Building Compliance & Ethics Programs

COMPLIANCE TOOLKIT

Introduction

A company's compliance and ethics program includes the policies, procedures, and systems the organization uses to obey the law and to maintain its reputation. Most companies already have some internal rules designed to deal with these issues, although they may not regard them as a formal program. But these existing standards can be the start of a more integrated plan sized to the company's needs.

A carefully developed program reduces a company's risk of regulatory actions, lawsuits, and fines. It can also improve morale, reduce employee turnover, and increase customer loyalty. Prioritizing ethics yields serious and worthwhile results.

This Toolkit will help you develop a working compliance and ethics program to improve your business.

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Compliance & Ethics Benefits

Many businesses do not have a formal compliance & ethics program. But most file taxes, follow zoning rules, and treat their customers right. If they didn't, they wouldn't be in business!

A compliance & ethics program brings together a company's existing obligations and systems to make sure they are enforced and managed legally and ethically. A good program reduces risk in three important ways:

- Oversight and management reduce the possibility of illegal activity in the organization.

- If someone at a company with a program still violates a law, just having the program can reduce consequences for the company.

- A program based on an ethical corporate culture minimizes the chance that illegal behavior will occur at all.

Your company's unique business model should drive your compliance & ethics program. Some companies find and use "sample" programs online. While samples may give you a start, these materials often miss important requirements. Your company is one of a kind, and so is its compliance profile.

A compliance & ethics program only helps your company if it works effectively. Using this Toolkit, you can establish a solid program sized to your needs that you can revise and improve as needed.

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Compliance & Ethics Program flowchart

Below are the concepts included in this Toolkit.

1. Learn about requirements for an effective compliance & ethics program.

2. Identify the laws, rules, and regulations that apply to your company.

3. Draft a process for following those laws, rules, and regulations.

4. Set the tone for the program and for your company.

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Seven Pillars Checklist

The Federal Sentencing Guidelines for Organizations help businesses build strong compliance & ethics programs. These programs include seven "pillars" built on two foundations.

The Federal Sentencing Commission developed this model to reduce illegal activity in businesses. If a company has a program that follows the guidelines, it will receive more lenient treatment in any enforcement actions.

An effective compliance & ethics program starts with two foundations:

1. Due diligence, and
2. Ethical corporate culture.

Due diligence means that the company will guard against illegal activity. By creating an ethical work culture, a company reduces the possibility of violations in the first place. A solid compliance plan centers on ethics.

From these foundations, a compliance and ethics program should have seven "pillars." Use this list to guide your program.

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Seven Pillars, continued

1.Standards & Procedures

A program must have rules and processes designed to keep the company out of trouble. Once your company has defined its risk areas, you should document ways you will work to reduce those risks.

2. High-Level Oversight

Many businesses add "compliance" to an employee's job and call it a day. But the Guidelines require high-level direction of the program. Consider involving the board or one of the top managers. If other personnel manage day-to-day issues, they should keep the responsible party informed.

3. Excluding Bad Actors

If an individual has a history of illegality that might compromise the program, a company should avoid giving that person substantial authority. It's fine to hire people with a criminal history, but be careful with their role to avoid raising a compliance issue.

4. Communication & Training

Companies should communicate their compliance & ethics program to all levels of the company. A program is no good if no one knows about it! Training should cover employees & agents as needed.

5. Monitoring & Auditing

A program is only effective if followed! A company must monitor its program for actual use. The company should also work to detect criminal conduct occurring despite the program. The Guidelines recommend an anonymous reporting system for employees who know of criminal activity.

6. Incentives & Enforcement

The Guidelines recommend a carrot-and-stick approach. Employees should receive incentives to follow the program, but failure to do so should be subject to discipline.

7. Responsive Action

If crimes occur, take action. This may include correcting any harm caused, reporting the crime, and reviewing the program to make any needed updates.

Making An LRR List

For a complete compliance & ethics program, you need to know what laws, rules, and regulations apply to your operations. Compliance pros refer to this list as an "LRR." LRR lists often contain the same basic items, but the overall profile may vary dramatically from company to company. Google is concerned about different regulations than GE, for instance, because their businesses are very different. But both companies follow the tax code and employment laws.

You probably have a good idea of the major legal issues that apply to your company, but you may want to pull in your accountant and your attorney to double-check your current status. They can also help you keep your LRR up to date.

Use the worksheet starting on the next page to start your LRR.

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LRR Worksheet

1. Basic LRRs That Apply to Most Organizations

Some LRRs are easy to find. They apply to almost all businesses, so resources are easier to find. Here are some of these fundamental LRR areas.

___ Federal, state, and local tax regulations (income, employment withholding, sales taxes, independent contractor rules)

___ Federal and state employment rules (I-9 forms, OSHA, wage & hour laws, civil rights laws, employment posters, workers' comp, military leave, Fair Labor Standards Act)

___ Organizational requirements (annual report, corporate filings, reporting rules, articles of amendment)

___ Financial practices (separate corporate bank account, record-keeping, financial reporting, insurance requirements)

Note: State laws vary widely. Some employment laws apply only if a company has over a set number of employees, but state laws might apply when federal laws do not.

2. Common LRRs That May Apply to Your Company

Some LRRs are very common, even if they don't apply to everyone. Do any of these fit?

___ Advertising and marketing regulations (print and broadcast media)

___ Intellectual property law (copyrights, trademarks, patents, and trade secrets)

___ Property rules (building codes, fire safety, emergency doors, equal access)

___ Licenses and registrations (professional and trade licenses, continuing education)

___ Government procurement (filing for and remaining qualified to bid)

3. LRRs That Apply to Specific Industries

Some LRRs only apply to certain sectors. Some are included below, but check with your advisors to make sure you capture all the requirements you need to track.

___ Manufacturing (environmental regulations, labor law, and other concerns)

___ Retail and consumer products (products liability, consumer protection, required warnings, etc.)

___ Food & alcohol service (food safety, service requirements, hygiene, security, tip accounting, allergy warnings, and more)

___ Agriculture (environmental rules, migrant labor laws, pesticide & fertilizer restrictions, land and water use requirements, etc.)

___ Energy & utility services (environmental laws, consumer service rules, infrastructure standards, and distribution, among others)

___ Financial services (federal banking and investment regulations, Dodd Frank Act, Sarbanes Oxley Act, just to start)

___ Health services (pharmaceutical & health care regulations, personal health information security, professional licensure, business form rules, and more)

___ Media and technology (federal communications regs, privacy rules, security issues, child safety, infrastructure requirements, and others)

___ Transportation (safety rules, route requirements, hazardous material handling, insurance reporting, fare limits, and more)

___ Your company's sector: _____

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Process Worksheet

Now that you have your LRR list, you can stretch your creativity by figuring out your program. Use this process worksheet for each major compliance activity.

1. What is the necessary outcome?

Is it filing an annual form? Maintaining a license? Required reporting? Record-keeping? Whatever the requirement is, identify the successful outcome.

2. What do you do now?

If you have a system for this outcome, what is it and does it work? Who's responsible? How is it documented and communicated? If you don't have a system, just note that.

3. If you have a system, could it work better?

If your system has failed or takes too many resources, how could it be better?

4. If you don't have a system, do you have another process that would work?

For instance, if the new requirement is documenting certain events, is there an existing system documenting other items, such as workers' comp injuries? Who is responsible for reporting? How does it work? Can you adjust that model?

5. Is there regulatory guidance?

What are others doing? If you search for "how to comply with [requirement]" you may find some great ideas. Consider calling the regulatory office to ask for recommendations.

6. Document your plans, double-check with your team, and distribute to staff.

Make sure that everyone knows their responsibilities and has the right resources. Can they access and follow the procedures easily?

7. Check in and stay flexible.

A program changes over time. Stay aware of changing requirements, and review your programs to see if they are working well or could work better

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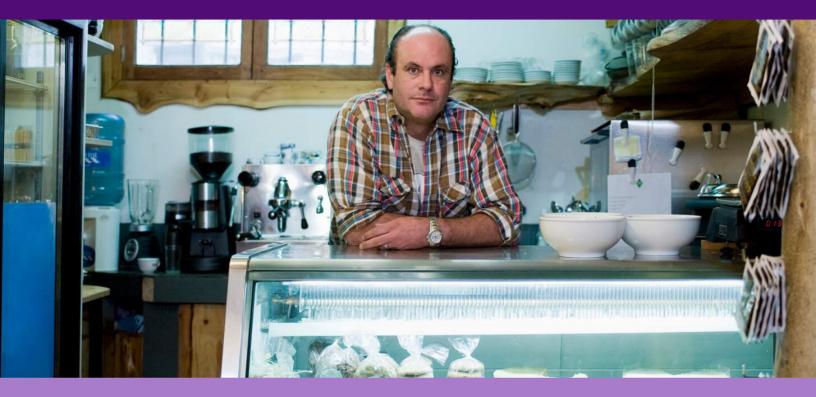BUSINESS ETHICS RESOURCE CENTER
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TONE FROM THE TOP

An ethical corporate culture is essential to an effective compliance & ethics program. Here are some ways to build and improve ethical behavior at your company.

- Lead by Example: Demonstrate ethics every day to set the tone for your company.

- Open Your Door (and Your Ears): Listen to your employees. They can raise an ethics issue before it becomes a problem. Also provide an anonymous way for them to report problems.

- Adopt a Code of Conduct: A code of conduct sets ground rules for actions taken by the company. (See more about our Code of Conduct Toolkit on the next page.)

- Reward Ethical Actions: Make it clear that the company values ethics. If an employee makes a tough ethical call, recognize them publicly.

- Hire for Ethics: Make ethics part of your hiring process. Ask potential employees about how they've lived ethics at work.

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ADDITIONAL RESOURCES

Compliance & ethics programs grow in importance every year. Here are some additional Toolkits that may help your company develop its compliance plans & ethical culture.

- **Creating a Code of Conduct**: Learn how to build an ethical workplace by creating a touchstone for behavior and decisions.

- **Communicating Your Compliance & Ethics Plan**: More guidance on how to launch and grow your program.

- **Auditing Your Compliance Program**: Help with reviewing and improving compliance & ethics processes over time

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