

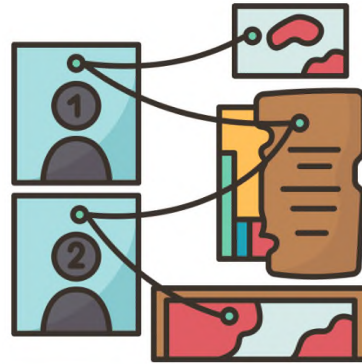
Top Ten Common Mistakes in Internal Investigations

- *Mary Tabin*
- *Dick Hillary*
- *Andrew Goetz*

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Today's Topic: Internal Investigations

- Our background
- What we plan to cover
 - Common mistakes
 - Best practices
- Time for questions



Common Mistake #1

Mistake: Lack of Training or Preparation

Not knowing when or how to initiate an investigation:

- Overlooking governing legal frameworks and likely risks
- Neglecting to investigate:
 - Anonymous reports
 - Reports where the alleged victim does not want an investigation
 - Second-hand or third-hand allegations
- Starting an investigation without a defined scope, a clear plan, and a thorough understanding of your capabilities



Best Practices

- Understand the legal and regulatory environment in which you operate
- Ensure that HR and supervisors understand the need to investigate all credible reports
- Define the scope and objectives of the investigation, considering the legal frameworks and potential risks
- Clarify HR's authority and limitations during the investigation process



Common Mistake #2

Mistake: Not Involving Legal Counsel

Failing to consult or involve legal counsel (not necessarily outside counsel) early in the investigation process:

- Missing legal insights that could guide the investigation
- Increased risk of legal non-compliance
- Increased litigation risk



Best Practices

- Consult legal counsel at the outset of the investigation
- Ensure legal counsel is involved in planning and decision-making
- If legal counsel is not conducting the investigation, regularly update counsel on the investigation's progress



Common Mistake #3

Mistake: Delays in the Investigation

Procrastinating or taking too long to start or complete the investigation:

- Risk of document deletion
- Fading witness memories
- Escalating legal problems



Best Practices

- Initiate the investigation promptly upon receiving a report
- Set and adhere to a timeline for the investigation
- Regularly review progress to ensure timely completion



Common Mistake #4

Mistake: Poor Interview Techniques

Conducting a biased or incomplete investigation:

- Failing to give *Upjohn* warnings when appropriate
- Inadequate interview preparation
- Not asking follow-up questions or pursuing new leads
- Failing to document the interview



Best Practices

- Provide *Upjohn* warnings as needed—and document that you did so
- Prepare thoroughly for interviews: documents, prior interviews, outline of topics, etc.
- Ask comprehensive questions and follow up on new information
- Document the interview when your memory is fresh, ideally the same day



Common Mistake #5

Mistake: Overlooking Digital Evidence

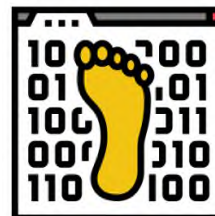
There are a lot of different types of digital evidence that you can miss:

- Various sources of documents, emails, messaging platforms, metadata, etc.
- Differ within each organization
- Important information for discovering what happened



Best Practices

- Include digital evidence in the investigation scope
- Think creatively about the different types of platforms used by your organization
- Collect and review electronic communications and digital footprints
- Use digital forensics if necessary



Common Mistake #6

Mistake: Poor Documentation

Failing to keep detailed and accurate records of the investigation:

- Lack of evidence to support findings
- Potential legal issues due to incomplete records
- Inability to identify and remediate the problems



Best Practices

- Maintain detailed and accurate records of all investigative steps and interviews
- Understand that most records are not confidential and may be part of an employee's personnel file or otherwise discoverable
- Organize your records so they are easy to retrieve and review

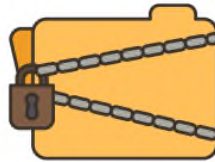


Common Mistake #7

Mistake: Not Maintaining Confidentiality

Failing to keep investigative details confidential:

- Can hinder and taint the investigation
- Potential liability and other legal repercussions (e.g., attorney-client privilege)
- Lack of trust harms the organization going forward



Best Practices

- Ensure all parties understand the importance of confidentiality, including during witness interviews
- Clearly communicate what information is and isn't confidential
- Implement strict confidentiality protocols restricting access to sensitive information



Common Mistake #8

Mistake: Retaliation

Retaliation against employees who report issues or cooperate with the investigation:

- HR might understand this, but others within the organization might not
- Legal risks to the organization
- Lack of trust harms the organization going forward



Best Practices

- Maintain a culture of compliance that makes employees feel comfortable coming forward
- Make clear that retaliation is prohibited and might itself be grounds for discipline
- Monitor for and address any retaliatory behavior



Common Mistake #9

Mistake: Not Applying Workplace Policies

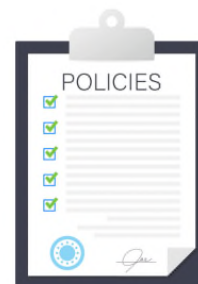
Failing to apply workplace policies or understand the legal landscape:

- Inconsistent handling of allegations
- Legal non-compliance



Best Practices

- Ensure workplace policies are up to date and that all investigations adhere to them
- Stay updated on legal changes, especially regarding discrimination and harassment and any specific regulatory regimes that your organization operates under
- Train HR and legal teams on current policies and laws

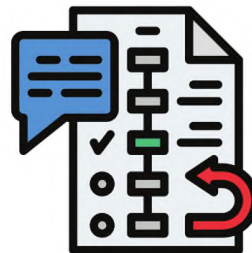


Common Mistake #10

Mistake: Lack of Follow-Up

Not following up on investigation findings or with involved parties:

- Unresolved issues
- Legal risk
- Lack of trust in the organization and investigative process



Best Practices

- Create actionable recommendations based on investigation findings
- Follow through on these recommendations
- To the extent possible, regularly update the reporting person on the investigation status, especially if the alleged wrongdoer is still employed



Questions?



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