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Ethics and compliance for humans: From “shoulds” to things we can do

by Adam Balfour

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Whenever I attend a conference (for example, the wonderful annual Compliance & Ethics Institute (CEI) that was held in Chicago in early October 2023), I tell myself that I should not eat the cookies and desserts made available each day at lunch and then later in the day at snack time (and inevitably again at any evening events or dinners). I told myself on the Tuesday of CEI that I should avoid the chocolate brownies available after lunch, and I knew it as I served myself a piece. Even after I dropped it on the floor (the five-second rule does not apply to food dropped on hotel floors), I still went back to get another piece even as I mentally told myself I should not do so as I did not need more brownies or dessert. What we know or expect we should do is often not what we actually do in practice (but on the positive side, the brownies were delicious, so no regrets there).

There are many things in life that people “should” do but do not—and that certainly applies to the world of ethics and compliance. What are some of the compliance-related shoulds we often encounter? Here are a few:

- People *should* read ethics and compliance policies in their entirety (but many will not even if they are made to certify that they have read and understood a policy).
- People *should* learn from compliance training (but not all training results in learning).
- People *should* speak up without fear (but we know that retaliation, poor treatment of people who have spoken up, and a lack of action are real and drive much of that fear).
- People *should* be influenced by headlines of prison sentences and fines for C-suite employees (although C-suite stories and individual fines worth millions of dollars are unlikely to resonate with most employees who will never find themselves in those roles or with the net worth to pay such fines).
- People *should* do the right thing even if everyone around them is not (remember, the Wells Fargo \$3 billion fine for opening “millions of accounts” involved, as described in the U.S. Department of Justice’s news release, “thousands of employees”).
- Leaders, managers, and supervisors *should* have an “increased” and “special responsibility” and “be able to help answer ethical questions and provide guidance on compliance matters that arise for employees because that is often what codes of conduct say (but, too often, codes create expectations without guidance for how to make it a reality).

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