

EFFECTIVE ROOT CAUSE ANALYSIS OF COMPLIANCE VIOLATIONS

“A hallmark of a compliance program that is working effectively in practice is the extent to which a company is able to conduct a thoughtful root cause analysis of misconduct and timely and appropriately remediate to address the root causes.”

Department of Justice, Evaluation of Corporate Compliance Programs (September 2024)

Root Cause Analysis Facilitates Continuous Improvement

There is no such thing as “perfect” when it comes to compliance programs. There will always be gaps in controls and opportunities for improvement. RCA facilitates the critical goal of continuous program improvement.

Without a deep understanding of root causes, remediation efforts may address only symptoms and leave a company vulnerable to repeat violations. RCA shifts the post-misconduct focus to identifying systemic issues that contributed to the misconduct.

Regulators and enforcement officials also recognize the importance of RCA. The US Department of Justice expects companies to conduct thorough root cause analysis in response to compliance violations.

Key Characteristics of RCA

- 1 Delving Beyond Symptoms:** RCA distinguishes between root causes (the underlying reasons) and symptoms (the observable effects).
- 2 Proactive Outcome:** While triggered by a past event, the purpose of RCA is to prevent future violations by identifying and addressing root causes.
- 3 Iterative Questioning Process:** Techniques like the “Five Whys” are used to drill down through layers of symptoms to uncover root causes.
- 4 Integration of Findings into Compliance Program:** Recommendations from the RCA are used to improve policies, training, monitoring, and other controls.

The Process

- 1 Clearly Define the Issue(s) Under Review**
Articulate the precise objectives of the RCA to provide a clear basis for the analysis.
- 2 Leverage Established Frameworks to Guide the Analysis**
Utilize recognized frameworks like the “Five Whys” or the “Fishbone Diagram” to guide the process and ensure a systematic approach.
Consider the DOJ’s ECCP and Corporate Enforcement Policy, which provide valuable insights into RCA.
- 3 Identify the Root Cause(s)**
Root Cause vs. Symptom: A symptom is an observable effect of the root cause. The root cause is the underlying reason for the symptom.
Recognize that people are often a contributing factor in compliance failures. Analyze factors like:
 - Incentives and pressures
 - Lack of understanding or inadequate training
 - Managerial pressure or a culture that discourages reporting
 - Ability to circumvent or override controls
 - Lack of monitoring
 - Deficiencies in oversightAvoid “human error” as a default. Go deeper to understand why individuals made certain choices and what systemic factors may have contributed. And recognize that compliance failures often result from a combination of deficiencies in policies; lack of awareness; inadequate oversight or monitoring; cultural issues; and external pressures.

4 Develop Actionable Findings and a Corrective Action Plan

Remedial measures should directly address the identified root causes. Remedial measures may include, for example:

- Revising policies, procedures, or controls
- Enhancing training programs
- Strengthening oversight and monitoring mechanisms
- Revising incentive structures
- Addressing cultural issues that may contribute to misconduct

5 Implementation and Documentation

Document and track implementation of remedial measures.

Addressing cultural issues that may contribute to misconduct

Avoiding Common Pitfalls in RCA

- Focusing on symptoms instead of root causes can lead to superficial solutions that fail to prevent recurrence.
- Asking poorly-framed questions can lead to inaccurate conclusions.
- Ignoring the role of individuals and organizational culture can result in ineffective remediation.
- Relying on data without context can be misleading. Understanding the context is crucial for drawing accurate conclusions.
- The RCA process is only valuable if the findings are used to make tangible improvements to the compliance program.

The Five Whys

The "Five Whys" is a simple yet powerful technique that can be used to drill down to the root cause of a problem. It involves repeatedly asking "why" to get to the underlying cause of an issue. While it may not always take exactly five "whys," the key is to continue asking until you reach a point where the answer is no longer a symptom but the root cause.

Example: An employee submitted an expense report with several non-compliant expenses.

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| 1 Why?
The employee was not aware of the company's expense policy. | 2 Why?
The employee did not receive adequate training on the expense policy. | 3 Why?
The company's training program does not adequately cover the expense policy. | 4 Why?
There is no process in place to ensure that the training program is updated to reflect policy changes. |
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Another common RCA technique is a fishbone diagram, with the head representing the issue, and the spines of the fish exploring the various causes.

Root Cause Analysis with Fishbone Diagram

