COSMOS
Navigate the Compliance Universe

The Complete Compliance and Ethics Manual 2024
Initial Steps for Building a Compliance and Ethics Program

By Debbie Troklus, CHC-F, CHRC, CCEP-F, CHPC, CCEP-I, and Sarah Couture, RN, CHC, CHRC[1]

1. Gain Support and Commitment

Support, buy-in, and commitment are critical to having an effective compliance program. It takes a village to make it work. Commitment and the right culture breed effectiveness. We will discuss several vital groups that should be included in the "village."

Board Support

Compliance and ethics begins with the governing authority.[2] Support from the top is critical. The Department of Justice states that, "The Company's top leaders – the board of directors and executives – set the tone for the rest of the company."[3] There can be no program at all, much less an effective one, without the vision, support, and guidance of the board. It is the board that officially recognizes the need for a compliance and ethics program and authorizes its launch and implementation, including the hiring of a compliance officer. The first step toward implementation of a compliance and ethics program is management's communication of its commitment. A resolution or memo from the board stating its unequivocal support for the program establishes a strong foundation. The source of such a statement may be different depending on the organization. In some organizations, it might come from the chairperson of the board, while in others it may come from the CEO. A university or college may want the statement to come from the dean or university president. Whatever the source, board/high-level endorsement should be in a written format, it must communicate support for and commitment to the compliance process and ethical business behavior, and it must be effectively communicated to everyone.

One option is for the chairperson of the board, CEO, dean, or other top-level executive to distribute the memo or resolution to all division heads. The division heads then distribute the document to their managers so that the word trickles down and the message is reinforced that *all* managers must endorse the compliance and ethics program. This approach also makes the compliance and ethics program directly accessible to staff and gives staff an opportunity to discuss the document in relatively small groups. A special department or unit meeting to discuss the program and distribute the letter can lend weight to the message, or it can be an agenda item for a regularly scheduled meeting. Whatever the venue, staff should be given ample opportunity to ask questions and offer feedback.

Moreover, the board's role does not end with voting to establish a compliance and ethics program and distributing a letter of support—nor does its responsibility. Ongoing, visible support from the board of directors is crucial. Most people care about what their boss cares about. When the board takes compliance and ethics seriously, that sense of importance will trickle down. The United States Sentencing Commission *Guidelines Manual*[4] states that the company's "governing authority shall be knowledgeable about the content and operation of the compliance and ethics program and shall exercise reasonable oversight." Your board may need guidance in understanding the seriousness of compliance and ethics and their oversight responsibility. They may not immediately recognize that doing the right thing is good business and that compliance and ethics is a good

Copyright © 2024 by Society of Corporate Compliance and Ethics (SCCE) & Health Care Compliance Association (HCCA). No claim to original US Government works. All rights reserved. Usage is governed under this website's Terms of Use.

long-term investment. The board, meeting infrequently and not always aware of day-to-day operations, can be insulated from issues. In the case of compliance and ethics, however, the board must understand the implications of not taking active measures to prevent potential wrongdoing. They should be educated about the potential for liability and reminded of the *In re Caremark International Inc. Derivative Litigation*,[5] which makes the board responsible for implementation of a system to gather information on the company's efforts to prevent and detect fraud and abuse. The compliance and ethics officer should accept the responsibility in assuring that the board receives training on the compliance and ethics program and their responsibilities on an ongoing basis. It is in the best interest of the organization to have the board take an active rather than a passive role in compliance and ethics.

Support from Management

Leaders and managers play an influencing role in making compliance and ethics work with support expressed in a myriad of ways. In fact, the Department of Justice considers the commitment to compliance by senior and middle management when evaluating corporate compliance programs. It contemplates the "extent to which senior management have clearly articulated the company's ethical standards, conveyed and disseminated them in clear and unambiguous terms, and demonstrated rigorous adherence by example...[and] how middle management, in turn, have reinforced those standards and encouraged employees to abide by them."[6] Attendance at educational programs must be mandatory for everyone—managers and leaders must not be exempt from this requirement. Making time to demonstrate a personal commitment goes a long way to enhancing a systemwide commitment. After attending training sessions, managers should discuss the content with staff either at a regular department meeting or, as circumstances permit, one on one.

Supervisors or managers must lead by example, as actions speak louder than words. A manager cannot encourage employees to report questionable behavior and then treat them badly for doing so. Once a potential infraction is reported, the nonretaliation policy must be rigorously observed. It is up to management to make sure employees do not hesitate to come forward for fear of retaliation.

Staying on top of compliance issues is a manager's day-to-day obligation. Managers and supervisors must closely follow news and information from their professional organizations and pass all compliance and ethics related issues to the compliance office. The compliance officer is encouraged to be proactive and, from time to time, ask managers and supervisors what new regulations are developing in their fields.

Support from Professionals

Certain industries revolve around key professionals who hold influential positions in the organization. Examples of key professionals in select industries include physicians in health care, engineers in building, attorneys in legal, programmers in computer science, investigators in research, etc. These individuals play key leadership roles in their industries. Frequent situations will arise where one of these individuals' support can make all the difference in creating a true culture of compliance and ethics. It is thus to your advantage to find a key professional champion/ambassador—someone who understands and supports the mission of the compliance and ethics program, is well thought of in the organization, and will back you up when needed. Moreover, this professional can be a model of how employees can effectively incorporate compliance and ethics into their other job functions without distracting from the performance of their actual duties and without consuming inordinate amounts of time. This key professional can advocate compliance and ethics in several ways:

- Emphasize operational and fiscal improvements gained through compliance and ethics;
- Provide data to support compliance and ethics activities and improvements;

Copyright © 2024 by Society of Corporate Compliance and Ethics (SCCE) & Health Care Compliance Association (HCCA). No claim to original US Government works. All rights reserved. Usage is governed under this website's Terms of Use.

- Build trust through involvement;
- Be a partner—not a dictator;
- Cultivate the early adopters and enthusiasts; and
- Communicate, communicate, communicate.

The earlier you achieve professional buy-in, the better. Invite professionals to compliance and ethics committee meetings and actively seek their input. Many organizations have a strong professional presence on their compliance and ethics committees. When funding permits, sending key professionals, including board members and management, to a compliance and ethics conferences can provide valuable education—as well as increased awareness—and facilitate support. Achieving professional buy-in will be an important challenge, but it is a critical element of launching an effective compliance and ethics program.

Support from Staff

It isn't a crime to make a mistake, but it may be a crime not to do anything about the mistake once it is detected. In launching a compliance and ethics program, staff will need to be convinced that identifying problem areas is not the sole responsibility of the compliance and ethics office—it is everyone's responsibility. Education is the first step, but also look for ways to heighten awareness on a day-to-day basis. When launching a compliance and ethics program, some organizations will distribute cups or pens with a compliance and ethics slogan and the organization name or logo. Everybody loves a freebie, and if the budget permits, these items can increase awareness and foster cooperation. Consider placing the hotline number or a quote from the code of conduct on employee badges.

Staff buy-in will directly correlate with the organization's ability to foster an environment of trust. As emphasized earlier, accepting the nonretaliation policy as nothing short of gospel will be the best way to ensure active staff participation. Rewarding and thanking those who come forward to do the right thing will provide immediate positive feedback to staff and reap long-term rewards for the compliance and ethics program overall.

This document is only available to subscribers. Please log in or purchase access.

Purchase Login

Copyright © 2024 by Society of Corporate Compliance and Ethics (SCCE) & Health Care Compliance Association (HCCA). No claim to original US Government works. All rights reserved. Usage is governed under this website's Terms of Use.