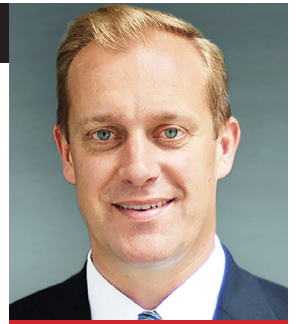


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BY T. MARKUS FUNK  
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# Managing Misconduct

## The Internal Investigations Balancing Act, From a Company Perspective

Managers are not acrobats. But the series of balancing acts internal investigations require are unique even among company management—and the lawyers who serve them.

True, the search for the truth is obviously the immediate goal of any internal investigation, regardless of whether the investigation concerns bribery, fraud, breach of fiduciary duties, cybercrime, trade secret theft, fraud, sexual harassment, or some other business-sensitive issue. But that observation constitutes little more than spotting the pig in the python.

In the complicated real world occupied by today's companies and organizations, the search for the truth finds itself in constant tension with other important considerations. And those responsible for budgeting for and running investigations feel this push and pull from the day the investigation is launched.

In most cases the right thing to do for a company confronted with suspicions concerning potentially serious conduct is to immediately consult with a lawyer who has internal investigations "chops" – either to get a basic sanity check, or, if necessary,

to devise an appropriately scaled and detailed investigative plan.

If an investigation is needed, the first order of business, in addition to performing the important check on whether insurance might cover the incident and the associated investigative cost—an important step that surprisingly often is overlooked—is to have experienced counsel work hand-in-glove with in-house resources to ensure that the investigation's process and results will stand up to scrutiny ... while not breaking the bank.

In short, a team-effort-attitude is required to produce a high-integrity investigation characterized by an economical, practical approach that does not sacrifice quality. The benefits of following such an intentional approach are many:

- Shores up employee and company morale.
- Safeguards your brand and protects your company's hard-earned reputation.
- Positions your company ahead of potential liability to gain a first-mover advantage with plaintiffs' lawyers, government enforcers and regulators, and other stakeholders.

- Removes problem actors and reduces the risk of future problems. Doing the right thing and being seen doing it are important.
- Signals constant improvement in adopting new governance, controls and processes.
- Shows Board ownership of the issues and reflects an appropriate "tone at the top."

Today's legal climate, and recent changes in how federal and state enforcers and regulators give credit for "responsible" company conduct, place a premium on independent, professional investigations that yield actionable results. Taking appropriate action early on will avoid many of the avoidable headaches (or worse) that increasingly are landing companies and their management in the headlines.

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