Conflicts & Controversies in the Compliance World.

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Three Questions:

➢ Will GDPR & privacy be traps for diligent compliance?
➢ Is the #metoo response of mandating more training & policies the best answer?
➢ Is ISO 37001’s approach of certifiable compliance management standards helpful or harmful?
GDPR & Strong Privacy Protection

➢ Fines up to 20M Euros or 4% global turnover
➢ Mass civil actions
➢ Ambiguous language
➢ Laws globally mimicking GDPR
➢ California’s law

History of EU privacy & C&E

➢ CNIL and helplines
➢ Are helplines “disproportionate”? 
➢ No anonymous calls?
Privacy in the US: more history

- FCRA & outside investigators: FTC opinion
- Asking permission to investigate?
- Giving complete file?
- HR professionals to the rescue in Congress

Legitimate Privacy Interests & C&E

- Protect legitimate interests
- Secure private information
- Restrict access
- Appropriate notification
### Risks to C&E from Unrestricted Privacy Laws

- Helplines/Speak up
- Due diligence
- Criminal background
- Official in political party
- Investigations
- Audits

### What C&E needs

- Policies that promote & protect C&E programs

#metoo

- Multiple scandals:
  - In all types of organizations
  - Even federal courts

One response: State/City Mandates

- California - train 2 hours, every 2 years
- States, e.g., Maine & Connecticut
- NYC & NY State Policies & training
- What enforcement record on these mandates?
What the US Supreme Court said:

- Defense in some harassment cases
  - Reasonable preventive efforts
  - Victim fails to use
- Defense to punitive damages
- Preventive steps taken by the company
- Have to be “reasonable”

What Do Companies Usually Do?

- Have a Policy
- Offer Training
- Tell people to call HR
- Investigate
Other important compliance areas are not so limited

➢ What credit would your FCPA program get with only:

➢ A policy
➢ Some training
➢ Telling people to call HR
➢ Then investigating

What causes harassment?

➢ Lack of knowledge about a policy? Not knowing it was wrong?
➢ Or is it all about POWER --taking advantage because you can.

Example: Steve Wynn
Q. “Did you take the harassment training?”
A. “No, I didn’t need it”
What is Lacking?

➢ A full management approach
➢ The USSGs 7 steps
➢ The same things you would do for any other C&E risk

Why not a full C&E approach?

➢ Senior management commitment
➢ A powerful CECO
➢ Risk Assessment
➢ Evaluation – do the steps/training work?
➢ Communication (not just classroom training)
➢ Incentives/Promotions
So what could go wrong for C&E?

- When the paper & preaching doesn’t work, commentators & law professors will tell us:
  - C&E does not work!
  - Don’t give C&E any credit
  - Agencies & Governments may listen

ISO 37001

- Getting your program certified?
- What could possibly go wrong with that?
- At least you would know you were “done”!
Where is ISO 37001 from?

➢ The UK standard
➢ 19600 – compliance management systems
➢ AS 3806 – Australia
➢ ISO standards in safety, quality, environmental management
➢ Do we need more guidance? OECD, DOJ/SEC guide, UK Adequate Procedures, etc.

Read ISO 37001:
Could there be some concerns?

➢ Readability
➢ Certify to broad generalities?
➢ Is it readily comprehensible?
➢ Some odd provisions
Who Would Do the Certification?

- You pick the certifier
- Who will you pick?
- How much will certifiers do & check?
- Who can certify?

What is the Impact of Certification?

- You can pull people together to get an actual result
- What happens after you pass?
- How much due diligence when a contractor is certified?
- Where is government on this?
ISO 37001 is worth knowing about

- Governments, 3rd parties could require it
- It could happen in other compliance areas
- See The ISO 37001 anti-corruption compliance program standard: *What’s good, what’s bad, and why it matters (2019)* by Joseph Murphy
- [http://tinyurl.com/y6yf8myc](http://tinyurl.com/y6yf8myc)

In Conclusion- Bottom Line

- C&E professionals know what we are doing – let us do it!
- Will the future of C&E be set by others who don’t know C&E?
- SCCE represents the global voice of compliance & ethics
- We need to speak up! We need YOUR voice to be heard