

Internal Investigations: Practices for Overcoming COVID Challenges

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UT Law CLE Virtual Studio Presentation

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Today's Speakers



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Agenda

- Introduction
- Scoping the Investigation
- Data Preservation
- Data Collection
- Witness Interviews



Introduction

- As the effects of the COVID-19 pandemic begin to wane, we expect to see an uptick in internal and government-facing investigations.
- At this critical point, it is important to develop comprehensive protocols that factor in limitations that may have been imposed by the pandemic. This applies to both current investigations and future investigations examining conduct that occurred during the pandemic.
- Some industries should be particularly prepared for increased government scrutiny, e.g., health care, energy, manufacturing, recipients of government funding under the CARES Act, and companies retaining consumer data.

In FY 2020, the US Securities and Exchange Commission received over 6,900 whistleblower tips – the largest number of whistleblower tips received in a fiscal year.





Scoping the Investigation



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Scoping the Investigation



Once an internal investigation is deemed necessary, quickly defining its scope is essential. A clear plan is especially important when adapting to today's novel circumstances. Key initial considerations include:

- **Time and Content Parameters:** Identify relevant time periods, potential witnesses, and subject matters of the investigation as soon as possible. Remain flexible — expect changes and be prepared to expand if needed.
- **Structure:** Determine who oversees, leads, and conducts the investigation.
 - **Lead and Oversee** – Select the voice of the company for purposes of directing the investigation. This could be a board committee or someone in the legal, internal audit, or compliance departments.
 - **Conduct** – Select who will conduct the investigation. This is typically outside counsel, in-house counsel, or inside employees, such as internal audit or compliance personnel, in coordination with whoever is selected as Lead.
 - **Support** – Identify any necessary support functions. Often one or more vendors are used, typically engaged by outside counsel to maintain attorney-client privilege.

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