SCCE CEI

New Beginnings: Starting Your Compliance Program and What Needs To Be Included

Debbie Troklus, CHC-F, CCEP-F, CHRC, CHPC, CCEP-I
Senior Managing Director
Ankura Consulting
Debra.Troklus@ankura.com

Sheryl Vacca, CHC- F, CCEP-F, CCEP-I, CHRC, CHPC
SVP/Chief Risk Officer
Providence St. Joseph Health
Sheryl.vacca@providence.org

1

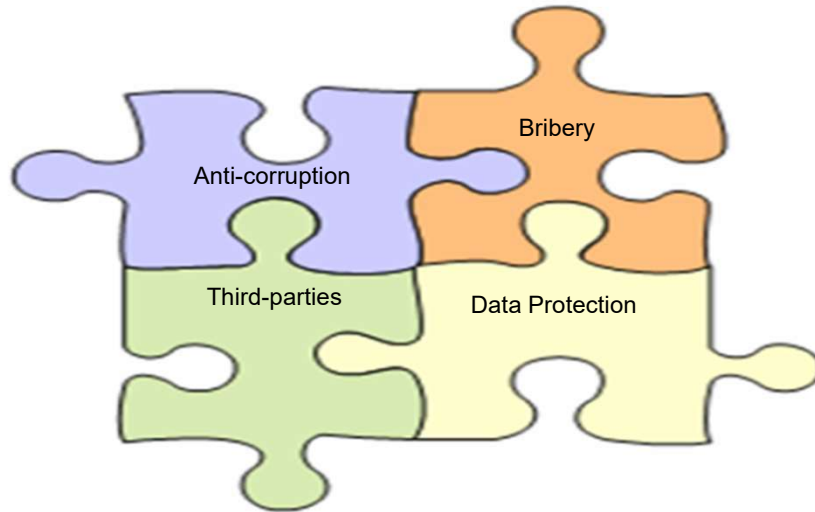## Why Develop an Ethics & Compliance Program?

- Promotes a culture of ethical behavior, awareness and commitment to compliance
- Prevents and detects wrong-doing
- Communicates organizational expectations and commitment
- Provides "safe" mechanisms for reporting and seeking help
- Enables compliance with governing standards, laws and guidelines
- Positive impact to corporate reputation/culture; public image
- Serves as a risk management tool

2

2

Ethics and Compliance Programs: How Comprehensive

Anti-corruption

Bribery

Third-parties

Data Protection

**Benefits of an Effective Ethics & Compliance Program**

- Integrates processes that ensure the prompt, thorough investigation of alleged misconduct
- Facilitates timely and appropriate corrective action and remediation
- Fosters a strong ethical culture -- Attracts talent and improves employee retention
- Strengthens the organization
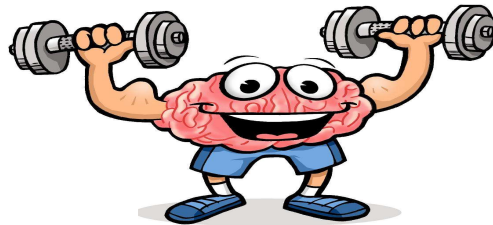
Key Building Blocks

Tools
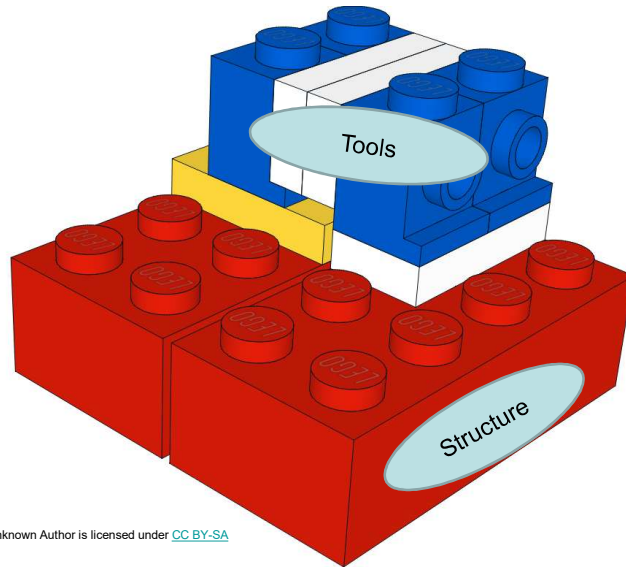
Structure

5

General Considerations: Structure…

- "Tone at the Top"

- Establish organizational governance (i.e.. Designation of Compliance Officer)

  - Reporting structure defined

- Compliance Oversight Committee

- Resources (people, budget, etc.)

  - Marketing, communications, staffing

6

6

General Considerations: Tools

- Conduct risk assessment
- Implement reporting system (i.e.. Hotline)
- Tracking processes
- Education and Training
- Managing Investigations
- Auditing and Monitoring

Key Elements in Developing an Ethics & Compliance Programs

1. Standards and Procedures
2. Compliance Oversight
3. Education and Training
4. Monitoring and Auditing
5. Reporting, Investigations and Background Checks
6. Enforcement and Discipline
7. Response and Prevention

Standards & Procedures

➤ Code of Conduct

- Keep it simple – Values-based and avoid legalese

- Tailor to organization's culture, ethical attitude, business, and corporate identity

  - Get lots of input - focus groups, senior execs., etc.

- Guidance on seeking help and reporting concerns

- Scenarios and FAQs

- Clearly stated expectations

- Primary language – watch translations

9

Standards & Procedures

➤ Standards and Procedures

- Controls – Facilitate compliance and prevent misconduct

- Accountability

- Integrate with and complement other departmental policies and procedures

- Avoid repetition/duplication

- Assure those affected by the policies have input into development

- Communication and distribution of standards and procedures to employees and others (i.e. third parties)

POLICY

10

Compliance Oversight

- Governing Authority – Knowledgeable of program w/reasonable oversight (*Board of Directors)*

- Ethics & Compliance Officer – Oversight for day to day operations

  - Recognized as a senior leader

  - Independent and empowered (i.e. adequate resources and authority)

  - Access to Board with periodic reporting responsibilities

- Other: Compliance Committees, Regional liaisons, Program Staff, etc.

Compliance Oversight: Due Care in Delegation of Authority

- Do hiring and promotion systems screen out those likely to break the law or who have a history of unethical behavior?

  - Use care when placing individuals in positions of substantial authority, i.e., hiring, promotions – *Substantial Authority Personnel*

- Could you have a Board Member, executive or other manager who had served time for a criminal act without knowing it

  - CEO resigned, served prison time – "Nobody asked"

Education and Training

- Communication and Training Effectiveness – *Continual review*

- Mandatory vs. Voluntary – Audience & Risk Considerations

- General vs. Specific – Content and Audience Considerations

- Training Methods
  - Blended & Interactive approach is most effective

- Attestations

13

Monitoring and Auditing

- Primary purpose is prevention and detection of criminal conduct and wrongdoing

- Definitions:
  - Monitoring - Real time reviews done by everyone, not necessarily independent
  - Audits – Always independent/objective and formalized

- Audit and monitoring plan scalable to risks and resources

- Auditors must be trained and knowledgeable about audit methodology.

14

Reporting, Investigations and Background Checks

- Reporting
    - Essential program resource for reporting wrong-doing and/or seeking help and guidance
    - Reporting process defined for stakeholders
    - Expectations are clearly defined for those that raise issues
    - Consider differing country laws for operation
    - Anonymous & confidential to extent allowed by law
    - Need strong, publicized and enforced non-retaliation policy
    - Continually market and publicize reporting mechanism
    - Consider internal vs. external reporting systems

Reporting, Investigations and Background Checks

Investigations

- Define response time expectations
- Triaging and handling investigations
    - Investigations should be professional – trained investigators
    - Consider the process for report writing
    - Consider the decision-making process for handling findings
- Action is comprehensive related to the potential/real concern
    - Are their enough facts to investigate?
- Consider attorney-client privilege

Reporting, Investigations and Background Checks

- Background checks

  - Determine what background checks are important for compliance ie: exclusions/sanctions from a government program

  - Assure there is a process for conducting background checks

  - Legality of background checks are determined by country laws

  - Expectations should be clear on what happens if there is a positive outcome

    - Consideration should include privacy laws, organization's obligations, timing to resolve issues

    - Must take action

17

Enforcement and Discipline

- Failure to take reasonable steps to prevent or detect criminal conduct heightens organizational liability and negatively impacts effectiveness determinations

- Compliance performance aligned with incentives

- Consistency in enforcement

  - Support from Sr. Mgmt; Board

  - Understanding by all members of organization

  - Fairness and consistency is key
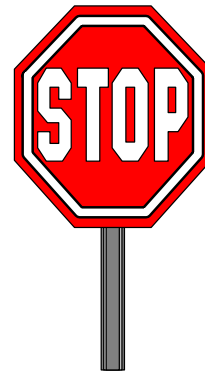
18

18

Response and Prevention

- Preventative measures
  - Education and Awareness
  - Policies and Procedures
  - Auditing and Monitoring
- Remediation efforts are timely and adequately address the program gaps, identified risks, etc.
  - Resolution of Issues – Root cause analysis/checklist
  - Management Corrective Action Plans
  - Prevents likelihood of reoccurrence
  - Majority of the time are related to lack of knowledge or expectations aren't clear (policy)

19

19

General Considerations: Tools

- Standards and Procedures- industry documents, scce website, networking

- Compliance Oversight-governing board documents for adopting compliance program, scce website, networking, program plans, industry

- Education and Training-tracking (excel, access), vendors, evaluation forms, training modules

20

20

General Considerations: Tools

- Monitoring and Auditing-self assessments, risk tools

- Reporting, Investigations and Background Checks – reporting templates, hotline benchmarking, SCCE website, investigation training, vendors, outsourcing

- Enforcement and Discipline – country laws

- Response and Prevention – surveys, focus groups, exit interviews, risk and effectiveness assessments

---

Risk Assessment

- Why conduct a risk assessment?
- Four steps of the risk assessment process are:
  1. Identification
  2. Analysis and evaluation
  3. Prioritization
  4. Developing management risk-mitigation plans.
- Management ownership and buy in
- Audit and Monitoring Activities

Ongoing Improvement

Evaluating Effectiveness-done by third party for independence

To self assess how your compliance program is doing you can use several tools to document your progress:

- Program metrics (hotline calls, incidents, etc.)

- Surveys, Focus Groups

- Compliance self assessments/ risk assessment tools to evaluate risks from baseline identification

- Exit Interviews

Is program working as designed and implemented? Impact?

23

Industry Practice and Benchmarking

- Fraud continued to climb this year.

- Over 84% of surveyed executives reported falling victim at least one instance of fraud in the past year, up from 82% in 2016

- Executives said that their company experienced a cyber attack or information theft, loss, or attack in the last year.

    - One of the following categories was identified in the above as a key perpetrator:

        Senior or middle management employees of our own company

        Junior employees of their own company

        Ex-employees

        Freelance/temporary employees

SOURCE: Kroll Global Fraud & Risk Report 2017/18.

24

Industry Benchmarks

- Fourteen percent of respondents who uncovered bribery and corruption violations after due diligence attributed them to improper risk ranking anticipate the bribery and corruption risks to their company will increase

- For the second year in a row, third-party violations top the list of perceived risks to an organization's anti-bribery and corruption program, representing 35 percent of responses.

- Almost a quarter of respondents report that they do not feel confident in their organization's ability to catch third-party violations of anti-bribery and corruption laws.

- 58 percent of respondents reported that they uncovered third-party violations of anti-bribery and corruption laws after the completion of their initial due diligence.

Industry Practice and Benchmarking

- The bottom line: The cost of implementing an ethics and compliance program are a small fraction of the potential costs of damage to your reputation or bottom line due to an ethics or compliance violation.

- http://www.globalcompliance.com/Resources/Understanding-Ethics-and-Compliance/About-Ethics-Compliance.aspx#sthash.6hhFmSjn.dpuf

"Characteristics" of an Effective Program

- Buy-in from the "top"

- Sufficient resources

- Program authority or "clout"

- Program independence

- Sufficient program "reach" and embedding in the company's operations

- Meaningful management knowledge of and involvement in the program

- Program's focus on corporate culture and ethics, not just compliance

27

27

28

28