



Responding to misconduct allegations

**The importance of effective
investigations**

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Organizations have recently faced scrutiny from media outlets, law enforcement, regulators, and the public regarding their response to and handling of allegations of misconduct. At times, organizations have failed to conduct investigations that identify all pertinent facts of alleged misconduct. Employees are reporting misconduct, such as misuse of confidential information, bribery, theft, and harassment, at the highest rate ever.¹ Employees are also experiencing increased pressure to compromise standards,² which may result in an increase in reported misconduct.

Current events demonstrate that an organization's response to allegations of misconduct may pose legal, regulatory, financial, and/or reputational risk. The response to allegations of misconduct must be prompt. This can be extremely challenging due to lack of investigative resources, including technology and other skill sets, stringent time constraints, or a lack of defined policies and protocols.

Examples of misconduct



Misuse of confidential information



Bribery



Theft



Sexual harassment



Abusive behavior



Discrimination



Violations of ethical standards



Violations of organizational policies

¹ The State of Ethics & Compliance in the Workplace, March 2018, Ethics & Compliance Initiative

² The State of Ethics & Compliance in the Workplace, March 2018, Ethics & Compliance Initiative



Why it matters

An organization's response to allegations of misconduct can have a significant impact. Effective investigations are able to:

- Identify the relevant facts and circumstances surrounding alleged misconduct
- Understand the pervasiveness of misconduct
- Assess the potential impact to the organization's culture
- Take appropriate corrective and remedial actions based on the facts gathered.

By conducting an effective investigation, organizations demonstrate a commitment to ethical culture, which can significantly influence workplace conduct. Employees at organizations with weak cultures are three times more likely to say they experienced pressure to compromise standards and three times more likely to say they observed misconduct.³ Organizations can combat a weak culture by appropriately and effectively responding to allegations of misconduct.



How can we assist law firms?

KPMG Forensic draws on extensive experience in forensic accounting, computer forensics, document analytics, structured data analytics and modeling, risk assessments, ethics and compliance, and integrity due diligence.

We have skilled investigators who are highly trained in misconduct investigations and investigative interview techniques. We use machine learning and other advanced technology to accelerate investigations so that conclusions can be reached quickly. This combined skill set and exposure to our diverse clients helps position our team to best support counsel's investigative strategy and objectives.

We are well positioned to promptly respond to allegations of misconduct and perform effective, cost-efficient forensic data collections and analysis. We balance the risks and costs of these efforts with the need to obtain the pertinent facts of the alleged misconduct, particularly when the level of scrutiny is high.

Through detailed investigative procedures and techniques, our highly credentialed professionals provide an impartial means to establish the facts and circumstances surrounding the allegations, evaluate implications to the organization, identify appropriate remedial actions, and prepare for communications with regulators or law enforcement, as needed. We have the necessary familiarity with foreign cultural standards, language skills, and local regulatory and privacy laws to consistently deliver high-quality results around the globe.

³ The State of Ethics & Compliance in the Workplace, March 2018, Ethics & Compliance Initiative



Investigations services

We assist legal counsel in their representation of boards of directors, audit committees, and management in understanding whether misconduct has occurred.

We work with counsel to develop an approach to respond to the alleged misconduct, which may include evaluating the pervasiveness of alleged misconduct, assessing the organization's commitment to integrity and ethical conduct, and assessing processes and controls that may mitigate the risk of misconduct.

We use various investigative techniques, which may include analysis of financial and nonfinancial information (e.g., social media, surveillance records, litigation records, and other information from public and private sources), detailed fact-gathering interviews, data analyses of structured and unstructured data, and trend analyses. Our investigators help develop remediation strategies to reduce the risk of recurrence of misconduct and enhance the organization's ethical culture and tone.



Technology supercharged investigations

We use a combination of forensically sound principles and processes to identify, preserve, collect, process, and review Electronically Stored Information (ESI) during misconduct investigations, with a focus on reducing the overall time to reach conclusions along with containing costs of the investigation. Our services are enhanced by decades of experience with both externally licensed software and proprietary forensic tools.



Identification

We identify key data sources and elements that may be relevant to the investigation, which may include data stored on various platforms, applications, locations, or devices. We evaluate the costs and benefits to the organization in obtaining this data and help clients evaluate what data should be obtained to appropriately investigate the misconduct.



Preservation

We develop and execute defensible preservation action plans to help our clients ensure evidence is not inadvertently deleted or purged.



Collection

We use both targeted and broad-based collection protocols and deploy experienced extraction teams to collect evidence pertaining to the misconduct. We document appropriate evidence handling and chain of custody

procedures and follow document and data safeguarding procedures.



Processing

We load, transform, consolidate, standardize, validate, and filter relevant data for analysis. We evaluate the appropriate hardware and software requirements based on our client's needs and nature of the investigation, which may include the use of Relativity, Nuix, and other processing tools. Our capabilities allow for fast and accurate data indexing, searching, and analysis. We use tailored culling techniques to reduce hosting and review costs as well as increase throughput speeds.



Review and analysis

We stage the data for first pass review along with KPMG investigative teams and external counsel. We use various machine learning, predictive models, and technology-assisted review (TAR) tools, such as Brainspace, to help identify the most relevant documents to the investigation quickly, which helps shape legal strategy early in the matter. Through our first pass document review services, we oversee a team of contracted attorneys and subject matter specialists to efficiently perform document review at a lower cost to the organization.



Document review services

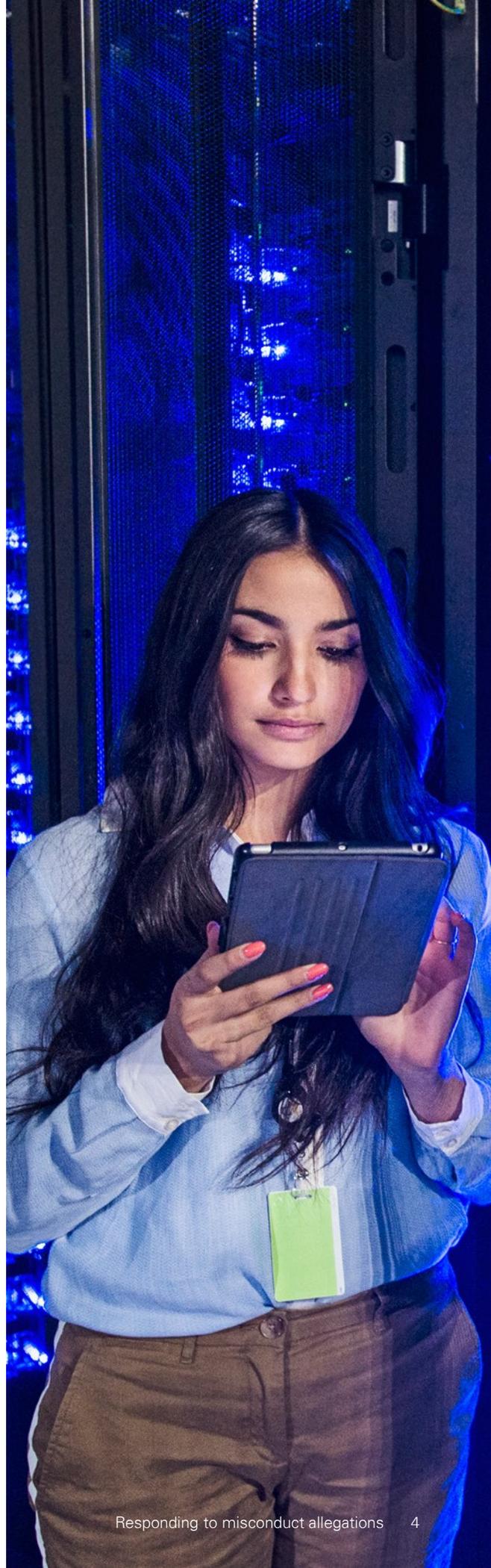
KPMG's document review services represent a new and innovative approach to document review. We integrate machine learning and statistical sampling into our first pass review to find relevant documents fast, reduce human errors, and lower the overall cost of review. Qualified attorneys and subject matter specialist reviewers efficiently and defensibly review documents and data involved in investigations. We use a team of reviewers that is reflective of our clients' investigation needs and budgets, which is comprised of:

- An experienced project lead to provide a single point of contact for streamlined and effective communication
- Team members with significant industry knowledge that can augment the review, providing context for review playbooks, training for machine learning categorizations, and strategic work streams.
- Technology and statistical subject matter professionals that can help maximize a flexible toolkit.



Forensic structured data analytics

KPMG's powerful data analyses can help focus misconduct investigations to areas of higher risk. We perform data analytics to identify anomalies and unknown patterns that may be indicative of fraud, misconduct, waste, or abuse. Our structured data specialists are experienced in extracting pertinent data from disparate sources and building a high-level view into all the data so that it can be sorted, filtered, and queried to develop models and reports to further investigative objectives and inform legal strategy. The use of data analytics helps the investigations team identify targeted areas of focus, which may include certain processes, people, or transactions for additional inquiry. In addition, we use data analyses to identify opportunities to stop fraud, waste, and misappropriation of resources that have an immediate impact on the bottom line.





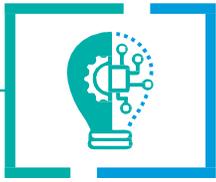
Case study

A large, private company was responding to allegations of misconduct involving violations of the organization's code of conduct by company employees. Due to the sensitivity of the matter, pervasiveness of the alleged misconduct, volume of data involved, and potential regulatory implications, outside counsel engaged KPMG Forensic to assist in the investigation.

KPMG utilized a cross-functional investigative team that consisted of seasoned investigators, forensic technology, data analytics professionals, and a managed review team to respond to the allegations. The cross-functional team used technology-enabled investigation tools to efficiently identify, process, and analyze documents and data pertinent to the investigation as follows:

- Leveraged various eDiscovery tools to process and analyze over 60 million documents.
- Used Brainspace to analyze conceptual clusters and email communications between subjects of the investigation to rapidly identify the most pertinent communications to the investigation, which allowed for the escalation of certain matters to outside counsel, senior leadership, and regulators in a timely manner, and to prioritize certain document types for review.
- Performed statistical data analyses of over 650 million records to identify potential anomalies or patterns of misconduct across the organization, such as locations, job functions, and categories of transactions with a higher rate of alleged misconduct.
- Participated with counsel in conducting over 200 interviews of subjects to the investigation; having investigators with deep technology skills and experience added significant value by identifying, in real time, inconsistencies between employee comments during interviews and facts provided through data examination and analysis.
- Advised on discussions with the client's special committee as well as regulators pertaining to the facts and circumstances identified during the investigation, remediation and correction actions, and the organization's commitment to integrity and ethical culture.





Use of technology-enabled investigation tools

One of the greatest investigative challenges is finding the relevant data in a timely and cost-efficient manner. KPMG's advanced technology capabilities enable clients to respond quickly to misconduct. We offer several technology-enabled investigation tools to assist in the response to allegations of misconduct, such as:



Brainspace

Technology-assisted review tool that provides text analytics for investigations. Brainspace allows for a cost-effective and efficient review of email communications by helping to identify the most relevant data for review through conceptual clusters, dynamic communication analysis, and interactive exploration of email conversations.



Artificial intelligence (AI) and machine learning

We use natural language processing to read documents, extract facts, and perform certain analyses, such as identifying problematic language in emails and text chats.



KPMG Digital Response (KDR) tool

For investigations involving an employee suspected of misconduct or use of material nonpublic information, our proprietary KDR tool can be used to expedite the investigation by automatically collecting and analyzing removable

storage device activity, file creation/deletion activity, network share activity, internet activity, email activity, and program/application activity.



Third-party intelligence

KPMG's proprietary integrity due diligence (IDD) tool helps identify integrity, regulatory, reputational, and political risks associated with a subject of an investigation. Our solution uses global information aggregators, local and regional data sources, and online open sources for corporate records, sanctions and regulatory enforcement lists, court filings, media, networking sites, and blogs to identify potential adverse and/or background information to assist in the investigation of alleged misconduct.



KPMG Data Analytics Tool (KDAT)

KDAT, our proprietary SQL-based tool, is used to analyze, compare, summarize, and aggregate transactional data to detect unusual activity, fraud, or other misconduct, such as unauthorized transactions, higher-risk journal entries, and other risk factors.



