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Considerations when creating or updating a conflicts of interest policy

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Conflicts of interest—these tricky shape shifters of the compliance world are never far from the headlines. Springing up in a multitude of contexts, they corrode ethical cultures, ruin reputations, and destroy trust.

But even with the amount of damage they can inflict, they can be difficult to anticipate and identify. Not surprisingly, the best defense includes a strong compliance program centered on a well-thought-out conflicts of interest (COI) policy. This article will explore how to either create your first stand-alone policy and disclosure process or how to update your current one, no matter your budget.

A conflict of interest arises when an employee's personal interests conflict, or *appear* to conflict, with the company's best interests. In other words, someone is, or is *perceived* to be, acting in way that benefits themself, or someone close to them, at the expense of the company.

Employees up and down the ladder can face conflicts of interests in a wide range of business settings. From accepting a bribe to ordering pizzas from your brother's company, from improper use of insider information to personal use of office supplies, conflicts of interest wear many masks. Often, conflicts are personal in nature, which can make it difficult for employees to recognize them and for companies to address them.[1] And, while a conflict of interest increases the risk of poor judgment, the existence of a conflict doesn't necessarily mean that anyone did anything wrong.

Personal interest bias

Adding to this complexity, most people believe that if faced with a conflict, they could be fair and objective. Research, however, suggests otherwise. The brain's wiring does not allow people to easily separate personal interests from professional duties.[2] All people are subject to a bias (often unconscious) to act in a way that serves their personal goals.[3] Therefore, even if an employee honestly believes they have acted objectively, it is likely their judgment was influenced by a personal interest.

But, even if an employee could act fairly when faced with a conflict of interest, an *apparent* conflict—the *appearance* that they are acting in their own best interest—is just as destructive. A company or its employees have an apparent conflict of interest if a reasonable person would believe that, given the circumstances, the person's business judgment would likely be compromised.[4]

For example, an employee, who accepts lavish entertainment from a vendor and then later chooses that same vendor for a lucrative contract, will inevitably have their motivations questioned—even if the vendor was the best choice. Externally, the company's reputation likely will be tarnished, because others will perceive that business was not conducted on the basis of merit. Internally, other employees likely will take notice, resulting in the erosion of the company's ethical culture, which in turn will lead to loss of morale. Even if the vendor was the best choice, tremendous damage can be done.

Policy development

Without question, conflicts of interest pose a tricky compliance landscape. However, a thoughtful and comprehensive COI policy can guard against many of these pitfalls.

Whether you are looking to create a stand-alone policy, or update your current one, first consider the purpose of the policy. Your policy's purpose is your "why?" Why do you have a COI policy? What is your intention? What are you trying to achieve? A simple, but meaningful, purpose could be to protect and further the company's ethical reputation by helping employees avoid situations where their conduct or motivations could be questioned due to real or apparent conflicts of interest. This type of purpose statement sets an important tone. It reinforces and reiterates that the company is known for ethical behavior and informs the employees that the COI policy is there to help them steer clear of trouble.

Next, consider the scope of the policy. The "scope" refers to whom the policy will apply. Will it apply to all of your employees? Will it apply to employees of subsidiaries or employees outside of the United States? Because these different groups could face different pressures and different conflicts, it is important to decide exactly to whom this policy will apply.