

Internal Investigations 101: Part 2

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In [part one](#) of this series, we covered the basics of when you need to hire counsel, how to protect the privilege and when and how to preserve evidence. Now let's turn to managing the [investigation](#).

Should you fire the individuals accused of wrongdoing? Do not assume that you should immediately terminate them, even if you believe the allegations to be true.

Employees have an obligation to cooperate with the company's investigation as long as they are employed, and terminating them too soon can deprive the investigators of key parts of the story. You might be surprised how often the subject of an investigation is willing to provide details of the scheme if confronted with enough evidence.

Of course, you should weigh the disadvantages of keeping the person employed. You should decide in conjunction with your employment counsel — just be sure to allow the investigating counsel the chance to weigh in before making any final decisions.

If, however, you have any concern that an employee might try to destroy documents or evidence, or if he poses a danger to any other employees, you will want either to terminate him immediately or put him on some sort of administrative leave. Either way, be sure to preserve documents and evidence as quickly as possible.

How do you control the cost of the investigation?

The best way is to agree, to the extent practicable, on the probe's scope at the beginning. But few investigations begin and end with the same scope established at the beginning; additional allegations often come up that require expanding the scope.

It might be tempting to try to narrow the scope as much as possible, but be careful that you don't get in the way of the independent investigation. You'll want the scope of the investigation to include what happened, how it happened and what needs to be done to ensure it doesn't happen again.

If the thoroughness of the investigation is later questioned, you could find yourself paying even more down the road — and not just in economic terms. Failing to conduct a thorough investigation of an allegation can cost you credibility not just with your shareholders, the government and your auditors, but also for your brand.

You'll want the investigators to evaluate whether other areas of the company are susceptible to similar vulnerabilities and what remedial efforts are called for. For this

part of the scope, you have a bit more flexibility to contain costs, but don't be shortsighted.

Whether you like it or not, you have a team of investigators who now know a great deal about your company and can provide valuable insights into how to prevent similar conduct in other areas of the company. There are few circumstances in which broadening the scope of the investigation to include a more prophylactic analysis does not make good economic sense.

How long will the investigation take? Longer than you want. Unfortunately, investigations, especially if you need to hire outside counsel and if done right, can take significant time. Even a seemingly contained incident or scheme can take months to investigate.

Investigators need to collect documents, interview witnesses and analyze the evidence into coherent and comprehensive findings.

Even though an internal investigation tends to move more quickly than the discovery period in litigation (you are not waiting 30 days to get the documents you request, which helps), the investigation can still take significant time. You should ensure the investigation keeps moving forward, but do not rush it, as that could undermine its integrity.

Distractions for employees

Don't underestimate the toll the investigation will take on your employees. An investigation into wrongdoing at your company will be more distracting than you expect. Obviously, there will be the time employees spend being interviewed and compiling data and documents at the investigators' request.

But there are more pernicious distractions for employees — worrying about whether the company and their jobs survive; whether they or their colleagues face legal or employment ramifications; and whether they should have done something differently to prevent it from happening.

Do not underestimate the chatter that will result as people try to figure out what is going on. Investigators will tell those being interviewed and those responding to requests for information to keep their conversations and requests confidential, but you can assume that at least some of those people will not abide by that direction.

Therefore, depending on how much your employees already know, you may wish to work with your public relations or employee relations teams to provide some transparency into what is going on, without disclosing privileged information.

For instance, assuring them that the allegations are being investigated by outside counsel, that the company will withstand the outcome of the investigation, and that the company will take whatever remedial measures are necessary can go a long way to calming the waters.

In sum, no company wants to conduct an internal investigation. But when they are needed, they should be done thoroughly, professionally and strategically.

The result, if addressed appropriately, can be a stronger, healthier, more stable company with a better culture for its employees and a better bottom line for its shareholders.

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