



# Covering the Bases: Does Your Code of Conduct Address Key Risks?

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## Overview

- Why Your Board Is Interested?
- How to Develop / Update Code of Conduct
- Legal Issues to Consider
- Communication Strategies and Plans



# CODES OF CONDUCT

## Why Your Board Is Interested?



## *Headline News*

- CEO of global technology company resigned for resume misrepresentations



## *Headline News*

- President of Big Ten university fired after child molestation scandal



## *Headline News*

- Founder of national retail company resigns for failure to alert audit committee about CEO's inappropriate relationship with female employee



## *Headline News*

- CEO fired for assaulting husband of mistress



## *Headline News*

- CEO of multinational computer technology company lost job for alleged sexual harassment



## *Headline News*

- CEO of medical device company fired for dating company's flight attendant



## *Headline News*

- CEO of sports/racing car company fired for use of company funds to refurbish houses



## *Headline News*

- CEO of car company fired for personal use of company funds



## *Headline News*

- CEO of healthcare company fired for “inappropriate behavior”



## *Headline News*

- SEC report:
  - 334 whistleblower complaints received in 7 weeks after SEC's Office of Whistleblower launched in August 2011
  - Close to 100 tips per day
  - Number expected to double



## *Why Important to the Board?*

- **Board Owns Responsibility for Compliance**
  - Audit Committee Duties
  - Increased Focus on Ethics And Compliance
  - Board Members – Personal Liability



## *Why Important to the Board?*

- Compliance Benefits
- Limit Liability
- Corporate Social Responsibility



## *Why Important to the Board?*

- Marketing Benefit
- Internal Protection
- Relationship Management
- Protect the Brand





# CODES OF CONDUCT

## BEST PRACTICES



## What is the Code supposed to do?

- Communicate corporate values
- Mitigate risk by guiding decision-making to be consistent with values and laws
- Inspire good conduct and good judgment
- Inform employees about what they should do and what they should not do
- Guide employees on how to respond when something goes wrong





## Best Practices in Code Development



- Keeping the Code updated:
  - Every 2 years, and
  - Upon merger/acquisition
  - New business operations
  - As a remedial measure after a major business event
  - To stay ahead of new risks



## Best Practices in Code Development

TAKE HOME TOP TEN “Must-have” checklist:



- Clear, authentic statement from President/CEO on commitment to the Code
- Statement of the corporate values – right up front
- Risk-based – the Code should address the highest risks facing *your* company
- Scope – state exactly who the Code applies to: directors, officers, employees, vendors, suppliers, contractors, agents
- Readability and tone – no legalese, 6<sup>th</sup>-8<sup>th</sup> grade reading level



## Best Practices in Code Development

### TAKE HOME TOP TEN “Must-have” checklist:



- Definitions – most employees don’t understand what “antitrust” means or how to avoid it, define these terms
- Learning aids – common scenarios, FAQs, Q&As
- Primary and prominent non-retaliation policy; include that managers can be disciplined for failing to adequately prevent or respond to retaliation
- Hotline, website and other reporting information - at the beginning and ideally, on every page; instructions on *how* to report, and all options
- Branding – mission, vision, heritage



## Best Practices in Code Development

### Compliance with Laws

The Company is subject to many laws and regulations in each of the countries or regions in which it operates, covering subjects as diverse as antitrust, commercial relationships, consumer protection, employee rights, environmental protection, insider trading and taxation. Such laws and regulations differ substantially in form and substance due to different cultures, traditions and political systems; but failure to comply with any of them can result in serious damage to the Company’s assets and reputation.



### Policy on Compliance with Laws

It is the policy of the Company to comply with all laws and regulations applicable to its operations, as such laws and regulations are authoritatively interpreted and administered.



# Best Practices in Code Development

OUR RESPONSIBILITY INCLUDES...

## Employee Relations

**WE VALUE RESPECT AND DIVERSITY:** We recognize that our employees are our most valuable assets, and we strive to make TriHealth a desirable and inviting workplace. We are committed to creating a workplace where employees are treated with respect and fairness, are valued for their different backgrounds, perspectives, and life experiences, and are empowered to provide care and attention to quality service.

*Everything we do, from the way we treat each other to the development of our Human Resources policies, is guided by our core values.*



On behalf of TriHealth we will:

- Create a positive work environment that fosters teamwork, discrimination, violence, and retaliation. We will not tolerate any form of behavior that could be reasonably perceived as harassment or unlawful discrimination against any TriHealth personnel, patients, visitors, customers, or vendors.
- Refer to Human Resources and Employee Relations policies and procedures located in the TriHealth Corporate Policy and Procedures Manual for guidance.
- Maintain open lines of communication and strive to build confidence and professionalism in every employee.
- Apply the Code and corporate policies equally to all employees and show respect and consideration for one another, regardless of status or position.
- Hire, train, promote, and compensate our employees on the basis of personal competence and potential for advancement without regard for race, ethnicity, color, religion, sex, sexual orientation, genetic information, national origin, age, marital status, disability, veteran's status, service status, or citizenship.
- Provide training opportunities to assist employees in building and maintaining professional skills.
- Periodically review and evaluate each employee's performance in an objective, professional, and uniform manner, and make promotion decisions based on employee performance, skills, and abilities.
- Confidentially maintain personal employee information.
- Ensure that all employees in a position requiring licensure/certification are properly licensed and certified by federal, state, local, and professional agencies.

Apply the Code and corporate policies equally to all employees and show respect and consideration for one another, regardless of status or position.

**Q** While a co-worker has been making good progress, I don't think I can comfortably meet my target. How should I handle this?

**A** TriHealth is committed to providing both verbal and written performance feedback. If necessary, discuss the employee's performance with your supervisor, or contact Human Resources or their Business Unit Director.

**Q** My co-worker seems to be trying to get ahead by "backing up" on his work, but I'm not sure if this makes me uncomfortable. Am I sure if this is a TriHealth issue because of happening outside of work, but it's affecting me during office hours when we have to work together. Can TriHealth help me with this?

**A** Yes, because TriHealth has a policy on harassment, you can feel comfortable in bringing this to the attention of Human Resources, or the Business Unit Director, or the Compliance Officer. If you are still uncomfortable, meeting with your supervisor or HR to talk with your supervisor and the conduct should not stop.



We will not tolerate any form of behavior that could be reasonably interpreted as harassment or unlawful discrimination against any TriHealth personnel, patients, visitors, customers, or vendors.

**QUESTIONER:** Call Corporate Compliance Officer at 313-559-3031 for anonymous reporting, call our Hotline at 1-800-467-0099.

COMPLIANCE & CONDUCT | COMPLAINTS



# Best Practices in Code Development

## “Back to Basics” Ethics

- Set forth **corporate values**
- Encourage employees to use those values in their decision-making:
  - Productivity vs. Quality
- “I know I can legally do it, but should I?”
- “If it doesn’t feel right, it probably isn’t”
- “Sniff test”



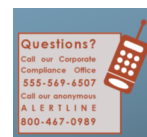
## Best Practices in Code Development

- Making it “stick” – Comprehension Aids
  - Even a well-drafted Code is useless if employees do not understand how it applies to their work
  - Adult learners need to know why they are learning a particular topic
  - Adding in examples of operational application of the code to every day business helps employees see how the Code is used in their work
  - Scenarios and examples make the Code come to life and help integrate the Code into the fabric of corporate culture



## Best Practices in Code Development

- Tell employees how you want them to report concerns
  - Include hotline number, website, point of contact in organization – make it easy for the employee to choose internal reporting
- State the non-retaliation policy, and re-state it again
- Use the code to educate employees on what kinds and types of retaliation are prohibited; retaliation can be an otherwise lawful behavior





## Best Practices in Code Development

- Training & Periodic Communication
  - Email alerts/media clips
  - “Toolbox Talks”
  - Pens, mugs, stickers
  - Posters
  - Contests, quizzes
- Include periodic communication with high-level personnel about their roles upholding the code



## HEADLINE NEWS

- 3 – 5 High Profile Examples
- - Will list Facts but NOT company names



## *Benefits of Codes of Conduct*

- **Compliance Benefits**
  - Protect from liabilities arising from non-compliance
- **Problem Solving**
  - Provide guidelines regarding how to respond when issues arise
- **Limiting Liabilities**
  - When issues arise, reduce the level of legal liabilities



## *Benefits of Codes of Conduct*

- **Marketing Benefits**
  - Promote the public image of the corporation
- **Internal Protection**
  - Protect the corporation from misconducts
- **Relationship Management**
  - Provide guidelines to handle different types of relationship



## *Global Codes of Conduct – Special Issues*

- Global Risk Assessment will help determine what topics to cover
- Industry you operate in (Health Care, Construction, Pharma, Aviation) will help you prioritize topics
- Check out OECD Guidelines—Guide for multinational companies to help them act responsibly.
- Countries you operate in—legal risks will vary geographically



## GLOBAL CODE OF CONDUCT

TAKING YOUR CODE GLOBAL—  
SPECIAL CONSIDERATION





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## *Global Codes of Conduct – Practice Pointers*

1. Don't just cut and paste or Google samples. It's okay to have samples but your code should be tailored to your industry and your way of doing business. Example, FCPA, UK Bribery Act, SOX...these legal requirements may or may not be a part of your industry.
2. Team approach to drafting—Get HR, Legal, Security and country business leaders involved.
3. Global approach—Have on version that addresses your core corporate values, vision globally. Have specific regional or country sections that incorporate local, regional rules and laws.
4. One Global Code Fits All? Does your company want to have 1 GCC and several Regional Codes of Conduct (RCC)?
5. Privacy Considerations—European countries have fare more comprehensive privacy and data protection legislation than the US. For instance, email monitoring while permissible in the U.S. may be restricted in other countries. Also, what data you can collect is restricted or may require employee permission based on the country you are doing business in.



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## *Global Codes of Conduct - Topics*

- [Alcohol and drug abuse;](#)
- Antitrust / competition / trade practices;
- Audit / accounting fraud / substantive SOX / national corporate governance compliance;
- [Bribery / facilitation payments / gifts / hospitalities;](#)
- Compliance with company rules;
- [Confidentiality;](#)
- Conflicts of interest;
- Data protection / privacy;
- Discrimination / equal employment opportunity;
- [Dress code](#)
- Environmental protection;
- [Harassment and bullying;](#)



## Global Code of Conduct -Topics

- Health and safety in the workplace
- [Insider dealing](#);
- [Intellectual property](#);
- [Media contact / use of social media](#);
- Money laundering;
- IT/Monitoring communications and reserving right to search;
- [Records management](#);
- [Reporting system / whistleblowing hotlines](#);
- Social responsibility and community involvement;



## Global Code of Conduct – Hot Topics

- Discrimination/Harassment—Avoid transplanting your U.S. policy straight from the handbook. While it is crucial that your Code clearly prohibits unlawful discrimination and harassment, the critical element is that you may not be able to detail all protected categories (e.g. age, race, gender, national origin, pregnancy, disability, etc.). What is prohibited in the U.S. may not be in another country. For instance, in certain countries the concept of “bullying” is legally actionable but in the U.S. for it to be legally actionable it must be based on a protected category.
- Antitrust laws vary from country to country. A GCC might advise employees to avoid price-fixing and collusion.
- Bribery/Gifts & Hospitality—Most countries prohibit making payments to foreign officials. This is likely to be your most robust provision. Including the applicable law(s) is essential – (FCPA, UK Bribery Act, etc.) Also, while many companies should prohibit payments to governments or foreign officials, increasingly companies are including payments to private companies, vendors, customers, etc. as prohibited payments.



## Global Codes of Conduct – Hot Topics

- **Date Privacy**—The European Union and other countries have stringent standards for use of personally identifiable information. This would also impact employee monitoring or surveillance policies and access to IT systems. Your code of conduct should consider how these laws intersect with U.S. policies. Here is a good place to consider having a regional or country code that follows the data privacy legislation of that jurisdiction.
- **Hotlines**— If your company is regulated under SOX there are whistleblower procedures you must have in place. In some countries, employee hotlines are heavily regulated. For instance, something as innocuous as anonymous reporting mechanisms in the U.S. may trigger foreign laws.



## Global Code of Conduct

### Final Note

- Your Global Code of Conduct does not have to contain the above listed topics—key is to tailor it to your industry, considering where you do business and what your corporate values are. The GCC is not an employee handbook so avoid day-day procedures such as performance evaluations, holiday policies, pay practices, etc.



# Legal Issues To Consider



## *Legal Issues To Consider*

- **Social Media**

- New Legislations Banning Requests for Passwords
- National Labor Relations Act (NLRA)
  - NLRB August 2011 Report:  
<http://mynlrb.nlr.gov/link/document.aspx/09031d458056e743>
- Stored Communications Act (SCA)
- Federal Trade Commission Guidelines - 16 C.F.R. § 255.1
- Federal Credit Reporting Act (FCRA)
- Employee's Right to Privacy
- Discrimination



## Legal Issues To Consider

- **Whistleblower Claims**

- Dodd-Frank Wall Street Reform and Consumer Protection Act
- Sarbanes-Oxley Act
- False Claims Act (FCA)
- Consumer Product Safety Improvement Act (CPSIA)
- Occupational Safety and Health Act (OSHA)
- Toxic Substances Control Act (TSCA)
- Fair Labor Standards Act (FLSA)
- Foreign Countries with Similar Whistleblower Laws:
  - » UK, India, Japan, South Africa



## Legal Issues To Consider

- **Transgender Discrimination**

- **New development of Title VII sex discrimination/ harassment issues:**
  - *Macy v. Holder*, No. 0120120821 (EEOC April 20, 2012)
- **Jurisdictions with laws or ordinances prohibiting discrimination on the basis of gender identity:**
  - States: 16 (CA, CO, NV, CT, MA, IA, MN, RI, NM, MI, HI, WA, VT, OR, NJ, ME)
  - Cities and counties: 143



## Legal Issues To Consider

- **Language May Raise NLRA issues**
  - News (July 13, 2012)
    - “The at-will employment policy cannot be changed except by a written agreement signed by the employee.”



## Legal Issues To Consider

- **Codes of Conduct - Contracts?**
  - **South Carolina Statute**
    - S.C. Code Ann. § 41-1-110 (1976)
    - DISCLAIMER: underlined, capital, first page, signed



## *Legal Issues To Consider*

- **California Transparency In Supply Chain Act**
  - Took effect on January 1, 2012
  - Companies conducting business in California and have global gross receipts exceeding \$100 million
  - Requires disclosure of efforts to eliminate slavery and human trafficking from their direct supply chains



## *Legal Issues To Consider*

- **Discrimination – Title VII, ADA, ADEA**
- **Fair Labor Standards Act (FLSA), Equal Pay Act (EPA)**
- **Foreign Corrupt Practice Act (FCPA)**
- **Drug-Free Workplace Act (DFWA)**
- **Federal Sentencing Guidelines**



## Legal Issues To Consider

- **Foreign Laws**
  - **EU Data Privacy Directive**
    - » Employees' Privacy Protected
  - **EU Art. 29**
    - » Not to encourage anonymous whistleblower claims
  - **Portugal, Spain**
    - » Prohibits anonymous whistleblower claims
  - **Germany, Finland, Luxembourg**
    - » Must discourage anonymous whistleblower claims
  - **UK Bribery Act**
    - » Broad coverage



## Legal Issues To Consider

- **Foreign Laws**
  - **France**
    - » "Moral Harassment" (anti-bullying)
    - » Must be in French
  - **Ireland & UK**
    - » Anti-bullying
    - » Employees entitled to grievance proceedings
  - **Latin America, China, Western Europe**
    - » Codes must be part of employment contracts and signed
  - **European Works Council**
    - » May need to consult with works council before adopting code

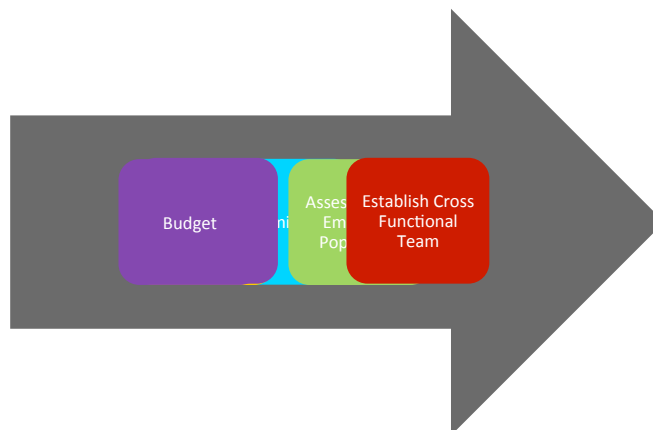




## Roll Out and Deployment of Your Newly Created or Recently Revised Code of Conduct



## Before You Even Begin Drafting...





## 1 Establish a Cross Functional Team

- Legal
- Internal Audit
- HR
- IT
- Security
- Communications
- Employee business services
- International resource
- Facility/plant resource
- Regular status updates/planned meetings



## 2 Budget

- Expensive prospect
- Plan for:
  - IT expenses
  - Translations
  - Printing
  - Review and benchmarking
  - Training costs
  - Deployment costs
  - Tracking of impact
- Budget ahead of your fiscal year
- Consider cost sharing with appropriate departments so full impact of cost does not fall on Legal



## 3 Culture Considerations

- Determine if the company desires a “culture shift” from a compliance perspective and if so, how you will drive that within the code
- Ensure your messaging in the code is consistent with the language of your corporate messaging
- Determine your company’s risk profile/tolerance
- When formulating your roll out plan, and affiliated activities (e.g., training), consider how the roll out will affect the employee population and management
- Consider forming a cross-functional “culture board” to assess the proposed draft
- Tap into HR resources to assess day-to-day employee impact that lawyers may miss



## 4 Assessment of Employee Population

- Inventory your employee population, namely:
  - its functions
  - classifications of the workers
  - geographic work sites
  - physical number of employees
  - other special issues across the workforce
  - languages needed
- Catalog the areas where you may need to differentiate between employee groups, including whether you can truly have a once size fits all code
- Determine what differences, if any, you will need in the roll out of your code across a potentially diverse population of employees
- Assess deployment mechanisms



## 5 Timing

- Comprehensive assessment of the rollout of company initiatives and HR calendar
- If Board approval required, assess Board meeting themes/scheduling
- Consider what follow up activities will be required (e.g., special acknowledgments, training, etc.)
- If you have a production workforce, ensure you are avoiding times of heightened production demands during roll out
- Closely connect with your communications department, HR department, and internal stakeholders
- Establish circulated but flexible timeline

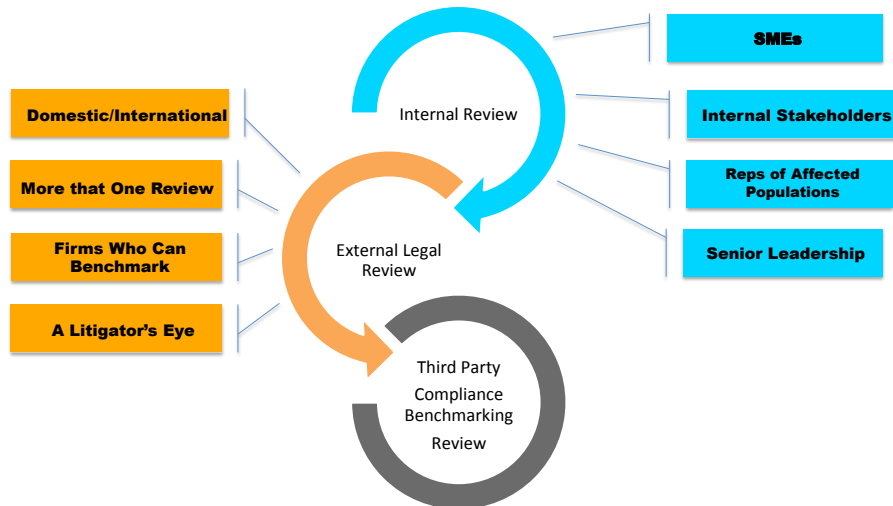


## What about after we have a draft?





## Three Layered Review of Draft



## Communication Plan

- Engage communications resource early and integrate them into the team
- You cannot over plan or over communicate the roll out
- Simplification is key, particularly on the acknowledgment piece
- Consider location specific and international communication nuances
- Vet your communication plan with representative HR leaders
- Provide talking points for managers on reinforcing the messages, as well as FAQs
- Feed bite size lead in reminders on a regular basis
- Solicitation of key stakeholders to support messaging
- Public event, CEO transmittal letter, and other devices



## Electronic & Hard Copy Deployment

- Electronic distribution vs. hard copy distribution
- Acquisition of acknowledgment and retention
  - A note on union facilities and options
  - International issues
- Early communication and planning with deployment team
- Electronic testing phase
- Full instructions and talking points for deploying HR team and/or managers



## Follow Up Activities

- Follow up communications
- Ensuring full acknowledgment and tracking
- Post-deployment status meetings with deployment team
- Training for employees
- Training for HR, audit, security, and managers on enforcement changes
- Tracking impact
- Adjusting enforcement procedures as needed
- Implementing new compliance tools necessitated by supplemented aspects of the policy
- Keeping the code current



## Two Rules to Live By

- You can never over communicate
- You can never simplify your message enough