

# Webinar: How to Handle Whistleblower Complaints Against Executive Management

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# War Stories

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# Roadmap

01

Have a  
Game Plan

- Roles and rules need to be well-defined in advance

02

Identify the  
Scope of  
the Problem

- Planning for the worst but hoping for the best

03

Internal  
Investigation

- Best evidence
- Legal pitfalls

04

The Fallout

- Terminations, reporting obligations, and other considerations

# Have a Game Plan

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# Define the Team and Keep it Small

## Who Needs to Know?

- Identify a point person and define cross-functional team
- Determine Board involvement
  - Sub-committee/Audit Comm
- Establish privilege protocols
- Auditors/Disclosure obligations
- Prepare contingency plan(s) if key player is implicated
- Consider labeling as an “audit” or “compliance review” or simply with case number

## Limit Access to Information

- Develop protocols for communications
  - Read team members in and out
  - Update cadence (daily/weekly?)
- Use technology to retain secrecy
- What to tell the subject if he or his team ask about investigation?
- Separate server to house investigation results
- How are you giving access to external investigators?

# Identify the Scope of the Problem: Pre-Investigation Considerations

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# Identify Potential Evidentiary Sources

## Where is the evidence, and how can we best get it?

- Understand what evidence will be needed to evaluate the veracity of the allegations
  - Are you going to need things like access control logs, email dumps, call logs, financials, surveillance footage?
- Identify which departments will be necessary to collect the information.
- Ensure that no potentially relevant evidence is destroyed – be forward thinking
  - Risk of both intentional and unintentional deletion
- Does IT have the forensic expertise to pull all the relevant evidence?
  - Can they do it without anyone knowing?
  - Can they do this while preserving the information as evidence?
- Need alignment on how these steps will be explained to employees who are needed to assist the investigation
  - Let trusted individuals ‘under the hood’?

# Pre-Investigation Considerations: Identify Impact:

## Identify the type of harm and potential exposure

### Reputational

- If reputational harm is at stake, involve PR early
- Think through worst case scenarios and have PR plans for each
- Consider a PR consultant
- Develop a communication plan for key stakeholders (customers, business leaders)

### Operational

- Think through business disruption and continuity planning
  - Product shortages
  - Customer disruption
  - Staffing considerations
- May need to involve HR to identify interim leadership

### Civil / Regulatory / Criminal

- As regulatory, civil, or criminal problems emerge, ensure legal involved in all aspect of decision making
- Guard against view of being perceived as uncooperative
- Value (or requirement) of independent investigation?
- Ensure relevant information is maintained – evidence vs information
- Think through strategies for all relevant jurisdictions



# Internal Investigation

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# Internal Investigation: Information Overload

## Gathering Information

- Can relevant information be obtained without involving those outside the inner circle?
- What if the CTO or CISO is implicated in the complaint?
- If litigation is a possible outcome, consider how you collect the data

## Preserving Information

- Monopolizing access to physical evidence (e.g. emails, chats, access logs, financials, browser history, etc.) is imperative
- Maintaining document integrity in the process

## Storing Information

- Now that you have the information, how will you ensure it stays within the circle?

## Reviewing Information

- The information is secure, but there are 100k documents. Do you have the bandwidth?
- When does it make sense to recruit help from outside?

# Internal Investigation: Interview Prep

## Identify who has information relevant to the Complaint

- What might each person potentially know?
- Can you learn / corroborate this information any other way?
- Are employees obligated to cooperate?
- Will the interviewee keep the meeting confidential?
  - Assume some level of information leakage
- Be strategic
  - Order of interviews
  - Time between interviews
  - Who should conduct the interview
  - Virtual vs in person
- Be honest about you/your team's ability to conduct the best interview – sometimes you only get one shot

# Internal Investigation

## Conducting Interviews – a few tricks of the trade

- One interviewee at a time
- Not an interrogation or a press conference: Keep the numbers small
- To the extent possible, put interviewee at ease
- No misrepresentations – but you need answers
- Preserve record of the interview to the maximum extent possible – this may become evidence on day
- Don't divulge secret information on accident
- How to handle suspected wrongdoer
  - What if you develop information during the interview indicating the interviewee is involved?
  - What if employee requests counsel or refuses to cooperate?
  - What if they provide false information?
  - What if they leak information?

# Internal Investigation

## Legal Pitfalls

- Whistleblower Protections
  - Need to balance protecting the whistleblower from blowback without compromising work
  - What if WB is somewhat compromised?
- Retaliation/obstruction during investigation
  - Employees feel pressured/coerced
  - Destruction of evidence
- Maximize Privilege - Upjohn
- Data Privacy and Cross-Border Implications

# The Fallout

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# The Fallout of a “Substantiated” Finding

## Potential Outcomes

- Termination for cause or negotiated exit?
  - Pros/cons of each approach
- Termination of Underlings?
  - Lower-level employees who were complicit but were following the direction/culture of the boss
- Handling whistleblowers
- Reporting obligations
  - Financial reporting/materiality
  - Legal/regulatory (cross-jurisdictions)
  - Reputational/ethical
  - Insurance
- Remediation
- Follow-on litigation

# Presenter Biographies



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Sherine Ebadi is an associate managing director in the Business Intelligence and Investigations practice at Kroll, a division of Duff & Phelps, based in Los Angeles. Sherine is a fraud and financial investigations specialist with over ten years of experience working on the complex financial crimes/public corruption squad at the Federal Bureau of Investigation (FBI).

Sherine works with clients to build bespoke, solution-driven engagements, actively managing investigative teams, directing case strategy, conducting critical and sensitive interviews, analyzing results of data analytics research and forensic accounting to drive investigative leads, preparing client reports, and testifying as an expert witness. During her time at the FBI, Sherine successfully investigated and helped prosecute several high-profile cases involving bank fraud, money laundering, securities fraud, public corruption, organized crime, fraud against the government, and asset forfeiture.



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Steve is a former federal prosecutor, an experienced trial lawyer, and a former Chief Compliance Officer and senior litigation counsel for a global, publicly traded Fortune 500 company. Steve's practice focuses on compliance counseling, sensitive internal investigations, and complex litigation. Steve understands that compliance programs differ greatly, based on the resources, risks, industries, and challenges unique to each company, and has significant experience working with companies and their boards.

Steve also handles sensitive internal investigations and interfacing with government agencies on behalf of his clients. He works with companies across many industries to investigate highly sensitive and urgent issues related to trade secret theft, technology and security breaches, employee misconduct, conflicts of interest, financial fraud, and potential violations of anti-bribery and other laws.





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