

Checklists



Introduction

On the pages that follow, we have included a number checklists. These are designed to be keyed to particular and recurring phases of crisis management and incident response, including:

1. Scoping an investigation.
2. Building a Team.
3. Producing Documents & Information.
4. Conducting Interviews.
5. Interacting with Authorities.
6. Speaking to the Media.
7. Taking Adverse Personnel Action.

Each checklist is cross-referenced to the relevant substantive chapters of the Handbook, and designed to help you quickly think through and identify information that may be necessary for the task at hand.

Checklist 1: Scoping an Investigation

✓ **Assess what is known about the subject matter, including how the company became aware of it.**

Chapter I: Managing The First Response
Chapter III: Conducting an Internal Investigation
Chapter VI: Employee Rights and Privileges

✓ **Establish the investigation's goals.**

Chapter III: Conducting an Internal Investigation

✓ **Determine the custodians likely to have relevant information and the location of documents and electronic data.**

Chapter I: Managing The First Response
Chapter III: Conducting an Internal Investigation
Chapter V: Data Privacy & Blocking Statutes

✓ **Prepare an investigative plan.**

Chapter III: Conducting an Internal Investigation

✓ **Brief relevant stakeholders on progress.**

Chapter I: Managing The First Response
Chapter II: Responding to Requests From Authorities
Chapter III: Conducting an Internal Investigation

✓ **Decide whether remediation is appropriate.**

Chapter III: Conducting an Internal Investigation
Chapter VII: Cooperation
Chapter IX: Collateral Considerations

✓ **Consider whether, and how, to disclose investigation's findings.**

Chapter III: Conducting an Internal Investigation
Chapter VII: Cooperation
Chapter VIII: Public Relations & Message Management
Chapter IX: Collateral Considerations

Checklist 2: Assembling a Team

✓ **Determine whether the matter is best handled by in-house or outside counsel.**

Chapter I: Managing The First Response
Chapter III: Conducting an Internal Investigation
Chapter IV: Preserving Legal Privilege
Chapter VIII: Public Relations & Message Management

✓ **Assess whether the matter is related to an already-existing investigation.**

Chapter III: Conducting an Internal Investigation

✓ **Assess what subject-matter expertise is likely necessary.**

Chapter I: Managing The First Response

✓ **Assess where the evidence is located and whether expertise is necessary in different jurisdictions.**

Chapter I: Managing The First Response
Chapter V: Data Privacy & Blocking Statutes

✓ **Identify the relevant stakeholders.**

Chapter I: Managing The First Response
Chapter III: Conducting an Internal Investigation

✓ **Establish a mechanism for reporting up and information sharing.**

Chapter III: Conducting an Internal Investigation

Checklist 3: Producing Documents & Information

✓ **Determine whether the request is within the sending authority's jurisdiction.**

Chapter II: Responding to Requests From Authorities

✓ **Assess legal impediments to complying with the request.**

Chapter II: Responding to Requests From Authorities

Chapter V: Data Privacy & Blocking Statutes

Chapter VI: Employee Rights and Privileges

✓ **Decide when and how to produce and negotiate the scope and timing of the requested information.**

Chapter II: Responding to Requests From Authorities

✓ **Determine likely custodians and other sources of data and secure the evidence.**

Chapter I: Managing The First Response

Chapter III: Conducting an Internal Investigation

✓ **Circulate, and update, a litigation hold notice.**

Chapter IV: Preserving Legal Privilege

✓ **Determine the best means of conveying the requested information.**

Chapter II: Responding to Requests From Authorities

Chapter IV: Preserving Legal Privilege

✓ **Assess collateral consequences of producing requested material.**

Chapter II: Responding to Requests From Authorities

Chapter VII: Cooperation

Chapter IX: Collateral Considerations

Checklist 4: Conducting Interviews

- ✓ **Assess potential legal restrictions on conducting interviews.**
Chapter VI: Employee Rights and Privileges
Chapter V: Data Privacy & Blocking Statutes

- ✓ **Determine whether the individual requires separate counsel.**
Chapter III: Conducting an Internal Investigation

- ✓ **Assess how the interview should be documented, including an analysis of the risk of disclosure in applicable jurisdictions.**
Chapter IV: Preserving Legal Privilege

- ✓ **Determine who should attend the interview.**
Chapter IV: Preserving Legal Privilege

- ✓ **Assess whether to provide the interviewee with topics or relevant documents in advance of the interview.**
Chapter III: Conducting an Internal Investigation

- ✓ **Evaluate how to disclose the interview to relevant stakeholders, including internally and to relevant enforcement authorities.**
Chapter VII: Cooperation
Chapter VIII: Public Relations & Message Management

Checklist 5: Interacting With Authorities

✓ **Assess the subject-matter and scope of authorities' interest and jurisdiction.**

Chapter I: Managing The First Response

Chapter II: Responding to Requests From Authorities

✓ **Assess whether the requested information implicates similar requests from other authorities.**

Chapter II: Responding to Requests From Authorities

Chapter III: Conducting an Internal Investigation

✓ **Negotiate a schedule for relevant events.**

Chapter II: Responding to Requests From Authorities

✓ **Keep authorities apprised of developments, to the extent appropriate.**

Chapter II: Responding to Requests From Authorities

Chapter VII: Cooperation

✓ **Determine whether to report findings of internal investigation to authorities.**

Chapter IV: Preserving Legal Privilege

Chapter VII: Cooperation

Checklist 6: Speaking to the Media

✓ **Consider whether to hire a public relations firm.**

Chapter VIII: Public Relations & Message Management

✓ **Coordinate all disclosures with advice of counsel.**

Chapter VIII: Public Relations & Message Management

Chapter IV: Preserving Legal Privilege

✓ **Coordinate messaging with relevant stakeholders.**

Chapter VII: Cooperation

Chapter VIII: Public Relations & Message Management

✓ **Assess the effects of disclosures on ongoing matters as well as potential future litigations.**

Chapter VIII: Public Relations & Message Management

Chapter IX: Collateral Considerations

✓ **Assess legal duties to make public disclosures.**

Chapter VIII: Public Relations & Message Management

Chapter IX: Collateral Considerations

Checklist 7: Taking Adverse Personnel Action

- ✓ **Maintain timely and thorough personnel files, including by conducting regular performance evaluations with written documentation, and record negative performance issues as they occur.**

Chapter VI: Employee Rights and Privileges

- ✓ **Carefully document the proper justifications for an employee's termination and be prepared to defend those justifications in follow-on legal proceedings.**

Chapter VI: Employee Rights and Privileges

- ✓ **Create a clear record demonstrating that the discipline is unrelated to any whistleblowing activity.**

Chapter VI: Employee Rights and Privileges

- ✓ **Ensure that senior management is well-trained and committed to compliance with the securities laws and that clear procedures are in place to report, investigate, and take appropriate action when made aware of potential violations of law.**

Chapter VI: Employee Rights and Privileges
