

## HOTLINES AS A FCPA COMPLIANCE TOOL

Employees are a company's best source of information about what is going on in the company. It is certainly a best practice for a company to listen to its own employees, particularly to help improve its processes and procedures. But more than listening to its employees, a company should provide a safe and secure route for employees to escalate their concerns. This is the underlying rationale behind an anonymous reporting system within any organization. This concept is one key components of a Foreign Corrupt Practices Act (FCPA) compliance and ethics 'best practices' program. Both the Principles of Federal Prosecution of Business Organization (US Sentencing Guidelines) and the OECD Good Practice Guidance on Internal Controls, Ethics, and Compliance ("OCED Good Practices") list, as one of their components, an anonymous reporting mechanism by which employees can report compliance and ethics violations. This concept, in the FCPA world, is usually referred to as a "Hotline". This article will discuss how the use of a Hotline can assist a company with its overall FCPA compliance and ethics efforts.

The US Sentencing Guidelines state:

(C) to have and publicize a system, which may include mechanisms that allow for anonymity or confidentiality, whereby the organization's employees and agents may report or seek guidance regarding potential or actual criminal conduct without fear of retaliation.

The OECD Good Practices states:

v) companies to provide channels for communication by, and protection of, persons not willing to violate professional standards or ethics under instructions or pressure from hierarchical superiors, as well as for persons willing to report breaches of the law or professional standards or ethics occurring within the company in good faith and on reasonable grounds, and should encourage companies to take appropriate action based on such reporting;

Confidential reporting is critical to any organization, not only from the legal requirements which specify that such a mechanism be available for employees, but also to allow escalation of compliance and ethics issues in a manner which is safe for employees and can lead the discovery of significant FCPA compliance issues. Two recent examples of employees reporting issues include the Daimler and, the ongoing, Avon matters. A company's commitment to a hotline provides a means by which employees can elevate compliance and ethics concerns before they become full blown FCPA enforcements actions.

While there is no generally accepted industry standard regarding the implementation and employment of Hotline, Ethicspoint, in a White Paper, entitled “It’s Not Your Father’s Hotline”, suggested the following as the ‘best practices’ for internal Hotlines:

1. *Availability*-a Hotline should be available 24 hours a day/7 days a week and toll-free. It should be available in the native tongue of the person utilizing it so if your work force uses more than one language for inter-company communications, your Hotline should reflect this as well.
2. *Escalation*-after a report is received through the Hotline it should be distributed to the appropriate person or department for action and oversight. This would also include resolution of the information presented, if warranted and consistent application of the investigation process throughout the pendency of the matter.
3. *Follow-Up*-there should be a mechanism for follow-up with the Hotline reporter, even if the report is made anonymously. This allows the appropriate person within your organization to substantiate the report or obtain additional information at an early stage, if appropriate.
4. *Oversight*-the information communicated through the Hotline should be available to the appropriate Board Committee or Management Committee in the form of statistical summaries and that an audit trail be available to the appropriate oversight group of actions taken and resolution of any information reported through the Hotline.

The Hotline can be a key company tool in an effective FCPA compliance program. Properly advertised and then utilized, it can assist a company to learn about issues and take appropriate actions before these issues erupt into more serious problems. Lastly the proper maintenance of a Hotline can not only allow a company to track compliance issues as they come into the system and document its response but also use this information as an ongoing audit of its FCPA compliance system.

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