Association of Corporate Counsel

209 Best Practices for Building an Effective Corporate Compliance Program

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Faculty Biographies

Moanica Caston

Moanica Caston is an attorney who holds the position of manager, workplace ethics with Georgia Power, a Southern Company located in Atlanta. In this role, she leads the company's efforts to provide an ethical work environment by resolving and addressing employee concerns and providing feedback and education to management and employees on ethical issues.

Prior to joining Georgia Power, she was the manager of organizational assessment for Progress Energy, the parent company of Carolina Power & Light and Florida Power where she directed diversity issues, affirmative action, and EEO compliance for the company in the Carolinas and Florida. Her experience also includes seven years of private practice with law firms in Cleveland, Ohio, and Raleigh, North Carolina in the areas of employee benefits, ERISA litigation, employment law, and creditors' rights.
She currently serves on the board of directors for the Northwest Georgia YWCA and the advisory board for the Grady Hospital Teen Services Center.

Ms. Caston received her B.S. from Louisiana State University in Baton Rouge, Louisiana and her J.D. from Harvard Law School in Cambridge, Massachusetts. She is also a certified Professional in Human Resources (PHR).

Teresa T. Kennedy

Teresa T. Kennedy is assistant general counsel for Cox Communications, Inc. in Atlanta, Georgia. Ms. Kennedy's responsibilities include oversight of Cox's corporate compliance program and providing legal counsel to Cox Media (Cox's advertising subsidiary).
Before joining Cox Communications, Ms. Kennedy served as in-house counsel for Health Images, Inc. and The Southland Corporation, and as an associate in the Atlanta law firm of Rogers & Hardin. Her practice included a wide range of general corporate matters, such as mergers and acquisitions, corporate governance, and SEC filings.

Ms. Kennedy currently serves as vice president for ACC's Georgia Chapter. She served as a member of ACC Georgia's board of directors and is a member of the Atlanta chapter of Women In Telecommunications. Ms. Kennedy is long-time tennis co-chair of the American Heart Association's Fulton County Golf and Tennis Classic. She has published articles in the award-winning ACC Docket on topics such as work-life balance, trust between inside and outside counsel, evaluating and creating effective compliance programs, and marketing law.

Ms. Kennedy received a B.S., with highest honors, from Auburn University. She is a graduate of the Vanderbilt University School of Law, where she served as executive editor of the Vanderbilt Law Review and received awards in moot court and American jurisprudence.

Lori J. Shapiro

Lori J. Shapiro is general counsel of Employment Learning Innovations, Inc. in Atlanta. As general counsel, she consults regularly with the management team of the company, and performs a wide variety of legal work in areas ranging from employment law to intellectual property law and general contracting. She also develops and delivers training programs on legal issues, including corporate compliance and ethics, and the prevention of harassment and discrimination in the workplace.

Prior to this position, Ms. Shapiro was a partner in the labor and employment practice group of Kilpatrick Stockton LLP of Atlanta, where she provided counsel on compliance with employment laws to national and international corporate clients in a variety of industries and litigated employment cases. She began her legal career in the litigation group at Nutter, McClennen & Fish in Boston, where she performed general litigation, including products liability and employment cases.

Ms. Shapiro is honored to serve on the board of directors of ACC's Georgia Chapter.
Ms. Shapiro is a graduate of Brandeis University where she received her B.A. cum laude. She received her J.D. from the New York University School of Law.

Philip I. Weis

Philip I. Weis is senior corporate counsel in Pfizer's employment law group in New York. Mr. Weis renders advice and counsel on various employee relations and workplace policy issues. His practice area includes employment discrimination, sexual harassment, breach of contract, wrongful discharge, and employment-related tort claims. He provides training and counsel with respect to hiring and recruitment issues, performance management, disciplinary decisions, medical and psychiatric leave inquiries, and workforce restructurings to ensure compliance with policies, statutes, and regulations governing employment relationships.

Prior to joining Pfizer, Mr. Weis was with the law firm of Epstein Becker & Green, P.C. where he practiced labor and employment law. As a litigator, Mr. Weis appeared before federal and state courts, and administrative agencies such as the Equal Employment Opportunity Commission, State Division of Human Rights, National Labor Relations, Board and the Department of Labor. He also represented management in labor arbitrations.

Mr. Weis is a member of ACC, the ABA, and the New York State Bar Association. He frequently presents seminars on a variety of employment-related topics for various legal and professional groups.

Mr. Weis earned a B.A. in political science from the State University of New York at Albany, during which time he also completed a legislative internship in the New York State Assembly. He received his J.D. from Hofstra University's School of Law, where he was an Associate Editor of the Law Review.

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A PANEL DISCUSSION

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The Assignment

Laurie Oxley is a Senior Director of Operations at Gadgets, Inc., a U.S. Corporation with its headquarters in New York City. Laurie is offered a transfer to California to assist the President of West Coast Operations, to provide domestic manufacturing management services to the Western Region.

Laurie is excited about moving to California and knows that accepting this assignment is critical to her career path at Gadgets, Inc. She is concerned, however, about her husband being forced to leave his job and his ability to find work in California. So, he agreed to remain in NY for while.

Gadgets, Inc. and its affiliates

- have made public commitments to Sarbanes-Oxley Act compliance and have pledged adherence to the highest ethical, moral and legal standards applicable in every jurisdiction where they do business.
- participate in industry associations and professional groups
- have a global code of ethics and responsibility, and a corporate values statement which highlight "Putting People First," and "Never Compromising Integrity."
- have an "Open Door" complaint resolution program with a global toll-free 24-hour hotline and an email in-box, which encourages employees to come forward, promises non-retaliation and provides for anonymous submissions.
- Make policies available in hard copy handbooks and on the company's internal web site, and all employees sign an annual certification of compliance.

Laurie meets with Oswald Crud, the head of HR, who presents her with a standard "Domestic Relocation Assignment Letter." Laurie will be assigned for a minimum of one year to work in California, reporting directly to Terrence "Hulk" Hogan, the President of West Coast Operations. Laurie is no fan of Crud and expresses concern about the absence of any job security or severance provisions. Crud tells her that it's a standard letter that cannot be modified and that if she wants to pursue this opportunity she should just sign the letter. Laurie reluctantly signs the letter as is.

Discrimination, Whistleblowing, and Termination

Laurie's husband stays in New York pending the sale of their fabulous waterfront efficiency, while Laurie relocates and starts her new job. She soon learns that she is one of very few women in a male-dominated work environment. Laurie eases her transition anxiety by pursuing her first passion—writing. She begins writing a column on the challenges of working women for *the California Chronicle*, a respected business journal.

During her first week on the job, "Hulk," her new supervisor holds a lavish "Welcome Laurie" party on his luxury yacht. Clients, vendors and government officials are invited to attend and expensive champagne, top shelf liquor and lobster tails are served as a precursor to a Kobe beef dinner. An attendee bag of expensive goodies is provided to each business guest, including an IPOD with the Company logo. He welcomes Laurie with a kiss on the cheek, followed by a full kiss on the lips, commenting publicly on her physical attributes and good looks. He then has her preside over a raffle, quipping to the group that, "the prize is not Laurie!" Laurie is embarrassed by these events, but she says nothing as she is new and doesn't want to rock the boat.

1. **What compliance issues are presented? How should they be handled? Does Laurie have any potential rights, responsibilities, or protections? If so, what laws, rules, or policies govern?**

A few days later, Laurie receives a telephone call from the manager of the Company's manufacturing plant in Oakland, who needs to reach Hulk urgently. (Last year the plant was directed by Corporate to radically cut costs or risk being shut down.) The plant manager explains that his wife owns a janitorial service that empties the trash at the State Government Center and has learned that the authorities are planning to raid the plant to uncover evidence of suspected child labor and environmental violations.

The plant manager wants to meet with, and provide the government investigators with "tokens of our appreciation" and is requesting authority from Hulk to access the "gift fund." Hulk is traveling and Laurie is unable to forward the message to him. The plant manager calls back and advises Laurie not to worry because he spoke with Hulk and "things have been taken care of…"

2. **What compliance issues are presented? How should they be handled? Does Laurie have any potential rights, responsibilities, or protections? If so, what laws, rules, or policies govern?**

The following day, Laurie learns that Hulk maintains a corporate apartment at the Ritz Hotel for "meetings" with job applicants, vendors, customers and government officials, and provides them with lavish gifts purchased through his daughter's concierge service (such as jewelry, IPODs and concert tickets), all of which he submits as business expenses. (The vendors and customers reciprocate by inviting members of Gadget's management team to attend international conferences, often coordinated with sporting events such as the annual 2-week long Hawaii surfing finals and the Winter and Summer Olympic Games.)

Hulk invites Laurie to the apartment to review monthly reports and Laurie reluctantly accepts. While at the Ritz apartment, Laurie, lonely and

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missing her husband, in a vulnerable moment succumbs to his advances. Over the next few weeks, despite repeated invitations, Laurie finds excuses not to visit the Ritz with Hulk, and ultimately terminates the relationship. Laurie is embarrassed about the whole affair, but feels compelled to do something. She calls the Company's 1-800 compliance hotline and tells the outsourced operator about the gift-giving and other activity at the company-apartment. She is given a file number and never hears back from anyone.

3. **What compliance issues are presented? How should they be handled? Does Laurie have any potential rights, responsibilities, or protections? If so, what laws, rules, or policies govern?**

A few weeks later, *the Chronicle*, reports that Hulk bribed Government officials in connection with a child labor and environmental investigation. Gadgets, Inc.'s share price plummets, and Hulk instructs Laurie to issue a public statement denying the accusations.

Laurie knows that Hulk is not being truthful and confronts him about the Plant Manager's call. Hulk explained that he never received the message and that local sites have carte blanch to manage their own affairs so there is "nothing to worry about." Hulk has been curt toward her since she declined further encounters in the hotel and Laurie remains concerned that her career is in jeopardy. So, while she releases the statement as directed, Laurie also sends emails to an attorney-friend, containing her notes from the call with the Plant Manager, as well as copies of records evidencing Hulk's use of the hotel for his personal assignations. (Laurie also provides her editor at *the Chronicle* with hard copies.)

Hulk receives a call from a reporter for *the Chronicle* asking about the bribes and the hotel arrangement; indicating that he has internal documents from an anonymous source. Outraged, Hulk orders a search of employee emails and Laurie's email to her attorney is brought to his attention by IT.

Hulk fires Laurie on the spot. He tells her that the termination is "for cause" and the company will not pay her severance benefits or pay for her relocation back to New York.

4. **What compliance issues are presented? How should they be handled? Does Laurie have any potential rights, responsibilities, or protections? If so, what laws, rules, or policies govern?**

Laurie's counsel writes a letter to regulatory counsel for Gadgets, Inc.'s New York office. He demands that Gadgets, Inc. preserve (a) all personnel records for Laurie, Hulk, and several women who previously worked for him; (b) company records regarding the use of and payment for the Ritz Hotel apartment, yacht parties and client gifts; and (c) all records regarding Gadget's alleged "gift fund" and any

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internal or company-run investigations of these matters.

The letter is forwarded to you in NY as in-house Counsel for Gadgets Inc.

What are your obligations as corporate counsel?

What steps should Gadgets, Inc. take to deal with the environmental and labor practices?

How should Gadgets, Inc. stop the practices, audit compliance, and prevent reoccurrence?

What are Laurie's employment issues in California?

What is Gadgets, Inc.'s potential exposure?

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I. CORPORATE COMPLIANCE PROGRAMS

A. The Complexity of Corporate Compliance Laws

Corporate compliance issues are complex. Scores of laws at the state and federal level regulate financial transactions, employment practices, product safety, environmental safety, antitrust, intellectual property, and a number of other compliance areas. In addition to prohibiting certain types of conduct and business methods, they also forbid retaliation against individuals who try to complain of unlawful practices internally.

Providing managers and employees with the details of these numerous laws and regulations may not be effective in preventing them from committing violations. As corporate history has shown, the violations continue, often becoming synonymous with the offenders themselves—Enron, Arthur Andersen, Texaco, WorldCom, Global Crossing, Mitsubishi. Merely being aware of the law did not prevent the problems experienced by these organizations.

What is often not considered in these instances is that in virtually every case, the disgraced organization had a vision and value statement that, if it had been followed, could have prevented the conduct from occurring in the first place, or at the very least, continuing. Second, almost universally, someone within the organization tried to raise awareness of the problem so it could be addressed before catastrophe ensued. The devastation becomes all the more unfathomable in light of the fact that the organization had one or more chances to ward off disaster and yet it squandered the opportunity to do so. To those who have lost their jobs or pensions, or who have seen their investments disappear, it must seem like a Greek tragedy when they read of complaints that were ignored or superficially investigated and the individuals whose careers were harmed simply for raising the concerns in the first place.

How do organizations prevent these disasters and make certain that employees understand their legal responsibilities and the corporation's commitment to finding out about problems and correcting them? On one hand, it seems overwhelmingly complex with all of the laws and business systems in place to set standards of behavior which cross the vast lines of corporate compliance. It is nearly impossible to communicate every form of improper conduct which may cause a business problem; no one could remember such a list. As an example, the following is a summary of some of the major federal laws, many with complex provisions, which govern business and employment practices:

Antitrust
- *The Sherman Act*: prohibiting contracts in restraint of trade

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- *The Clayton Act*: prohibiting monopolies and attempts to monopolize with regard to tying contracts, mergers and acquisitions, etc.
- *The Robinson-Patman Price Discrimination Act*: prohibiting discrimination in price and promotional allowances
- *The Hart-Scott-Rodino Act*: requires pre-merger notifications to the Federal Trade Commission and the Justice Department

Employment

- *Title VII of the Civil Rights Act of 1964*: prohibiting discrimination in employment based on sex, race, religion, national origin, or color
- *Age Discrimination in Employment Act*: prohibiting discrimination in employment based on age
- *Americans with Disabilities Act*: prohibiting discrimination based on disability
- *Family and Medical Leave Act*: requiring up to 12 weeks of unpaid leave for personal or family medical reasons
- *Equal Pay Act*: requiring equal pay for equal work regardless of gender
- *Fair Labor Standards Act*: addressing the appropriate payment of wages and overtime
- *National Labor Relations Act*: governing relations between management and labor unions
- *Occupational Safety and Health Act*: providing safety guidelines in the workplace
- *Immigration Reform and Control Act*: addressing the immigration status of employees
- *Uniformed Services Employment and Reemployment Rights Act of 1994*: providing for military leave

Environmental

- *Clean Air Act*: regulating air emissions
- *Clean Water Act*: establishing regulations for the discharge of pollutants into U.S. waters
- *Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)*: regulating hazardous wastes and establishing a trust fund for cleanup
- *Emergency Planning and Community Right to Know Act*: developing a plan for community safety from chemical hazards
- *Resource Conservation and Recovery Act*: authorizes the Environmental Protection Agency to control hazardous waste generation, transportation, treatment, storage and disposal
- *Toxic Substance Control Act*: authorizes the EPA to track industrial chemical produces or imported into the U.S.

Intellectual Property

- *Economic Espionage Act of 1996*: imposing criminal penalties on individuals or organizations that steal or attempt to steal other's trade secrets.

Securities Laws

- *Securities Act of 1933*: requiring disclosures be made to investors about securities offered for public sale
- *Securities Exchange Act of 1934*: creating the Securities and Exchange Commission and providing it with disciplinary powers to regulate conduct in the market

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- *Public Utility Holding Company Act of 1935*: requiring reporting by electric utility and gas companies
- *Trust Indenture Act of 1939*: regulating the issuance of debt securities
- *Investment Company Act of 1940*: regulating the organization of companies
- *Investment Advisers Act of 1940*: regulating investment advisors

Marketing Laws

- *CAN_Spam Act*: requiring certain disclosures on commercial emails, and limiting the practice of spamming
- *Childrens' Online Privacy Protection Act (COPPA)*: protecting personally identifiable information relating to minors.

Does anyone really think that managers can master these laws with any where near the same degree of competence they are expected to demonstrate in the core functions of their jobs? Likewise, the United States Department of Labor's website lists these provisions which prohibit retaliation against individuals for complaining of arguably illegal practices: the Clean Air Act (Employee Protection Provisions); the Comprehensive Environmental Response, Compensation and Liability Act (Employee Protection Provisions); the Energy Reorganization Act of 1974 (Employee Protection Provisions); the Occupational Safety and Health Act of 1970; the Safe Drinking Water Act (Employee Protection Provisions); the Solid Waste Disposal Act (Employee Protection Provisions); the Toxic Substance Control Act (Employee Protection Provisions); the Federal Water Pollution Control Act (Employee Protection Provisions); and the Regulations Governing Procedures for Handling of Discrimination Complaints Under Federal Employee Protection Statutes. Further, other statutes prohibit retaliation to protect employees for raising other kinds of concerns.

Furthermore, regulatory laws are not often only extremely complex but often ambiguous – many organizations employ specialized counsel to deal with separate segments of the same statutes or types of regulation. For example, an employer may use one lawyer for ADA advice and defense and another for counsel on harassment claims though both issues involve employment law in general and civil rights in particular. It is just not realistic to think that individual managers can be taught to recognize the nuances of not one but many applicable laws to avoid legal and related pitfalls. On the other hand, instruction on legal issues is important – it communicates the significance of legal conduct, it may be required under some laws, such instruction can reduce damages where violations can occur and can help reduce penalties under applicable criminal sentencing guidelines.

How, then, can managers be expected to understand scores of complex laws and apply them daily in the midst of all of their other responsibilities if that is what is needed to ward off disaster? And how can organizations provide appropriate instruction and communication to achieve the legally recognized benefits mentioned above. The answer is that we cannot expect business people to become legal experts and the good news is that it's not necessary anyway.

Instead, organizations need to define what's important in business in clear specific terms and values that everyone can understand. Virtually every business has sacrosanct rules about what it does and how it operates that everyone understands and is expected to extrapolate into daily business behavior. These messages are simple, uncluttered and not lost in the noise of legal jargon.

B. Elements of an Effective Compliance Program

A number of recent legal developments have made it imperative for organizations to have an effective compliance program that includes clear policies and procedures, communication and training about corporate standards and policies at all levels of the organization:

The Federal Sentencing Guidelines and Effective Compliance Programs

The Federal Sentencing Guidelines are used to determine the penalties for all criminal activity covered by federal law. Since 1991, in addition to individual penalties, they have included penalties for organizations that engage in criminal activity. Penalties for organizations can include fines, probation, restitution, the issuance of public notices of conviction, and exposure to forfeiture statutes, and can be imposed on an organization if an employee commits a criminal act that is apparently within the scope of his or her employment, even if the act is contrary to organizational policy or instructions. The organizational sentencing guidelines, along with the individual sentencing guidelines which provide individual penalties (e.g., prison time, fines) for many white collar crimes, provide incentive for both individuals and organizations to act ethically and legally in carrying out their businesses.

In addition, the Sentencing Guidelines provide an action plan to help organizations to limit or avoid liability. An organization can mitigate or reduce its liability by demonstrating that it has an effective compliance program in place. The mandate of an effective compliance program was strengthened by amendments adopted by the Federal Sentencing Commission that went into effect on November 1, 2004. The amendments to the Sentencing Guidelines enhance the role of organizational leadership in ensuring that the compliance program is valued, supported, periodically reviewed, and operates as intended. The compliance program must include effective communication to all levels of the organization of appropriate standards and procedures that govern conduct in the workplace. Furthermore, the defense created by an effective compliance program is not available if high level organizational officials are involved in the wrongdoing.

The Sentencing Commission indicates that an

effective compliance program has two overall elements: (1) the prevention and detection of criminal activity; and (2) a corporate culture that encourages ethical conduct and compliance. The Commission uses phrases like "due diligence" to describe the level of effort it requires with regard to the implementation and enforcement of the compliance program, and it has laid out a number of specific steps for organizations to take to help them achieve these objectives. They include:

- establishing standards and procedures related to corporate compliance and ethics;
- ensuring knowledge and oversight of the program by the organization's governing body;
- making the existence and implementation of the program the responsibility of high-level organizational officials;
- delegating day-to-day operational responsibilities to specific individuals who are given adequate resources to carry out the program, authority and access to appropriate leaders in the organization;
- avoiding including individuals who have committed inappropriate or illegal actions in the group with substantial authority to implement the program;
- taking reasonable steps to communicate periodically to all levels of the organization, including training programs and disseminating information outlining roles and responsibilities;
- taking reasonable steps to ensure the program is followed (monitoring and auditing);
- measuring and evaluating the effectiveness of the program periodically;
- publicizing a reporting system for concerns about illegal activity that allows for anonymity;
- protecting employees from retaliation for filing complaints or concerns;
- reinforcing the program through incentives to comply and disciplinary action for non-compliance with the law or the program; and
- taking reasonable steps to address any criminal conduct that comes to light.

In early 2005, the United States Supreme Court decided the companion cases of U.S. v. Booker and U.S. v. Fanfan, No. 04-104 and 04-105, 2005 LEXIS 628 (January 12, 2005). In its decision, the Court held that Federal Sentencing Guidelines were advisory and not mandatory for judges who are considering sentencing. However, this ruling likely will not impact the consideration in the courts of whether or not an organization has an effective compliance program. Nothing in the opinion calls into question the value of an effective compliance program as an element of an organization's potential defense to criminal charges and penalties, and it has not been interpreted that way by the lower courts at this point. Most likely, courts will continue to look to the Guidelines as a standard of fairness in sentencing and will still be influenced by the factors (including effective communication of standards of conduct and the other aspects of an effective compliance program) addressed in the Guidelines as a means to minimize liability.

In addition, whether or not the Federal Sentencing Guidelines are applied, the existence of an effective compliance program is (and will likely continue to be) an important factor used by many federal agencies, including the Department of Justice and the Securities and Exchange Commission, in determining whether or not to charge organizations with misconduct committed by their employees. The value of compliance programs is also still reflected in the code of conduct and communication requirements of the Sarbanes-Oxley Act of 2002, and of NASDAQ and the New York Stock Exchange.

The Sarbanes-Oxley Act of 2002

On July 30, 2002, the President signed into law the Sarbanes-Oxley Act of 2002, also known as the Corporate Fraud and Accountability Act. The law established new guidelines for all public companies with regard to corporate governance and accountability. The act addressed both internal and external controls on corporate activity, including:

- establishing of a board to set auditing standards;
- creating internal and external auditing committees;
- requiring that CEOs and CFOs personally certify financial reports, and take personal responsibility for fraud or other misrepresentations in corporate filings;
- requiring that corporate attorneys report misconduct to the CEO, chief legal officer or other appropriate individual within the organization;
- holding all involved corporate employees responsible for the destruction of documents; and
- providing significant protections for corporate whistleblowers by prohibiting employers and their agents from taking adverse employment action (including discharge, demotion, suspension, threats, harassment, or other discrimination in the terms and conditions of employment) against them.

The Sarbanes-Oxley Act requires organizations to have and communicate a Code of Ethics for senior financial officers within the organization.

Industry Standards

Industry standards, including guidelines issued by NASDAQ and the New York Stock Exchange, reinforce the requirements of the law by requiring organizations that are listed on the stock exchanges to adopt and disclose codes of business conduct and ethics for directors, officers and employees. The standards recommend that codes of conduct and business ethics include provisions addressing the following:

- Conflicts of interest
- Corporate opportunities
- Confidentiality of organizational and customer information
- Fair dealing with customers, suppliers, competitors, and employees
- Protection and proper use of company assets, including theft, carelessness, and waste
- Compliance with laws, rules, and regulations, including insider training laws
- Encouraging the reporting of any illegal or unethical behavior

II. Changing Behaviors to Build an Ethical Culture

According to Sam Buell, a member of the Justice Department's Enron Task Force, "The best inoculation against being crippled by a crisis in your business is to build a culture of openness, honesty and responsibility within your own ranks." "Ashcroft Warns Executives about Corporate Cover-Up Consequences," *The Atlanta Journal-Constitution*, September 28, 2002. To do so, leaders will have to take a hard look at their organization's culture and how business operates in their organizations. What messages are being sent, not just through words but through actions? What is acceptable behavior in our organization? How do managers and leaders respond to concerns? Is it in a manner that punishes or rewards employees for speaking up about problems?

Without a fundamental change in the way people in the organization – and in particular, its leaders – behave, companies cannot build a legal, ethical culture, regardless of the sorts of issues that they face. Effective leadership is the single most important element in building a culture of honesty and integrity. As Noel Tichy, professor of organizational management at the University of Michigan's business school, has pointed out, "Ultimately, you've got to have leadership at the top who (a) have integrity, and (b) teach it." "Ethics Hotlines Heating Up At Corporations," *NEPA News*, September 25, 2002.

Of the many similarities between recent high profile cases, one of the most telling is leader behavior. These companies may have had policies and values statements decrying illegal or unethical conduct, but the actions of senior leadership contradicted those statements and sent a message to employees about what the real standards and expectations were. Enron, Worldcom, Texaco – the names have become almost synonymous with over-the-top violations, and in all of them, management led the way to high-profile scandal. Enron required new employees to sign a code of conduct statement before joining the firm, yet its Board suspended the ethics code twice to allow off-the-books partnerships that would financially benefit a company executive. According to Dick Thornburgh, a former U.S. attorney general examining the WorldCom fraud, "When … actual earnings faltered, their top management resorted to a smorgasbord of manipulation to falsely inflate … earnings." "Report Slams Culture at WorldCom," *USA Today*, November 5, 2002. Texaco offered wide-reaching diversity training, yet high-level company executives were caught on audiotape making racially derogatory comments. These leaders' actions all but nullified codes of conduct and values statements

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that spoke of integrity, honesty, and fairness.

Leaders set the example for everyone else in the organization to follow. When management cuts corners, employees see it as acceptable business practice. On the other hand, leaders who demonstrate that the values of integrity and honesty are important to them – by living those values themselves and taking prompt, appropriate action when others' behavior contradicts those values – set a powerful example.

In addition to ensuring their own behavior embodies the organization's values, leaders also need to verbalize the message effectively to their employees. Managers and employees are often the front line to clients, vendors, and shareholders. If they do not fulfill their responsibilities through ethical, legal behavior, the business will suffer – through the loss of customers, diminishing of shareholder confidence, and/or lost sales or revenue. As a result, they need to understand not only what their responsibilities are but how their actions are tied to the bottom line.

III. Effective Compliance Training Initiatives

Once the organization's leadership has become aligned, education and training are required to effectively communicate the requirements of corporate compliance and ethics as a uniform vision throughout an organization—they give meaning to mission statements, policies, corporate values, codes of conduct and ethics, and other communication devices. Implementing a comprehensive learning and education solution is vital.

Even when they recognize the need for training, however, many organizations make the mistake of deciding simply that they will meet that need by just delivering something—anything. But they may end up implementing a program that either does not engage and reach its audience, is not comprehensive enough, does not meet the needs of their workplace climate, or in some other way fails to deliver the results.

In essence, though, many organizations determine what training they will use without ever even considering what they are trying to accomplish. Many employers say their mission is to provide an inclusive workplace that welcomes diversity, is characterized by professional standards of behavior, and does not tolerate discriminatory and harassing conduct. Of course by realizing these objectives, they will also be increasing the legality of their operations and reducing the risk of litigation and penalties. Very few leaders say their mission is to guard against and prevent lawsuits; yet many choose learning programs that focus on legal obligations, the requirements of the law, and the avoidance of claims rather than their stated mission: to build a diverse, productive, and civil workplace.

Providing information on legal issues is important, but it is not the same as providing

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specific standards on workplace conduct. The common mistake many organizations make is that they use training as a strategic part of their plan, when in fact, training is a tactic. The organization's vision is the strategy; training should be a tactical component of that overall strategy.

Similarly, organizations may say that training on workplace standards and corporate citizenship is vital and is, in fact, just as important to the business as achieving sales goals and producing flawless products. However, when they look at learning solutions, they focus not on what will work the best and deliver their desired results; instead they try to find the cheapest solution or the one that involves the least time away from work.

If these are the goals, rather than providing training, companies would be better served designing something quickly and inexpensively and then simply communicating the message by e-mail alone. This would certainly minimize training costs and reduce time away from the job. Reaching decisions this way is comparable to an architect determining that a sturdy, well-built, long-lasting structure is needed, and then choosing the cheapest materials and throwing it together as quickly as possible using unskilled labor. Again, the tactical plan must support the strategy.

In the last few years, there has been an explosion of interest in e-learning as a new training delivery system. The rationales companies use for implementing e-learning are generally that it seems cheaper than classroom training (a questionable premise when all setup, administration, and equipment costs are considered), it can reach people at their desktops, and students can use it anytime they want without the confines of traditional classroom scheduling. All of these rationales may be correct; however, what should be the most important consideration—whether the training will generate the outcomes that meet your objectives—is frequently forgotten in the haste to embrace the logistical attractions of e-learning.

E-learning, as an element of an overall training implementation, can have many tactical advantages and practicalities, but it is not a training strategy in and of itself. Choosing e-learning or any other learning device or tool for its logistical benefits without considering the quality of the learning experience and whether it can help lead to those outcomes driving the instruction is like buying a drill because of its latest enhancements and sleek design when the job actually requires a wrench. To avoid falling into this trap, organizations should ask these simple questions before they decide on any learning content and delivery system:

- What are the reasons we are delivering this instruction? What do we hope to accomplish when we have completed the delivery?
- Are the content and delivery method we are choosing going to serve the objectives we have defined as the rationale for the training?

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"Good business leaders create a vision, articulate the vision, passionately own the vision, and relentlessly drive it to completion."
— John Welch

A. Implementation Planning

There are many issues that merit consideration when planning to implement compliance training in your organization. An implementation strategy should be designed to a) meet your business goals; b) demonstrate your commitment to the initiative; c) align behavior with organizational policies; and d) produce measurable results. The most effective implementations consider training as one element in the process rather than a finite, "one-shot" experience. The following outline identifies possible issues you may need to consider and some suggestions for addressing them. It also identifies who in the organization may play a role in each step of the process.

1. Link to Business Goals and Objectives

- Define standards and expectations that support the organization's mission, vision, and values.
- Identify needs and performance gaps.
- Define a clear set of implementation objectives.
- Gain agreement from executives on who should be trained.
- Identify a senior management champion and use his/her influence as needed.
- Set a baseline for measurement.

Key people: Top-level executives, business-unit-level executives

2. Communication Strategy

An effective communication plan requires a variety of methods and delivery mechanisms for communicating the messages based on available channels within the organization and those methods that will reach the widest audience. The communication plan should have specific phases for introduction of message, consistent repetition in a variety of ways, and reinforcement. In essence, this is the "marketing plan" for institutionalizing long-term cultural and behavioral standards and expectations.

Communication Plan Components

a. Developing content – Messages should be linked to organizational values, policies, and related initiatives. Specific messages may include:
   - Senior management commitment
   - Performance standards/expectations
   - Who will facilitate training
   - Follow-up activities
   - Organizational training objectives
   - Course content/agenda
   - Training logistics

b. Identifying delivery methods – A variety of delivery channels should be used, taking into account existing channels (e.g., newsletters, website, etc.), internal capabilities, and audience accessibility (e.g., access to e-mail) as well as other potential options for getting messages out.

Best Practices for Building an Effective Corporate Compliance Program

c. Establishing a communications calendar – A timeline or internal project plan with specific events, milestones, and delivery methods is necessary to ensure consistency, repetition, and reinforcement without dilution of message. Specifically, the timeline should indicate:
   - Who communicates to which audience
   - What the message is for each audience
   - What delivery methods should be used to communicate the message
   - When the messages should be communicated (intervals and frequency)

Key people: Human Resource specialists, instructional designers, training department

3. Develop Course and Materials

- Identify learning objectives for each audience (i.e., executives, managers, employees, etc.)
- Determine appropriate learning methods for each group.
- Finalize course content, matching objectives with identified needs.
- Develop materials and audio-visual components.
- Develop leave-behinds, job aids.

Key people: Instructional designers, vendor partners

4. Develop Course Roll-Out Strategy

- Create training agendas identifying content for executives, course participants, and other employees.
- Identify delivery methods for each group (i.e., instructor-led, online, in-house certified instructors).
- Gain agreement on the timing of training for each group and create a training schedule.
- If using internal instructors, gain agreement on who will facilitate the training. Include criteria for selection and performance expectations.
- Develop a system for tracking participant attendance.

Key people: Training managers, business-unit-level executives

5. Trainer Preparation

- Provide materials to trainer, meet to review the materials.
- Provide samples of key organizational policies, internal communication pieces used to communicate about the training initiative, organizational charts, and other key business information.
- Share key information on the link to business goals and objectives, company commitment for training and support for facilitators, agenda.

Key people: Training manager, training department

6. Follow-up/Ongoing Reinforcement

- Create objectives and a strategy for measuring course retention, effectiveness, and return on investment.
- Integrate key course skills into the performance management system and cultural assessment.
- Continue on-going communication strategy and include follow-up activities, progress reports, etc.

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Key people: Training manager, measurement specialists, instructional designers

The following is a list of barriers that could make the implementation process more challenging:

- Failure to link the implementation to strategic business goals, customer needs, and/or continuous improvement: It is difficult to create a sense of ownership for applying key principles when participants do not understand how course concepts are linked to the business and its overall success.
- Unclear implementation objectives: When an organization fails to clarify and/or clearly communicate what the objectives for implementing training are, trainers may become frustrated because they cannot articulate the company's commitment, which is a critical component for achieving participant buy-in. Participants who do not fully understand why the organization chose to provide the training may consider it irrelevant and assume it is just another "flavor of the month" program.
- Unclear implementation roles and responsibilities: It is difficult for just one champion within an organization to sustain an effective implementation and long-term results. The most successful and lasting implementations result from partnerships established at multiple levels within a company and a clear understanding of the roles and responsibilities of each partner.
- Non-supportive climate: A non-supportive climate can manifest itself in several ways including:
  - Lack of reinforcement after the training: Without regular reinforcement, initiatives lose momentum, participants' skills become less sharp, and the perceived importance of the program diminishes.
  - Lack of trainer support: Trainer support, including adequate time to effectively prepare for and facilitate courses, allocation of appropriate resources, and regular performance feedback, are crucial for maintaining the quality of the training.
- Poor participant preparation: Without an effective communication strategy that emphasizes executive commitment and links the training to broader business objectives, participants will not be fully prepared for the training, making it difficult for overall learning outcomes to be achieved.

B. Training Delivery Methods: A Comparison

According to a job impact study published by Thomson Learning in 2003 indicated that, in analyzing various learning methods, blended learning resulted in a 153-163% increase in performance, while e-learning alone resulted in only a 99% increase in performance. Thomson Job Impact Study – Final results. The Next Generation of Corporate Learning: Achieving the Right Blend, NetG, Inc., 2003. The following analysis outlined the benefits and disadvantages of a variety of communication methods.

DISTRIBUTION OF READING MATERIAL	
Benefits	**Disadvantages**
Easy	Must be read to be effective
Quick	No opportunity to ensure understanding
Ability to reach wide audience	
Low cost	

CLASSROOM LEARNING	
Benefits	**Disadvantages**
Opportunity to explain difficult or complex concepts	Cost (instructor and materials)
Immediate interaction	Time
Ability to assess knowledge and understanding	Travel
Outside expert trainer - Can provide alternative perspectives - Can be subject matter expert who only does this type of training - Can be insulated from organizational politics	*Outside expert trainer* - Knowledge of organization-specific issues, standards and policies is limited - Can be costly - May have scheduling or logistical challenges
Inside trainer - Can share expertise on organizational policies and standards from within the organization - Understanding of organizational dynamics and issues - Cost effective - Fewer scheduling or logistical challenges	*Inside trainer* - May be unwilling to raise sensitive issues - Message may not be taken as seriously because it is raised by an insider - May not have same level of expertise in the subject matter as an outside trainer

ONLINE LEARNING (CD-ROM, Intranet or Internet delivery)	
Benefits	**Disadvantages**
Convenience (conducted at participant's own desktop and at their own pace)	Unclear whether the message is reaching each participant
Ability to communicate information in an interactive way	Lack of live interaction; inability to ask questions or participate in discussion
Ability to reach a wide and dispersed audience with a consistent message	Technical Challenges
Ability to track and measure results	If not well-designed, can be boring and linear

WEBCASTS	
Benefits	**Disadvantages**
Live instructor and participants encourage discussion and participation	Not very effective for training very large groups at one time
Convenience (conducted at the participant's own desktop)	Difficult to maintain participants' attention for more than 2 hours
Ability to reach a wide and dispersed audience with a consistent message	Can be hard to gauge participants' comprehension of/attention to key concepts
Cost effective and can be implemented quickly and easily	
Sessions can be archived and accessed at any time	

IV. Assessing the Effectiveness of the Compliance Program

The Federal Sentencing Guidelines require that effective compliance programs be periodically reviewed and evaluated for effectiveness. There are a host of metrics that the organization can use to determine whether its compliance program is meeting its objectives. Before attempting to measure effectiveness, the organization must identify its objectives for the compliance program. Once those objectives have been identified, the organization can begin to measure effectiveness against the objectives. Here are some steps to consider:

- **Identify your objectives (expected outcomes) for implementing the compliance program.** Find out what is driving implementation of the compliance program and make sure you are focusing the program around these specifics. Work with key stakeholders to establish objectives. Try to make sure these objectives are in line with the company's vision, mission statement, and desired culture. It is best to start with a few specific, measurable outcomes that, if achieved, would signify a successful implementation. Objectives can involve bottom-line figures or have a behavior focus. Examples include:
  - Reduce litigation involving charges of harassment/discrimination by X%
  - Increase employee awareness of EEO-related policies and procedures
  - Improve communication between managers and employees
  - Increase manager effectiveness in investigating and documenting workplace events

- **Assess what common practices you currently use within your company to support the program.** Knowing what your employees are familiar with is important when constructing a measurement strategy. You may want to look at your company's existing method(s) of:
  - Training employees (e.g., stand-up v. online training)
  - Testing employees (e.g., True/False v. multiple choice)
  - Communicating with one another (e.g., e-mail, newsletters, meetings, memos)
  - Obtaining feedback (e.g., evaluations/surveys, focus groups, interviews)
  - Tracking improvements/changes in key performance/bottom-line areas based on training and other interventions (e.g., accounting, HR, management)

- **Identify potential barriers to effectiveness.** In order to have a successful outcome, it is important to anticipate possible obstacles that could prevent the program from having the intended impact. Questions you may want to consider:
  - Do all stakeholders support the program's implementation? Is their commitment to its success being communicated to employees?
  - Do we have a plan on how to roll out communications and training in a timely manner?

- Are there other company-wide initiatives that may overshadow or diminish the intended message of this program?
- Have the necessary individuals/departments been informed about the desire to measure outcomes? Will they serve as a "sounding board" for development and evolution of the measurement strategy?

- **Develop an action plan for implementing concepts and/or principles learned in training that is part of the program.** At the end of the course, the facilitator can work with participants to identify ways to transfer the training back to the workplace. Managers of participants may also be able to assist with the action plan. It is often helpful to include specific expected outcomes and target dates for each action item developed.

- **Review the initial action plan.** If participants create action plans, you can have them revisit them periodically to determine whether the outcomes are being achieved by the agreed upon target dates. If some desired outcomes are not being achieved, discuss why (e.g., additional resources).

- **Collect and share "success stories."** Follow up on training initiatives and other communications to determine how the knowledge is being used back on the job. The gatherer of this information can then share these "success stories" with other participants, which may help them identify ways to use course principles in their work.

- **Ask employees about the usefulness of training and other communications.** Though you may ask participants in the initial after-class evaluation ("smile sheet") to rate the usefulness of the content of any particular class that is part of the training element of the program, they may not know until they have had a chance to use the information back on the job whether it is useful. You may send out a short survey asking participants to indicate what percentage of the training is directly related to their job, or you may have more in depth conversations with them to obtain feedback.

- **Identify gaps in knowledge, skills, and/or abilities.** Usually participants walk away from training having either gained knowledge or improved skills or abilities in one or more areas. Training can also be helpful in identifying for participants other aspects of performance needing improvement. Work with employees to help identify these gaps and how these needs can be addressed. You can also use assessments to identify what areas participants still need to work on.

- **Ask employees about effectiveness.** Employees are the best gauge as to whether the company's objectives are being met (e.g., changed behavior, culture, work environment, etc.). There are several ways to gather this information: employee opinion surveys, 360° feedback surveys (respondents should remain confidential to allow for candid feedback), and focus group discussions.

Best Practices for Building an Effective Corporate Compliance Program

As is the case with constructing initial training evaluations, make sure the information you request from employees is related to the initial objectives and outcomes you identified. If you are developing a tool to obtain this information, it is a good idea to pilot it with a small audience to obtain feedback (e.g., clarity, difficulty level, and usefulness of the questions) on the survey.

- **Focus on a few specific desired outcomes.** Look to the objectives for the program to identify clear and measurable outcomes. It is best not to get too detailed in trying to measure the impact of the compliance program. Leave statistics as intangible numbers if it would be hard to make the information credible. In other words, do not try to manipulate the numbers.

- **Compare performance indicators to baseline numbers.** If your company has collected information related to the projected outcomes prior to the implementation of the compliance program, use this information as a baseline of comparison. Examples of data/information you may track that relate to a compliance program are:
  - Frequency of use of ethics hotlines or other avenues for reporting concerns
  - Number of ethics complaints
  - Number of charges or other litigation filed
  - Litigation costs related to areas covered by training delivered in the training and communication components of the program

V. Conclusion

"A corporate culture is what determines how people behave when they are not being watched." Jay W. Lorsch and Tom Tierney, *Aligning the Stars: Organizing Professionals to Win*, April 2002. An organization's culture hinges on the reactions of individuals within that organization, and the organization as a whole, to inappropriate or unethical behavior in the workplace. What we can expect and must require is that individuals be guided by a clear set of simple principles that are easily followed and taken seriously by everyone at all levels in the organization. Once these principles are communicated regularly, modeled by senior executives, and treated as elements of corporate citizenship, organizations will be well on their way to creating an ethical, legal workplace culture, and to having an effective compliance program.

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COMPLIANCE TOOLS

The following pages contain samples of compliance tools that have been used by members of the panel in their corporate compliance programs:

1. **Compliance Training Vendor Assessment**

2. **Focus Group Survey**

3. **Sample Compliance Curriculum**

4. **Education Comparison**

1. Compliance Training Vendor Assessment

Compliance Training Vendor Assessment

0 = does not meet, 1 = meets criteria, 2 = strong match

Evaluation Criteria	List Vendor Name Here	List Vendor Name Here	List Vendor Name Here
• Look/Feel/Navigation			
• Interactivity of courses			
• Assessment and affirmation capability			
• Ability to customize content			
• Meets AICC standards			
• Meets technical standards for [Your Company name] (Critical for Success)			
Company Profile/Experience			
Content of Courses			
• Code of Conduct			
• Antitrust			
• Conflict of Interest			
• eCompliance			
• Sexual Harassment			
• Financial Integrity			
• Privacy			
Total			
Other Comments			
Pricing Model / Value			

CONFIDENTIAL

2. Focus Group Survey

FOCUS GROUP SURVEY

Thanks for taking the time to complete these questions. Your input is valued highly, and your answers to this survey will be carefully reviewed and treated confidentially. The results will be aggregated to provide an overall view of focus group feedback.

Your job/function ____
Your department or location
____

Understanding our Code

1. How easy is the on-line Code to navigate?

Easy ☐
Average ☐
Difficult ☐

Are there any ways navigation could be improved? _____________________________
____

2. How easy is it to find key issues and answers?

Easy ☐
Average ☐
Difficult ☐

Are there any ways accessibility could be improved? ____________________________
____

3. Are the Code's standards clear?

Yes ☐
No ☐

If not, what needs to be clarified? ____
____
____

4. Are there any broad areas of concern not covered?

Yes ☐
No ☐
Not sure ☐

If so, what are the gaps? ____

Tone at the Top

5. Is there a clear message of organizational senior management support and commitment to ethics and compliance?

Strong message ☐
Average ☐
Weak message ☐

How could we further strengthen the message from the top? _______________________
____

6. Do you believe the company is committed to doing business ethically?

Yes ☐
No ☐
Not sure ☐

What other communications should we be doing? ______________________________
____

7. Are your obligations to act consistently with the Code stated clearly?

Yes ☐
No ☐
Not sure ☐

8. What will you do personally to support the Code? __________________________
____

9. Do you believe management will enforce the Code?

Yes ☐
No ☐
Not sure ☐

How to Speak Up

10. Does the Code clearly describe the various channels for asking questions, seeking guidance and expressing concerns?

Yes ☐
No ☐
Not sure ☐

How to Speak Up (continued)

If not, how can this be improved? ____
____

11. If you had a question or concern, which channel/s would you be most likely to use?

Your manager or supervisor ☐
Your supervisor's supervisor ☐
Local Senior Management ☐
Human resources ☐
Open Door Policy ☐
Legal Department ☐
Ethics Line ☐
Other – please specify ☐

What are the key reasons for your choices? ______________________________________

12. Is the Code's message on "personal responsibility" clear?

Yes ☐
No ☐

If not, how can we improve it? ____
____

13. Is the Code's message on "non-retaliation" clear?

Yes ☐
No ☐

If not, how can we improve it? ____
____

14. Are the messages on our Ethics Line clear?

Yes ☐
No ☐

If not, how can we improve it? ____
____

Communications

15. What method of receiving the Code would work best?

Intranet ☐
Internet ☐
CD ☐
Hard copy ☐
E-mail ☐

Any other comments? ____
____

16. Does the Code clearly communicate the key messages? (What is the Code, why do we need one, how can we access it, how can we get additional guidance, how do we express concerns, etc?)

Yes ☐
No ☐

If not, how can we improve it? ____
____

17. Do you think that training about the Code and your responsibilities would be helpful?

Yes ☐
No ☐
Not sure ☐

18. How would you prefer to see the training conducted (for example, on-line, instructor-led, through a webinar or conference call)?
____
____

19. Do you think that compliance training targeted to your particular job responsibilities would be helpful? If so, how would you prefer that the training be conducted?
____
____

Thanks again for taking your valuable time to share your input with us!

3. Sample Compliance Curriculum

SAMPLE COMPLIANCE CURRICULUM

Required Compliance and Ethics Training
- Code of Conduct Course
- Compliance Manual (affirmation)

General Compliance and Ethics Training
- Mutual Respect
- E-Compliance
- Antitrust
- Insider Trading
- Financial Integrity

Other Compliance and Ethics Training
- Gifts and Conflicts of Interest
- Intellectual Property

4. Education Comparison

COMPLIANCE EDUCATION

Comparison of Solutions

Education Features	In House	Vendor #1	Vendor #2
Develop Multi-Level Educational Requirements for Employees			
Develop customizable materials that reflect company culture			
Develop "Triggers" that Flag Employees Course Requirements when Promoted			
Email Employee Training Courses			
Track Course Participation			
Report Course Completion Rates			
Report Course Completion by Location/Department			
Timing			