

CEP Magazine – April 2021 In praise of 'Goldilocks compliance'

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With the election of Joe Biden as America's new president, we may have entered an age of political moderation. Could this also be a time for compliance moderates? Consider the following true story.

A company decides to implement what is in effect a zero-tolerance policy for violations of its code of conduct. Unexpectedly, this seems to trigger a drop in the number of reports of violations being submitted. Why? Evidently employees felt the new discipline policy was too harsh, and they did not want to subject their colleagues to it.

It seems that one can go too far with not only discipline, but with other compliance and ethics areas.

In training, companies sometimes do too much. Not every employee of every company needs a full hour of antitrust or anti-bribery training each year. I should emphasize that there are more—indeed, many more—companies that do too little rather than too much, but the latter types are not rare.

For some, the “too much” issue is also raised in connection with creating chief ethics and compliance officer (CECO) reporting relationships. By this, I do not mean informational relationships; it is pretty well-established, at least in the compliance and ethics community, that the CECO should report informationally to the board of directors (or a committee thereof). But the issue is trickier when it comes to administrative reporting, with some practitioners taking the position that the general counsel should never be part of such reporting and others saying that it should be dealt with on a case-by-case basis. (I am in the latter camp.)

In these and other compliance and ethics areas, there may be advantages to adopting the more moderate position. Principally, doing so may make the program more effective than it would otherwise be. Also, adopting a “Goldilocks” approach may help a CECO earn trust among other key players at the company, which can be invaluable in various settings.

But moderate practitioners must be careful too. Above all, they must make it clear to all concerned that the company's devotion to effective compliance and ethics is rock solid. The company must not compromise on issues of right and wrong, or give the appearance of being willing to do so. Above all, Goldilocks compliance must benefit the company and not executives or others personally.

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