Law & Compliance: State and Local Government Compliance and Ethics Programs

Society of Corporate and Ethics
7th Annual Compliance & Ethics Institute
Chicago, Illinois
Sunday, September 14, 2008
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Objectives

• Important definitions and distinctions
  – Ethics
  – Compliance

• Compliance Program Structure vs. Substance
  – Structure = 7 elements of a compliance program
  – Federal Sentencing Guidelines

• Why the Corporate Compliance Program Model is applicable to City, County & State Governments
  – Substance = laws and regulatory bodies that apply to each industry, government body, etc.

• Benefits of a Compliance Program

• Questions & Answers
What are Ethics?

- Ethics Laws
- Morality / values
Ethics Laws

• Limitations on actions of government officials
  – Conflict of interest in procurement
  – Hiring or contracting with family members
  – Acceptance of gifts

• Disclosures
  – Financial disclosures
  – Election contribution reports
Morality and Values

- Influence of societal values
  - Individual behavior
  - Relationships
  - Organizational roles
- Sense of responsibility for actions
- Common understanding of duty
  
  *Subordinating personal benefit to the good of the “whole”*
What is a Compliance Program?

• A Compliance Program is a systematic process aimed at ensuring that the organization, its employees and contractors (and to a certain extent its business partners) comply with applicable laws, regulations, and standards
  - In the context of city, county and state governments, it usually includes a comprehensive strategy to ensure transparency and compliance with laws and regulations in bidding processes, contracting, paying for services using tax dollars, etc.
  - It should also contain a strategy to ensure compliance with other regulations related to the EPA, OSHA, ADA, etc.
Compliance Programs…

• …are a vital source of **protection** for organizations against federal and law enforcement investigations and resulting public relations and civil/criminal liability

• …provide the **framework** for all personnel to clearly understand their responsibilities as employees of the organization

• …provide a means for **resolving issues** in a systematic, timely and continuous manner
Compliance Program
Structure vs. Substance

**Structure** – framework

1. Compliance Officer / Committee
2. Policies and Procedures/ Code of Conduct
3. Education and Training
4. Anonymous Reporting
5. Disciplinary Action
6. Auditing and Monitoring
7. Remediation of Problems

**Substance** - areas of concern specific to your organization

- ADA
- EPA
- HIPAA
- Theft
- Embezzlement
- Ethics
- Wire fraud
Structure: 7 Basic Elements of a Compliance Program

1. Compliance Officer / Committee
2. Policies & Procedures / Code of Conduct
3. Education & Training
4. Anonymous Reporting
5. Auditing & Monitoring
6. Investigations of Reports of Violations
7. Disciplinary Action for Illegal/Improper Activities
Federal Sentencing Guidelines

• Determine sentencing for federal crimes
  – Individuals
  – Organizations (“any person other than an individual”)

• Leniency when organizations have acted as good citizens
  – Implemented the elements of an “effective compliance and ethics program” (www.ussc.gov)
  – Prevent, detect, and correct wrongdoing
Federal Sentencing Guidelines

• FSG recommends increased penalties when:
  – High-level management was involved in the crime
  – The organization:
    • is very large (leading to greater harm to the community)
    • has a history of prior similar violations
    • attempts to prevent testimony or retaliates against whistleblowers
1: Compliance Officer

- **Purpose:** To have a leader of compliance efforts who is knowledgeable of compliance issues and who coordinates compliance activities

  **The Compliance Officer is charged with operating and monitoring the Compliance Program**
1(a): Compliance Committee

- **Purpose:** To support the compliance officer and to represent various departments and areas of expertise

  **Should include select “champions” to help gain buy-in**
2: Code of Conduct

- **Purpose:** To guide general business processes and to hold employees, elected officials, etc. responsible for abiding by a set of standards (detailed in the compliance program) and applicable laws and regulations

- **Not** intended to replace specific policies and procedures related to business operations or compliance
2: Policies & Procedures

• **Purpose:** Promote a commitment to compliance and that address specific requirements of compliance and specific areas of potential fraud
3: Education

- **Purpose:** To communicate the structure and substance of a compliance program to employees, customers and other stakeholders and to define these individuals’ responsibilities under the compliance program.
4: Anonymous Reporting

• **Purpose:** To give employees and the public a method of reporting concerns without feeling that their jobs or situation may be compromised, especially since they are expected and obligated under the compliance program to report suspicions of suspected violations.
5: Auditing and Monitoring

• **Purpose:** To proactively monitor specific processes and documents for compliance and to assist in the reduction of identified problem areas

  **Ongoing Monitoring**
  **Audit Plan & Schedule**
6: Disciplinary Action

• **Purpose:** To respond to allegations of improper/illegal activities and to enforce appropriate disciplinary action against employees who violate internal compliance policies, applicable laws, statutes, regulations or requirements of federal, state, county or local governments
7: Remediation of Problems

• **Purpose:** To investigate and remediate problems that are identified through audits, monitoring or reporting
All 7 elements of a compliance program rely on each other for effectiveness

- Systematic implementation of all 7 elements
- Enforcement of all 7 elements
Why the Corporate Compliance Model is applicable to City, County and State Governments

• **Structure = Best Practice:** A compliance program’s structure provides a proven process or “best practice” for enforcing the program’s substance

• **Substance:** The program’s substance defines the content of an organization’s compliance program

• **Relationships:** All relationships in organizations and government are defined by some type of agreement, which can hold the power to bind all individuals and entities to the program
Compliance in the Municipal Context “Chicago’s Opportunities”

- Redefine its “former image”
- Resources
  - Streamline compliance and audit activities
- Defining Roles & Responsibilities
  - Establish accountability
  - Reach agreement on priorities
- Building Stakeholder Buy-in
  - The upside of “This is how we’ve always done it”
  - The upside of compliance failures
- External Communication
  - Increased transparency, but …
Substance: Laws & Regulatory Requirements

- Environmental Protection Agency (EPA)
  - Clean Water Act
  - Clean Air Act
- Drug-Free Workplace Act of 1988
- Omnibus Transportation Employee Testing Act of 1991
- Federal Equal Employment Opportunity Laws
- Davis-Bacon and Related Acts
- States’ “Sunshine” Laws
  - Freedom of Information Acts
  - Open Meetings Acts
Compliance in Municipal Context “Chicago’s Challenges”

- Resources
  - Selling the value proposition
- Defining Roles & Responsibilities
  - Autonomous “Fiefdoms”
- Coordination between departments and units and branches
  - Getting management to own compliance
- Building Stakeholder Buy-in
  - Moving from “fighting fires” to risk-based management
- External Communication
  - What’s protected, what’s public?
Compliance in the Municipal Context “Chicago’s Challenges”

- “You can’t discipline an individual for violating a policy unless the policy is written and approved, the individual has been trained on the policy, non-compliance with the policy has been identified and documented, etc.”

- “You can’t discipline …”
  - Unions
  - Career Service protection
Compliance in the Municipal Context
“Chicago’s Challenges”

- “Document, document, document”

- “Don’t document, don’t document, don’t document”
How to Sell Elected and Appointed Officials on the Benefits Of:

• A Strong Ethical Culture
• An Effective Compliance Program
“When I feel the heat, I see the light.”

Everett Dirkson
Ways to turn up the heat:

- **Cite Potential Consequences**
  - (of not having an Ethics and Compliance program)
  - Bad Press
  - Jail Terms
  - Fine$$ and Penalties

- **Describe the Benefits**
  - Prevent, detect and remediate fraudulent and/or abusive practices, and false or inaccurate claims
  - Could save money!
Consequences

Leland Wong convicted on 14 felony corruption counts
The former L.A. City Hall power broker was tried on 21 counts
By Garrett Therolf, Los Angeles Times Staff Writer
July 25, 2008

A jury found former Los Angeles city commissioner Leland Wong guilty of public corruption Thursday, ending a criminal investigation that figured in former Mayor James K. Hahn's 2005 election defeat.
Consequences

SPECIAL REPORT
Ohio agency sinks millions into rare coins
State gives investment business to prominent local Republican

By MIKE WILKINSON
and JAMES DREW
BLADE STAFF WRITERS

Since 1998, Ohio has invested millions of dollars in the unregulated world of rare coins, buying nickels, dimes, and pennies.

Controlling the money for the state? Prominent local Republican and coin dealer Tom Noe, whose firm made more than $1 million off the deal last year alone.
Consequences

'03 audit stalls; city told probe is deficient
Firm says complete inquiry needed before it can proceed

By Philip J. LaVelle
UNION-TRIBUNE STAFF WRITER
October 28, 2004

A widely anticipated audit of San Diego's 2003 books cannot be completed until city officials fully investigate whether "likely illegal acts" related to the pension system and City Hall's financial-reporting practices have occurred, according to the city's independent auditor.

In letters from KPMG to top city officials, the company says it has warned for months of deficiencies in a city-financed investigation of City Hall's financial-reporting practices.
Report included 66 restatements totaling nearly $1.8 billion
San Diego's pursuit of a clean annual audit for 2003 ended yesterday with applause from a roomful of city officials and employees whose enthusiasm seemed only slightly tempered by the awareness that three more annual audits are still overdue.

By Matthew T. Hall
UNION-TRIBUNE STAFF WRITER
LAURA EMBRY / Union-Tribune
March 17, 2007

City officials were all smiles yesterday as Mayor Jerry Sanders, flanked by (from left) City Attorney Michael Aguirre, Councilmen Jim Madaffer (obscured), Kevin Faulconer and Scott Peters and CFO Jay Goldstone, announced that San Diego's 2003 audit was complete. What began as a seemingly routine task for accounting giant KPMG three years ago on a $250,000 retainer turned into a $6.6 million scouring of the city's wildly inaccurate books from fiscal 2003.
Consequences

There's no disputing that the feds are going after a lot of state and local officeholders these days.

Since 2002, both the number of public corruption cases and the number of FBI agents devoted to such cases has increased by more than 50 percent.

BY ALAN GREENBLATT, Governing Magazine
July, 2008

What's clear is that we are dealing with a national phenomenon.

In the past three years, the FBI's long-running undercover operation in Tennessee (code named "Tennessee Waltz") has led to the conviction of a dozen officials, including several state senators and a state representative, the most recent of them in April.

In New Jersey, U.S. Attorney Christopher Christie has prosecuted more than 125 state and local officials, without a single acquittal.

In North Carolina, U.S. Attorney George Holding successfully prosecuted House Speaker Jim Black in a corruption scandal, followed this spring by the conviction and expulsion of one of Black's top lieutenants — the first expulsion of a legislator in that state since 1880.

And in Alaska, a major bribery scandal involving an oil services company has already led to seven convictions, including that of former state House Speaker Pete Kott.
Assess Your Risks

1. Identify Inherent Risks
   - Cash-handling
   - Permitting / inspection

2. Evaluate Impact of Each Risk
   - Amount of $$ at risk
   - Reputational damage to organization

3. Score and Rank
   - High = 3, Medium = 2, Low = 1
Example Risks

- Bribery
- Embezzlement, theft, fraud
- Abuse of discretion
- Favoritism, nepotism, clientelism
- Improper political contributions
- Extortion
- Others?
Benefits

Financial:

• Avoid or reduce fines in case of regulatory violations

• Potential savings in organizational costs
Organizational Cost Savings

2001 City of Austin Audit

Objectives

• **Determine relationship between ethical climate and organizational costs.**

• Assess the degree of variance among City departments’ ethical climate.

• Compare City policies to standard ethics management program.
Ethical Climate Benefits: Reduced...

- # of damage claims and $ paid
- Lost-time worker injuries
- Complaints from the public
- Sick leave usage
- Employee turnover
### Measuring the Ethical Culture

<table>
<thead>
<tr>
<th></th>
<th>1 Strongly Disagree</th>
<th>2 Disagree</th>
<th>3 Neutral</th>
<th>4 Agree</th>
<th>5 Strongly Agree</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>I am aware of illegal or unethical behavior by city employees.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>My managers follow laws &amp; policies</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>A complaint will be handled fairly in my department</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>My managers insist we follow laws &amp; policies</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td></td>
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</table>

- [www.corporatecompliance.org](http://www.corporatecompliance.org) | +1 952 933 4977 or 888 277 4977
Correlation: Climate to Cost

- All city departments—grouped into two groups (for each indicator)
  - Above the mean = “strong” ethical climate
  - Below the mean = “weak” ethical climate
- Correlated indicators of ethical climate to selected “organizational” costs
Example:
“My managers insist we follow laws & policies”

**Department-wide Averages**

<table>
<thead>
<tr>
<th>Department</th>
<th>Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>4.25</td>
</tr>
<tr>
<td>B</td>
<td>4.01</td>
</tr>
<tr>
<td>C</td>
<td>3.86</td>
</tr>
<tr>
<td>D</td>
<td>3.43</td>
</tr>
<tr>
<td>E</td>
<td>2.76</td>
</tr>
</tbody>
</table>

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**City-wide Mean: 3.54**

- Above the mean = “Strong Ethical Climate”
- Below the mean = “Weak Ethical Climate”

**Answer Scale**

<table>
<thead>
<tr>
<th>Response</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strongly Agree</td>
<td>5</td>
</tr>
<tr>
<td>Agree</td>
<td>4</td>
</tr>
<tr>
<td>Neither Agree nor Disagree</td>
<td>3</td>
</tr>
<tr>
<td>Disagree</td>
<td>2</td>
</tr>
<tr>
<td>Strongly Disagree</td>
<td>1</td>
</tr>
</tbody>
</table>
### Audit Results: Correlations

<table>
<thead>
<tr>
<th>Climate Indicator</th>
<th>Financial Claims</th>
<th>Service Quality</th>
<th>Human Resources</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$</td>
<td>#</td>
<td>Lost-Time Inj.</td>
</tr>
<tr>
<td></td>
<td>Public Complaints</td>
<td>Empl. Rating</td>
<td>Sick Leave</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Turn-over &gt;25%</td>
</tr>
<tr>
<td>Awareness of unethical behavior</td>
<td>⭐</td>
<td>⭐</td>
<td>✔</td>
</tr>
<tr>
<td>Manager sets good example</td>
<td>✔</td>
<td>⭐</td>
<td>✔</td>
</tr>
<tr>
<td>Managers enforce ethical rules</td>
<td></td>
<td></td>
<td>✔</td>
</tr>
</tbody>
</table>

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[Human Resources]
Paid Damages (Claims)

- Costs of successful damage claims against the city were highest among departments where employees reported greater awareness of unethical conduct.

**Chart: Total Cost of Claims Paid Out**

- Low Awareness: $80,221
- High Awareness: $887,112

<table>
<thead>
<tr>
<th>Employee Awareness of Misconduct</th>
<th>Total $$ paid</th>
</tr>
</thead>
<tbody>
<tr>
<td>Low Awareness</td>
<td>$0 - $200,000</td>
</tr>
<tr>
<td>High Awareness</td>
<td>$200,000 - $400,000</td>
</tr>
<tr>
<td></td>
<td>$400,000 - $600,000</td>
</tr>
<tr>
<td></td>
<td>$600,000 - $800,000</td>
</tr>
<tr>
<td></td>
<td>$800,000 - $1,000,000</td>
</tr>
<tr>
<td></td>
<td>$1,000,000 +</td>
</tr>
</tbody>
</table>
Paid Damages

- Number of successful damage claims against the city were highest among departments where:
  - Employees aware of misconduct
  - Less agreement that managers set a good example

![Bar chart showing the number of paid claims in departments where employees witnessed misconduct.](image)

**The number of paid claims in departments where employees witnessed misconduct**

- Low Awareness: 31 claims paid
- High Awareness: 525 claims paid

**Employee Awareness of Misconduct**
Other Benefits

Employee Perceptions of:

- Leadership commitment to ethics
- Consistency between policies and practices
- Fair treatment of employees
- Open discussion of ethics
- Ethical behavior is rewarded
Other Benefits

- Increased awareness of requirements
- Improved compliance
- Ethical decision making
- Increased public trust in government
Questions?