

CEP Magazine – April 2019 Compliance Incentives

By Jeffrey Kaplan

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The Sentencing Guidelines provide, in relevant part: “The organization’s compliance and ethics program shall be promoted and enforced consistently throughout the organization through...appropriate incentives to perform in accordance with the compliance and ethics program...”^[1] Providing discipline for violations is, of course, a form of incentive, but what is contemplated by the above-cited provision is something different—a *positive* incentive.

Many organizations have struggled with this expectation over the years. Here are some quick thoughts on this always challenging topic.

First, offering large bonuses for ethical behavior is pretty rare. (I know of one company that gave out several \$10,000 awards of this sort.) One often hears that such an approach “wouldn’t work with our culture.” Still, one can envision a money-centric culture—such as in the financial services field—where ethics bonuses would be not only appropriate but also effective.

Second, in many businesses, inclusion of compliance-related factors in performance evaluations operates as a form of incentive. The efficacy of such practices varies considerably, but as a general matter, the more relevant detail that is provided to those conducting the evaluations, the better. This is particularly so with respect to behavioral expectations of leaders and other managers.

Third, and related to the performance evaluation area, one can provide a targeted approach to incentives through job descriptions. For instance, in a business unit that has struggled to complete due diligence of third-party providers, achieving such completion can be made part of the business unit leader’s annual plan. The same might be done with training completions.

Fourth, if done right, recognition of exemplary ethical conduct can be a powerful incentive—even if there is no tangible benefit attached. Indeed, praise from leaders can be seen as more valuable than a traditional monetary award, in part because of the prospect that such recognition will benefit an employee’s career.

But to make sure that a company makes the most of this approach, managers should be trained on how to identify and respond to exemplary ethical conduct. And compliance audits should make sure that recognition is given where warranted.

Finally, in determining the appropriate approach to compliance incentives, one should take into account an organization’s incentives for noncompliance. Like virtually all parts of a compliance program, this one should be informed by a risk assessment.

¹ United States Sentencing Guidelines, §8B2.1(b)(6).

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