

Table of Contents

CHAPTER 1. INTERNAL INVESTIGATIONS—A NARRATIVE CHECKLIST

- § 1:1 Introduction and overview
- § 1:2 Types of internal investigations
- § 1:3 Advance planning for potential investigations
- § 1:4 Problems to be avoided under the “do no harm” concept
- § 1:5 When the problem hits: Preliminary assessment
- § 1:6 The lawyer’s role—The attorney-client privilege
- § 1:7 —The Organizational Sentencing Guidelines
- § 1:8 —Responsibility for the lawyer’s own conduct in an internal investigation
- § 1:9 —Considerations in conducting the interviews
- § 1:10 —Considerations in other aspects of the investigation
- § 1:11 Legal pitfalls in an internal corporate investigation
- § 1:12 List of useful forms

CHAPTER 2. LEGAL AUDITS

- § 2:1 Introduction and overview
- § 2:2 Comparison of legal and financial audits
- § 2:3 Legal audits and compliance programs
- § 2:4 The preventative law legal audit
- § 2:5 The *Caremark* case
- § 2:6 Summary and conclusions

CHAPTER 3. THE IMPLEMENTATION AND STRATEGIES OF INTERNAL CORPORATE INVESTIGATIONS AND EFFECTIVE COMPLIANCE PROGRAMS

- § 3:1 Introduction
- § 3:2 —Enforcement authorities
- § 3:3 —Department of Justice
- § 3:4 —Federal Acquisition Regulations (FAR)
- § 3:5 —Securities and Exchange Commission
- § 3:6 —U.S. Sentencing Guidelines
- § 3:7 —Summary
- § 3:8 Responsibilities of senior management: *Salomon, Joseph, and Triton Energy*: The seminal cases—*Salomon*

- § 3:9 —*Joseph*
- § 3:10 —*Triton Energy*
- § 3:11 Responsibilities of corporate directors: *Cooper, Grace,*
and *Caremark*—*Cooper*
- § 3:12 —*Grace*
- § 3:13 —*Caremark*
- § 3:14 —Auditor reports of illegal acts
- § 3:15 The internal corporate investigation: The FCPA
example
- § 3:16 —History
- § 3:17 —The decision to investigate
- § 3:18 —Conduct of the investigation—The participants
- § 3:19 — —Privileges—Attorney-client privilege
- § 3:20 — — —Work-product immunity
- § 3:21 — — —The self-evaluation privilege
- § 3:22 — —Board resolution
- § 3:23 — —Audit programs
- § 3:24 — —Letter of instruction
- § 3:25 An analysis of the duty to report corporate
misconduct—Mandatory
- § 3:26 — —Quantitative materiality
- § 3:27 — —Management integrity
- § 3:28 —Voluntary
- § 3:29 The sentencing of organizations—Fines
- § 3:30 —Guideline components
- § 3:31 — —Offense level
- § 3:32 — —Base fines
- § 3:33 — —Culpability score
- § 3:34 — —Multipliers range
- § 3:35 — —Multiple counts
- § 3:36 An effective compliance program—Sentencing
guidelines standards
- § 3:37 —Government-negotiated integrity agreements
- § 3:38 Implementation of an effective compliance program
- § 3:39 —Agents
- § 3:40 —Distributors
- § 3:41 —Joint venture partners
- § 3:42 The legal audit
- § 3:43 —Document review
- § 3:44 —Evaluation of FCPA written program
- § 3:45 —Implementation of FCPA written program
- § 3:46 —Interviews
- § 3:47 —Report
- § 3:48 Conclusion

TABLE OF CONTENTS

Appendix 3-A. Evaluation of Corporate Compliance Programs (Department of Justice, Criminal Division— Updated June 2020)

CHAPTER 4. CORPORATE CRIMINAL LIABILITY

- § 4:1 Introduction
- § 4:2 Liability of corporate employees
- § 4:3 —Individual’s liability for his or her own conduct—
Individuals always liable for their own conduct
- § 4:4 — —Conspiracy
- § 4:5 —Individual’s liability for the corporation’s conduct
- § 4:6 Liability of the corporation itself
- § 4:7 —Liability for employees’ actions
- § 4:8 —Corporate liability for acts of nonemployees
- § 4:9 —Credit for corporate cooperation in federal criminal
investigation
- § 4:10 — —Corporate mergers
- § 4:11 Crime/fraud reporting requirements for government
contractors
- § 4:12 Some specific crimes for which corporations may be
held liable—Mail and wire fraud—Overview
- § 4:13 — —Jurisdictional elements
- § 4:14 — —Intangible rights
- § 4:15 — —False representations
- § 4:16 —Conspiracy—Overview
- § 4:17 — —When does a crime become a conspiracy?—
General definition of conspiracy
- § 4:18 — — —The agreement
- § 4:19 — — —Knowledge, intent, and participation
- § 4:20 — —Overt act
- § 4:21 — —The conspiracy to defraud the government
- § 4:22 — —Intracorporate conspiracies
- § 4:23 —Obstruction of justice—Overview
- § 4:24 — —Section 1503: The Basic Obstruction of Justice
Statute
- § 4:25 — — —Corrupt intent
- § 4:26 — — —Pending proceedings
- § 4:27 — — —Knowledge requirement
- § 4:28 — — —What types of conduct are prohibited?
- § 4:29 — — —Who is protected?
- § 4:30 — —Section 1505: Obstruction of Government
Proceedings
- § 4:31 — — —A pending proceeding
- § 4:32 — — —Prohibited conduct

- § 4:33 — — —Corrupt intent
- § 4:34 — — —Section 1510: Obstruction of Criminal Investigations
- § 4:35 — — —Section 1512: Witness Tampering
- § 4:36 — — —Section 1519: Document Destruction or Alteration
- § 4:37 — — —Section 1520: Retention of Corporate Audit Records
- § 4:38 — — —Aiding and abetting—Overview
- § 4:39 — — —Basic elements
- § 4:40 — — —Relationship between principal and aider/abettor
- § 4:41 — — —Knowledge of the aider/abettor
- § 4:42 — — —Parameters of aiding and abetting
- § 4:43 — — —False statements—Overview
- § 4:44 — — —Willful and knowing
- § 4:45 — — —Materiality
- § 4:46 — — —The abolition of the “exculpatory no” exception
- § 4:47 — — —Corporate fraud
- § 4:48 — — —Certification of financial reports
- § 4:49 — — —Effect on other statutes
- § 4:50 — — —Statute of limitations

Appendix 4-A. Evaluation of Corporate Compliance Programs—Department of Justice, Criminal Division (March 2023)

CHAPTER 5. THE ATTORNEY-CLIENT PRIVILEGE AND CONFIDENTIALITY

- § 5:1 Introduction
- § 5:2 Overview of the attorney-client privilege—The law of privilege
- § 5:3 — — —Application to the corporate client
- § 5:4 Parties to the privilege
- § 5:5 — — —Client—Corporations
- § 5:6 — — —Federal courts
- § 5:7 — — —State courts
- § 5:8 — — —Dissolved corporations
- § 5:9 — — —Limited liability companies
- § 5:10 — — —Successor
- § 5:11 — — —Individual employees
- § 5:12 — — —Former officers and directors
- § 5:13 — — —Functional equivalents
- § 5:14 — — —Subsidiaries
- § 5:15 — — —Insurer
- § 5:16 — — —Attorneys—Bar membership

TABLE OF CONTENTS

§ 5:17	— — <i>De facto</i> attorney
§ 5:18	— — Agents of the lawyer
§ 5:19	— — Acting in capacity as lawyer
§ 5:20	— — — Limited involvement
§ 5:21	— — — Corporate responsibilities
§ 5:22	— Patent agents
§ 5:23	Access to privileged corporate materials
§ 5:24	Types of communications covered—Communications versus information
§ 5:25	— Attorney’s advice to the client
§ 5:26	— — Dual purpose communications
§ 5:27	— <i>Ex parte</i> communications
§ 5:28	— Lawyer-auditor communications
§ 5:29	— Billing statements
§ 5:30	— General reports
§ 5:31	— Investigative reports
§ 5:32	— Settlement records
§ 5:33	— Manuals
§ 5:34	— Illegal or fraudulent conduct
§ 5:35	The confidentiality of the communications— Expectation of confidentiality
§ 5:36	— Physical maintenance of confidentiality
§ 5:37	— The presence of third parties
§ 5:38	— Dual representation
§ 5:39	Exceptions—The “last-link” exception
§ 5:40	— The joint-client exception
§ 5:41	— Self-protection exception
§ 5:42	— The crime-fraud exception
§ 5:43	— Whistleblower statutes
§ 5:44	Asserting a claim of privilege
§ 5:45	— Entity to determine validity of claim
§ 5:46	— The privilege log
§ 5:47	— <i>In camera</i> inspections
§ 5:48	— Filter protocols
§ 5:49	— Protective orders
§ 5:50	— Appeals
§ 5:51	Waiver
§ 5:52	— Types of waivers—Express waiver
§ 5:53	— — — Intentional waiver
§ 5:54	— — — Inadvertent waiver
§ 5:55	— — Implied waiver
§ 5:56	— — — Development of adversarial relationship
§ 5:57	— — — Offensive-use waiver
§ 5:58	— — — Subject matter
§ 5:59	— — — Common-interest theory

- § 5:60 — — —Testimonial review
- § 5:61 — —Partial waiver—Generally
- § 5:62 — — —Effects
- § 5:63 —Who may waive the privilege?—Change of corporate control
- § 5:64 — —Shareholder
- § 5:65 — —Corporate organization
- § 5:66 — —Personal versus corporate assertions of the privilege
- § 5:67 — —Corporate representative
- § 5:68 Records kept at outside counsel's offices
- § 5:69 Privilege and technology—E-mail
- § 5:70 —Keyword search protocol
- § 5:71 —Format of electronic records

CHAPTER 6. VOLUNTARY DISCLOSURE PROGRAMS

- § 6:1 Introduction
- § 6:2 The government-run voluntary disclosure programs—
Corporate criminal misconduct
- § 6:3 —Defense contractors
- § 6:4 — —Agency responsibilities
- § 6:5 — —Procedure
- § 6:6 —Environmental violations
- § 6:7 —Antitrust
- § 6:8 — —Corporate leniency policy
- § 6:9 — —Individual leniency policy
- § 6:10 —Medicare/Medicaid fraud
- § 6:11 Pros and cons of voluntary disclosure
- § 6:12 —The pros: Advantages to voluntary disclosure
- § 6:13 —The cons: Disadvantages to making disclosures
- Appendix 6-A. Corporate Leniency Policy: Answers to Some
Recurring Questions
- Appendix 6-B. United States Attorneys' Offices Voluntary
Self-Disclosure Policy

CHAPTER 7. DUTY AND INCENTIVES TO CONDUCT AN INTERNAL INVESTIGATION

- § 7:1 Introduction
- § 7:2 Why *shouldn't* you investigate?
- § 7:3 —Cost
- § 7:4 —Exposure to liability
- § 7:5 —Disgruntled bad actors

TABLE OF CONTENTS

- § 7:6 What if we are required to investigate?
- § 7:7 —Statutory and regulatory duties
- § 7:8 —Common-law duties of managers and officers
- § 7:9 —Common-law duties of counsel
- § 7:10 Incentives
- § 7:11 —Government incentive programs
- § 7:12 —Practical incentives
- § 7:13 Conclusion

CHAPTER 8. PROTECTIONS FOR WHISTLEBLOWERS

- § 8:1 Introduction
- § 8:2 The Sarbanes-Oxley Act of 2002—The enforcement agency
 - § 8:3 —The basic rules
 - § 8:4 —The basic procedures—Determination letter
 - § 8:5 — —The preliminary order
 - § 8:6 — —The hearing and appeal
 - § 8:7 —The prohibited acts
 - § 8:8 —The *prima facie* case
 - § 8:9 —The relevant case law
- § 8:10 — —*Halloum v. Intel Corp.*, No. 2003-SOX-7 (DOL ALJ Mar. 4, 2004)
- § 8:11 — —*Welch v. Cardinal Bankshares Corp.*, No. 2003-SOX-15 (DOL ALJ Jan. 28, 2004)
- § 8:12 — —*Gilmore v. Parametric Technology*, No. 2003-SOX-1 (DOL ALJ Feb. 6, 2003)
- § 8:13 — —*Getman v. Southwest Securities, Inc.*, No. 2003-SOX-8 (DOL ALJ Feb. 2, 2004)
- § 8:14 — —*Platone v. Atlantic Coast Airlines*, No. 2003-SOX-27 (DOL ALJ Apr. 30, 2004)
- § 8:15 — —*Morefield v. Exelon Services*, No. 2004-SOX-2 (DOL ALJ Jan. 28, 2004)
- § 8:16 — —*Marshall v. Northrup Gruman Synoptics*, 2005-SOX-8 (DOL ALJ June 22, 2005)
- § 8:17 — —*Bechtel v. Competitive Technologies, Inc.*, 2005-SOX-33 (DOL ALJ March 29, 2005)
- § 8:18 — —*Smith v. Hewlett Packard*, 2005-SOX-88 (DOL ALJ Jan. 19, 2006)
- § 8:19 — —*Brady v. Direct Mail Management, Inc.*, 2006-SOX-016 (DOL ALJ Jan. 5, 2006)
- § 8:20 — —*Levi v. Anheuser Busch Companies, Inc.*, 2006-SOX-108 (DOL ALJ Oct. 18, 2006)
- § 8:21 — —*Koeck v. General Electric Consumer and Industrial, et. al.*, 2007-SOX-73 (DOL ALJ March 13, 2008)

- § 8:22 — —*Fredrickson v. American Eagle Airlines, Inc.*,
2008-SOX-38 (DOL ALJ July 24, 2008)
- § 8:23 — —*Snyder v. Wyeth Pharmaceuticals*, 2008-SOX-55
(DOL ALJ Oct. 1, 2008)
- § 8:24 — —*Conner v. ITT Corp., ITT Industries, Inc. and ITT
Space Systems Divisions*, 2008-SOX-71 (DOL ALJ
Apr. 10, 2009)
- § 8:25 Dodd-Frank Wall Street Reform and Consumer
Protection Act of 2010
- § 8:26 The federal employment laws
- § 8:27 —Occupational Safety and Health Act
- § 8:28 —The Fair Labor Standards Act
- § 8:29 —Equal employment opportunity provisions
- § 8:30 The False Claims Act
- § 8:31 The Fair and Accurate Credit Transactions Act
- § 8:32 Consumer Product Safety Act
- § 8:33 The environmental laws
- § 8:34 The state laws
- § 8:35 Other legal issues to consider
- § 8:36 Conclusion

CHAPTER 9. INTERNAL INVESTIGATIONS OF EMPLOYEE MISCONDUCT

- § 9:1 Introduction
- § 9:2 At-will or contractual: Erosion of the employment-at-
will doctrine
- § 9:3 —Investigation that reveals bona fide reason for
termination
- § 9:4 —Exceptions to the employment-at-will doctrine—The
public policy exception
- § 9:5 —Discharges based on implied contract theories:
Employee handbooks and manuals
- § 9:6 — —Situations in which courts refused to recognize
implied contracts based on employee handbook or
manuals
- § 9:7 — — —Situations where courts recognized implied
contracts in employee manuals and handbooks
- § 9:8 — — —Disclaimers of at-will employment
- § 9:9 — —Oral implied-in-fact contracts
- § 9:10 Tort causes of action
- § 9:11 —Intentional infliction of emotional distress
- § 9:12 —Invasion of privacy
- § 9:13 —False imprisonment
- § 9:14 —Defamation
- § 9:15 The investigation process

TABLE OF CONTENTS

- § 9:16 —Effective investigations
- § 9:17 —How not to conduct the investigation
- § 9:18 —Does the company have a duty to investigate?
- § 9:19 —Failure to follow investigation procedures
- § 9:20 —Negligent investigation
- § 9:21 —Retaliation claims
- § 9:22 Collective bargaining agreements and the preemption
of state tort law claims arising from internal
investigations
- § 9:23 Conclusion

CHAPTER 10. THE SELF-EVALUATIVE PRIVILEGE

- § 10:1 Introduction
- § 10:2 Elements
- § 10:3 The self-evaluative privilege is a qualified privilege
- § 10:4 The evaluative/factual distinction
- § 10:5 *In camera* inspection
- § 10:6 Confidential treatment of the information
- § 10:7 Disclosure to the government
- § 10:8 Materials prepared for mandatory government
reports—Product safety reports
- § 10:9 —Accident reports
- § 10:10 —Affirmative action plans
- § 10:11 Investigative materials—Employment discrimination
claims
- § 10:12 Voluntary internal reviews
- § 10:13 —Medical peer reviews
- § 10:14 — —Federal labor laws
- § 10:15 Beyond the Title VII cases in the corporate context
- § 10:16 Statutory protection
- § 10:17 Privacy Audits and the self-evaluative privilege
- § 10:18 Conclusion

CHAPTER 11. ENVIRONMENTAL AUDITS

- § 11:1 Introduction
- § 11:2 Different audits for different purposes
- § 11:3 Why an audit is necessary—Common reasons for
conducting an audit
- § 11:4 —Advantages and disadvantages of environmental
audit programs
- § 11:5 The environmental self-audit privilege—Overview of
problems connected with environmental audits
- § 11:6 —The environmental self-audit privilege in general

LEGAL AUDITS AND INVESTIGATIONS

- § 11:7 —EPA self-policing incentive policy
- § 11:8 — —eDisclosure system
- § 11:9 — —New owners
- § 11:10 —States' privileges
- § 11:11 — —What they cover
- § 11:12 — —What they except
- § 11:13 — — —Waiver
- § 11:14 — — —Legally required information
- § 11:15 — — —Information obtained by observation
- § 11:16 — — —Fraudulent purpose
- § 11:17 — — —Stipulation
- § 11:18 — — —Evidence of noncompliance without
reasonable diligence
- § 11:19 — — —Imminent and substantial danger
- § 11:20 — —Conditions precedent to getting the privilege
- § 11:21 — —Burden of proof
- § 11:22 — —Immunity for voluntary disclosure
- § 11:23 — —No effect on other privileges
- § 11:24 —Self-policing policy and criminal violations
- § 11:25 —EPA corporate-wide audit agreements
- § 11:26 —Conclusion
- § 11:27 Components of a typical environmental audit—
Ingredients
- § 11:28 —Common elements of all good audit programs
- § 11:29 —Planning
- § 11:30 —Identifying the applicable environmental laws
- § 11:31 —Identify past uses of property and past
environmental audits
- § 11:32 —Agency contacts
- § 11:33 —Staffing the audit team
- § 11:34 — —Staffing suggestions
- § 11:35 — — —Team leader
- § 11:36 — — —Legal counsel
- § 11:37 — — —Engineering consultants
- § 11:38 — — —Information manager
- § 11:39 — — —Specialists
- § 11:40 — —Assembling an audit team
- § 11:41 — — —Legal counsel
- § 11:42 — — —Technical consultants
- § 11:43 — — —The assessment team
- § 11:44 —Contracts with consultants
- § 11:45 —Determining the purpose and scope of the audit
- § 11:46 —The questionnaire
- § 11:47 —The visit
- § 11:48 —Inspection of property

TABLE OF CONTENTS

§ 11:49	—Sampling
§ 11:50	—Preparing the report/conclusion
§ 11:51	Acting on the report or the conclusions—Initial considerations
§ 11:52	Acting on the report or the assessment—Frequency of site assessments
§ 11:53	Auditing assistance: Available EPA resources
§ 11:54	Summary and conclusion
Appendix 11-A.	Text of EPA Environmental Auditing Policy Statement
Appendix 11-B.	Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations
Appendix 11-C.	EPA’s Audit Policy Program: Frequently Asked Questions (U.S. Environmental Protection Agency—January 2021)

CHAPTER 12. AUDITING COMPLIANCE WITH THE OCCUPATIONAL SAFETY AND HEALTH ACT

§ 12:1	Introduction
§ 12:2	Major components of the Occupational Safety and Health Act
§ 12:3	—Coverage
§ 12:4	—General requirements of the Occupational Safety and Health Act
§ 12:5	— —General duty clause
§ 12:6	— —Standards
§ 12:7	—Hazard communication rule
§ 12:8	— —Labeling
§ 12:9	— —Safety data sheets
§ 12:10	— —Information and training
§ 12:11	— —Written program
§ 12:12	— —Occupational Safety and Health Administration hazard communication rule compliance assistance
§ 12:13	—Occupational Safety and Health Administration penalties
§ 12:14	Essential components of an effective Occupational Safety and Health Act compliance program
§ 12:15	—Management commitment and employee involvement
§ 12:16	—Work site analysis
§ 12:17	—Hazard prevention and control
§ 12:18	—Safety and health training

- § 12:19 The Occupational Safety and Health Administration
consultation service
- § 12:20 Voluntary protection programs
- § 12:21 Targeted inspections
- § 12:22 Frequently cited Occupational Safety and Health Act
violations—Occupational Safety and Health
Administration web site information on frequently
cited standards
- § 12:23 —Record-keeping rules
- § 12:24 — —Employers covered by the rule
- § 12:25 — —Changes to record-keeping forms
- § 12:26 — — —Recording of injuries and illnesses
- § 12:27 — — —Determining work relationship
- § 12:28 — — —Elimination of different recording criteria for
injuries and illnesses
- § 12:29 — — —Days away and job restriction/transfer
- § 12:30 — — —Revised definitions of first aid and medical
treatment
- § 12:31 — —Needlestick injuries
- § 12:32 — —Hearing loss
- § 12:33 — —Tuberculosis
- § 12:34 — —Musculoskeletal disorders
- § 12:35 — —Business ownership changes
- § 12:36 — —Employee involvement with record keeping
- § 12:37 — —Privacy protections
- § 12:38 — —Computerization and centralization
- § 12:39 — —Fatality and catastrophic incidents
- § 12:40 Protecting audit documents under various privileges
- § 12:41 Protecting trade secrets
- § 12:42 Conclusion

CHAPTER 13. AUDITING RECORDS RETENTION PRACTICES

- § 13:1 Introduction
- § 13:2 Types of records
- § 13:3 —Personal records
- § 13:4 —Vital records
- § 13:5 —Third-party records
- § 13:6 —Electronic records
- § 13:7 —Internet records
- § 13:8 — —Advertising
- § 13:9 — —Communications
- § 13:10 — —Information
- § 13:11 — —Privacy implications for the corporation

TABLE OF CONTENTS

§ 13:12	Retention periods
§ 13:13	—Statutes and regulations
§ 13:14	—Statutes of limitations
§ 13:15	Storage
§ 13:16	—Accessibility
§ 13:17	— — Retrieval
§ 13:18	— — —Organization
§ 13:19	— — —Standards
§ 13:20	— — Security
§ 13:21	— — —Proprietary information
§ 13:22	— — —Classified information
§ 13:23	— — —Private records
§ 13:24	— — —Electronic records
§ 13:25	— — Obsolescence
§ 13:26	— — —Maintain systems
§ 13:27	— — —Standardize format
§ 13:28	— — —Migration
§ 13:29	—Preservation
§ 13:30	— —Facilities
§ 13:31	— — —Location
§ 13:32	— — —Environment controls
§ 13:33	— — —Supplies and products
§ 13:34	— — —Handling
§ 13:35	— —Catastrophic events
§ 13:36	— — —Scope
§ 13:37	— — —Procedures
§ 13:38	Record destruction—Identification
§ 13:39	—Duplicates
§ 13:40	—Suspension
§ 13:41	— —Statutory provisions—Criminal
§ 13:42	— — —Civil
§ 13:43	— —Program procedures—Timing
§ 13:44	— — —Documenting the program
§ 13:45	— — —Flagging documents
§ 13:46	— — —Litigation hold
§ 13:47	— — —Types of documents—Records of co-defendants
§ 13:48	— — — —Original records
§ 13:49	—Method of destruction
§ 13:50	Conclusion

Appendix 13-A. Electronic Records Management (36 C.F.R. pt. 1236)

Appendix 13-B. Facility Standards for Records Storage
Facilities (36 C.F.R. pt. 1234)

Appendix 13-C. Facility Standards for Records Storage
Facilities Inspection Checklist

CHAPTER 14. AUDITING INSIDER TRADING COMPLIANCE PROGRAMS

- § 14:1 Introduction
- § 14:2 Legislative history
- § 14:3 Theories of liability
- § 14:4 Section 10(b) and the SEC's Regulations
- § 14:5 —Insider trading policies
- § 14:6 —Trading plan
- § 14:7 Tender offers
- § 14:8 Short-swing trading restrictions
- § 14:9 Checklist of possible compliance procedures
- § 14:10 Conclusion

CHAPTER 15. CORPORATE CAMPAIGN CONTRIBUTIONS AND LOBBYING ACTIVITIES

- § 15:1 Introduction
- § 15:2 Campaign activities
- § 15:3 —Political action committees
- § 15:4 — —Organizing a PAC
- § 15:5 — —Contribution limits
- § 15:6 — —Payment of PAC costs
- § 15:7 — —Who may be solicited?
- § 15:8 — —The manner of solicitation
- § 15:9 — —Earmarked contributions
- § 15:10 — —Cash contributions
- § 15:11 — —Use of PAC funds
- § 15:12 — —Tax considerations
- § 15:13 — —State versus Federal PACs
- § 15:14 —Trustee accounts
- § 15:15 —Corporate communications
- § 15:16 —Voter registration and get-out-the-vote drives
- § 15:17 —Candidate visits
- § 15:18 —Use of corporate facilities
- § 15:19 —The company airplane
- § 15:20 —Employee leaves of absence
- § 15:21 —Participating in convention-related activity
- § 15:22 —Providing legal and accounting services
- § 15:23 —State political activity
- § 15:24 Corporate lobbying activity

TABLE OF CONTENTS

§ 15:25	—The Lobbying Disclosure Act of 1995—Generally
§ 15:26	— —Who is a “lobbyist” under the LDA?
§ 15:27	— —What are a “lobbying contact” and “lobbying activity” under the LDA?
§ 15:28	— —Registration requirements, Form LD-1
§ 15:29	— —Reporting requirements, Form LD-2
§ 15:30	— —Record-keeping requirements
§ 15:31	— —Penalties
§ 15:32	—Government contractors
§ 15:33	—Compliance counseling advice
§ 15:34	Memorandum explaining federal election laws to corporate employees
§ 15:35	—Illegal corporate actions
§ 15:36	—Restricted corporate actions
§ 15:37	—Actions relating to the company’s political action committees
§ 15:38	—Definition of management and executive employees
§ 15:39	—Individual political activity

Table of Contents

CHAPTER 16. THE ANTITRUST AUDIT

- § 16:1 Introduction
- § 16:2 What should you be looking for?
- § 16:3 —Files relating to any competitor
- § 16:4 —Sales reports
- § 16:5 —The record retention program
- § 16:6 —Distinction between corporate and personal records
- § 16:7 —Assessing the effect of consolidation
- § 16:8 —Auditing joint activity
- § 16:9 — —Cybersecurity
- § 16:10 —Auditing attendance at compliance programs
- § 16:11 What should you do with the results?
- § 16:12 Auditing receipt of the compliance manual
- § 16:13 How often should you audit a facility?
- § 16:14 Preparing for the audit
- § 16:15 Trade association attendees
- § 16:16 Audits in other portions of the company
- § 16:17 —Purchasing
- § 16:18 —Advertising
- § 16:19 —Engineering and technology
- § 16:20 —Mergers and acquisitions
- § 16:21 Summary and conclusions

Appendix 16-A. Suggested Antitrust Audit Protocol

Appendix 16-B. FTC’s Model Antitrust Compliance Audit Program

Appendix 16-C. Department of Justice and Federal Trade Commission: Antitrust Policy Statement on Sharing of Cybersecurity Information

Appendix 16-D. Evaluation of Corporate Compliance Programs in Criminal Antitrust Investigations (U.S. Department of Justice—Antitrust Division – July 2019)

Appendix 16-E. Antitrust Red Flags for Employment Practices

Appendix 16-F. Antitrust Guidance for Human Resource Professionals (Department of Justice—Antitrust Division and Federal Trade Commission—October 2016)

Bibliography

CHAPTER 17. AUDITING RELATIONSHIPS WITH INDEPENDENT CONTRACTORS

- § 17:1 Introduction
 - § 17:2 Independent contractor status—Illustrative cases
 - § 17:3 Identify present classification of existing workers
 - § 17:4 Documenting the relationship and drafting a good contract
 - § 17:5 Examine retention documents
 - § 17:6 Examine tax documentation
 - § 17:7 Assess the work situation of contractors
 - § 17:8 —Behavioral control
 - § 17:9 —Financial control
 - § 17:10 —Type of relationship
 - § 17:11 Review third-party contracts and arrangements
 - § 17:12 Voluntary Classification Settlement Program
 - § 17:13 Conclusion
- Appendix 17-A. Publication 15-A Employer's Supplemental Tax Guide (Internal Revenue Service–2024)
- Appendix 17-B. Voluntary Classification Settlement Program (VCSP)—IRS Announcement 2012-45
- Appendix 17-C. Understanding Employee vs. Contractor Designation; IRS Press Release, July 2017

CHAPTER 18. AUDITING SUBSTANCE ABUSE POLICIES

- § 18:1 Introduction
- § 18:2 Written policy provisions
- § 18:3 Training
- § 18:4 Testing
- § 18:5 Performance problems
- § 18:6 Employee assistance programs and last chance agreements
- § 18:7 Conclusion

CHAPTER 19. AUDITING COMPANY HANDBOOKS AND POLICIES

- § 19:1 Introduction
- § 19:2 Review the content of company handbooks
- § 19:3 —Compare existing policies with legally required policies
- § 19:4 —Harassment policies
- § 19:5 —At-will language

TABLE OF CONTENTS

- § 19:6 —Alternative dispute resolution
- § 19:7 —Internet usage
- § 19:8 Identify policies not included in handbook
- § 19:9 Compare company practices with policies
- § 19:10 Dissemination of policies
- § 19:11 Conclusion

CHAPTER 20. AUDITING WORKFORCE REDUCTION POLICIES

- § 20:1 Introduction
- § 20:2 Planning
- § 20:3 Examine company policy manuals or handbooks
- § 20:4 Early retirement incentives
- § 20:5 Severance agreements and releases
- § 20:6 Health care continuation policy
- § 20:7 Notices under the Worker Adjustment and Retraining Notification Act
- § 20:8 Policy for handling actual terminations
- § 20:9 Conclusion

Appendix 20-A. Employer's Guide to Advance Notice of Closings and Layoffs—Worker Adjustment and Retraining Notification (WARN) Act (Department of Labor—Employment and Training Administration)

CHAPTER 21. AUDITING EMPLOYMENT RECORD RETENTION AND POSTING PROCEDURES

- § 21:1 Introduction
- § 21:2 Types of records
- § 21:3 —Personnel documents
- § 21:4 —Employee selection procedures
- § 21:5 — —Records concerning impact
- § 21:6 — —Records concerning adverse impact
- § 21:7 — —Internet applications
- § 21:8 —Regulatory reports
- § 21:9 Retention periods
- § 21:10 Record destruction
- § 21:11 Confidentiality
- § 21:12 Compliance with posting requirements
- § 21:13 Conclusion

Appendix 21-A. Background Checks—What Employers Need to Know (Equal Employment Opportunity

Commission and the Federal Trade
Commission)

Appendix 21-B. Understanding OFCCP's Internet Applicant
and Traditional Applicant Recordkeeping
Requirements (Office of Federal Contract
Compliance Programs—Department of
Labor)—August 2019

CHAPTER 22. AUDITING VETERANS' REEMPLOYMENT POLICIES

- § 22:1 Overview
- § 22:2 Covered employers
- § 22:3 Employment and reemployment rights
- § 22:4 Employee benefits—Health plan continuation
- § 22:5 —Retirement benefits
- § 22:6 —Vacation and compensation
- § 22:7 Nondiscrimination obligation
- § 22:8 State law
- § 22:9 Areas to examine when auditing for the uniformed
services Employment and Reemployment Rights Act
compliance
- § 22:10 Conclusion

CHAPTER 23. AUDITING COMPLIANCE WITH THE FAMILY AND MEDICAL LEAVE ACT

- § 23:1 Overview
- § 23:2 Ensuring compliance with the Family and Medical
Leave Act leave requirements—Determination of
applicability
- § 23:3 —Examination of existing employee handbook
provisions
- § 23:4 —Evaluation of the process
- § 23:5 — —Handling leave requests
- § 23:6 — —Certification
- § 23:7 — —Notification of eligibility
- § 23:8 — —Designation of leave
- § 23:9 Evaluating the handling of medical information
- § 23:10 Reviewing policies and practices relating to job
restoration and employee benefits
- § 23:11 —Job restoration
- § 23:12 —Employee benefits
- § 23:13 Compliance with record-keeping and posting
requirements

TABLE OF CONTENTS

- § 23:14 Review of past lawsuits
- § 23:15 Conclusion
- Appendix 23A. Fact Sheet # 28D: Employer Notification
Requirements under the Family and
Medical Leave Act

CHAPTER 24. AUDITING COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT

- § 24:1 Introduction
- § 24:2 Audit of employment practices
- § 24:3 —Review employee handbooks and policies
- § 24:4 —Review written job descriptions
- § 24:5 —The hiring process
- § 24:6 — —Application forms
- § 24:7 — —Interviewing methods
- § 24:8 — —Tests and qualification standards
- § 24:9 — —Medical examinations
- § 24:10 —Verify adherence to posting and notice requirement
- § 24:11 —Evaluate Americans with Disabilities Act training
- § 24:12 —Review how accommodations are handled
- § 24:13 —Review employee benefit plans
- § 24:14 — —The Genetic Information Nondiscrimination Act
of 2008
- § 24:15 —Evaluate actions taken for compliance program
infractions
- § 24:16 —Check for previous lawsuits
- § 24:17 —Review confidentiality policies and practices
- § 24:18 Auditing places of public accommodation
- § 24:19 —Determine whether the entity is a public
accommodation
- § 24:20 Auditing places of public accommodations—
Determine whether the entity is a public
accommodation—Websites
- § 24:21 Auditing places of public accommodation—Evaluate
eligibility criteria
- § 24:22 —Review the process of modifying policies
- § 24:23 —Assess how auxiliary aids and services are handled
- § 24:24 —Evaluate the facility or building for barriers that
must be removed
- § 24:25 —Assess the procedures followed when alterations to
existing facilities are made
- § 24:26 —Evaluate the types of alterations that can be made
- § 24:27 —Ensure that the company knows what is required
when constructing new facilities

§ 24:28 Conclusion

CHAPTER 25. AUDITING EMPLOYEE BENEFIT PLANS

- § 25:1 Introduction
- § 25:2 Key ERISA definitions
- § 25:3 Office of Compliance Initiatives
- § 25:4 Deferred compensation plans
- § 25:5 Plan design issues—Service
- § 25:6 —Vesting and benefit accruals
- § 25:7 Welfare benefit plans—Types of plans
- § 25:8 —COBRA
- § 25:9 —Retiree medical benefits
- § 25:10 —HIPAA—Portability
- § 25:11 — —Privacy
- § 25:12 — —Security
- § 25:13 Reporting and disclosure requirements
- § 25:14 —Reporting obligations
- § 25:15 —Disclosure obligations
- § 25:16 ERISA fiduciaries—Primary parties
- § 25:17 —Duties
- § 25:18 —Prohibited transactions
- § 25:19 Subpoenas
- § 25:20 Correcting plan defects
- § 25:21 Plan audit considerations
- § 25:22 Conclusion

Appendix 25-A. Risk Analysis under HIPAA

Appendix 25-B. Association Health Plans—ERISA
Compliance Assistance (United Department
of Labor, Employee Benefits Security
Administration—August 2018)

Appendix 25-C. Fact Sheet—Delinquent Filer Voluntary
Compliance Program (U.S. Department of
Labor—January 29, 2013)

CHAPTER 26. A LEGAL AUDIT OF THE PURCHASING FUNCTION

- § 26:1 Introduction
- § 26:2 The purpose of the purchasing audit
- § 26:3 Purchasing policies
- § 26:4 The forms
- § 26:5 —Purchase order terms and conditions
- § 26:6 —Contracts for work to be done on company premises

TABLE OF CONTENTS

§ 26:7	—Safety, environment, and security issues
§ 26:8	—Software licenses
§ 26:9	—Consultants or other independent contractors
§ 26:10	—Forms for handling confidential information
§ 26:11	—Master, corporate, or override agreements
§ 26:12	—Electronic purchasing
§ 26:13	—Disposal of used or excess equipment or supplies
§ 26:14	—Requests for proposal
§ 26:15	—Other forms
§ 26:16	Just-in-time purchasing
§ 26:17	Other items in the audit

CHAPTER 27. AUDITING COMPLIANCE WITH GOVERNMENT STATUTES AND REGULATIONS DESIGNED TO CURB FRAUD IN GOVERNMENT CONTRACTS

§ 27:1	Introduction
§ 27:2	Statutes and regulations
§ 27:3	—The Anti-Kickback Act of 1986
§ 27:4	—The False Claims Act
§ 27:5	—Program Fraud Civil Remedies Act
§ 27:6	—Limitations on the payment of funds to influence federal transactions
§ 27:7	Areas upon which to focus
§ 27:8	—Procedures
§ 27:9	— —Reporting
§ 27:10	— —Management approval
§ 27:11	— —Auditing
§ 27:12	— —Supervision
§ 27:13	— —Enforcement
§ 27:14	— —Investigations
§ 27:15	—Employees
§ 27:16	— —Training and education
§ 27:17	— —Termination
§ 27:18	— —Lines of communication
§ 27:19	— —Conflicts of interest
§ 27:20	—Contracts
§ 27:21	— —Size
§ 27:22	— —Clauses
§ 27:23	—Subcontractors
§ 27:24	— —Flow down obligations—AKA
§ 27:25	— — —LPFIFT
§ 27:26	— —Lines of communications

§ 27:27 Conclusion

CHAPTER 28. INTELLECTUAL PROPERTY AUDITS

- § 28:1 Introduction and overview
- § 28:2 Intellectual property audit areas
- § 28:3 —Patents
- § 28:4 — —Registering and recording patents
- § 28:5 — —Maintaining patent development records
- § 28:6 — —Provisional patent application
- § 28:7 — —The company's rights to its employees' inventions
- § 28:8 — —Patents and consultants
- § 28:9 — —Purchase and sale forms
- § 28:10 — —Foreign patents
- § 28:11 — —Patent licensing
- § 28:12 — —Government and universities
- § 28:13 —Trademarks and trade names
- § 28:14 — —Registration requirements
- § 28:15 — —Use of trademarks
- § 28:16 — —Advertising
- § 28:17 — —Foreign registrations
- § 28:18 — —Internet domain names
- § 28:19 — —Enforcement of trademarks
- § 28:20 —Copyrights
- § 28:21 — —Copyright registrations
- § 28:22 — —Works made for hire
- § 28:23 — —Software
- § 28:24 — — —External software audits
- § 28:25 — — —Internal software audits
- § 28:26 — —Multimedia issues
- § 28:27 — —The scope of licenses
- § 28:28 — —Security interests in copyrights
- § 28:29 — —Reverse engineering
- § 28:30 —Trade secrets
- § 28:31 — —What is a trade secret?
- § 28:32 — —Protecting against loss of trade secrets
- § 28:33 — —Using others' trade secrets
- § 28:34 — —Relations with suppliers or customers
- § 28:35 — —International operations
- § 28:36 Other issues to consider—Interaction of patents, copyrights, and trade secrets
- § 28:37 —Alternative dispute resolution techniques
- § 28:38 —Forms and administrative hassle

TABLE OF CONTENTS

- § 28:39 —Attorney-client privilege
- § 28:40 —Antitrust
- § 28:41 —Distribution agreements
- § 28:42 —Records retention procedures and imaging
- § 28:43 —The Internet and Web sites
- § 28:44 — —Linking
- § 28:45 — —Delivering content to your customers
- § 28:46 — —Online reviews
- § 28:47 Summary and conclusions

Appendix 28-A. Master Checklist for IP Audits

CHAPTER 29. AUDITING COMPLIANCE WITH THE ANTIBOYCOTT LAWS

- § 29:1 Introduction
- § 29:2 Overview of the antiboycott laws
- § 29:3 How the boycott works
- § 29:4 —The boycott procedure
- § 29:5 —Boycott questionnaire
- § 29:6 —Penalties
- § 29:7 —Letters of credit and shipping documents
- § 29:8 Suggestions for compliance
- § 29:9 —Assessment of the problem
- § 29:10 —The company policy
- § 29:11 —Procedures
- § 29:12 Arab boycott checklist
- § 29:13 Recommendations for audit procedures
- § 29:14 —Understanding of law
- § 29:15 —Compliance program
- § 29:16 —Reporting
- § 29:17 —Miscellaneous

Appendix 29-A. A Framework for OFAC Compliance Commitments
(U.S. Department of the Treasury—Office of
Foreign Assets Control—May 2019)

CHAPTER 30. THE FOREIGN CORRUPT PRACTICES ACT

- § 30:1 Introduction
- § 30:2 The bribery provisions—Elements of an FCPA bribery violation
- § 30:3 — —The jurisdiction of the bribery provisions
- § 30:4 — —“Foreign officials” under the FCPA
- § 30:5 — — —Outside director of a government instrumentality

LEGAL AUDITS AND INVESTIGATIONS

- § 30:6 — — —Parastatal directors' fees
- § 30:7 — — —Consulting arrangement with parastatal's
general director
- § 30:8 — — —Temporary consulate employee in clerical
capacity
- § 30:9 — — —Members of parliament
- § 30:10 — — —Foreign government official on leave from law
firm
- § 30:11 — — —The intent requirement
- § 30:12 — — —Knowledge
- § 30:13 — — —The interstate instrumentality requirement
- § 30:14 — — —To obtain or retain business
- § 30:15 —The exception and affirmative defenses—The
facilitating payments exception
- § 30:16 — — —Affirmative defenses
- § 30:17 —DOJ enforcement of the bribery provisions
- § 30:18 — — —Deferred prosecution agreements
- § 30:19 — — —Voluntary self-disclosure
- § 30:20 —SEC enforcement of the bribery provisions
- § 30:21 The accounting and record-keeping provisions—
Background
- § 30:22 —Elements of an FCPA accounting and record-
keeping violation
- § 30:23 —The jurisdiction of the accounting and record-
keeping provisions
- § 30:24 —SEC enforcement of the accounting and record-
keeping provisions
- § 30:25 —Criminal enforcement of the books and records
provisions
- § 30:26 Compliance programs—Detection of FCPA problems
- § 30:27 —The compliance culture
- § 30:28 —Assignment of responsibility
- § 30:29 —Due diligence investigations—Before the project
begins
- § 30:30 — — —After a project is under way
- § 30:31 —Contractual terms—Covenants
- § 30:32 — — —Representations and warranties
- § 30:33 —Effect of the Sarbanes-Oxley Act of 2002
- § 30:34 Director and officer liability under the FCPA—
Overview
- § 30:35 —Illustrative cases
- § 30:36 —Private right of action
- § 30:37 —Statute of limitations
- § 30:38 International efforts to curb bribery

Appendix 30-A. A Resource Guide to the U.S. Foreign Corrupt

TABLE OF CONTENTS

- Practices Act (Second Edition)—
Department of Justice and Securities and
Exchange Commission—July 2020
- Appendix 30-B. Department of Justice FCPA Corporate
Enforcement Policy (March 2019)
- Appendix 30-C. Criminal Division Corporate Enforcement
and Voluntary Self-Disclosure Policy (U.S.
Department of Justice—March 2024)

CHAPTER 31. AUDITING COMPLIANCE WITH U.S. EXPORT CONTROLS

- § 31:1 Overview of the U.S. export control regime
- § 31:2 —Export Administration Act and Export
Administration Regulations—Types of export
controls
- § 31:3 — —Jurisdiction
- § 31:4 — —The commerce control list and commerce country
chart
- § 31:5 — —Licenses and license exceptions
- § 31:6 —Treasury Department controls—The Trading with
the Enemy Act
- § 31:7 — —The International Emergency Economic Powers
Act
- § 31:8 —State Department controls
- § 31:9 —The deemed export rule
- § 31:10 — —What is “technology”?
- § 31:11 — —Who are “foreign nationals”?
- § 31:12 Recommendations for a compliance program—
General recommendations
- § 31:13 —Record-keeping requirements—EAR requirements
- § 31:14 — —Requirements under TWEA and IEEPA
- § 31:15 — —Arms Export Control Act
- § 31:16 — —Original records and reproduction of original
records
- § 31:17 Recommended audit procedures
- Appendix 31-A. Compliance Guidelines: How to Develop an
Effective Export Management and
Compliance Program and Manual—
November 2013 (U.S. Department of
Commerce-Bureau of Industry and
Security-Office of Exporter Services-Export
Management and Compliance Division)
[Excerpt]
- Appendix 31-B. Export Compliance Guidelines—The

Elements of an Effective Compliance
Program

CHAPTER 32. THE PRIVACY AUDIT

- § 32:1 Introduction
- § 32:2 Privacy issues in the workplace
- § 32:3 Privacy issues related to the internet and e-commerce
- § 32:4 Federal privacy statutes
- § 32:5 State privacy law issues
- § 32:6 International privacy issues
- § 32:7 —The General Data Protection Regulation
- § 32:8 Data breaches
- § 32:9 —Standing

Appendix 32-A. The CAN-SPAM Act: A Compliance Guide for
Business (Federal Trade Commission)

Appendix 32-B. Federal Trade Commission: Protecting
Personal Information

Appendix 32-C. Federal Trade Commission: Data Breach
Response (February 2021)

Appendix 32-D. Children's Online Privacy Protection Rule: A
Six-Step Compliance Plan for Your
Business (June 2017)

Appendix 32-E. Seven Steps for Businesses to Get Ready for
the General Data Protection Regulation—
European Commission (Publications Office
of the European Commission—2018)

Appendix 32-F. Complying with COPPA: Frequently Asked
Questions (Federal Trade Commission—
July 2020)

CHAPTER 33. AUDITS AND INVESTIGATIONS UNDER THE SARBANES- OXLEY ACT

- § 33:1 Introduction
- § 33:2 Overview of the SOX Act
- § 33:3 A checklist of legal audit issues under the SOX Act
- § 33:4 Corporate investigations and protection against
whistleblower liability—Overview of the
whistleblower protections
- § 33:5 — —Protected persons
- § 33:6 — —Reasonable belief
- § 33:7 —Compliance issues to consider during an
investigation

TABLE OF CONTENTS

§ 33:8	Standards of professional conduct under the SOX Act
§ 33:9	—Attorney conduct rules
§ 33:10	— —Retaliation claims
§ 33:11	—Financial experts and codes of ethics
§ 33:12	—Practical suggestions
§ 33:13	Conclusion

Bibliography

Table of Laws and Rules

Table of Cases

Index