



Hotline Investigations in a Virtual World

Richard P. Kusserow | July 2024

With people working remotely, Hotline call dynamics and investigations have changed


One result of the recent COVID Pandemic has been the disruption in the workplace. The 2023 SAI Global/Strategic Management Compliance Benchmark Survey found 84% of reporting organizations had compliance office staff working remotely to one degree or another. Further complicating matters is that the host organization also have many who are also working in a virtual capacity away from the job site. The full implication of all this on the operation of the hotline is open for speculation, but one thing is sure and that is the workplace and compliance office dynamics have changed, which will influence hotline reporting. It means (a) individuals may be less likely to witness or hear about potential violations or incidents in the workplace that could be reported to the hotline; (b) compliance staff may not be available to learn directly from others about incidents or issues; and (c) investigations of allegations and complaints may be complicated by individuals not being available for personal interviews. The first two issues could affect hotline call rates, but what is already clear is that it is increasingly common for conducting investigations of hotline reports remotely. Both those conducting the investigation, as well as those to be interviewed are often working remotely. This creates major challenges for being able to thoroughly conduct the investigation, including interviewing witnesses while protecting employee privacy rights. It also means taking steps to ensure confidentiality and security of information. The following are tips for Compliance Officers to consider:

- 1. Reinforce Duty to Report.** Employees remote from the workplace may be more reluctant to report suspected or potential violations through management channels. As such, reinforcing the duty to report to the hotline in compliance training and employee communication channels becomes doubly important.
- 2. Hotline Operators.** With so many people being remote from the workplace, there is an ever-increasing reliance on written communication channels, rather than direct personal live contacts. In the past the hotline trend was for more employees using web-based reporting, rather than speaking with an operator. However, in this new world people may find talking to a trained operator as a preferred

communication channel. As such, consideration might be given to reinforcing in the hotline message of being able to speak directly to someone.

- 3. Remote Investigators.** Remote investigations are likely here to stay, but they present numerous privacy, confidentiality and data security challenges requiring proper planning to ensure compliance with applicable laws and business needs. Those conducting investigations remotely must take into consideration legal requirements and challenges to ensure privacy of employee personal information and the confidentiality of information gathered or shared during an investigation. Investigators conducting interviews remotely must ensure they are doing it in a private, closed space where there are no distractions, and the interviews can't be overhead or interrupted by others; and never use public Wifi systems for interviews. They must keep investigative records confidential in a secure limited access space.
- 4. Interviewees.** One of the fundamental rules in conducting investigation interviews is taking steps to ensure privacy, avoid distractions, or any place where others could overhear what is going on. In addition, it is always important for the person being interviewed to be away from their own setting or office that provides them with a level of control not optimal for interviewing. However, for remote interviewing this is a very serious obstacle, in that the person is likely in their own premises with many potential distractions, such as television in the background, or the presence of spouses, children or others. It is therefore important to try to schedule the interview at a date and time when some of these potential distractions can be avoided.
- 5. Video Technology.** Conducting interviews in person is without question far superior to doing it any other way. An extremely important aspect to it is being able to establish rapport with the person, as well as see and physically read the person's attitude and reactions. Done correctly, it also eliminates any distractions. In conducting interviews remotely, establishing rapport, gaining control and reading body language is weakened significantly. However, by necessity it may not be practical or feasible to interview everyone in person. In such circumstances, the best alternative is conducting the interview via video, which is far better than a simple phone call. In either case there is a loss of some control and no assurance that there may not be others viewing or overhearing it. There are several platforms for conducting interviews through this means, including Teams, Zoom, etc. It is important that the person being interviewed understands in advance how it is used. It is important to know how to share any document on the screen with the person being interviewed. Video interviews can be recorded, therefore check this setting to avoid doing this unless it is intended, and the witness has authorized having this done. At the same time, it is important to confirm with the person being interviewed that they are not recording the meeting.

6. Others Present at Interviews. Interviews conducted during an investigation are confidential and should not have others present to affect how individuals will respond to questions and should be avoided. However, when this is being done remotely, it is difficult to ensure that others are not present. It is advisable at the outset of the interview to ask the person whether there is anyone else present to overhear the call.



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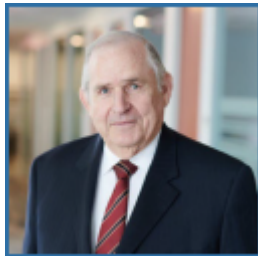
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7. Recording Interviews. Recording remote interviews can be risky, particularly without obtaining the consent of the interviewee. Investigators should obtain an interviewee's express consent before recording a call or videoconference session. Most states only require the consent of a single party to a recording, however, fifteen states require both (or all) parties to a conversation to consent to recording it. Penalties for violating these laws can include civil penalties as well as criminal liability. The witness should be told up front that they do not have the investigator's consent to record the interview. Even assuming the witness consents to recording, consideration should be given as to whether it's a good idea to do it. Before moving ahead with recording consider (a) that the recording might be discoverable in any third party proceeding; (b) applicable law for obtaining consent before recording an interview; (c) how to go about informing the interviewee that the interview will be recorded; (d) need to obtain written consent to record from the interviewee in advance; (e) understanding the recording functionality of the video platform to be used; (f) knowing how to share documents securely that will contain confidential or sensitive information; (g) announcing at the beginning of an interview that the interview will be recorded and the participant has consented to it; and (h) following data preservation and storage policies.

8. Establish Rapport. One of the essential principles for conducting effective investigation interviews is establishing rapport with people being interviewed. This requires taking steps to ensure a friendly, open, and positive tone for the interview and overcoming the person feeling uncomfortable. Doing this remotely is far more difficult than when done in person. Notwithstanding this, it is important that the first impression will provide a sense of empathy, trust, and respect. One part of this will be at the outset asking the person if this is a good time for the interview and whether there are other people present. If there are any doubts about the time or circumstances for the interview, it should be rescheduled.

9. Assess Credibility. A very large part of conducting interviews is assessing the person's credibility. In large measure this goes beyond what is being said to how it is being said. It is being able to read a person's body language when answering questions, especially those that are important or critical to the investigation. Much of that body language involves hands and feet that will not be visible during video interviews. Notwithstanding this, attention should be given to looking closely at demeanor throughout the interview. During this initial rapport establishing phase, provide easy and general questions about who they are what work they do, etc.; and closely observe their facial expressions, pace of speaking and other characteristics. This will be the baseline to compare when substantive questions follow. Changes in behavior become important.

Interested in learning more about Compliance Hotlines? Contact Shelby Cole at scole@complianceresource.com



About the Author

Richard P. Kusserow established Strategic Management Services, LLC, after retiring from being the DHHS Inspector General, and has assisted over 2,000 health care organizations and entities in developing, implementing and assessing compliance programs.