Everyday ethics: It’s child’s play

The difference between ethics and compliance—and why understanding the difference is critical to successful leaders
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The difference between ethics and compliance—and why understanding the difference is critical to successful leaders

BY CHARLES A. NEFF AND JULIE J. GRESHAM

What’s the difference between ethics and compliance, and why does it matter? Leaders who understand the difference have a powerful advantage in the fight against employee misconduct, and their companies are likely maximizing the benefits of having functions that focus on both ethics and compliance. More importantly, leaders who do not understand the difference are likely missing an extraordinary leadership opportunity and also risk inadvertently promoting unethical and non-compliant behavior—even as they are pouring millions of dollars into ethics and compliance.

Conventional wisdom: Compliance simply means following the law. Ethics and compliance professionals often explain the difference between ethics and compliance as:

Ethics and compliance are essentially different sides of the same coin. Compliance is following the law, while ethics is doing what is right regardless of what the law says. Compliance is something that
the government requires you to do. Ethics, on the other hand, is something you choose to consider when taking action.²

The shorter version is: Compliance equals legal requirements, and ethics equals doing the right thing. Both statements are true, but the equation risks relegating compliance to a series of work instructions and ethics to a bumper sticker. Although this conventional view of compliance and ethics can be helpful in understanding the difference, it’s not actionable. Other than nod in agreement, there’s not much a leader or employee can do. This construct also implies that compliance has little value to a company unless a government enforcement or regulatory agency cares about a particular issue.

Compliance means preventing misconduct—not simply following laws.
Complex, multinational corporations need their ethics and compliance functions to provide information, tools and systems that leaders and employees can deploy and use. A company can extract the highest value from its compliance organization when that organization focuses on preventing misconduct. The fact is costs and reputational harms of employee misconduct have ruined some companies and many CEOs. There will never be enough corporate resources to ensure each employee is following every law all of the time. What’s more: Not all laws have clearly delineated rules that can be followed easily. Under the Foreign Corrupt Practices Act (FCPA), for example, bribing a foreign official is a crime, but the FCPA does not provide a specific dollar amount for gifts and gratuities to foreign officials. In that example, a compliance organization must manage the opportunity—one that is not legally prescribed—employees have to commit bribery under the FCPA, and an ethics organization must sort through the related ethical issues. So, if compliance is not only about following the law but also preventing misconduct, including fraud and criminal
acts, then what should companies expect from their compliance organizations, and how does that fit with the expectations of their ethics organization?

The “Fraud Triangle.”
Let’s start with the “fraud triangle.” Developed years ago by Donald Cressey to help detect employee misconduct, the fraud triangle has three elements: Opportunity, rationalization and pressure. Although often referred to as a triangle, picture a Venn diagram with three circles labeled “opportunity,” “rationalization” and “pressure” partially laid over each other. Where the three circles intersect, misconduct, including fraud, is more likely to occur. If fraud occurs when the three elements of the fraud triangle intersect, how do we prevent this intersection? To answer that question, we need to examine each of the three elements of the fraud triangle (or circles of our Venn diagram), and how a company might manage each of those three elements to reduce the likelihood of misconduct.

Opportunity (and compliance).
A company can reduce the opportunity to commit misconduct with a strong and effective compliance program. There’s no doubt this means rules must be clear and accessible. Those rules mean little, however, if they are not coupled with systems and processes that reduce an employee’s opportunity to commit misconduct. A strong compliance program will not only focus on the appropriate procedures and training, it will examine business systems, internal controls and approvals designed to prevent misconduct. In the case of the FCPA, most companies with reasonably strong compliance programs have set explicit limits on gifts, and they have put systems in place to track employee travel, spending and reimbursement. Those are all designed to reduce the opportunities employees have to violate the law.

Rationalization (and ethics).
Likewise, a company can reduce the likelihood that employees will rationalize misconduct by investing in a strong ethics program. For most employees, ethical behavior can be taught and learned. An ethics program should exist to teach employees and leaders how to behave ethically through training, messaging, living a company’s values and facilitating a continuous conversation about ethics, integrity and doing the right thing. Companies with effective ethics programs also hold employees accountable when they fail to live up to the company’s ethical standards. We often hear of companies having a “values-based culture.” Most
often, those are companies with strong ethics programs that hold employees accountable for knowingly violating the company’s standards. Since the FCPA has no explicit limits on gifts, if a company chooses to not define explicit limits, then it must count on the ethical training and values of employees to handle correctly the giving of gifts to foreign officials. But even in a strong values-based culture, is that good enough?

GREAT LEADERS UNDERSTAND THAT THEY MUST BALANCE THE PRESSURE TO PERFORM WITH THE REQUIREMENT THAT EMPLOYEES ACT WITH INTEGRITY.

The difference between ethics and compliance and the importance of leadership.
Our version of the fraud triangle and its importance to ethics and compliance can be summarized as follows: (a) Ethics should focus on reducing an employee’s ability to rationalize misconduct; (b) compliance should focus on shrinking the opportunity for misconduct; and (c) leadership should focus on reducing unhealthy pressure to perform or meet certain targets. So the difference between ethics and compliance is that ethics focuses on employees’ rationalization of misconduct, and compliance focuses on reducing the opportunity employees have to commit misconduct. Although those are important distinctions, they mean little if leadership is not focused on motivating employees in positive ways—in ways that minimize the pressure to perform without integrity. By focusing on managing the pressure that exists to commit misconduct, leaders send explicit messages that performance must
never come at the expense of following the process or their company’s values.

**Why understanding the difference between ethics and compliance matters.**

Compliance and ethics programs must be balanced, defined, and be supported by strong leadership. Compliance erodes ethics when rules and processes are too unwieldy, too voluminous or too overbearing. In those cases, employees often stop following the rules and start rationalizing what rules to follow. Soon they are likely operating outside the controls designed to further compliance.

The Army War College recently published a paper titled, “Lying to Ourselves, Dishonesty in the Army Profession.” That study asserted that an Army officer could not complete all of his or her compliance obligations—even if they were the only obligations the officer tried to execute. Once that happened, officers became “ethically numb” and began to rationalize why he or she would follow one rule but not another. This violates the code of ethics hammered into young officers during formative leadership training and then drives cynicism and skepticism of the Army’s ethical teachings. In those cases, compliance starts to erode, rather than complement, a strong ethics program. This doesn’t mean companies shouldn’t have strong compliance programs. It does mean that smart companies need to have risk-based compliance programs that consider the effects of compliance requirements on their ethics programs. If a company chooses to ignore compliance and rely totally on a “values-based culture,” then employees are at risk of doing something the employee thinks is “good” or more efficient that may in fact be violating a law.

There’s nothing wrong with viewing ethics and compliance as different sides of the same coin, but it limits the value of each function. Leaders who consciously employ (a) ethics to attack their employees’ ability to rationalize misconduct; (b) compliance to reduce employees’ opportunities to commit misconduct; and (c) leadership to reduce the pressures to commit misconduct really have three valuable coins at their disposal. More importantly, those leaders can sleep well at night knowing they put their employees in the best possible position to succeed.

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**ENDNOTES**

1 The authors would like to thank Chad Boudreaux, the chief compliance officer at Huntington Ingalls Industries (HII) and Kenny Rogers, the Director of Ethics and Business Conduct at HII, for their leadership, support and contributions to this article.

2 From Ethics vs. compliance: Do we really need to talk about both? By Ashley Watson, Inside Counsel magazine, January 27, 2014.
As a child, I grew up playing all sorts of outside games. Most of the time, I played with several cousins and neighbors. Often, we would have new players. Typically, new players were schoolmates visiting from other neighborhoods or visiting family or friends associated with my neighbors. Most times, our activities consisted of uninterrupted, endless fun.

When our activities included new players, there was potential for a delay of game. Usually, delays were the result of a player questioning another player’s integrity when they lost. Here are a couple of examples: If they lost a race, they would say another runner’s foot was either on or beyond the starting line. In Hide and Go Seek, they would say the person’s eyes weren’t closed completely or they looked up while they were running away. It doesn’t matter the game, they found a way to question another player’s integrity.

In *Go Put Your Strengths to Work*, Buckingham shares a story about his five-year-old son. Buckingham’s son is a college football fan and has a favorite team. His son enjoys watching his favorite team as long as they are winning. When his team is losing, he has to leave the room or turn off the television. The author believes that no amount of effort will change his son’s behavior and that this behavior will follow him into adulthood.

According to the author, childhood behavior transitions into adulthood. If this theory is correct, we can expect similar behavior in the marketplace regardless of the industry. Why? Childhood
friends and schoolmates become working professionals. When an organization experiences an increase in revenues, clients/customers, and market share, they may encounter similar behavior. What does that mean? Organizations should expect some competitors to question their integrity and the validity of their compliance and ethics programs. Competitors question marketing campaigns and some threaten with subpoenas and litigation. It’s business and not much different than child’s play.

In the *48 Laws of Power*, Greene discusses using smoke screens to distract competitors from their intentions. Additionally, he states that a person who believes that they are winning hearts by being honest and open are greatly deluded. He states being open makes it impossible to be respected so lay honesty aside to achieve power. Maxwell believes that abuse of power is one of five categories that undermines the Golden Rule and results in many of the scandals we are witnessing.

Just imagine that questioning another’s integrity can be a distraction used to persevere in a competition. Losing focus on objectives and focusing on competition is one way to succumb to distraction. For example, I remember checking more than once to ensure my feet and hands were behind the line before racing. In addition to checking myself, I would look over to ensure my competitors were behind the line, also. Before I knew it, the race began and I wasn’t in first or second place.

Perhaps, individuals or organizations that have a genuine interest in learning and establishing best practices pose questions of integrity. Their perception triggers their curiosity so at conferences, tradeshows, and other events they attempt to gain information. These interactions tend to reinforce that good intentions are being observed and receiving recognition. This is great but excessive pride can be a distraction, also. In this context, distractions can be a false sense of accomplishment or failure to recognize the need for improvement. By the way, Maxwell ideas pride as a category that undermines the Golden Rule.

![Image](image.jpg)

**What do children do?**

In retrospect, we learned to focus on our objectives, which were to have fun and play fair. We were transparent about rules. We shared our rules, which may or may not have varied from other neighborhoods, at the start of each game. The purpose was to avoid the impression that rules and exceptions were provided intermittently throughout the day to create a neighborhood advantage. Quickly, we learned that some players used distractions to compensate for their lack of skills or dedication to improve their performance. The players were
in the game but rarely considered as part of the competition. In some races, we gave them head-starts and occasionally they won, but most times they lost. This made the neighborhood kids push harder and gave them bragging rights when they beat a player that had a head start.

What can organizations do?
Although organizations are complex, most scenarios are elementary despite individual (and often, collective) efforts to make them complex. When it comes to compliance and ethics programs, organizations have regulations that provide guidance. This is similar to having a head start. Numerous resources exist for organizations to have a baseline to reference for developing a reputable program. For many organizations, their objective is to go beyond regulations and establish an ethical culture. They are passionate about their integrity and aren’t distracted by the thought competitors questioning their integrity. Solutions may not be readily available but they can refer to a documented process that supports their decisions.

They invest in their infrastructure and document with due diligence. They communicate and make their plan accessible so that activities are transparent throughout the organization. To the extent possible, they are prepared to share their plan with regulators. Unfortunately, there are others that communicate commitment but demonstrate little effort. Their focus is on short-term gains that result in long-term losses. They represent a baseline to avoid. These organizations appear to be competition but they are not in the game. Like child’s play, they are a temporary distraction attempting to prevent ethical organizations from achieving their objectives.

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Tammy Hall boss and New York State Senator George Washington Plunkitt often pontificated in the late nineteenth and early twentieth centuries about “honest graft” and “seeing my opportunities and taking them.”¹ He made the dirty tango of politics and business into an art.

The recent conviction of former New York Assembly Speaker Sheldon Silver stemming from his tangled web of intrigue, secrecy, and dubious business relationships in his capacity as a lawmaker is not just about political corruption.² It’s about corporate willingness, sometimes reluctantly, to enable bad behavior at the public expense. Corporate policies routinely fail to foresee the perverse, problematic relationships that can arise.

Jaded New Yorkers are surprised, though quite pleased, by the US Attorney’s successful conviction of Silver. Jaded because, after all, as Silver’s defense legitimately argued, how could this elected official be doing anything wrong when Albany has conducted itself this way for well over a century? It’s how Albany operates.

The Manhattan legislator concocted a way to get millions in legal referrals by helping real estate developers and steering research money to a university professor. It was a vulgar quid pro quo, but long tolerated, especially by voters who returned this man to office for over two decades and whose colleagues elected him assembly speaker for many years.
Incidentally, New York Governor Andrew Cuomo is under federal investigation by the same U.S. Attorney’s office who had Silver convicted and currently (at the time of press) has former Senate Majority Leader Dean Skelos and his son on trial for political corruption. After Silver’s conviction, Cuomo said (listen to hear my jaw drop in disbelief), justice had been done. Despite the conviction, the ongoing trial, and his own potential indictment, Cuomo refused to call back the legislature for a special session to address New York’s notoriously weak ethics laws.³

Business sometimes enables bad behavior through campaign donations or offering high-paying jobs or contracts to a lawmaker’s friend or relative in exchange for, nod-nod-wink-wink, tax breaks, favorable legislation, lucrative government contracts, or near monopoly rights in a certain industry.

Political action committees (PACs), perfectly legal, funded by deep-pocketed corporate interests often play a critical role in distorting messages, packaging issues, and creating perceptions about issues and candidates for office. This doesn’t mean lobbyists are bad or disseminating information is evil. Lobbyists who behave with fairness, decency, and integrity (yes, some exist) can actually serve a positive, productive purpose in helping evaluate a complex issue.

Term-limits, lobbying restrictions, campaign finance reform, and far tougher laws to prosecute unscrupulous lawmakers are all necessary parts of the equation for change. But why isn’t business aggressively adding its voice for reform?

Not only is it the right thing to do, but it would be beneficial to them as good corporate citizens, leveling the playing field against competitors, and promoting an ethical, positive image to the greater public.

Access to lawmakers in exchange for special favors is a two-sided coin. Perhaps there will be a tax incentive or zoning change, but what happens when things go very wrong?

In the Silver and Skelos cases, businesses that helped the prosecution as witnesses have a tainted reputation for their willingness to dance a tawdry waltz. There’s also a monetary cost if customers look elsewhere for goods and services and in the Skelos case a business was pressured to give the lawmaker’s son a no-show job. Not only was it a no-show job,
but what did it do to morale and productivity of honest, hardworking employees?

In both the Silver and Skelos cases business representatives noted during trial they felt pressured from the lawmakers to do something not in the ordinary course of their decision making. Clearly, there were no internal policies to address such situations like referrals or hiring friends or family of lawmakers. Or if there were, they held their noses and did it anyway fearing their businesses would suffer.

The New York cases are a microcosm of what goes on too often nationally and in other states. When was the last time you heard a major business discuss and promote its written “political” code of ethics? It’s time they did. Businesses, regardless of size, need to call for legislated reform while self-regulating themselves with policies and procedures when dealing with elected officials and the political process. ■

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ENDNOTES


One in three people who observe misconduct choose not to report it.

In 2014, claims alleging retaliation accounted for almost 43% of all claims filed with the EEOC.

Retaliation action goes beyond termination and can be due to “corporate shunning.”

A survey of compliance officers found that 53% of those who responded had investigated a complaint against senior management.

Companies that exact retribution or ignore reports of wrongdoing are more likely to be the subject of an outside investigation.

There are benefits to organizations and to the workforce when an ethical culture is promoted. The 2014 Federal Sentencing Guidelines for effective compliance and ethics programs makes that clear in stating that “organizations shall promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law.”

Studies show that organizations that promote an ethical culture have greater success in meeting their goals and are able to achieve greater customer and employee satisfaction. Workforce members are more productive and are happier when they work for organizations that promote an ethical culture, because it gives everyone
confidence in the organization’s success and, therefore, their own future success.

The greatest deterrent in creating an ethical culture is when people are not comfortable reporting concerns for fear of retaliation. According to the 2013 National Business Ethics Survey (NBES), there are benefits to an organization that fosters high standards of conduct and honors the rules. However, the NBES also reports that more than one out of every three people who observe misconduct choose not to report it, and that the rate of retaliation remains alarmingly high at 21%. This results in conflict and confusion as to whether the organization is really creating an “ethical culture or has a commitment to compliance with the law” as defined by the Federal Sentencing Guidelines.

Every employee needs to be familiar with the standards for business conduct, because the standards help employees understand how to raise concerns, define the risks to the organization, and explain how employees are accountable to comply with the laws and the organization’s policies. Employees need to realize that they can be held accountable for wrongdoing when they know about it and do not do anything about it. Yet, when many do the right thing, they are retaliated against.

Since 2000, the number of claims alleging unlawful retaliation filed with the U.S. Equal Employment Opportunity Commission (EEOC) each year has roughly doubled—from 19,694 in 2000 to 37,836 in 2012. In fact, in 2014, claims of retaliation were the most frequent charges filed with the EEOC, accounting for almost 43% of all claims filed. Retaliation is now the most common type of discrimination alleged nationally, topping both race and gender.

The NBES has identified the rise in retaliation as a critical warning sign of a possible ethical decline in American business. Although the EEOC and NBES data applies to a broad spectrum of American companies and ethical wrongdoing, many healthcare organizations, including hospitals, nursing homes, and physician groups, have an active compliance program headed by a top executive. A key standard within these compliance programs is a non-retaliation policy. Surprisingly, a survey conducted in 2013 by the Health Ethics Trust of compliance officers
who investigated complaints against senior management found that 33% experienced adverse consequences for doing so. The sizable growth and adoption of compliance programs by healthcare organizations and the corresponding growth in retaliation claims presents a contradiction in the effectiveness of compliance efforts in these organizations.  

Compliance programs
The purpose of a compliance program is to detect, prevent, and mitigate practices and behaviors that present regulatory, civil/criminal, financial, or quality risks. Additionally, a well-designed compliance program will foster integrity and serve as a basis for encouraging ethical business practices. Compliance programs were first implemented in response to the Federal Sentencing Guidelines’ provisions that allow the presence of a compliance program within an organization to serve as a mitigating factor for determining the penalties for false claims and civil monetary penalty liability.

Today, healthcare compliance is recognized as a distinct profession. Thousands of individuals are certified in healthcare compliance, and schools around the country offer certificate programs in healthcare compliance. The Health Care Compliance Association (HCCA) announced in July 2015 that membership has grown to 10,000. The HCCA, along with other professional organizations, including the Medical Group Management Association (MGMA) and the Healthcare Financial Management Association (HFMA), provide a large range of compliance resources (e.g., publications, training programs, and consulting services) to healthcare entities to assist them with creating and implementing effective compliance programs. Nearly every healthcare organization now has some type of a program in place.

The healthcare industry is highly regulated, especially with respect to entities that receive federal and state reimbursement (e.g., Medicare, Medicaid, etc.). A compliance program that effectively implements the seven elements can mitigate risks that result from fraud, waste, and abuse; regulatory noncompliance; substandard quality of care; and unethical business practices.

The False Claims Act (FCA) qui tam or whistleblower actions are a unique mechanism that allows persons and entities with evidence of fraud against federal programs to sue the wrongdoer on behalf of the government. Currently, qui tam provisions include strong financial incentives to file a lawsuit on behalf of the federal government. Healthcare
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fraud cases, including coding false claims, DRG false claims, Prospective Payment System (PPS) false claims, outpatient PPS false claims, kickbacks, Stark law violations, durable medical equipment (DME) fraud, and Diagnosis Related Group (DRG) fraud (DRG creep) now comprise the majority of all FCA cases. As a percentage of the total FCA lawsuits filed each year, *qui tam* lawsuits have steadily increased from 12% in Fiscal Year 1987, to more than 45% in 2007, and to 66% in 2013.⁵

**What is retaliation?**

An “adverse employment action” goes beyond termination. In the context of employment discrimination (generally considered applicable to the whistleblower context), the Supreme Court has said that “corporate shunning,” including changing an employee’s schedule or even excluding the employee from an important business meeting or activity, could potentially constitute retaliation.⁶ The 2012 Whistleblower Protection Enhancement Act, which protects federal agency whistleblowers, includes in its definition of prohibited retaliation an agency’s reassignment, adverse pay decisions, or a significant change in duties, responsibilities, or working conditions.⁷

Under the FCA, the whistleblower is entitled to reinstatement with seniority, double back pay, interest, special damages sustained as a result of discriminatory treatment, and attorneys’ fees and costs. To establish a claim for retaliation, the whistleblower must engage in conduct protected by the FCA. Second, the courts require a showing that the defendant had some notice of the protected conduct—that the whistleblower was either taking action in furtherance of a *qui tam* action, or assisting in an investigation or actions brought by the government. The protection against retaliation extends to whistleblowers whose allegations could legitimately support an FCA case, even if the case is never filed. Finally, the whistleblower must show that the suspension, firing, demotion, harassment, or threat was in retaliation for the protected activities. An FCA retaliation case can include whistleblower claims and other legal claims based upon other state and federal laws, and a claim for retaliation may be brought in federal court.

A complainant regarding a retaliation claim can prevail merely by showing by a preponderance of the evidence that his/her protected activity was a contributing factor in the unfavorable action. A contributing factor is “any factor which, alone or in connection with other factors, tends to affect in any way the outcome of the decision.” Once a complainant meets his/her burden of proof by a preponderance of the evidence, the employer can avoid liability only if it proves by clear
and convincing evidence that it would have taken the same action in the absence of the employee engaging in protected conduct, an onerous burden.\textsuperscript{8}

In March 2013, Mark Pastin released the results of a survey of compliance officers who subscribe to the \textit{Ethics Whisperer} blog. More than half of the site’s members who opened the survey responded. The results were very interesting. A few key findings relative to retaliation are:

- Fifteen percent (15\%) of the responding compliance professionals had left a position at their organizations under adverse circumstances of being fired or forced out.

- Thirteen percent (13\%) of respondents thought their job was insecure, with 67\% believing that there is at least some level of insecurity in their positions. Some respondents in the “somewhat secure” category noted that there is a certain amount of job insecurity in general, but most comments pointed to specific reasons for the perceived insecurity.

- Fifty-three percent (53\%) of the compliance professional respondents said they have investigated complaints against senior management. Of those who investigated complaints against senior management, 33\% experienced adverse consequences for doing so.

- A surprisingly high 21\% of responding compliance professionals have considered becoming whistleblowers.\textsuperscript{9}

A broader study, beyond healthcare compliance professionals, is “Inside the Mind of a Whistleblower.”\textsuperscript{10} This study attempts to determine why certain employees will and others will not report activities they perceived to be misconduct. Most of the report focuses on factors influencing employees to report misconduct and how they do it. The first major factor depends on whether the employee felt that the report would make a difference. If the employee believed that no one would listen or care, then he/she was less likely to take action. The second factor is the employee’s sense that the employer would retaliate for the report. Employees who felt more financially secure
and who believe that they will not suffer retaliation are more likely to report misconduct. The third influence is the whistleblower’s level of support, both within and outside of the job. Not only does this affect an employee’s confidence in doing the right thing, but it is also likely to make the employee understand the best place to report. Most workers would rather report to a supervisor, if they had a good relationship, than to an anonymous tip line. This is true, of course, only if the employee regards the supervisor as an ethical person.

**MOST WORKERS WOULD RATHER REPORT TO A SUPERVISOR, IF THEY HAD A GOOD RELATIONSHIP, THAN TO AN ANONYMOUS TIP LINE.**

**Conclusion**

The biggest conclusion from this report seems to be that the corporate culture is critical. A workplace that is perceived to be healthy, interested in what its employees have to say, and likely to make changes when needed will find its employees speaking up. Companies that exact retribution, or ignore reports of wrongdoing, are more likely to find themselves the subject of some outside investigation.

Employers that ignore reports of wrongdoing not only do the organization a disservice, but also lose certain defenses for charges of wrongdoing. Research and anecdotal evidence show most whistleblowers brought problems to their companies’ attention and only became whistleblowers when problems weren’t fixed. The organization’s lack of response may be the organizational chaos resulting from claiming to have open-door policies when they actually restrict discussion and dissent, even at the board level. They rationalize their behavior and avoid self-examination. Their executives may use fear to control employees, so there are no safe places within the company for honest people to ask questions or report problems. Most often the whistleblower is categorized as a rouge employee, a non-team player. Many can never find employment again. In short, those who should be applauded as truth bearers often are scorned as turncoats.

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**ENDNOTES**


4 Health Ethics Trust 2013 Survey. Available to members only at http://www.healtheticstrust.com


8 Ibid.


How does an organization recover from a scandal? I was asked this question many times when I accepted the position of Deputy Wayne County Executive. Turning the page does not happen overnight. Changing a culture is like climbing a mountain. It happens one step at a time.

The first step is the most important. The organization must take ownership of the past mistake. Many organizations find this hard to do. Until the company recognizes the root cause of the problem, any efforts at reform are mere window dressing. A company cannot turn the corner until there is a genuine acknowledgment of the past transgression. Remorse should not be because the company got caught. Instead, immediate attention should be on dismantling the culture that allowed the misconduct to occur.

The leaders of the organization must articulate what it would do differently if the situation arose again. Arrogance is a roadblock. Blame shifting or attempts to rationalize and minimize the previous wrongdoing are red flags the company is not ready for a full recovery.

The organization’s next step is critical. A comprehensive review of all company principles and procedures starts the critical analysis done in step two. In addition to clarifying any shades of gray that exist in office guidelines, management should ensure adequate protocols are in place to report and investigate misconduct. Enacting and enforcing
clear standards promote a custom of accountability. Accountability is the backbone of an ethical office.

Employee training is a key component in maintaining the newly developed ethical culture in step three. Training elevates the articulated code of conduct as a company priority. Training on ethical leadership does not imply attendees are unethical. Interactive training designed to highlight the organization’s principles and mission, allows for employee input on the ethical challenges faced in performing the job. This interaction reinforces and celebrates core company values of honesty, integrity and civility and acknowledges that every employee is value added. Through the effort of all, the ethical brand of the company is polished.

During my term as Deputy Wayne County Executive, the administration was under federal investigation. I pledged cooperation from the start. The administration would not play hide the ball. A culture that promotes transparency will expose bad actors. The message of cooperation was spread throughout the organization. As a result employees felt comfortable volunteering information. I encouraged employees to err on the side of disclosure and let law enforcement determine the value of the unfiltered information. By self-reporting, the credibility of an organization is enhanced and so was the morale of the honest workforce majority.

In step four, the focus turns to developing strategies that motivate, inspire and validate the workforce. The best resource a company has is its people. The overwhelming majority of employees are honest and hardworking. They take pride in their work and do the right thing every day. When they too feel victimized by the scandal, a company must atone for its failure to listen to employee concerns. In addition, leaders should look for opportunities to recognize and celebrate the good work of employees. Humility and empathy drive ethical leadership.

This humility can start with a simple hello. Taking the time to walk the halls and engage employees helps to build a foundation of trust. A genuine connection with staff can be the difference between a good leader and a great leader. Empowered employees will be inspired and motivated to rally behind the company vision.

Climbing the ethical mountain is no easy task. Throughout the scramble back from a scandal, leaders must consistently prioritize the interests of the organization ahead of personal self-interest. Consistency in policy regenerates buy-in by the workforce and promotes accountability. Enacting these safeguards recreates and maintains the ethical brand. An ethical culture is reborn.

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Ethics hotlines: Not just for blowing the whistle

BY AMANDA NIEWELER

“We’ll See Your ‘Misconduct Reporting’ and Raise You ‘Ideas Reporting’”

“We Believe In an ‘All-Encompassing’ Hotline: Here’s How It Works”

Every post you see, everywhere, regarding ethics hotlines or whistleblower hotlines, revolves around setting up processes in place to allow employees to anonymously report on wrongdoing in the company.

We see media reports of securities violations, bullying and harassment, occupational fraud and abuse, money laundering... the list goes on. Many organizations have adopted hotlines to allow employees and stakeholders to report on these instances of misconduct.

Public companies are mandated by Sarbanes Oxley and Multi-Lateral Instrument 52-110 to have whistleblower hotlines in place, allowing employees to report wrongdoing anonymously. And these organizations must follow-up accordingly on allegations of wrongdoing to come to some sort of resolution—the SEC likes to see proactive action.
Small business can benefit implementing ethics hotlines because for them, one serious instance of fraud could spell disaster for that company. Unlike their larger counterparts, small businesses just don’t have the tools and finances in place to fight legal battles and ethical violations.

And non-profits benefit from whistleblower hotlines by proactively nipping wrongdoing in the bud in order to ensure their continued financial support from communities and government—thus being able to continue to benefit and support those very communities and citizens.

In all instances, businesses want to prevent reputational damage, financial losses and employee distress, as it can lead to long-term organizational dysfunction. Ethics hotlines allow companies to find instances of wrongdoing fast, work out solutions to fix them, and ensure they never happen again. That can be seen a positive growth—learn and grow by making mistakes. We totally agree with that statement!

But what if we were to spin this in an entirely different direction? What if employees could use a hotline as a tool for giving ideas for areas of improvement? What if they thought their idea was ‘silly’ but still wanted to anonymously get it out there? What if an employee was too shy to come forward, out in the open, with a new idea about a product the company could manufacture? They may even have ideas about how to improve an organization’s customer service.

This concept can be incorporated into an ethics reporting system.

When people think of ethics hotlines, they think of anonymously reporting instances of wrongdoing. That’s it. Absolutely, this is a must for organizations, no question!

But hotlines aren’t just tools where employees can come forward to anonymously report instances of wrongdoing. They’re tools where employees can come forward anonymously, period!

I suppose you could think of this like an anonymous suggestion box. The only difference is that this suggestion box isn’t hanging on the wall in the lunch room, with pen and paper at the ready…and colleagues and co-workers nearby getting coffee, chatting…seeing you filling out that piece of paper.

A well-working hotline will allow employees to anonymously come forward with anything they wish to report or suggest. That same employee who wishes to remain anonymous while reporting internal fraud committed by their co-worker, may also be the same employee who’s too shy to come forward and suggest a new company value they think should be adopted.
Another employee may wish to report anonymously on a safety issue at a worksite that breaches the company’s code, however, may also have a suggestion for improvement on that safety issue—and it could be a really great idea, they just prefer to remain anonymous.

What if there’s existing processes and procedures in place, have been for a while and aren’t hurting anyone, but a quiet employee has an amazing idea on how to improve these processes and procedures but just can’t bring themselves to come forward for fear of having their idea kyboshed in front of their colleagues?

A well-rounded system will allow reporting of not only wrongdoing, but can also be a place where employees can submit ideas, areas of improvement, thoughts about vision and values, and new product suggestions.

Instances of wrongdoing can also be coupled with ideas on areas of improving those instances of wrongdoing. Not every employee is comfortable with coming forward, with everyone watching, while they attempt to express themselves. But they are still your valued employee who works hard, contributes to the success of the company…and still has a great idea or two.

Amanda Nieweler is the Marketing Manager at WhistleBlower Security Inc., a global provider of ethics reporting hotlines and case management systems.
Breathing life into ethics and integrity

BY JENNIFER MCGLINN

Ethics and integrity, valuable in their own right, are also good for business. They enhance your brand, earn customers’ loyalty, and help to reduce the risk of legal problems.

So how do you actually become a more ethical company? A published code of ethics is a start, but you need to make ethics and integrity living, breathing, actionable ideals that are deeply ingrained in the consciousness of every employee, no matter how large your organization.

That’s what my company, Ricoh Americas Corporation, set out to do, and we’ve made some great strides. We’ve developed a comprehensive ethics and integrity program that is achieving exceptional engagement across the entire workforce in the U.S. The program includes components that educate, illuminate and inspire employees to do the right thing. We bring ethics to life with teaching, real-life examples, and practice. And in today’s business environment, ethical initiatives have to be particularly engaging and relatable because it’s so easy to think of ethics in the abstract; you really need to show people how ethics enters into their everyday lives, and how they can participate in more ethical conduct.
While Ricoh Americas’ approach is not the only way to become a more ethical company, we can speak to what worked for us and our results, which you can replicate in your own organization. Below are some examples of what’s gained us some success.

**Online learning vignettes**

When trying to bring ethical issues close to home for employees, it helps to connect with them on a level beyond text. We have a very vibrant company-wide intranet called RWorld, and it’s the perfect place to provide bite-sized learning nuggets aided by visuals. Last May, we posted an animated vignette, which involved a real-world ethical dilemma:

An employee needs help moving some heavy furniture to her new apartment. She asks her co-worker for a favor: Can you drive the company truck to my family’s home, help me load the furniture, and bring it to my place?

Employees were asked to identify which ethics principle would be violated if employees did the favor and used a company-owned vehicle. Answer: Protecting the company’s assets and resources. The lesson ended by providing an alternate solution, which pointed the employee to our employee assistance program (EAP). Through this vignette, many employees discovered the EAP for the first time and learned that it contains a wide range of helpful advice! If you look at your EAP usage and see it’s lower than expected, perhaps it just needs some additional exposure. Not only does an EAP offer tremendous support for employees, but it can also help alleviate and minimize your risk and legal problems down the road.

This online learning vignette became some of the company’s most-watched intranet content. It earned nearly 8,000 views and more than 2,400 responses to the related polling question. That’s terrific engagement for something that isn’t mandatory. As a small incentive, we randomly awarded thirty ten-dollar gift cards to employees who answered the polling question correctly.

Sometimes, a company’s willingness to frankly discuss a common ethical issue is almost as important as the discussion itself. It can be important to show employees that ethical guidelines aren’t just there to protect company assets—they exist to demonstrate organizational priorities. For example, beyond our internal vignette, another video scenario we shared involves a woman expressing worries about her touchy, suggestive boss and what is a potentially hostile work environment. We also have a separate set of third-party-created video scenarios that we connected to our mandatory anti-bribery training, which we
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provide to employees at the director level and above. When employees feel they have their company’s support in doing the right thing—such as reporting inappropriate conduct—they are more inclined to do the right thing.

**Leadership Excellence Award**
Recognizing exemplary leaders who demonstrate the highest level of ethics and integrity is another excellent way to affirm expectations for ethical behavior across your workforce. In 2012, we introduced the Ricoh Leadership Excellence Award, awarded twice-annually to managers who live the company’s core values every day and continually exemplify ethics and integrity.

The award carries considerable credibility, as it is sponsored by the company’s cross-functional Business Integrity Team, which communicates frequently with employees about ethics and values, and is personally awarded by our CEO. By making individual and corporate integrity clear priorities, we’ve established a “tone from the top” that has fostered a culture for these values to thrive.

Defining an avenue to recognize leaders who demonstrate how we want all employees to act when it comes to ethics and integrity has been huge! We ask employees to nominate deserving leaders, and after a tough and thorough selection process, provide the company with role models while recognizing excellence beyond the top sales performers.

As a result, the award is deeply meaningful to its recipients and their teams. As a 2012 award recipient and Sales Manager from State College, PA said:

“During my 31 years in this business, I have had the opportunity to earn many other revenue driven awards. These achievements are appreciated, but in no way do they equal what this award means to me. I now understand the magnitude of this honor.”

**Compliance and Ethics Portal**
Ethics needs a home. That is to say, when employees are looking for guidance, they need to know where to turn. So we created a central location for our ethics and integrity program that offers an easy way for employees to report any potential ethical breaches. The Compliance and Ethics Portal is relatively new for us, so to gain traction and increase awareness we’ve shared a series of communications directing employees to the portal and have it easily accessible on the company intranet. The portal enables employees to report violations via an online form, or they can opt for email or a phone call—all available in many languages to accommodate employees.

Importantly, employees can report ethical issues anonymously and are assured they won’t face retaliation or discipline for use of the portal,
and that their concerns will be handled promptly, discreetly and professionally. It’s a one-stop shop, providing employees with easy access to the company’s code of ethics and a comprehensive list of human resources contact information, including access to HR resources and an “Ask HR” portal to turn to for any kind of help.

While a comprehensive online portal is good to have, it can only be effective if people remember to use it. To sustain engagement, we display awareness posters in high-traffic areas urging employees to “speak up”—either through the portal or with a manager—if they witness or experience misconduct. These posters help serve as reminders that how we do business is as important as the business we do. Implementing this online resource has been an important part of breathing life to our ethics and integrity and is proving to be a solid part of our overall program.

It’s a commitment that has earned credibility with our employees, our customers, and even recognition for our parent company, Ricoh Company, Ltd., as a 2015 World’s Most Ethical Company® from the Ethisphere Institute.

Final thought: An ethics program is only as good as the understanding employees bring to it. And more important than having the answer to any ethics question that may arise is the ability to spot the problem in the first place. And that’s what our ethics and integrity training is all about, by making the lessons as fun and engaging—and therefore likely to be learned and remembered—as we can. ■

Jennifer McGlinn is Vice President, Assistant General Counsel & Ethics Officer for Ricoh Americas Corp. She is also a Certified Compliance & Ethics Professional (CCEP)®.
How ethical behavior involves kindness

BY SUSAN WELSH

In June of 2015 my father died after a long illness. A little over two weeks later my brother died after a long fight with lung cancer. Just like that, my world was upended. Personal loss aside, I was the named administrator for both estates.

My brother had left some of his most expensive jewelry in the care of a friend. That friend said the jewelry had been given to him by my brother and refused to return the items. Clearly this illuminated an ethical problem on his part. But this is about the ethical behavior of the police department that was called in to investigate the issue of the jewelry.

The police are struggling in the wake of criticism of their treatment of minorities, marginalized communities, and the disenfranchised. Without comment on these issues here is how one officer handled this touchy issue.

The individual that had the items was a longtime sufferer of HIV, gay, and had just married his longtime partner. The officer met with this man, talked to him, accorded him the respect he deserved, offered sympathy for the longtime struggle he had with his disease and made arrangements for the individual to speak with my attorney. No fuss, no angry accusations, no trouble and a good outcome.
I had already given up the jewelry as a loss and was shocked this officer had been able to convince this man to talk with my attorney. Then I got a phone call. The officer explained what he had done and what had happened. He had seen the jewelry because the man brought it with him to the interview. Then, as kindly as possible he shared with me his analysis of the situation. He was polite, even funny at times, but logical and thorough in his explanation. It was, quite simply, a civil matter. His kindness had been in pursuing the matter even though he suspected at the time that it would end up being a civil matter. It was also in how he treated both me and the man with the jewelry with respect and honesty. His closing comments were about kindness, that he wanted to instill in other members of his team that starting out on that level, with kindness and respect, produces better results than hardness and confrontation.

In our everyday dealings with our employees, stakeholders, and customers how often are we kind? Many times, in our profession, we know what the right thing is to do. That's our job. We have experience, we have research, and we have citations and data and charts and graphs and well-thought-out logical reasoning. Ethically, we already know we are in the right. Ethically we are sure.

How often do we take what is right and present, argue, and convince with kindness and respect? It is easy to be a bully with facts, figures, charts, graphs, citations, and just grind the “opposition” into the dust. But is that the ethical way to win an ethical battle?

I worked in internal audit and in compliance for years. My visits to our sites were
an occasion for fear and dread. The managers and administration often told me they were afraid, I might be judgmental, I might be a hard- (well, you know), I might blame them, or attack them for poor performance or laxity in pursuing compliance excellence. Ethically our company wanted to be compliant and made that clear through training over and over again. I might ruin their career. They could lose their job if they got a bad score.

There were issues, at times big issues. My response was the same, “Yes, this is not good, but we can fix this and I am here to help you do that.” My goal as an internal compliance auditor was always to leave the engagement with the individuals I had to work with loving me, loving that I came, grateful for the experience. No, it didn’t work out that way all the time, of course. But the vast majority of engagements resulted in lasting relationships of trust where individuals were much more likely to call me for advice on compliance problems they thought might be an issue than to say, “For God’s sake, do anything but call compliance!” The extra effort to be kind reaped rewards that short-circuited potential problems time and time again, not to mention the savings accrued from catching an issue early. These individuals trusted that I would be kind, that I would help, that I would respect them and work with them to solve the problem and that what we did would be ethical and compliant.

It was a winning operational plan that saw compliance audit scores climb steadily year after year.
Third-party training at Kilkanian

BY BRETT INGERMAN AND ELLEN GINSBERG SIMON

This is the fifth in a series of articles that confront real-life compliance and ethics problems and offer practical solutions.

Cecile Eleanor Oster, Kilkanian Electronics’ new Chief Executive Officer, sat at the head of the conference room table studying her laptop over the rim of her bifocals. The Kilkanian Governance, Regulatory, and Compliance Committee still was not used to meeting regularly with the CEO, and General Counsel Gordon Corman’s forehead seemed perpetually beaded with sweat since her arrival. The GRCC had gathered today to address the topic of third-party training, and everyone in the room knew Ms. Oster was not going to like the answer to her inevitable question.

Cecile smiled at the assembled group. “Okay, team. Dazzle me! What do we have in place in terms of third-party training?”

Gordon glanced at Vice President of Human Resources Harriet Rogers who cleared her throat and turned to Chief of Internal Audit Ivan Ackerman who carefully studied something invisible on his loafers while Chief Risk Officer Riley Orbach seemed riveted by a bird on a tree branch outside the conference room window.

Chief Compliance Officer Claire C. Owens rolled her eyes and began. “I’m afraid you’re not going to like the answer, but we
are not as on top of this as we should be. As amazing as this may sound, we don’t have any uniform training program in place for our vendors, suppliers, distributors, and other contractors.”

Cecile rested her glasses on the table and smiled again at the group. “Look, guys, I wasn’t expecting us to be 100% on top of this. Everyone knows this is a common problem that all companies are facing these days. Let me start the conversation. At my last company, we weren’t on top of this at all. When the DOJ came knocking with allegations of bribes being paid to government officials in China, the company paid a heavy price. In fact, Kilkanian is already light years ahead of where we were because you’ve already cleaned up your third-party due diligence process, conducted thorough risk assessments, and have a complete inventory of all entities we’re dealing with. I’m not here to judge. I’m here because I don’t want to repeat the same mistakes I’ve seen in my past and I want to set the right tone from the outset of my tenure here.”

There was an audible sigh of relief in the room as the other members of the GRCC engaged in the conversation.

“While our training programs for employees are not perfect, they are fairly robust and well documented,” Harriet chimed in, “when it comes to third parties, we’re all over the map. There’s no system in place to ensure consistent education on our Code of Conduct, anti-corruption, and other workplace policies.”

“This poses a significant legal risk,” added Gordon. “Kilkanian can be held liable for the conduct of third-party entities with which we do business under both the Foreign Corrupt Practices Act and the UK Bribery Act. We are not immune from their bad behavior. We put this company’s reputation and bottom line at risk every time they act, and we need to do more to protect ourselves by imposing expectations and obligations.”
“And what better way to do it than through improved third-party training programs,” added Harriett. “But they will require some work. We need to tailor our preexisting trainings to make them appropriate for the third parties depending on their roles, locations, even the languages they speak.”

“ Heck, Kilkanian can avoid liability altogether under the UK Bribery Act if we can at least demonstrate that we have adequate procedures in place to prevent bribery,” Gordon commented. “And the UK has indicated that training is an important part of such adequate procedures, particularly for high-risk parties.”

“We may even be able to make use of our new third-party management system to electronically roll out and track completion of training,” suggested Head of IT Ichabod Traynor. “We can roll out specialized curricula depending on the party’s risk assessment level, the type of business they conduct, and their geographical location pretty easily using the data management system because we already have information and contacts for each contracted third party in there.”

“Ultimately this just makes good business sense,” Claire chimed in. “Our business partners will better understand our standards, expectations, corporate culture, and laws and be better able to comply with them. It will be a win-win for everyone.”

**A Win-Win for Everyone**

Kilkanian’s new CEO had one thing dead right—companies are woefully behind when it comes to implementing training programs for third-party vendors. There are many reasons for this common shortcoming in compliance programs, not the least of which are money and resources. The process involves identifying, risk assessing and ranking, and training or certifying third parties before contracting with them. Many companies argue that they need the third party’s help yesterday and don’t have the time to engage in this laborious process.
It is no wonder that a recent survey conducted by The FCPA Blog indicated that nearly 82 percent of companies only sometimes or never train their third parties. The 2015 Compliance Week/Deloitte & Touche survey indicated that only 32 percent of companies always require training or certification by third parties despite the fact that the surveyed CCOs also identified third parties as their greatest source of concern. A 2015 NAVEX Global survey indicated that more than 57 percent of companies participating provided no training to third parties. Just a casual review of these recent survey results begins to paint a picture of a gaping hole in the majority of compliance programs.

These figures remain surprising given the sheer number of enforcement actions involving corruption or other bad acts engaged in by third parties, many time overseas and without the direct knowledge of the company that ultimately pays the price. In 2009, 10 out of 11 FCPA investigations of corporations involved improper payments by third parties. In 2012, Ernst & Young’s 12th Global Fraud Survey indicated that more than 90 percent of reported FCPA cases continued to involve third parties. Again, all but one of the FCPA resolutions in 2014 involved allegations related to third-party activities. Third parties continue to remain prominent in enforcement actions; one need only look at last year’s epic fine of $772 million against Alstom S.A. to settle allegations regarding bribes to officials in Indonesia, Saudi Arabia, Egypt, the Bahamas, and Taiwan as well as falsifying records to conceal the alleged bribes. This fine constituted the largest criminal penalty and second highest total FCPA settlement in history. The DOJ’s focus on third parties remains laser sharp. Given the high degree of attention to third parties, they are commonly viewed as the highest risk in a compliance program, and companies need to invest the needed resources to tackle this potentially costly problem.

Why Training Matters
Companies may ask why expending time and resources specifically on training third parties will make any difference given the limited degree of daily control they can exert over
a third party on the other side of the world. The answer is it can make a great deal of difference according to the government’s own FCPA guidance.

As noted above, the FCPA and the UK Bribery Act have long reaches. The FCPA applies to all U.S.-based companies and overseas companies doing business in the U.S. Companies can be held liable for the bribes made by their third parties to public officials under the FCPA. That means that a U.S. company like Kilkanian doing business overseas with a Chinese distributor or an Indonesian supplier or a Kenyan contractor is on the line for the third party’s illicit bribes. Similarly, the UK Bribery Act prohibits all bribery without exception and applies to UK-based companies, companies doing business in the UK, the subsidiaries of businesses based in or doing business in the UK, all UK citizens, and anyone living in or with a connection to the UK. Again, companies are liable for the acts of their third parties.

Training can mitigate potential damages for the acts of third parties. The U.S. Federal Sentencing Guidelines expressly list “conducting effective training programs” as a mitigating factor when evaluating a company under FCPA investigation. The Guidelines indicate that companies should train agents “as appropriate.” More notable is the fact that several enforcement actions, such as In re Westinghouse Air Brake Technologies Corporation, have directly faulted companies for failing to require third parties to complete anti-corruption training. Regulators will expect to see some evidence that you are engaged in such training.

In fact, FCPA guidance expressly addresses the significance of training your third parties. In discussing the management of third-party relationships in its section on Third-Party Due Diligence and Payments, the guidance indicates that companies need to undertake some form of ongoing monitoring of the relationships. It states that, “[w]here
appropriate, this may include updating due diligence periodically, exercising audit rights, providing periodic training, and requesting annual compliance certifications by the third party.”

The FCPA Guidance section on Training and Continuing Advice further exhorts companies to train third parties, stating that the “…DOJ and SEC will evaluate whether a company has taken steps to ensure that relevant policies and procedures have been communicated throughout the organization, including through periodic training and certification for all directors, officers, relevant employees, and, where appropriate, agents and business partners.” It is fair to say that the DOJ and SEC expect to see third-party training incorporated into compliance plans in some form or another.

The UK Bribery Act adequate procedures guidance also suggests the importance of training, stating that “[i]t may be appropriate to require associated persons [which can include agents] to undergo training. This will be particularly relevant for high risk associated persons. In any event, organisations may wish to encourage associated persons to adopt bribery prevention training.”

All of the above support the incorporation of third-party training into any best-in-class compliance plan. FCPA guidance and past enforcement practices indicate that companies may avoid fines and penalties by demonstrating that they undertook comprehensive, periodic, and high quality training that reached a wide audience. Even better, under Sections 7(1) and (2) of the UK Bribery Act, companies can entirely avoid liability if they are able to demonstrate that they employed “adequate procedures” to prevent bribery and, as noted, guidance described training as a necessary part of such adequate procedures.

It also just makes good business sense. By better informing your partners of your company’s policies, culture, ethics and compliance expectations, and legal requirements, you impart knowledge that not only protects your business from potential reputational damage and financial harm, but can improve the functionality of your business relationships with your partners. You will engender more effective working relationships when you ensure that your partners are familiar with your compliance standards, the processes by which you conduct certain business activities, and the laws to which you are held accountable. Do not assume that every third party knows this information before engaging with you or that they will educate themselves on such matters.
Without doubt, training your third parties is in your company’s best interest. Make sure you can demonstrate your efforts, however, by monitoring, tracking, and documenting them. The DOJ and SEC will be looking for evidence that your company sought and obtained assurances from third parties that demonstrate their commitment to your compliance policies, whether that be through certifications, contractual clauses, or otherwise.

How to Conduct Third-Party Training

What should your third-party training regimen look like? There is no stock answer to this question, and company size, activity, resources, and geographical spread will dictate much of the answer. There are basic, common steps to consider, however, in establishing a program.

1 Include third parties within the scope of your compliance program. Include statements in your company’s code of conduct and supporting policies that expressly outline your anti-corruption expectations for all third parties, covering distribution, supply chain, and other vital activities in which third parties engage on your behalf. It is important to clearly state your expectations in black and white, make such policy statements available to your third-party vendors in languages they can understand, and document the distribution of such information.

2 Conduct third-party risk assessments. Identify and conduct a risk assessment of all pre-existing as well as potential new third-party vendors, rank them according to risk, and inventory them, preferably in an electronic format. The second article in this series provided a detailed explanation of such a process. (See Ingerman & Simon, “Trouble Abroad For Kilkianian Electronics,” ethikos, July/August 2015, Vol. 29, No. 4.) Many companies simply cannot afford to provide training to every third party. Focusing efforts on the highest risk entities is necessary to ensure that limited resources are deployed effectively.

3 Require a robust compliance program. Require your third parties to have effective compliance programs and provide training and awareness to their employees on your organization’s anti-corruption requirements. This should be a prerequisite in negotiations with any potential agent. Such a process will ensure consistent application of the requirement to all third parties.

4 Tailor your training. To the extent possible, tailor the training courses you offer to the third party. Training is fairly useless if it’s in a language that the
third party’s employees do not understand. Consider particularized training courses for types of activities, such as distribution, supply chain, government contracting, consulting, and so on. Also take into account local laws and incorporate supplements that ensure adherence to such geographically specific requirements. Also remain cognizant of different cultural and social practices. In some countries, what is illegal in the U.S. may be accepted, common practice, and in such locales it will be especially important to hammer home the importance of not engaging in such practices on behalf of your company.

5 Track your efforts. The DOJ and SEC will not care about your efforts if you cannot provide hard evidence that you made them. Rolling out training in electronic formats, which can be accomplished through a number of compliance vendors these days, is one efficient means of tracking completion of and certification to trainings and policies. The value of your training efforts will only be as good as your record keeping practices.

Investing in this process may be costly and may not seem like a top priority, but if a crisis ever does strike your company, you will be glad you did so and it will pay dividends.

* * *

“I’m happy to report that we’ve rolled out our new training regimen for third-party vendors in all jurisdictions as of the end of last month,” Claire announced to the GRCC members convened for their monthly meeting.

“We’ll be tracking it in the third-party vendor database, and we have added clauses to all contracts requiring certification to our code’s requirements and attendant education.”

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Speaking of putting minds at rest,” Claire’s gaze shifted to Gordon, who was studying his Blackberry as usual. “There’s something I’ve been meaning to discuss with you for a while now, Gordon. That is, my own liability as a chief compliance officer. Everything I read in compliance magazines and alerts has been steadily increasing my monthly budget for antacids. Can we have a frank conversation about what I’m on the line for and how I can protect myself while I’m trying to protect the company?”

“I’ll add it to the to-do list,” Gordon grumbled, as the team disbanded.

To be continued… ■

Brett Ingerman is Chair with DLA Piper Compliance Practice, and Ellen Ginsberg Simon is an Associate with DLA Piper Compliance Practice.
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