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

Rebecca Speer, J.D. & Elizabeth Gramigna, J.D.
Founders, Tribù Partners LLP
September 18, 2019
www.tribupartners.com

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

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

---

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

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

Additional trends: increased activity, pressures, and scrutiny of investigations
Number of complaints?

Types of complaints?

Level of contentiousness?

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

Other pressures?

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

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

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
Why are quality investigative teams indispensable to Organizational Justice?

- 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.

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

1. Pick the right team
   • Size
   • Composition
   • Reporting structure
   • Vetting during hiring process
   • Align skills/experience with the types and complexity of investigations handled
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

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
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

Rebecca Speer
150 Spear Street
Suite 800
San Francisco, CA 94105
rspeer@tribupartners.com
415.283.4888

Elizabeth Gramigna
51 JFK Parkway
First Floor West
Short Hill, NJ 07078
egramigna@tribupartners.com
908.988.2520

THANK YOU!