

Best Practices in the Era of Outside Investigations: Is Your Organization Ready?

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Institutions and organizations are increasingly expected to conduct a thorough, neutral investigation of allegations of impropriety, misuse of authority, and sexual harassment, among many other issues. No organization, public or private, non-profit or for-profit, can afford to ignore or minimize these allegations. Stakeholders, employees, the public, and donors increasingly expect a timely, rigorous, and competent investigation. If the allegations result in litigation or an enforcement action, a prompt, thorough, and impartial investigation may be a key aspect of the organization's defense.

While all investigations are unique, there are common issues and waypoints to most investigations. These considerations include:

- Identify Reporting Authority (e.g., Special Investigative Committee of the Board, disinterested employee or director) that will engage in unbiased decision-making.
- Coordinate pre-investigation public relations.
- Evaluate and consult existing complaint/whistleblowing/ethics policies.
- Preserve documents and information, including electronically stored information (ESI).
- Define initial scope of investigation and the deliverable.
- Identify and retain investigators. Need not be outside counsel, but there are advantages to using outside legal counsel.
- Consider privilege and waiver issues early in the investigation and in light of the objective of investigation; if investigation results to be disclosed outside organization, attorney-client privilege and other applicable privileges may be lost.
- Collect and analyze documentary evidence, including ESI.
- Consider whether to retain or recommend separate legal counsel for individual officers, employees, or directors.
- Conduct interviews with complainant employee(s), employee(s) accused of wrongdoing, and witnesses; administer UpJohn and Zar warnings if appropriate.
- Reach conclusions based on available evidence.
- Report investigative findings to Reporting Authority and, if appropriate, make recommendations for changes to policies/procedures.

Related People

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Related Capabilities

- Government Enforcement & Corporate Investigations
- Labor & Employment
- Labor & Employment Guides

- Where warranted, take appropriate employment action.
- Respond to complaining employee(s).
- Coordinate Post-Investigation Internal and Public Relations response.

A good investigation enables an organization to make an informed decision about what may be a very difficult, consequential, or high-profile issue. Credibility of the investigation, good tradecraft, and experience are essential to uncover the truth. The investigation should balance its fact-finding purpose with business continuity, the organization's core values, and the preservation of individual rights, including confidentiality and due process. And appearances at these difficult times can be crucial to preserve credibility with stakeholders, customers, business partners, and employees. Organizations of all sizes must consider that the corporate investigation is not just a good practice; increasingly it is becoming the standard of care.