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To err is human: How compliance programs affect your employees

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Think about the last time that someone in your organization committed a compliance violation. Did you wonder why they would do such a thing? Would you and other members of your compliance team hypothesize and come up with reasons the violation was committed? In all of your theorizing, did you ever consider it possible that your compliance program and the measures you use to implement it could have played a role in causing the violation?

Carrot and stick

In February 2017, the United States Department of Justice (DOJ) issued the Evaluation of Corporate Guidelines, a document designed to educate corporations on the factors that DOJ considers to be the basis for an effective compliance program.^[1] By issuing this document, DOJ attorneys placed responsibility for an effective compliance program onto the various corporate executives in the hopes that this would outline the steps needed to ensure that a culture of compliance was instituted throughout the corporation.

DOJ’s action was not without benefits to corporations that chose to follow the issued guidelines. Sometimes called “duty-based” sentencing, the organizational guidelines incentivize companies to police the criminal conduct of their employees by reducing corporate fines if firms have an effective program to prevent violations of law, promptly report wrongdoing, fully cooperate with the government, and accept responsibility. This “carrot and stick approach” was intended to use criminal sentencing to convert companies from “passive bystanders who hoped their employees would behave well to active advocates for ethical conduct on the job.”^[2]

Given DOJ’s direction, organizations hired those who were most familiar with the new guidelines. “Top compliance officers at major corporations are often not just attorneys, but many are former prosecutors and regulatory agents.”^[3] Although these new compliance officers, as well as the corporate boards and executives who hired them, have good intentions, you often build the very thing with which you are most familiar. The programs these officials subsequently built are referred to as command-and-control programs. “These programs, and their associated communications, aim to govern employee behavior largely through concrete incentives, principally deterring misconduct via monitoring and detection mechanisms and the threat of punishment. The explicit message is the same as the message from law enforcement: follow the rules or pay the penalty.”^[4]

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