

Managing Internal Investigations

Presented by Juliette Gust
Ethics Suite

Introduction

When conducting internal investigations, the facts and circumstances of each individual matter will dictate the course of the investigation. In every instance, due care must be taken to ensure compliance with local laws and regulations (in consultation with outside counsel, when appropriate), a company's own policies and procedures, preservation of confidentiality and privilege, and ensuring that the investigation is independent and free from even the appearance of having been influenced by people who may have been involved or who could have directed the course or the outcome of the investigation for their own purposes.

When to Investigate

A variety of reporting methods could trigger an internal investigation, including a government inquiry (e.g., a subpoena or request for information), a complaint received from a reporter (e.g., an internal whistleblower/hotline complaint), or in response to potential issues identified during due diligence or an internal audit. In some cases, social media and consumer complaints may warrant investigation if there is an allegation of unethical or illegal activity made in good faith.

Investigations Stakeholders

When actively managing multiple investigations, it becomes imperative to build relationships across the company so that risks are addressed timely; support and engagement is provided from all areas of the company; knowledge is shared and potential risks addressed sooner; and information on history, employees, location, vendors, and the operating environment can be gathered. Stakeholders include, but are not limited to, resources from functions such as finance, legal, human resources, information technology, security, and risk management.

Investigations Resources

Due consideration for how a third-party would view the investigation must be given when staffing an investigation and scoping the matter to be investigated. All investigations must be independent, diligent, and appropriately scoped to avoid potentially negative consequences, such as a regulator conducting its own investigation or requiring a compliance monitor to do so. While assistance may be required at a unit/property level, to preserve the independence of the investigation, any resource asked to facilitate or assist must not be involved or implicated in the matters under investigation.

Third-parties may also be engaged to assist with an investigation. These may include outside counsel; forensic accountants; e-discovery experts; or subject matter experts (e.g., tax). Other specialized third-parties may also be engaged as needed. Internal resources may require specialized knowledge, language skills, interview skills, and awareness of local culture and customs. Additional considerations include the ease of deployment for various resources, and,

depending on the nature of the investigations, the level of risk tolerance.

Preparation and Due Diligence

Adequate preparation and legal guidance prior to commencing an investigation is critical, and consideration must be given to the preservation of confidentiality and the attorney-client privilege. In addition, a thorough review of local privacy and employment laws should be undertaken. Estimated costs should be considered, as well as the safety and security of the investigative team. Steps should be taken to preserve or collect relevant and necessary data and other sources of information.

Summary

An investigation plan should be prepared at the beginning of every investigation. Depending on the scope or complexity of the investigation, this may be a short summary or a more detailed map of the steps to be undertaken. Each plan should contain the following information, as appropriate: a summary of the known facts; a list of employees who may have information regarding the conduct at issue or who are alleged to have participated; the identification of potential sources of information (e.g., email data); and investigative steps taken to date and planned future steps.