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Compliance Mitigation through Collaboration

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Session Goals

• Establishing or reinforcing the organizations compliance message

• Identifying and communicating Shared Goals

• Capitalizing on Internal Partnerships

• “How to’s” versus the “Don’t do’s”

Mitigation

• Alleviation; abatement or diminution of a penalty or punishment imposed by law.
  
  *Black’s Law Dictionary*

• The action of reducing the severity, seriousness, or painfulness of something.
  
  *Oxford Dictionary*

• Anticipating a potential outcome by addressing known concerns and weaknesses. - Risk management
  
  *My unofficial compliance perspective*
Collaboration

• In general, this is a cooperative agreement of two or more parties to work jointly towards a common goal. The involved parties may or may not have had any previous relationship. *Black’s Law Dictionary*

• The action of working with someone to produce or create something. *Oxford Dictionary*

• Shared initiative to reach a desired outcome - Goals Management

  *My unofficial compliance perspective*

Collaborative Compliance Mitigation

• Proactive approach – establish relationships with internal business partner as a resource not as an enforcer
• Focus on the needs of the Stakeholders or Compliance Partners
• Emphasize the impact and not the rules
• Stakeholders are more likely to participate to avoid:
  • interruptions in operations,
  • loss in revenue,
  • talent turnover
Motivating Compliance “Partners”

1) Communicating the Message

2) The “business case” for Compliance

3) Compliance Defining Event(s)

1. Communicating the Message

- What is the organization’s message to the public involving compliance?

- Tying the business mission, vision and values back to the compliance program

- How are compliance concerns communicated to the organization?
Corporate mission and integrity

It’s our dedication to core values that truly distinguishes us from the competition. As a company, we have chosen Putting People First, Integrity and Ethics, Quality and Professionalism, Continuous Improvement, and Growth as our core values. Putting People First is considered our defining core value and serves as our guiding light. When this simple philosophy is followed, business and personal success is inevitable.

Trust and personal responsibility in all relationships. IBMers . . .
• actively build relationships with all the constituencies of our business including clients, partners, communities, investors and fellow IBMers.
• build trust by listening, following through and keeping their word.
• rely on their colleagues to do the right thing.
• preserve trust even when formal relationships end.

Dole Food Company, Inc. is committed to supplying the consumer and our customers with the finest, high-quality products and to leading the industry in nutrition research and education. Dole supports these goals with a corporate philosophy of adhering to the highest ethical conduct in all its business dealings, treatment of its employees, and social and environmental policies.

FedEx will produce superior financial returns for shareholders by providing high value-added supply chain, transportation, business and related information services through focused operating companies. Customer requirements will be met in the highest quality manner appropriate to each market segment served. FedEx will strive to develop mutually rewarding relationships with its employees, partners and suppliers. Safety will be the first consideration in all operations. Corporate activities will be conducted to the highest ethical and professional standards.

What is the Compliance Message at IU?

An enterprise-wide
• Commitment
That requires the
• Contributions of Many
To achieve the
Common Goal

Principles of Ethical Conduct

What matters, Where it matters.
Resonate with the Individual Stakeholder - Self Interest

- Part of the larger, very reputable, community – share metrics, organizational structure, accomplishments of the organization,

- Reputation of the Institution is now part of the individual’s reputation

- Personal responsibility based on trust not adverse accountability – “we know you will do the right thing, let us assist”

Identifying Compliance “Partners” or Stakeholders

- Risk Management
- Internal Audit
- Legal
- Finance
- Human Resources
Compliance Stakeholders per DOJ

- Recent Corporate Integrity Agreement, DOJ includes among its provisions the composition of the Compliance Committee

- “The Compliance Committee shall, at a minimum, include the Compliance Officer and other members of senior management necessary to meet the requirements of this CIA (e.g., senior executives of relevant departments, such as billing, clinical, human resources, audit, and operations). The Compliance Officer shall chair the Compliance Committee and the Committee shall support the Compliance Officer in fulfilling his/her responsibilities (e.g., shall assist in the analysis of the risk areas and shall oversee monitoring of internal and external audits and investigations). (emphasis added)

The OIG Compliance Stakeholders

- The compliance function promotes the prevention, detection, and resolution of actions that do not conform to legal, policy, or business standards.

- The legal function advises the organization on the legal and regulatory risks of its business strategies, providing advice and counsel to management and the Board about relevant laws and regulations that relate to the organization.

- The internal audit function provides an objective evaluation of the existing risk and internal control systems and framework within an organization.

- The human resources function manages the recruiting, screening, and hiring of employees; coordinates employee benefits; and provides employee training and development opportunities.

- The quality improvement function promotes consistent, safe, and high quality practices within health care organizations.
Compliance Partners/Stakeholders

- Human Resources
- Risk Management
- Legal
- Compliance
- Communications
- Internal Audit
- Environmental Health & Safety
- Administration
- Finance
- Decision Support (data miners)
- Sales
- Customer service
- Marketing
- Departments with highly regulated activities
- Departments with oversight responsibility

Collaborating with Key Stakeholders

In an average week, how much time does your compliance team spend consulting with the legal, internal audit and risk functions on compliance issues (in hours)?

- Less than 1: Legal 20%, Internal Audit 35%, Risk 32%
- 1 to 3: Legal 15%, Internal Audit 32%, Risk 37%
- 4 to 7: Legal 10%, Internal Audit 19%, Risk 15%
- 7 to 10: Legal 7%, Internal Audit 9%, Risk 7%
- More than 10: Legal 5%, Internal Audit 3%, Risk 9%
2. The Business Case for Compliance – Internal Partners & Existing Metrics

- Surveys – employees, business partners, leadership
- Audit results
- Complaints
- Prior Incidents
- External reviews
- Internal investigations
- Exit interviews
- Consumer feedback
- Business partner feedback
- Training completion rates
- Strategic Plans
- Employee turnover
- Productivity and volumes
- Number and type of legal proceedings

2. The Business Case for Compliance – Effective Programs

Compared to other survey participants, the ethics and compliance programs of the superstars are more frequently deemed to be highly or very highly effective on all three of the following dimensions measured:

- An overseer (e.g., focusing on controls, risk management, and investigations) by 71% to 60%;
- A business enabler (e.g., providing advice/counsel, enabling better decision making) by 78% to 53%; and
- A corporate conscience (e.g., promoting an ethical culture and values-based behavior) by 86% to 64%

*The 2015 Ethics and Compliance Effectiveness Report*

3. The Compliance Defining Event(s)

- Common point of reference involving an enforcement related activities that resonate with the stakeholders in your organization.
- The activity may vary for each department
- The activity need not have occurred at your organization –
  - Peer institution
  - Business partner

3. The Compliance Defining Event(s)

- New regulation
- Audit
- Reportable breach
- Law suit, settlement, deferred prosecution agreements
- Fines and penalties
- Loss of accreditation or quality standard
Shared Goals and Partnerships

- Avoiding the Roadblock
- Reputation
- Individual Buy-in
- Whistleblowers – costs of retaliation

Shared Goals and Partnerships – Avoiding the Roadblock

- U.S. Federal Sentencing Guidelines, include expectations for organizations to promote an “organizational culture that encourages ethical conduct” and “compliance with the law.”

- “Organizations responsible for some of the most egregious acts of malfeasance have had quite impressive, formalized ethics and compliance guidelines,” Nicole Sandford, partner and national practice leader at Deloitte & Touche LLP’s Enterprise Compliance Services.

- “...without a culture of integrity, organizations are likely to view their ethics and compliance programs as a set of check-the-box activities or—even worse—as a roadblock to achieving their business objectives”.

Corporate Culture: The Center for Strong Ethics and Compliance
Shared Goals and Partnerships
- Reputation

• Biennial memo to senior managers, Warren Buffett writes that:

  • "the top priority — trumping everything else, including profits — is that all of us continue to zealously guard Berkshire's reputation."

  • "We can't be perfect but we can try to be. As I've said in these memos for more than 25 years: "We can afford to lose money — even a lot of money. But we can't afford to lose reputation — even a shred of reputation."

  • "We must continue to measure every act against not only what is legal but also what we would be happy to have written about on the front page of a national newspaper in an article written by an unfriendly but intelligent reporter."


Reputation Risk

“Usually, reputation risks result from other risks. For example, noncompliance with applicable laws and regulations, misconduct of senior management, failure to adequately meet our customer’s expectations and contractual requirements. All of these could lead to civil liabilities and fines, as well as loss of customers and damage to the reputation and brand value of SAP, to just mention a few.”

Miriam Kraus, SAP’s senior vice president of Global Governance, Risk, and Compliance, Deloitte 2014 Global Survey on Reputation Risk
Reputation Risk

- Driven by a number of business risks
- Must be actively managed
- Risks include risks related to:
  - Ethics and integrity
  - Products and services
  - Safety, health and environment
  - Relationships with third parties

Deloitte 2014 Global Survey on Reputation Risk

What affects Reputation?

What affects reputation most? Data breaches are in the top 3 of incidents that affect reputation. As shown, the biggest reputation spoiler is poor customer service, according to 75 percent of respondents, as shown in Figure 15.

Figure 15. The incident that would have the greatest impact on a company’s reputation
Two responses permitted

- Poor customer service: 75%
- Environmental incident: 32%
- Data breach: 30%
- Publicized lawsuits: 29%
- Government fines: 18%
- Labor or union disputes: 13%
- Other: 2%

The Aftermath of a Mega Data Breach: Consumer Sentiment – April 2014
Shared Goals and Partnerships
– Individual Buy-In

• Participatory Approach vs Mandated Approach
  – Mandate - each individual has a responsibility based on HR policies, job descriptions, Code of Conduct, etc.
  – Participant – department team goals, colleague, customer focused

• Personal Stake – each individual’s reputation is now tied to the organization’s reputation – CV’s, resume’s, work references

• Downstream impact of non-compliance may result in the loss of:
  – jobs, access to health care, accreditation, ability to receive financial aid, ability to receive federal grants, etc.

“How to’s versus the Don’t do’s”

“ The most effective ethics and compliance programs don’t “do” ethics and compliance. They enable and assist their business units to do so, or – more precisely – to “do” culture and “get” compliance as an outcome.

*The 2015 Ethics and Compliance Effectiveness Report*
http://cdn2.hubspot.net/hubfs/319387/PEI_Report_2015_v9.pdf?submissionGuid=1af36d5c8a6444d9-888c-873e87d0b5e1
“How to’s versus the Don’t do’s”

- Identifying the “message” stakeholders who are in the best position to put the “do” stakeholders on notice
  - Members of leadership vs company “watch dogs” or “enforcers”
  - Incorporate the expectations into operations through instruction not mandates

- Communicating with the “do” stakeholders
  - Resource driven – tools, access to information, bridging the information gap
  - Find a key initiative they have and determine how compliance can help move this forward with them

Whistleblowers

Average whistleblower is more likely to report concerns internally first.

- 92% turn to somebody internally when first reporting misconduct
- Only 20% share their concerns externally
- Only 9% report to the government
- 1 in 5 reporters experience retaliation after reporting internally

The Network Integrated GRC Solutions Whitepaper – Embracing Whistleblowers: Understand the Real Risk and Cultivate Culture of Reporting
https://www.tnwinc.com/13473/whitepaper-embracing-whistleblowers/
Costs of Retaliation

Retaliation Is Far More Common in Weaker Ethical Cultures

- Overall Ethical Culture: 12%
- Top Management Culture: 21%
- Supervisor Culture: 27%
- Coworker Culture: 21%

Strong or Strong Leaning Ethics Culture
Weak or Weak Leaning Ethics Culture

Costs of Retaliation

Employees Experiencing Retaliation Intend to Leave Company Much Sooner

- All Employees: 40%
- Employees Who Exposed Misconduct: 35%
- Employees Who Reported Misconduct: 65%
- Employees Who Reported Misconduct Who Experienced Retaliation: 65%

Length of Time Employees Intend to Stay with Company
- Less Than One Year
- More Than Five Years or Until Retirement

Questions?