Three avenues of multiparty investigations

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Investigations produce a number of challenges, which become more numerous and difficult when two parties need to investigate the same or closely related allegations. When the need for an investigation arises that requires the participation of an outside entity (or a separate internal entity), your mutual investigations can be conducted through three fundamentally separate manners.

The first way is running “concurrent and mutual” investigations, where the interviews and process of investigation is done together. The two investigating parties work together, interview together, look at the same documentation, share their internal leads, etc. They typically produce separate reports, but they share the same goals and same concerns and often the same recommendations.

The second way is running “separately simultaneous” investigations where the two parties run separate investigations, including separate interviews, and write their separate reports. They may meet to share and discuss their reports, but their goals and focuses typically result in different recommendations.

The third and final way is “separately spaced” investigations. In these investigations, the compliance investigator is required to wait until the third party completes their investigation, and only once the third party produces their report may compliance proceed with an internal investigation.
When having to run co-investigations, performing the entire investigation together has its benefits and drawbacks. Having the ability to discuss an interview or documentation review in real time keeps the investigation moving along at a decent pace and allows for consideration of different viewpoints. When compliance performs an investigation with another internal department — IT for example — it is usually because the allegation involves the expertise of the other department, or the other department needs to address noncompliance-related concerns.

An example of this type of investigation would result from an allegation of retaliation for reporting on Family and Medical Leave Act (FMLA) discrimination. In this example, the compliance professional may work with human resources, because they are likely to have a comprehensive understanding of the complexities surrounding FMLA.

However, it is plausible that the valuable internal resource could cause the interviewees to be uncomfortable. This could happen through their inexperience with interviewing for allegations; through the interviewee having had negative, unrelated interactions with the internal resource; or through the interviewee being uncomfortable simply because they don’t know the internal resource. Whatever the reason, this situation is plausible, and it’s best to be generally prepared for this possibility.

If your relationship with the interviewee has historically been supportive, use that prior relationship to give them the confidence to truthfully engage as the interviewee. This can be a common concern for interviewees where the non-compliance interviewer is an external third party, such as an oversight licensing agency.

If you and the other interviewer are both new to the interviewee, they may be concerned about who will be informed of what they say in response to the questions asked. Or they may be concerned that they will get themselves in trouble or that they will be retaliated against for participating in the investigation. This is the time to be honest, beginning with a reminder of the organization’s policies, the first one being retaliation and confidentiality. Then tell them (or remind them) of the annual training where the investigation process was discussed, what to expect from the interview, and give a general description of the investigative process overall.
Separately simultaneous investigations

The second way a co-investigation may be run is separately but at the same time. This may occur if the third party has a different agenda than the compliance professional. For example, when an oversight governmental agency performs an investigation, they may be looking at specific regulatory violations while the compliance professional is considering regulations, policies, protocols, and opportunities for improvement of best practices. The benefit to this, as with all co-investigations, is having dual energies on finding the facts surrounding the allegation.

Some challenges that can result in this style of an investigation are: the parties not agreeing on the interpretation of the resource, the parties having separate timelines for producing their reports, interviewees providing different testimony when interviewed by the separate parties, and/or interviewees being exhausted with multiple interviews.

A way to mitigate these challenges is for the parties to work together prior to beginning interviews to discuss who they are considering on their interviewee list and interviewing the common interviewees together. If the timeline for the reports is not aligning, one option would be for one party to place consideration of the other’s report within their own report via a post-factum. If the interpretations of the resources (e.g., regulation, law, policy) are different, it becomes an opportunity to gain clarification within the written document. At first the disagreement could cause tension, but the reality is that the disagreement shows a need to clarify language used, making the resource easier to comply with.

Separately spaced investigations

Separately spaced investigations are arguably the most frustrating of the different investigative avenues. In this avenue, one party cannot begin their investigation until the other party has completed their own. Unfortunately, compliance typically ends up being the second party to investigate. An example would be a report made to a governmental oversight agency. Internally, the compliance professional may have to wait to investigate until the agency has completed their investigation regarding the allegation. This may be necessary
to avoid potentially obstructing the government agency’s investigation.

The frustration with this is that, as discussed in the separately simultaneous section, the third party may not be considering all that needs to be measured from a compliance standpoint, so now the compliance officer may have to wait months before even beginning their investigation. As anyone who has been an investigator will tell you, eyewitness testimony is only minimally accurate to begin with. Delay that by months between the alleged incident and the interviews, and the accuracy is even further decreased.

When possible, it is best to avoid this investigatory avenue, especially if the party needing to complete their report first is unable to do so quickly. If this avenue is required and happens frequently for your industry, the compliance professional needs to work with and develop a relationship with the third-party investigators to encourage open communication throughout the investigation. This will allow the compliance professional to establish a more concrete plan for when they can begin their investigation, and they may even be able to begin their investigation sooner.

**Conclusion**

Compliance professionals need to be versatile. They have to be able to work alongside others on compliance investigations, work parallel to others on closely related investigations, and sometimes wait patiently for other investigations to conclude before even being able to start their own. By knowing to expect these variations in investigatory practices, you can plan accordingly and avoid unneeded frustrations. You can be aware of the advantages and pitfalls of each type of investigation so that you can conduct the investigation with proper planning and attentiveness.

**Takeaways**

- The challenges of investigations are expanded in multiparty investigations.
- Although the risks can’t be eliminated in multiparty investigations, they can be mitigated.
• Investigating with another party has the added benefits of a different perspective.

• Third parties may not be considering all that needs to be measured from a compliance standpoint.

• Consideration of the interviewees during multiparty investigations is crucial.

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