

# Seven tips for internal investigations in the age of coronavirus

But how do we operate in this new world that removes so many of our critical tools? Internal investigations typically involve in-person meetings and interviews, which makes it easier to discuss sensitive issues, to assess body language, to pass documents back and forth, and to read the room. Travel restrictions and social distancing have made all that much more challenging, but nothing relieves companies from their obligations to prevent misconduct and to investigate potential wrongdoing. The work goes on.



Our firms have continued to work together on cross-border internal investigations after the severe restrictions went into effect. There has been no travel, no on-site document collection, and no in-person interviews. At times, it has been awkward and challenging. Overall, it has stretched our creativity, digital capabilities, and collaboration skills. But even working within those limitations, it is possible to deliver sound advice and to develop a robust factual record.

For companies, compliance professionals, and lawyers who are currently conducting or about to begin complicated internal investigations, we suggest a few practical pointers gleaned from our recent experience:

- **Data security laws.** Be mindful of data security and privacy

laws affecting electronic data transfer and telephone and video conferences. With the wider use and first-time use by some of electronic tools, remember that legal prohibitions do not recognize the extreme circumstances of the coronavirus. Your interviews from outside the borders of some countries may violate the criminal laws of that country.



- **Digital dangers.** Hackers and phishers have a lot of time on their hands and are making full use of it. Be especially careful to maintain rigorous data security, particularly working from home offices. This might mean using a virtual private network to connect devices to the internet versus your internet service provider.
- **IT professionals.** Because it may be difficult to send e-discovery vendors onsite to collect documents, consider enlisting the company's IT professionals to do the collection. If chain of custody is a concern, consider granting external counsel or their vendors temporary access to run and save searches on the company's servers. Responsive documents can then be uploaded to an e-discovery vendor's platform via FTP. Afterwards, conduct an interview of relevant IT personnel to ensure a contemporaneous record of the technical environment and measures taken to ensure the integrity of the data collection.
- **Adjust to current realities.** Recognizing that these are extraordinary times is an important part of creating a cohesive team. To promote the kinds of communication that tend to occur organically in an office, schedule daily "check-in" video calls for the legal and compliance teams, welcoming kids and pets.

- **Confidentiality still matters.** Family members and roommates are not members of the investigative team and are not within the circle of privileged and confidential communications. Exercise care that interviews are not overheard by others and that screens and desks do not contain confidential information.
- **Conduct interviews by videoconference.** The technology has never been easier, but it is critical that the investigations team be fully proficient in advance of the interviews. When choosing an app, make sure that it provides good audio and video quality and complies with relevant security and data privacy laws. The “share screen” functionality in your videoconferencing app should allow read-only review so that the team can discuss documents during interviews. It also has the added benefit of focusing all participants on specific sections of documents as the interviewer asks about them.
- **Make the best of it.** Acknowledge the strangeness of conducting interviews in what would ordinarily be private spaces. Ensure that the interviewee is comfortable, but also understands the gravity and formality of the interview. It is possible that conducting interviews at home, during convenient times, may actually facilitate more relaxed and productive interviews.

Starting in February, we knew that we would have to approach investigations differently. What surprised us most was how much of our work felt routine. We have continued to review thousands of documents, conduct numerous interviews, engage with appropriate stakeholders, and do our best to deliver the results of our investigation within the challenging time frames requested by our clients. Like everyone else, we hope to soon conduct our work in a world free of coronavirus. But in the meantime, we have no choice but to rely on a new set of tools and practices to help our clients

comply with legal requirements wherever they do business.

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