Counseling Compliance in Small & Medium Sized Businesses

Society for Corporate Compliance and Ethics • Compliance and Ethics Institute
Las Vegas, Nevada • Monday, October 22, 2018 • Session 305

Jason B. Meyer, JD, CCEP
President, Leadgood LLC
@MeyerJason B

Amy McDougal, JD, CCEP
President, CLEAResources LLC
@EthiVenger

Do you know this woman?

Do you know this woman?
Do you know this woman?

“That's just Charlie being Charlie…”

“I should have stood up for them. I failed. It is crushing. I deeply regret not helping them.”
An object lesson...
... in small business compliance

97%
of U.S. Companies have fewer than 100 employees

Introductions
Jason B. Meyer, JD, CCEP
President, LeadGood, LLC
Principal Lawyer, Meyer Business Law

➢ Former SMB general counsel, chief compliance officer, executive
➢ Decades of experience at the intersection of education and compliance
  ➢ EduNeering ➞ LRN ➞ LeadGood
➢ Consulting on engagement, content organization, vendor selection and management, education program assessments, “how to talk” compliance and ethics...
➢ Entrepreneur and “outside general counsel” for SMBs

Amy McDougal, JD, CCEP
President, CLEAResources, LLC

➢ US Air Force veteran - 12 years as JAG officer
➢ Former federal prosecutor (SAUSA)
➢ Former General Counsel of SMB firm specializing in defense-sector security issues
➢ Advises organizations on culture, policies, training, investigations, monitoring and auditing, reporting, remediation, discipline and incentives

Topics

• SMBs and the elements of a compliance program
  • Oversight
  • Standards and Procedures
  • Training
  • Monitoring and Auditing
  • Investigations and Reporting
  • Discipline and Incentives
• Cultural leadership: challenge and opportunity
• Can operational excellence drive ethical excellence?
The elements...

Oversight
Someone has to do it, and have a title
They might have another job
They might be a lawyer
Get over it

Oversight: Back-Up
The Rose/Nasser/Sandusky Doctrine: Always have a second channel
Hot Lines are cheap, or can be replicated
• But who "answers" it?
• Anonymity is hard
Use compliance "champions" "liaisons" or "delegates" to extend the CEO's reach into the business
Oversight: Resources

Part of oversight is resources: ensure your executives make resources available, even if you have to form a “ghost budget” that is sourced from multiple divisions of the company:

- Finance or Internal Audit can fund audits
- HR or Legal can fund training and/or investigations
- Operational business units can also fund investigations

Oversight: Assessment

“SCARF” for 360 snapshot of CE program

- **Structure** – What does the program look like?
- **Culture** – What is going on with culture: discipline, investigations, reports, trends, successes, management change, turnover, layoffs, etc.
- **Areas of Risk** – How is risk mitigation? What new areas of risk are emerging or shifting?
  - Enforcement trends, new legislation (GDPR, minimum wage changes)
- **Forecast** – What is next for the CE program? Upcoming audits, code of conduct revision, launch of new training programs, technology or initiatives, periodic communications planned, new policies developed or published

Oversight: The Board

- Have one!
- The special problems with "founder" companies and boards
- The special problems with "family" companies and boards
- The special problems with VC and PE-funded companies
- The independent seat at the table
- YOUR seat at the table
**Risk Assessment**

This is the true fundamental piece of your program, but you know that because you are here. Get buy in from the business on the risk assessment process. Ensure that the risks of not having a CE program make it into the risk assessment.

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**Standards & Procedures**

Follow your risk assessment in developing policies, just because you can have a policy on something doesn't mean you should...

Subsume the SOP process – as the CECO, you should have access to and maintain all versions of policies

- Standardize policies as much as you can.
- Use a template and include owner, version history, next review/revision date
- Centralize policies for easier management

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**Standards & Procedures: Contracting**

Watch our for overly-aggressive clauses and "the deal we gotta have"

- But consider playing "offense" and leveraging third parties
Training & Education

I live training
Use your advantages: different groups; on-boarding; role-playing
Engagement: the same rules apply (except…)
Easiest setting for social learning
Lead with values
Subsume / piggy back on training about safety – process – onboarding – benefits
But is it mandatory? (Does it matter?)

Monitoring & Auditing

Add the hotline number to employee badges or paychecks
Ask about unethical conduct during exit interviews
Do another background check on employees who are being promoted into a substantial authority role
Monitor enforcement trends of regulatory agencies – who is getting in trouble for what? Read the agency’s strategic plan to discover what their enforcement priorities are

Monitoring & Auditing

Your business is never too small for an audit plan; start simple, base audits on the risk assessment
If no internal audit function; look for and use self-checklists (DOL, FCPA); there many available online
Investigations and Reporting

Have an investigations policy that sets forth the process for receiving, investigating and resolving complaints

Make clear who is informed of different types of complaints

Make a repository of complaints, or mini-case management system to record complaints so that you can see trends (when this gets too unmanageable, then you have a basis to advocate for resources for a case management system)

Ensure your risk assessment includes what types of things are subject to mandatory reporting (environmental spills, on the job accidents, fraud/waste/abuse, etc.)

Discipline & Incentives

Have a progressive discipline policy in place, even if it is just a simple and short policy

If there is a performance evaluation process, ensure it is fair – i.e., evaluations are completed for everyone in the organization

Discipline & Incentives

Incentives:

• Easy for sales to rule the roost in SMBs
• Easier for founders/CEO to get greedy
• Watch out for unintended consequences
• Ensure you have oversight of incentive plans (bonus, commissions, sales) and programs (spot awards)
• Ensure upper management is evaluated on at least as high standards of conduct as other employees
Culture

Tone at the Top / Mood in the Middle
• Employee who agree that their managers talk about the importance of ethics are almost 12X more likely to believe their organization encourages them to speak up (ECI GBES 2018)

Once you wrestle in to get your seat at the table, encourage the management to be leadership for the company
• How? What do you say?

Culture: Persuading the Entrepreneur

Story Time!

Boys and girls, the moral of our story is:
Entrepreneurs and small business CEOs do go to jail.
Culture: Persuading the Entrepreneur

Work directly on retaliation and reporting: "Your opportunity to lead"
Ethical entrepreneurship
Operational Excellence = Ethical Excellence
Ethics as a competitive advantage
Ethics as an end

FREEsources

Add the hotline number to employee badges or paychecks
Ask about unethical conduct during exit interviews
What’s your favorite?

Final Questions /Discussion?
Appendix

What else does research say?

- Research on teacher misconduct
- Lessons from Milgram and Stanford
- A word about “behavioral economics”
- Consider “cognitive dissonance”

“Ethical violations are usually not a case of bad people doing bad things for no good reason; it is usually the case of good people doing bad things for good reasons.”

Maria Angel, former editor-in-chief of New England Journal of Medicine