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# Nine Elements of an Effective Internal Investigation

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Allegations of criminal, regulatory or other misconduct place immediate and intense pressure on a business. Decisions need to be made – and often fast. Good decisions, however, are fueled by good information, which can take time to gather and analyze. Establishing a swift but thorough investigation process is often the best course of action.

Here are nine key elements of an effective and efficient internal investigation.

## 1. Establish Objectives

Set clear objectives for the investigation. What allegations are being vetted? What is the scope of the investigation? What are realistic goals for the investigation given the nature of the allegations and the timelines for the company to respond? Clear objectives help maintain focus and ensure that the investigation stays on course.

## 2. Ensure Confidentiality

Maintain the confidentiality of the investigation to protect the integrity of the process and the privacy of all involved parties. The company does not yet know whether the allegations are founded, unfounded or somewhere in between. The company must tread carefully until it has evidence and a basis to make determinations. Limit disclosure of information to those who need to know.

## 3. Select the Right Team

Choose an investigation team that is unbiased and skilled. This team may include internal legal counsel, HR professionals, or external lawyers and consultants. If there is potential reputational risk to the company, early consideration should be given to engaging public relations or crisis communications professionals. The investigation team should have the necessary expertise to handle the complexities of the case, which we will discuss further in a future bulletin.

#### 4. **Develop a Plan, But Allow for Contingencies**

Set a plan for achieving the investigation's objectives. Consider timelines, the order of evidence gathering, and the timing and number of witness interviews. The plan will be a helpful road map, but will also need to be able to change and adapt as new information is received and digested. Chart a course but do not get stuck in your ways.

#### 5. **Prioritize Fairness**

Serious allegations of wrongdoing can lead to snap judgments and implicit bias. The mere existence of an allegation can unfairly stain an individual. It is critical that the investigation team approaches and conducts the investigation in a fair and objective manner. A lack of fairness undermines both the investigation and the business.

#### 6. **Document, Document, Document**

The investigation may be scrutinized in a future civil, regulatory or criminal proceeding. Meticulous investigation records are important, as those involved may be asked to speak or testify to elements of the investigation several months and (in some cases) years later.

#### 7. **Comply with Legal Requirements**

Yes, this may seem obvious, but it is often overlooked. Ensure that all pertinent legal and regulatory requirements are being followed. Consider the application of relevant privacy, labour or employment laws, as well as corporate policies, procedures, by-laws or rules.

#### 8. **Prepare for Possible Outcomes**

Anticipate and prepare for the various possible outcomes of the investigation, including taking disciplinary action, making reports to regulatory authorities, and commencing or responding to legal action. Planning for these outcomes ensures that the business can respond swiftly and appropriately. At the same time, the business must be careful not to let this planning impact the impartiality of the investigation, or to give the appearance that an outcome was pre-determined. This can be a delicate balance.

#### 9. **Report Findings and Take Action**

Once the investigation is complete and the report is available, take appropriate action promptly. Inaction or delays in the face of independent conclusions can be detrimental. Where necessary, engage legal counsel to discuss how to respond.

Thorough, fair and swift internal investigations can prove critical in the face of serious allegations. Consider whether it is prudent to create an investigation policy now, so that procedures are in place before events triggering an investigation occur. Having a policy ready ahead of time can insulate the investigation from allegations of unfairness, and provide management with a roadmap in what will inevitably be a stressful and tense situation.

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