Measuring Ethical Culture In A Remote Environment

Victoria McKenney, Deputy General Counsel – Regulatory & Compliance and Deputy Chief Compliance Officer at U. S. Steel

Jared Kephart, Counsel – Regulatory & Compliance at U. S. Steel

1

Measuring Ethical Culture

Discuss how to assess ethical culture in today's environment

Learn how to use culture surveys and investigations data to assess the state of the workforce

Respond through messaging and training suited to a remote environment

2

POLL: Have you previously tried to measure ethical culture at your organization?
A. Yes
B. No

3

Why Measure Ethical Culture?

Signs of Bad Culture Precede Corporate Scandals

"Decisionmaking driven by urgency and fear, isolation of groups, lack of accountability, a culture that celebrates success by any means necessary, and language and jokes that cover up wrongdoing"[1]

DOJ Expectation

"How often and how does the company measure its culture of compliance? Does the company seek input from all levels of employees to determine whether they perceive senior and middle management's commitment to compliance?"[2]

Benefits of Good Culture

"Companies with stronger cultures tend to have employees who are more engaged and committed. Turnover tends to be lower and productivity higher."[3]

4

Why Measure Ethical Culture?

Regulators expect companies to measure ethical culture to see if employees feel empowered to bring concerns up and what they do in response to the results.

"We are also interested in how a company measures and tests its culture – at all levels of seniority and throughout its operations – and how it uses the data from that testing to embed and continuously improve its ethical culture."

Assistant Attorney General Kenneth A. Polite Jr. Delivers Remarks at NYU Law's Program on Corporate Compliance and Enforcement (PCCE), New York, NY March 25, 2022

"Employee surveys, conversations, and focus groups can help us understand what actually happens in organizations, how seriously stated values and formal processes are taken, and which units or departments may pose the most ethical risk."

Alison Taylor, 5 Signs Your Organization Might Be Headed for an Ethics Scandal, Harvard Business Review, December 18, 2017

5

"Today's Environment"

◈ Remote work (a/k/a teleworking or work from home) is defined as "the action or practice of working from home, making use of the Internet, email, and the telephone" (BLS)

◈ Since the start of the Covid-19 pandemic, remote work has become a driving force in the labor market

◈ New or Increased Potential Risks

  ◈ Loss of training and developmental opportunities

  ◈ Loss of connection to team, organizational values, or culture (isolation)

  ◈ Possible less day to day feeling of accountability

  ◈ Turnover

Private Sector Organizations with Remote Workforce

- Hybrid 30%
- Rarely/Never 60%
- Permanently Remote 10%
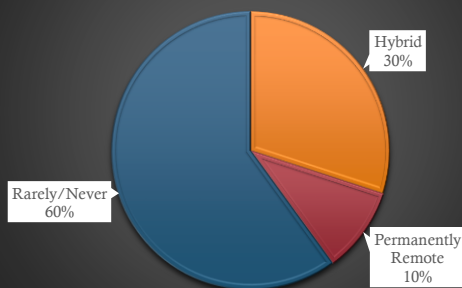
Data from Bureau of Labor and Statistics [4]

6

Step 1: Frame Your Assessment – "What?"

- ◇ Break "Ethical Culture" down into specific factors to measure and track. For example:
  - ◇ <u>Leadership</u> modeling ethical conduct
  - ◇ <u>Clarity</u> in communications
  - ◇ <u>Agency</u> to act ethically
  - ◇ <u>Connection</u> to others and culture
- ◇ Factors can be drawn from organization mission, vision, or code, DOJ guidance, ethics and compliance resources

Leadership

Clarity — Ethical Culture — Agency

Connection

7

Step 1: Frame Your Assessment – "How?"

- ◇ Choose your Tools:
  - ◇ Surveys (Culture, Pulse, Exit, Stay, etc.)
  - ◇ Focus Groups
  - ◇ Investigation Data
  - ◇ Interactive Trainings
  - ◇ Others?
- ◇ Choose your Channels, factoring in remote employees:
  - ◇ Company App
  - ◇ Newsletters
  - ◇ Bulletin Boards
  - ◇ Emails
  - ◇ Others?

8

Assessment Tools - Surveys

Ethical Culture

Big Picture Questions
- Is the organization fair?
- Are managers ethical?
- Are there enough resources to support ethical behavior?
- Pressure to act unethically?
- Observed misconduct or good conduct?

Pulse

Focus on the Moment
- Struggles or successes of remote work?
- Do they feel connected?
- Do they feel valued?

9

Assessment Tools - Surveys

Exit

- Why are they leaving?
- Would they recommend working at the company?
- Legal or ethical concerns?

Stay

- Opportunity for employee to speak up
- Opportunity for employee to self-assess career goals, company
- Reminder of importance to organization

10

Assessment Tools - Focus Groups

◇ Identify the purpose and objective of the focus group

◇ Keep questions open-ended, conversational, simple, and short

◇ Give employees a chance to share concerns, comments

◇ Consider observing while a neutral party facilitates the discussion

11

POLL: What are the biggest challenges of implementing surveys or focus groups?
A. Employee participation
B. Resources to administer
C. Technical challenges
D. Unsure what to ask

12

Assessment Tools - Investigation Data

Track key metrics such as:

◇ Number of investigations

◇ Number of substantiated reports

◇ Actions taken as a result of reports

◇ Types and seriousness of concerns raised

◇ Reports by business area / location

◇ Root cause analysis results

Focus on change over time (D)

Key Questions
About Investigation Data:

◇ Are employees reporting concerns that are consistent with survey responses?

◇ Are reporting patterns and substantiation rates consistent with industry averages?

◇ What real-world factors (including remote work) influence our reporting patterns?

13

Step 2: Collect Data

Leadership

❖ Do employees know who to ask for guidance or answers to difficult questions?

❖ Do employees trust managers to behave ethically?

❖ Are business decisions made with reference to the organization's ethical principles?

❖ Are there potentially toxic incentives in play?

❖ Do leaders embed compliance messaging in their communications?

Clarity

❖ Does the organization have clear expectations for ethical conduct?

❖ If there is misconduct, will discipline be issued regardless of the actor's position?

❖ Do employees review and certify to the organization's Code of Conduct and key policies?

❖ Are policies easy to find and understand?

❖ Are trainings available, relevant, and understandable?

❖ Are business decisions made transparently and communicated to managers?

Agency

❖ Is there a Speak Up environment for reporting?

❖ Are hotline reports above, below, or consistent with industry averages?

❖ Do employees believe hotline reports will drive meaningful action?

❖ Do employees believe they have agency to make ethical decisions?

Connection

❖ Do employees feel pressure to behave unethically?

❖ Do employees feel their job is constantly under threat?

❖ Is your organization siloed by product lines or functions or is there regular cross-functional communication? Do employees communicate laterally or vertically or both?

❖ Are there "water cooler" opportunities for unstructured discussion with colleagues or managers? Do managers speak with employees 1-on-1 regularly? Has either of these changed with remote work?

❖ Is remote work leading to feelings of isolation?

14

Step 3: Analyze Data

Comparative

Analyze the data across categories to determine where to direct your resources (e.g., follow-ups, trainings, etc.).

For example:

Factor A v. Factor B

(Leadership Scores v. Agency Scores)

Population A v. Population B

(Salaried v. Hourly Employees)

Longitudinal

Analyze change-over-time within the same categories to determine whether the efforts you're making are successful.

For example:

% Change in Leadership Scores 2020-21

Change in hotline reports / number of employees 2015-2020

Change in number of responses / number of employees 2021-2022

Against Other Metrics

Check your data for soundness by comparing related datapoints. Feedback should be reasonably consistent.

For example:

If your employees report no fear of retaliation, but you're not seeing any hotline reports, look for a disconnect.

If your employees report a lack of ethical messaging from leadership, but you know the messaging is occurring, look for a disconnect.

15

Step 3: Analyze Data

By bucketing data under key factors, we can generate average scores which:

- Emphasize "big picture" thinking
- Provide consolidated metrics to share with senior leadership
- Smooth outliers in a way that helps guide resource allocation
- Incorporate new or changed metrics into the existing picture

Example: Positive Responses on Leadership Q's
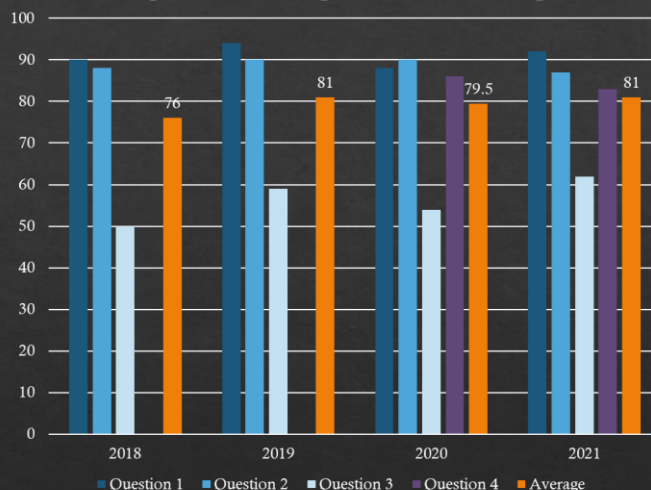
16

Step 4: Respond to Data

1. Summarize and share the information with the board, senior leadership, and employees
2. Develop an Action Plan to Build Ethical Culture
   ◇ Messaging Focused
   ◇ Training Supported
   ◇ Targeted (business units, employee roles, physical locations)
3. Focus on speaking up and nonretaliation policy

17

POLL: With whom do you share
Ethical Culture Data?
A. Employees
B. Managers
C. Board
D. Two or more of the above

18

Strengthening Culture through Messaging and Training

DO

◇ Multi-tier (Senior Leadership, Direct Managers, Outside Voices)

◇ Use stories and visuals

◇ Be consistent, not stale

◇ Address the tough topics

◇ Remote environment-friendly:

   ◇ "Live" training instead of in-person

   ◇ Short, frequent touchpoints

   ◇ Informal virtual "coffee talks" with managers

   ◇ Utilize apps, newsletters, bulletin boards

   ◇ Frequent team meetings

DON'T

◇ Rely solely on lofty or "squishy" statements

◇ Abuse PowerPoint

◇ Undercommunicate values

◇ Be afraid of new approaches

19

Questions?

20

Victoria McKenney
vmckenney@uss.com

Jared Kephart
jakephart@uss.com

21

Endnotes

1. Alison Taylor, *5 Signs Your Organization Might Be Headed for an Ethics Scandal*, Harvard Business Review, (December 18, 2017)

2. U.S. Department of Justice Criminal Division *Evaluation of Corporate Compliance Programs (Updated June 2020)* Section A: Continuous Improvement, Periodic Testing, and Review "Culture of Compliance"

3. Erica Byrne, *Culture Matters: The Advantages of a Strong Ethical Culture are Manifold*, Ethisphere Magazine (2016)

4. Bureau of Labor Statistics, *News Release: U.S. Business Response To The Covid-19 Pandemic — 2021*

22