Creating a Code of Conduct

By Vickie L. McCormick

You are responsible for drafting your organization’s first Code of Conduct (Code) or replacing an existing Code. Where do you start?

First, determine whether the organization has a rules-based Compliance Program, a values-based Compliance Program or a rules and values-based Compliance Program. What is the difference?

Codes of Conduct Defined

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An organization’s Compliance Program type will largely determine the Code’s structure and content. Because experience indicates that rules and values-based Compliance Programs are most effective, the balance of these guidelines will assume a rules and values-based Compliance Program.[2]

**Purpose of the Code of Conduct**

Why have a Code of Conduct? A good Code of Conduct can be a powerful tool for an organization. It is a way for a company to tell employees about the company’s requirements and expectations. The Code can also be the employees’ primary resource concerning:

- Conduct that is or is not acceptable
- How to decide what to do when there is not a rule that applies
- What to do if they have a question
- Who to tell if they suspect misconduct

The Code can also encourage and empower employees. Employees may be more loyal to employers they believe are ethical. Such employees may also be less likely to engage in misconduct that can get the company into trouble or conduct that hurts the company, such as employee theft. Finally, employees who have been given guidance and tools that help them make compliant and ethical business decisions may feel more empowered to do so—and they may be more likely to do what is right.
Characteristics of Effective Codes of Conduct

An effective Code, one that is more likely to achieve the desired ends, has the following characteristics.

**Readability**

The goal should be a readability level of 8th–10th grade. Many Codes have a post graduate reading level. This can happen when Codes are written by lawyers and are very legalistic in their tone and language. Use plain, direct language and uncomplicated syntax.

**Additional Readability Tips:**

- Use an active voice rather than passive voice. Turn on the grammar check in Word to help you. (Go to File: Options: Proofing: Writing Style: Grammar & Style.)
- Avoid repeated long references. Instead of using “Directors, officers, employees and contractors” repeatedly, use “you” or “staff” or “everyone.” This will make it a more personal and friendly document and lower your readability score.
- Keep sentences to 14 words or less and paragraphs to no more than 5 lines.
- Use one- and two-syllable words.
- Use the right word rather than the long word.
- Use as few words as possible.
- Avoid assumptions—define acronyms—and avoid jargon.
- Check the “Show readability statistics” button in File: Options: Proofing so that you know how you are doing.

**Format**

Have a user friendly and attractive organization and layout, with plenty of
white space. Employees are turned off by Codes that look and read like a legal document. The Code will not have the desired impact if employees do not read it because of its format.

If you have a graphics designer to help with the format—great. If you don’t, use the word art and graphic features available in Word. Even if you only change the spacing and font type and size, it is better than a long narrative in Times Roman. Just make it interesting to look at.

**Additional Format Tips:**

- Use the talent you have in the organization. Your marketing and communications departments are experts at taking complicated information and communicating it in an easy to understand and appealing manner.

- Establish a brand for the entire Compliance Program, including the Code of Conduct. The brand can help “sell” the Code to your employees.

- Try different formats within the document to move the reader’s eye.

- Have plenty of “white space,” even if it will add a couple of pages to the length.

- Use headers and titles for new topics.

- Change font size, colors, formatting.

- Do not use the usual business document font.

- Use bulleted and numbered lists.

- Periodically change the format, so that you have some information in full-width narrative and some in columns or tables.

- Call out important information in some fashion so that the reader’s eyes go to it. For example, use sidebars to provide illustrations or other information.

- Incorporate graphics—even if it is just the Microsoft clipart.
Tone

Use a consultative and helpful tone—not a series of threatening phrases, such as “thou shalt” and “thou shalt not.” Convey that the company wants to be successful, while also being compliant and ethical. Make the employee feel guided, not threatened.

Additional Tone Tips:

- Use pronouns and other “friendlier” terms when referring to employees.
- Use “us,” “we,” “our,” instead of “the company”—this promotes a sense of being in it together, rather than an “us vs. them” mentality.
- Talk about how everyone can be successful and feel good about working for the company, not just how to avoid problems and legal violations.

Statement of Values

In a rules and values-based Compliance Program, the Code should contain a statement of the values employees can use to interpret how the rules should apply and what to do in the absence of a rule. Explicitly address management’s position that, although it is important for the company to be vigorously competitive and successful, it must do so using compliant and ethical business practices. Consequently, the “sale at any cost” approach is not acceptable. This can be a difficult message for employees to believe, so they need to see it backed up by management’s conduct.

Additional Statement of Values Tips:

- Do not include it if it is not an honest reflection of the company’s culture and management. A statement of values that is broadly perceived as untruthful may be worse than no statement at all.
- Align the statement of values with any other values and mission statements the organization has adopted.
- Explain how to handle situations that are not addressed by a rule.
- Identify ways that employees can figure out the right thing to do, e.g., the
newspaper test—would the employee want to read about their conduct in the newspaper?

**Directions for Asking Questions and Reporting Concerns**

Employees need to know that they are expected to notify the company if they think there is misconduct. They also need to know how to ask questions and report any concerns they have.

- Whom do they contact?
- Can they go to someone other than their boss?
- Can they report a concern anonymously?
- What will happen when they report a concern – what is the process?
- Will anyone else know they reported a concern?
- What if it is an employment issue?
- You need to answer all of these questions so employees know what to expect.

You also want employees to believe the company takes their reports of possible misconduct seriously and that it will stop any misconduct. Placing this information after the Statement of Values and before the description of Policies tells employees that the company wants to know about problems and fix them.

**Additional Reporting Process Tips:**

- Employees are nervous about reporting problems—make them feel comfortable and secure in doing so.
- Explain what an employee can expect when he or she reports a concern. Answer all of the questions listed above, as well as any others your employees may have.
- Tell employees what they can expect to be told or not be told about investigation results. For example, tell them they will not be told about employment action that resulted from a report because of the other
employee’s right of confidentiality.

- Tell employees that there can be instances in which there is additional information they are not aware of that can result in a decision that something is not misconduct—and that you may not be able to share that other information with them.

- Provide multiple alternatives for reporting a concern so that if they are uncomfortable with one option, they have others.

- Explain how they can anonymously report concerns.

- Let employees know that there are times when an anonymous caller’s identity may be known. For example, if an employee who has been working with Human Resources also makes an anonymous call to the hotline, the company may be able to identify the anonymous caller. Explain how the company will deal with that type of situation.

- Tell employees that if they report something anonymously, additional information is sometimes required to complete an investigation and if the anonymous reporter does not provide the requested information, the case may have to be closed.

- Let them know that there are some types of issues, such as many employee relations issues, that cannot be handled anonymously.

**Non-Retaliation Promise**

Because employees are afraid of retaliation if they report a problem, the Code must assure them that the company has, and strictly enforces, a non-retaliation policy. Employees are very concerned and sensitive about what can happen to them if they report a problem—especially about something management is doing. They are even more concerned if their boss is involved. The promise should include a commitment to discipline anyone who retaliates against another employee. The non-retaliation promise is not very meaningful if there are no real consequences to the retaliator. (See Appendix 2-B in Chapter 2 for a Sample Non-Retaliation Policy.)

The Code should also instruct employees what to do if they think they are a retaliation victim. Tell employees to immediately contact Human Resources
and/or call the hotline. Remind them that this type of issue cannot be addressed on an anonymous basis.

**Additional Non-Retaliation Tips:**

- Have a stand-alone non-retaliation policy that is separate from non-retaliation in a sexual harassment and discrimination policy.

- Include in the policy a provision for disciplinary action for anyone who retaliates against another employee.

- This is one of the few cases in which clearly stated and definitive “thou shalt” and “thou shalt not” is appropriate.

**Easy to Read and Understand Description of the Important Policies**

Do not make the Code the sole source of information about the company’s policies. A Code that is the sole source of the company’s policies will result in an ineffective Code. Complete policies should be available elsewhere—typically a company intranet site.

Include summaries of the most important policies in the Code. Organize and write the policy summaries so they are intuitive and easy for the reader to follow and understand. Instead of saying, “Do not violate insider trading laws,” explain what insider trading is and provide examples of how it can occur. The average employee may not know how insider trading can occur. They may not know that providing tips to someone else who buys or sells the stock is an insider trading violation, or, that the law applies to information they have about another company.

Instead of saying “It is against company policy for family members to report to each other,” state “In order to avoid the bad feelings and other problems that can occur when family members report to each other, we do not allow one family member to have a reporting relationship to another family member.”

This approach may result in a slightly longer Code, but if you provide explanation and examples, employees are more likely to read, use, and understand it.
Do not summarize all of the company's policies—only those that are highest-risk issues or applicable to most employees. Either omit or include only very brief discussion about any policies that are low risk or applicable to only a limited number of employees.

Which policies do you include? Below is a list of policies an organization may have. To decide which ones to include in the Code: (1) List your policies; and (2) Decide which policies are either (a) most important to your organization’s compliant and ethical business practices; or (b) apply to most employees. Remind employees in the Code about the other policies they are required to comply with and where they can find them.

**Business Practices**

- Accurate Billing Practices
- Business Courtesies (Receiving and Giving Gifts, Gratuities and Entertainment)
- Charitable Contributions
- Environmental Protection
- Fraud, Abuse and Theft
- Government Contracting
- Government Interviews of Company Employees
- Information Practices, Including Health Information Privacy (Confidentiality)
- Product Quality and Safety
- Protecting Shareholder Rights
- Regulatory Compliance
- Sales Agents, Consultants, or Other Professional Services
- Truth in Advertising, Marketing and Sales
• Using Agents, Representatives, Contractors and Consultants

Company Property, Records and Procurement

• Accurate Books and Records
• Procurement Practices
• Protecting Company Information, Ideas and Intellectual Property
• Records Retention
• Software Protection, Acquisition and Distribution
• Trademarks, Service Marks, Use of Company Names and Endorsements

Competition

• Antitrust
• Competitor Relations and Disparagement

Compliance Program

• Compliance Hotline
• Reporting Possible Misconduct
• Investigations and Corrective Actions

Conflicts of Interest

• Avoiding Conflicts of Interest
• Honoraria
• Insider Trading
• Outside Directorships

Employment Practices and Employee Conduct (Focused only on compliance-related issues)
- Child Labor
- Community Activity
- Discrimination and Harassment
- Drug-Free Workplace
- Employee Privacy
- Labor Relations
- Non-retaliation

Global Business

- Accounting
- Anti-Boycott
- Export/Import Control
- Foreign Corrupt Practices Act
- International Boycotts

Health, Safety and Security

- Contagious Disease, Including Bloodborne Pathogens
- Emergency Action
- Fire Safety
- First Aid
- Hazard Communication Program
- Injury Records
- Safety Committee
- Severe Weather Information Services and Systems
• Computer Information Security
• Computer Equipment and Resource Use
• Electronic Mail Security
• Employee Termination
• Encryption
• Equipment Change Control
• Firewall Management
• Individual Accountability
• Information Security Awareness
• New Employee Security Awareness
• Password Control
• Portable Computer Security
• Remote Access
• Unauthorized Software
• Virus Detection
• Wireless Technology

Political and Community Activities

• Community Support
• Lobbying
• Personal Community Activities
• Political Activities

Property Rights of Others
Competitive Information

Customer Privacy

Public Communications and Relations

- Crisis Communications
- Disclosure of Information to the Public, the Media and Analysts.

Sales and Marketing

Instead of addressing employment and employee relations policies in the Code, you may decide to refer readers to your employee relations intranet site or policies. Or, you may decide to include some of the higher-risk employment issues in the Code. For example, the Code may include information about sexual harassment and discrimination, drug-free workplace, non-retaliation and anything else that is particularly important to the company. In that case, also refer employees to your employee relations policies.

Additional Policy Content Tips:

- If length is an issue, refer to the location of the other policies and focus attention on the highest risk issues for your business.
- Organize the policies so that the flow is logical and intuitive to the reader.
- Provide examples of appropriate and inappropriate conduct that the employees can recognize.
- If possible, explain why the policy is good for them.

Other Recommendations

Versioning and Archiving

Know what version of the Code was in effect when. This information may be important if your organization is investigated or subject to any enforcement action. Fines and penalties can be reduced under the organizational sentencing guidelines if an effective compliance program was in place at the time of the
misconduct. To prove an effective compliance program, you need to know what was in effect when the misconduct happened. Clearly identify the version of the Code (as well as all policies and other elements of the Compliance Program) on the document itself.

You will also need to be able to produce the Code, so archive all versions of the Code for easy retrieval at a later date. Although there should be some type of reference within the Code (and other compliance documents) that identifies the version, you can track more detailed information, such as when it became effective, in a separate log. If you are not maintaining a separate log, then include the effective date in the document.

References to Other Policies

The Code may be the only statement of a policy or it may be summarizing a policy that exists independent of the Code. If the Code summarizes another policy, reference the full policy and where it can be located.

Distributing and Webizing

You need to make sure that employees actually have access to the Code—either through distribution of a paper copy and/or posting it on the company intranet. If an organization has an intranet, consider “webizing” the Code and posting it on the intranet, including links to other related documents that are available on the intranet, e.g., the employee manual. This improves the accessibility of the Code. If most employees have access to the intranet and the Code is available on the intranet, you can enhance its profile and availability.

Employee Awareness

Regularly and repeatedly remind employees about the Code. Do not remind employees about the Code just once a year during annual training. In newsletters, meetings or emails and any other employee communication avenues you have, remind employees that there is a Code and about certain issues addressed in it. Employees receive so much information that reminders about the Code are necessary long after you are tired of sending them out. Plus, you need to catch the new employees who did not receive all of the previous messages.
Acknowledgments or Certifications

Decide whether to require employees to acknowledge or certify that they received, read and understood the Code. If you are going to require acknowledgements or certifications, consider alternatives to the typical paper chase. For example, consider a web-based acknowledgement, making certification part of the annual review processes, etc. Whatever methodology you adopt, make sure you can manage it.

Posting the Code on the Internet

Decide whether to post the Code on the company’s public internet site. An increasing number of companies are doing so, probably because they believe it reflects a significant commitment by the organization. Before posting the Code, have a Code that is ready to be scrutinized (and criticized) by others.

Alternatively, some companies just have a discussion on their website about their commitment to compliance and ethics.

Sample Codes of Conduct

If a company posts its Code on its website, it is often, but not always, available on the “Corporate Governance” page. Codes of Conducts from other organizations, even if they are from different industries, can be helpful to decide on the type of Code your organization wants to develop. The following companies’ Codes of Conduct are available on the internet. They may or may not follow the characteristics listed above. They tend to be for larger companies. Even if you are a small organization, these Codes can still provide ideas about what may or may not work for your organization.

Aetna:

AT&T:

Baxter Pharmaceutical:

DuPont:

Jet Propulsion Labs:

Lockheed Martin: