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Conflict of interest: Corporate responsibility and individual liability

by Ibrahim Yeku, LLB, BL, CCEP-I, CAMS, DDC

Ibrahim Yeku (yekuduke@yahoo.com) is a Barrister and Solicitor at the law firm of Solola & Akpana in Old GRA, Port Harcourt, Nigeria.

Justifying wrong actions may seem awkward, but it seems more awkward to punish someone for a wrong induced by the quest for survival. The concept of conflict of interest in the compliance landscape is notorious because it poses a threat to organizations as a going concern. The question is, what do organizations mean by conflict of interest? Is there any generally accepted definition of conflict of interest? Is conflict of interest subjective, objective, or contextual? At what point is it right to conclude that a conflict of interest exists? Are there instances where it appears that a conflict of interest exists, but the individual's decision is not impaired by the conflict? What is the relevance of disclosure to conflict of interest?

The concept of conflict of interest

Generally, conflict of interest is viewed as an incompatible or competing interest between an employee and employer, between two or more organizations, or between an individual and an organization. Whenever interest is at variance, a conflict situation can be said to have arisen. However, an organization has the right to define what constitutes a conflict of interest within the context of its compliance policy. What is regarded as a conflict of interest in an organization may not be viewed as conflict of interest in other organizations. Therefore, conflict of interest is what an organization says it is.

Factors that may give rise to conflict of interest

Different factors may give rise to conflicts of interest. Some of the causative factors can be attributed to both the organization and individual employee.

Causative factors by organizations

The failure of organizations to have a clearly defined conflict of interest policy is a major factor that brings employees into conflict with their organizations. Notwithstanding the variation in definitions of conflict of interest, organizations must ensure that they state in clear terms what constitutes a conflict of interest and circumstances that could give rise to conflict of interest situations. The language of communication must be clear, concise, and definite. There should be no room for ambiguity in the definition of conflict of interest, and the interpretation of a conflicting situation should not be left to the discretion of compliance professionals. The conflict of interest policy should speak for itself.

The problem with subjective definitions or interpretations by compliance professionals is that there is the potential to create a double standard in terms of the enforcement of the compliance policy. The accuracy of judgments cannot be guaranteed if the discretion of compliance professionals is not guided by rules and a clear policy statement.

Secondly, a policy statement on conflict of interest is not enough; organizations must create an environment that will aid compliance with the conflict of interest policy. Organizations must look into their welfare programs and ensure that the interest of employees with regard to rewards and incentives are reasonably covered. The interest of employees and that of organizations are often at crossroads when organizations pay lip service to the welfare of their employees. The motivation to undermine an organization is likely to be low if the organization pays sufficient attention to the welfare of its employees. This is not to say that a good welfare system within an organization is the perfect cure for human greed or the insatiability of human desires.

Having a good welfare program is a driving force for the enforcement of compliance policy and justifies any punishment imposed on offending employees. This is so because organizations expect maximum loyalty and commitment from employees to the goals and business interest of the organization without any iota of self-serving interest that may jeopardize the fortune of the organization. Similarly, employees expect organizations to act in their best interest. When career and welfare expectations of employees are not met, the chances of a conflict of interest arising become very high. The likelihood of an underpaid employee cheating his organization is higher than when the employee is well paid. Similarly, an employee who has no career path within an organization may not be acting in the overall interest of the organization.

Thirdly, lack of job security within an organization will often give birth to conflict of interest. When employees are not confident of job security, they are compelled to look for other alternative means of securing their future. This is often called the backup or contingency plan. This may include taking advantage of weaknesses within the organization to cheat or engage in corrupt acts that may cost the organization more than it could ever imagine. Asking for loyalty when there is no job security is asking for too much. Organizations must ensure that this impression is not created in the minds of employees and that atmospheres that promote lack of job security are not created. Failure to take care of this issue creates a corporation within a corporation and multiple employments. An employee is self-employed and yet working in an organization. When employees who devoted their whole life to the service of an organization are laid off without any humane consideration, but for the sole purpose of profit maximization by the organization, a wrong signal is sent to other employees not to put their trust in the organization.

Causative factors by employees

Oftentimes, employees find themselves in compromising situations of conflict when they allow their insatiable desire for social status, class, income, and power to consume their sense of obligation to the organization. The issue with this set of employees is not that their income is not enough, or that the conflict of interest policy is not clear. Rather, it's because they view their employment as a means of self-actualization with little or no regard for corporate rules and policies. These employees prefer to be blind to conflict of interest obligations owed to their employers. This is willful blindness to anything that may limit the possibilities of self-actualization. This is very common when you have an employee engaging in businesses that compete with the employer. The employee is a competitor to his employer. Employees in this category require value reorientation, which can be attained through employment training on ethics and proper conduct. Training helps employees develop ethical standards that are compatible with that of the organization.

Secondly, employees' failure to ask the right questions to the compliance officer or seek clarification to understand the expectation of the company with regard to compliance with the conflict of interest policy is another major cause of conflict of interest. Before signing conflict of interest forms, employees should evaluate their roles, job functions, relationships, and other personal and official information in relation to the conflict of interest policy of the organization. Keeping quiet is a recipe for disaster. Asking the right questions late will not be a defense in the event of a violation. The plea of ignorance when there was an opportunity to know will be of no avail to an employee. Employees must seek clarification before it is too late.

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