



# The Vital Role of Exceptional Investigative Teams in the #MeToo Era

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1

What perspective do we each bring to the question of investigations and in-house investigative teams?



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2



- Major cultural shifts tied to #MeToo that affect *all types of workplace complaints*
- New standards, expectations, and aspirations for internal investigative teams & the investigative function more broadly
- Challenges to building and sustaining exceptional investigative teams
- Strategies for a new era

3

Major trend: Acknowledging the failure of current practices, the EEOC takes a new look at prevention

4



- Harassment in the workplace continues at a very concerning rate
- A culture of silence surrounds harassment complaints – the vast majority of incidents go unreported
- A clear need exists for different, more effective preventive measures.  
Conclusion: What we've done up until now is not working.
- A holistic, multi-pronged, approach is required

5

The EEOC's proposed guidance requires an effective complaint resolution system, including effective and fair investigations

- “Fully resourced”
- “Impartial”
- “Thorough”
- “Neutral, independent, and well-trained investigators”
- Confidentiality and privacy reserved to fullest extent
- Everyone treated “with respect”
- “Welcomes questions, concerns, complaints”
- “Encourages reporting”
- “Imposes appropriate consequences”
- “Documents”

6



Major trend: Intense focus increasingly is being brought to bear on an organization's response to complaints (independent of the wrongdoing itself)

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... and in regulatory proceedings that place an organization's viability on the line

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8

8



The investigation specifically “did not set out to determine whether or not Mr. Wynn did in fact sexually harass or perpetrate any sexual assault upon any person.”

*Instead, the investigation examined the actions/inaction of the top levels of the organization when faced with alleged misconduct.*

- Whether members of relevant management had notice of allegations of misconduct by Wynn
- Actions (or inaction) by the company’s senior and executive management after they learned of allegations about Wynn
- The company’s response to press reports about Wynn’s alleged misconduct
- General organizational factors relevant to the company’s handling of misconduct issues



- Executives and the General Counsel “concealed” and failed to investigate complaints
- Management at large failed to escalate complaints, including to the company’s Board and audit and compliance committees
- Endemic fears of retaliation prevented the reporting of complaints
- Management violated company policies related to complaint-handling
- The company failed to document complaints and to retain them in a centralized fashion

11

Additional trends: increased activity, pressures, and scrutiny of investigations

12



Number of complaints?

Types of complaints?

Level of contentiousness?

Degree of concern with legal exposure – and exposure in social media?

Other pressures?

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13

#MeToo has driven new standards, expectations, and aspirations when it comes to the investigation and resolution of workplace complaints

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The reporting of complaints  
The investigation of complaints  
The resolution of complaints

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We meet these demands by establishing, bolstering, and safeguarding “organizational justice”

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15

*Organizational justice is **critical** to a culture of compliance & ethics*

*Employee perceptions of fairness, transparency, consistency, trustworthiness, and ethical leadership directly influence workplace conduct*

*Organizational justice also embodies an organization’s highest values*

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16





- Fair and professionally-conducted investigations help build trust that the organization takes complaints seriously and follows through with its stated values
- Investigative teams act as a principal point of contact for employees. They become key employee-facing stewards of the company's values and intentions to fairly handle complaints
- How investigators "message" the investigation to management acts as a key educational tool and provides an opportunity to communicate compliance and ethics values/goals
- Through their findings, investigators provide information that enables sound decision-making in line with company policies & values
- Investigators help ensure effective remedial action, particularly when they engage in root cause analysis
- Solid investigative teams make an organization resilient and capable when faced with alleged or suspected misconduct
- Exceptional investigative teams promote organizational trust and integrity

17

What challenges do we face in building and sustaining quality investigative teams — and a vibrant and effective investigations function?

18



How do we meet those challenges?

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19

19

### 1. Pick the right team

- Size
- Composition
- Reporting structure
- Vetting during hiring process
- Align skills/experience with the types and complexity of investigations handled

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20

20



## 2. Engage in effective skill-building

- Assess the skills/experience level of team members
- Treat investigations as a learn-by-doing enterprise; relentlessly commit to a model of continuous learning
- Establish a learning structure that works for your team; learning will be multi-dimensional
- Focus on key areas of needed learning as you undertake to up-level competencies to ensure that skills keep pace with demands placed on internal investigative teams

21

## 3. Empower and motivate the team

- Appeal and speak to higher values; help investigators embrace their larger role and impact
- Cultivate team members as stewards of organizational justice through a focus on communication skills
- Develop clear role definition
- Invest in your team

## 4. Team-build

- Through effective team-building, address the isolation and burnout that internal investigators can often feel
- Set up systems so that team members can help and support one another

22



5. Coordinate with investigative teams across the organization

- To avoid missteps, avoid confusion, and strengthen the organization's investigative function overall, establish clear lines of responsibility and closely coordinate investigations across the organization

6. Know when to outsource investigations

- Preserve the integrity of the investigative process by recognizing situations that warrant an outside, independent investigation



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