

R. McCONNELL GROUP PLLC

A BOARD GUIDE

Internal Investigations

A framework for fair, thorough, and privileged investigations

The legal framework, the lifecycle, intake and triage, privilege, interviews, findings, and remediation—so a board can tell whether its investigations would withstand scrutiny.

Why Investigations Matter

An investigation gathers facts so a credible determination can be made—not to “prove” a case.

Establish the facts.

A fair, objective, thorough process yields complete information to assess and mitigate risk and remedy any wrongdoing.

Consistency drives reliability.

A standardized process produces outcomes the organization and its people can trust.

Manage legal and regulatory risk.

Mishandled investigations increase the risk of legal action or regulatory sanction and can damage reputation and morale.

Build institutional knowledge.

Investigation data surfaces compliance trends, enables proactive risk mitigation, and feeds lessons learned.

THE GOAL

“To demonstrate integrity in the investigative process so that the organization and its employees trust the outcome—and any recommendations.”

What the Law Expects of an Investigation

Investigations sit inside a web of statutes, doctrines, and enforcement expectations.

U.S. Sentencing Guidelines

Organizations must “take necessary steps to respond appropriately” to detected misconduct and prevent recurrence.

Sarbanes-Oxley Act

§301 requires procedures to receive and treat complaints on accounting and auditing; §404 governs internal controls.

FCPA & UK Bribery Act

Anti-corruption, sanctions, export-control, and anti-boycott allegations carry heightened escalation duties.

Upjohn v. United States

Counsel–employee communications are privileged—but the privilege belongs to the company, not the employee.

Attorney Work-Product

Materials prepared by or at the direction of counsel in anticipation of litigation are protected from discovery.

Weingarten Rights

Union employees may have a representative present at investigatory interviews that could lead to discipline.

Data Privacy & Cross-Border

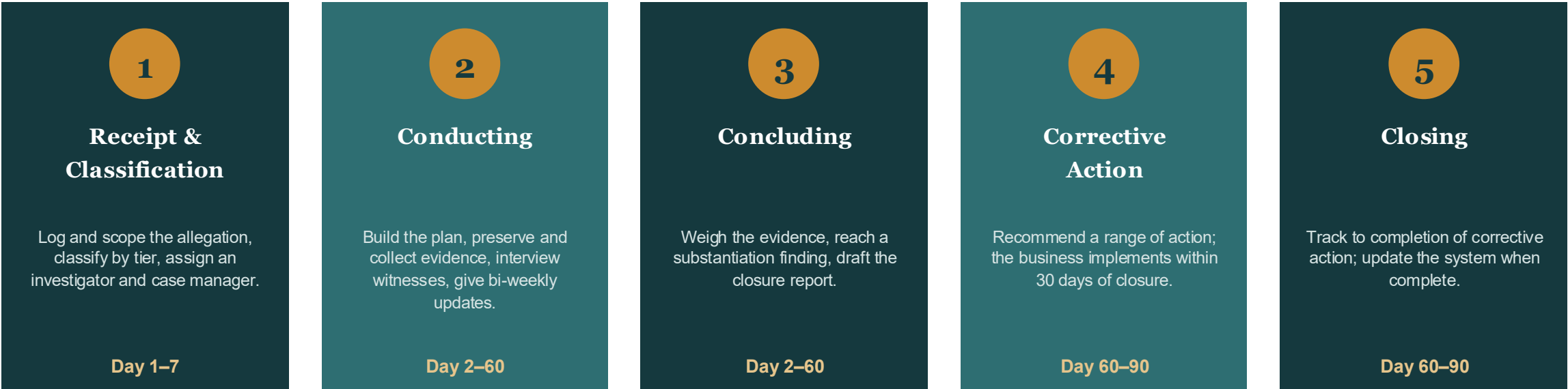
Privacy laws, blocking statutes, and limits on in-house privilege abroad shape collection and review.

Anti-Retaliation / Whistleblower

Protected activity—reporting or participating—cannot be met with retaliation under law and policy.

From Receipt to Closure

Five stages move a matter from intake to verified remediation—most close within sixty days.



Target cadence: 80% of investigations conclude within sixty days; corrective actions are implemented within thirty days of case closure.

Classifying What Comes In

The intake team classifies every allegation by risk tier and assigns it for review.

TIER 1 Lower risk

Employment and HR-type issues, conflicts of interest, supplier relationships, health and safety.

TIER 2 Increased risk

Discrimination and harassment, wage and hour, antitrust, data privacy, insider trading, trade compliance.

TIER 3 Significant

Fraud and revenue recognition, bribery and corruption, human rights, workplace violence, violations of law.

HOW CLASSIFICATION WORKS

Each tier reflects the level of risk—to the company—of litigation, reputational harm, or regulatory exposure. Aggravating factors, extenuating circumstances, or signs of habitual misconduct affect tiering, and the classification can change as new facts emerge. A matter that lacks enough information to investigate should stay open no longer than reasonably necessary—usually not more than seven days.

Who Does What

Clear roles keep the investigation independent, thorough, and accountable.

Investigator

Gathers facts, builds the plan, conducts interviews, assesses root cause, and follows the matter to closure.

Case Manager

Ensures the investigator follows the protocol, keeps a complete plan, and uploads supporting records.

Investigative Departments

Compliance, Legal, HR, IT Security, Product Quality, EHS, and Global Security follow one consistent approach.

Legal

Directs privileged matters, issues legal holds, and advises on collection, privilege, and corrective action.

Senior Oversight

Significant matters draw oversight from the chief integrity officer and general counsel.

Disciplinary Review Committee

Decides senior-level matters that may lead to termination; the board's audit committee receives program reporting.

Plan the Work, Preserve the Proof

Early planning and disciplined preservation protect the integrity of the record.

THE INVESTIGATION PLAN

A written plan identifies the issues, sets a logical sequence of steps, assigns responsibilities, and flags questions for legal research—ideally within forty-eight hours of assignment.

PRESERVATION & LEGAL HOLDS

At the outset, address data preservation and collection, including ESI. Where litigation or a government inquiry is anticipated, a legal hold—issued only by counsel—follows immediately.

OPERATIONAL & SHARED RECORDS

Created by the business or automated processes and held centrally—contracts, invoices, financial records, access logs, security video, personnel files.

CUSTODIAL RECORDS

Created by the user in individual accounts—email, devices, cloud drives, chat and messaging apps. Reviewing them requires a legal hold issued by counsel. Preserve metadata; keep the chain of custody intact.

Protecting the Investigation

Where it matters, investigations run under counsel to preserve privilege and work-product protection.

Run under counsel

Sensitive matters may be conducted at the direction of legal counsel to preserve privilege and work-product protection.

Hold information closely

In privileged matters, participants do not disclose information even internally without counsel's approval.

Mark and route correctly

Documents move through counsel and are marked “Confidential / Attorney-Client Privileged / Attorney Work Product.”

Mind the borders

Privilege protection varies abroad—some jurisdictions limit or deny privilege for in-house counsel.

Upjohn principle: counsel represents the company, not the individual—and the privilege belongs to the company, which may choose to waive it.

In the Interview Room

How an interview is conducted shapes both its credibility and its admissibility.

Keep it small

Absent unusual circumstances, no more than three people: the interviewee, the investigator, and a scribe.

Never coercive

Rooms stay unlocked; nothing blocks the exit; the interviewee is reminded they are free to leave at any time.

Give the Upjohn warning

In counsel-led interviews, make clear the lawyer represents the company and the privilege is the company's.

Honor Weingarten rights

A union employee may have a representative present at an interview that could lead to discipline.

Flag self-incrimination

In some jurisdictions, interviewees must be told of their right against self-incrimination—check local law.

Confidentiality & no retaliation

Remind interviewees to keep the matter confidential and that good-faith reporting is protected from retaliation.

Reaching a Conclusion

Findings rest on facts and a clear evidentiary standard—not on legal conclusions.

PREPONDERANCE OF THE EVIDENCE

A violation is found when it is more likely than not—greater than 50%—that it occurred.

Substantiated. The evidence confirms the allegations are valid.

Partially substantiated. Some, but not all, of the allegations are supported.

Unsubstantiated. The evidence does not confirm the allegations.

WHAT THE REPORT CONTAINS

The triggering allegations, the work plan, the background facts, the analysis of key evidence, the governing policy or law applied to the facts, the substantiation finding, and the remedial measures. A report states factual conclusions—not legal ones.

Root Cause, Correction, and Closing Out

A finding is the beginning of remediation, not the end of the matter.

Root cause analysis

Complex or significant matters get a formal root-cause analysis with the right stakeholders at the table.

Separate finding from discipline

The investigator does not set discipline—separating the phases protects independence and credibility.

A range of corrective action

From coaching and training to written warnings, monitoring, loss of bonus, suspension, or termination.

Implement on the clock

The business implements corrective actions within thirty days of case closure.

Close and retain

Complete the record, return or delete reviewed materials, and retain per the retention schedule.

Capture lessons learned

Near-misses and lessons feed enterprise awareness and prevent the next occurrence.

Knowing the Program Works

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An investigations program proves itself through metrics, independence, and oversight.

Timeliness

A target that 80% of investigations close within sixty days, with bi-weekly progress updates to the case manager.

Independence & objectivity

Investigators are free of bias and conflicts and are never decision-makers in the discipline they may trigger.

Quality-control review

Periodic, structured reviews test whether investigations are independent, thorough, and within the standards.

Board-level reporting

Aggregated case data flows to senior leadership and the audit committee to surface trends and exposure.