

**Verrill**



# When A Crisis Strikes: Conducting (& Communicating) An Effective Internal Investigation

April 14, 2020

Doug Currier  
[dcurrier@verrill-law.com](mailto:dcurrier@verrill-law.com)

Mike Saxl  
[msaxl@mainestreetolutions.com](mailto:msaxl@mainestreetolutions.com)

Clara McConnell  
[cmcconnell@mainestreetolutions.com](mailto:cmcconnell@mainestreetolutions.com)



## Agenda

- 1) Preparing for a Crisis
- 2) Workplace Investigations in Crisis Situations
- 3) Communication Strategies
- 4) COVID-19: What We Have Experienced and Lessons Learned

## Wide Range of Crisis Scenarios

- Allegations of corporate misconduct
- Lawsuits by former employees / clients
- Loss of an important client or downturn in business
- Allegations against high level executives
- Security breach
- Pandemic
- Natural disaster

**Verrill**



## **Planning for the Inevitable: Crisis Preparation**

Number #1 Rule:

*Don't wait until a crisis arises to put a plan in place*

## Specific Goals of a Crisis Management Plan

- 1) Providing guidance and reducing tension when a crisis occurs;
- 2) Demonstrating the company's competence and leadership;
- 3) Controlling the flow and accuracy of information (not letting the rumor mill and media speculation take over);
- 4) Protecting the company from liability and loss; and
- 5) Providing reassurance and information to key stakeholders as well as the media and government regulators.

## Preparing for a Crisis

1. Identify Likely Scenarios
2. Determine your vulnerabilities
  - Personnel/HR, digital security, operations, environmental/health
3. Develop a Management Team
4. Develop a Communications Strategy
5. Ensure that, in times of crisis, you can act quickly and intelligently
6. Crisis drills?

## Preparing for a Crisis -- Management Team

- Senior management, public relations, security, operations, finance, and human resources.
- External resources such as publicists, lawyers, accountants, computer experts and government relations experts.
- Identify Investigators, external and internal, and establish Investigation Protocols.
- Each person on the team should understand duties and scope of authority. Train them!
- Depending upon the crisis, the members of the team may change. Be prepared to be flexible.

## Preparing for a Crisis -- Communications

- Identify spokespeople and train them!
- Identify and implement notification systems -- Checklists should be prepared that address all parties that should be contacted and by whom.
- Map out audiences, communications channels, & staff responsibilities (including media protocols).
- Draft holding statements for various scenarios.
- Ensure that, in times of crisis, you can act quickly.



## Investigations

- Whether or not to do the investigation.
- Purpose and goals of the investigation.
- Who should conduct the investigation.
- Who should be responsible for investigation.
- Confidentiality vs. Transparency.
- What is to be done with results.

## Whether or Not to do the Investigation

- Sometimes the answer is **NO**.
- Sometimes an informal inquiry is enough.
- Why might you not do an investigation?
  - You know the allegation is false.
  - You just covered this issue and cannot justify doing it again.
  - The likely outcome is worse than the problem.

## Purpose and Goals of the Investigation – What are They?

### Purpose

- To uncover all the relevant facts.
- To decide what to do.

## Purpose and Goals of the Investigation – What are They?

### Goals

- Correct the problem
- Prevent future problems
- Maintain fair/healthy workplace
- Protect a reputation
- Avoid publicity
- Avoid a lawsuit
- Generate favorable publicity

## Goals Affect Nature and Method of Investigation

- Its scope.
- Who conducts it.
- To whom are the results reported.
- What action is taken based on investigation.
- Whether or not the results are made public.
- What will be the publicity plan.

## Role of Policies

- Whistleblower / Ethics policies.
- EEO and Harassment policies.
- Grievance policies.
- Reporting Mechanisms -
  - Access to Board of Directors?
  - Sarbanes-Oxley Act.

## Who Should Conduct the Investigation?

- How high up in the food chain is accused?
- Is special knowledge required?
- Is confidentiality important?
- Is public involvement likely?
- Is legal action a risk?
- Internal vs. external investigators.

## Investigator Credentials

- Independence from the subject of the investigation.
- Personal integrity.
- Sufficient experience and skill in investigations to not only do a good job, but also be able to convince any observer that a good job was done.
- Too often external investigators are not that good, which can make a bad situation worse.



## Confidentiality

- Whether or not it is needed.
- How to obtain and maintain it.
- The “Me Too” Movement as an example of the need for transparency.
- Attorney Client Privilege.

## What is to be Done with Results

- Internal Use Investigation.
- Public Use Investigation.
- The Danger of Confidential Separation Agreements.
- The Threat of Criminal Prosecution.

## Communicating During a Crisis

1. Act quickly – communicate early & often
2. Convene crisis management team to assess the crisis
  - Leadership, subject matter experts, PR, legal
3. Map out audiences and messages
  - Who needs to know what?
  - Internal and external audiences
  - Tailor messages to audiences and to channels – but be consistent
  - Fill in the blanks in your holding statement

## Communicating During a Crisis

### 4. Identify spokespeople

- Leadership & subject matter experts
- Frontline workers

### 5. Define the right tone

- Show empathy for those affected
- Convey gravity and exhibit responsibility (not culpability)
- Don't be defensive

### **3 Takeaways: Timely, Accurate, and Consistent**

- The initial response to a crisis must be timely; ideally you can be the first to tell your story to your stakeholders.
- If stakeholders view the company as the primary source of information regarding the crisis it means they believe the company has the crisis under control.
- Being first to tell the story cannot excuse being inaccurate.
- Stakeholders want to know what happened and how the crisis may affect them. Blame can be placed later.
- The company must avoid any appearance of misleading or shading the truth. And the message must be consistent.

## **First Address Any Threat to Employee or Public Safety**

- Nothing is more damaging to a company than causing a threat to employee or public safety.
- Failure to recognize such a threat and give it first priority may severely harm the reputation of the company.
- The public must know and understand that your primary concern is for employee and public safety, not your own financial or reputational impact.

## COVID-19 – Our Observations

- Businesses were unprepared.
- Confusion about what to do and what to say.
- Varying degrees of concern about employee and customer safety.
- A sense of panic - Survival first; Protecting reputational damage second.
- This is a motivator for changes already being considered.

## COVID-19 – Lessons Learned

- For many, this is an opportunity to develop employee and customer loyalty.
- Those that acted quickly and kept a calm head will fare better.
  - When the dust settles, for those who were not prepared and thoughtful in their response, there will be legal claims, increased union activity, qui tam actions, lost business.
- This is a prolonged crisis – businesses need to be fluid – things are going to continue to shift.



## Damage Recovery

What steps need to be taken to recover?

- Reputation rehabilitation
- Employee morale
- Client/customer retention

## Post Crisis Reflection

When the crisis passes and the company regains something resembling normal operations, it is time to review how well the company was prepared for the crisis.

- Should there be changes made to the crisis management plan and perhaps to the make up of the crisis management team?
- Are there steps to be taken to reduce the chances of another crisis developing, particularly in the areas over which the company has control?

The Verrill logo consists of the word "Verrill" in a bold, black, serif font, centered within a solid yellow rectangular background.

## Questions?

Doug Currier  
dcurrier@verrill-law.com

Mike Saxl  
msaxl@mainestreetolutions.com

Clara McConnell  
cmcconnell@mainestreetolutions.com

*This communication is provided for general information purposes as a service to clients and friends of Verrill Dana, LLP. This communication may not be relied upon by any person as legal advice and does not create an attorney-client relationship. This information may not be used in any marketing or promotional materials without our express permission.*