



DEPARTMENT OF JUSTICE UPDATED GUIDELINES FOR EVALUATING THE EFFECTIVENESS OF CORPORATE MISCONDUCT REPORTING TOOLS

June 2020

These guidelines are used by DOJ prosecutors in investigating and determining whether a company had an **"adequate and effective corporate compliance program"** at the time of misconduct and will be used when deciding charges, negotiating pleas, and calculating fines.

On June 1, 2020, the United States Department of Justice (DOJ) updated its guidelines for Federal prosecutors, encouraging them to evaluate the effectiveness of corporate misconduct reporting tools and whether they are working actively and effectively.

The updated guidelines give companies less protection from passive, check-box compliance programs and favor proactive programs that are well communicated, and feature easily accessible reporting solutions that guarantee employees a place of safety.

Given that the two main reasons employees do not report misconduct are: a lack of confidence action will be taken by the employer; and fear of retaliation, the DOJ will measure the effectiveness of corporate misconduct incident reporting tools in three categories of questions:

Is the corporation's compliance program well designed?

Is the program adequately resourced and empowered to function effectively?

Does the corporation's compliance program work in practice?

A "hallmark of a well-designed compliance program is the existence of an efficient and trusted mechanism by which employees can anonymously or confidentially report allegations of a breach of the company's code of conduct, company policies, or suspected or actual misconduct."

- Department of Justice

Section 1.d.

Confidential reporting mechanisms are highly probative of whether a company has “established corporate governance mechanisms that can effectively detect and prevent misconduct.” JM 9-28.800; see also U.S.S.G. § 8B2.1(b)(5)(C)

Questions used for evaluation include:

- ❑ Does the company have an anonymous reporting mechanism and has it been used?
- ❑ Does the company take measures to test whether employees are aware of the (reporting tool) and feel comfortable using it?
- ❑ Has the compliance function had full access to reporting and investigative information?
- ❑ Does the company periodically analyze the reports or findings for patterns of misconduct, red flags, or other weaknesses?

Section 2. Adequately resourced and empowered compliance programs

Prosecutors are instructed to probe whether a compliance program is a “paper program” or one “implemented, reviewed, and revised in an effective manner. Also, probing into whether employees are “convinced of the corporation’s commitment” to the compliance program”.

See the full text of the DOJ Evaluation of Corporate Compliance Programs, [here](#).

Vault Platform ensures companies have a well-designed internal incident reporting system that adheres to the best practices suggested by the DOJ.

Vault’s highly accessible mobile app gives employees options for reporting in name, anonymously, or together under the condition they are not the first of only to raise a concern about an individual.

Vault’s Resolution Hub promotes collaboration across internal and external partners in the investigative process and allows multiple levels of admin access and supervision.

Data & Insights dashboard surfaces patterns of misconduct across time and department, tracking time spent in investigation, and highlighting trends across geography and misconduct categories.

Hotlines are no longer adequate for today’s workplaces. They are an underutilized checkbox solution, acknowledged as insufficient.

According to the [2019 Global Business Ethics Survey](#) hotlines only capture **6%** of incident reports from employees.

Whereas employees with access to Vault are **8x** more likely to report issues to their company than those without by giving employees a discreet, accessible path for surfacing concerns with a tool built to cultivate trust and increase transparency in the process.

Vault Platform ensures you are fully compliant to respond to DOJ inquiries by:

Creating an accessible and confidential mechanism for employees to voice concerns or submit reports internally with paths to discreetly come forward directly, anonymously, or together via an enterprise-grade mobile app . Open Reporting extends the reporting capability to your entire ecosystem, not just employees with access to the app.

Ensuring reports are escalated to the appropriate stakeholder with automated triage based on attributes such as misconduct category type or location.

Providing a robust case management solution with innovative time-stamping, configurable misconduct categories, and an investigation audit trail for reporting.

Cutting out ineffective third-party hotline solutions to give you transparency into the process and the risks by directly connecting you with your people, reducing the liability of potentially unexposed issues from outsourcing misconduct reporting and processes.

