

CRIMINAL DEFENSE  
AND INTERNAL  
INVESTIGATIONS

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## INTERNAL INVESTIGATIONS: FIVE TANGIBLE BENEFITS OF RESPONDING PROMPTLY AND DECISIVELY TO REPORTS OF MISCONDUCT

*By Laurel Gift*

Never before have business leaders, public officials, and other highly visible individuals and organizations had to endure the fish bowl we live in today. Thanks to social media and round-the-clock news coverage, public reports of misconduct and criminal activity are often broadcast more quickly, remain visible over time, and cause more damage than ever before.

Living in a world where information about a corporate crisis can be so readily available, organizations should initiate an internal investigation as soon as a problem is detected or reported. There are five tangible benefits of investigating and responding promptly and decisively to reports of misconduct.

### **1. Halt the Misconduct**

Too often, organizations initially appear to ignore allegations of misconduct. Immobilized by fears of potential culpability or negative publicity, management may not act promptly or may fail to make disclosures when required by law. The results can be catastrophic. Rather than acting to stop the problem, leadership can become culpable for the ongoing wrongdoing.

In response to a crisis, conducting an internal investigation and communicating the facts without delay may not stop all negative publicity and may

even contribute to news coverage. But the results of prompt and appropriate action are far less damaging than the consequences of allowing the misconduct to continue.

### **2. Initiate a Good-Faith Response**

The ability to demonstrate a good-faith response to misconduct can mitigate damage and foster a more positive public perception of how the organization handles the potential crisis. How an entity responds will often shape its image long after the matter is resolved.

In this way, conducting an internal investigation helps organizations to respond more effectively. The investigation can establish a comprehensive understanding of the relevant facts and the risks involved. This information is critical to an organization's decision-making process as it considers how to deal with publicity, what to disclose, and how to remedy and prevent further misconduct. These proactive steps enable leaders to mount more appropriate and forceful defenses.

### **3. Shield Leaders from Allegations of Complicity**

Often an internal investigation is tasked with uncovering who knew what, when they knew, and what they did about it. The answers to these

questions can often shield management or the board of directors from allegations of complicity.

In contrast, an incomplete, non-comprehensive investigation may result in management failure to adequately address the underlying factual and operational questions. This can lead to ongoing problems, business leaders facing arrest, and the company dealing with protracted legal battles.

#### **4. Satisfy Disclosure Requirements**

Failure to comply with mandatory disclosure or reporting requirements can trigger civil or criminal liability. An initial assessment is crucial to determine whether mandatory requirements have been triggered. These considerations are especially important in industries subject to government regulation.

Conducting an internal investigation can identify and meet such disclosure requirements, insulating both individuals and the organization from prosecution and facilitating the negotiation of non-prosecution agreements or deferred prosecution agreements.

#### **5. Promote a Culture of Transparency and Compliance**

Conducting an effective internal investigation helps to promote a culture of transparency and compliance within the organization. These values must serve as the guiding force of the investigation process and can have lasting benefits for the organization.

There is an element of courage in the decision to investigate and face misconduct head on. There must be a willingness to accept vulnerability and learn the truth so that ethical decisions can be made. This sends a message throughout the organization that ethical conduct is expected. Furthermore, it sends a message that the failure to act with integrity and honesty has significant consequences.

#### **Conclusion**

Conducting an internal investigation allows business leaders to evaluate their operations, identify problem areas, and prevent further harm to affected individuals and the organization. For

many businesses, the failure to respond to allegations of wrongdoing often results in more profound, longer-lasting damage to the entity and the individuals responsible.

In many situations, it is useful to retain outside counsel to conduct the investigation. Experience and recent court decisions suggest that use of outside counsel may also provide the greatest possible protection of confidential material. The first step outside counsel will take is to create an investigative plan defining the scope of the investigation and its objective. The investigation will then commence and involve witness interviews and the gathering of relevant material. Ultimately, a report may be provided, which customarily outlines the significant facts and events, provides an assessment of the source and cause of the wrongdoing, and makes recommendations for remedial action.

Properly conducted internal investigations allow the organization to emerge from the crisis with a greater sense of identity, transparency in governance from the top down, and a clear mission moving forward. Together, these benefits translate directly into improved business operations and bottom-line results. ♦

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