

Building and Sustaining a Culture of Compliance and Ethics: Compliance Training

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Overview

- What is training?
- What are the basic elements of an effective training program?
- What makes an effective institutional compliance training program?
- How does an institution scale-up training to address significant regulatory changes?
- Best practices

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What is Training?

Some Different Perspectives

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What is Training?

- Training is teaching, or developing in oneself or others, any skills and knowledge or fitness that relate to specific **useful competencies**. Training has specific goals of improving one's capability, capacity, productivity and performance.
 - Wikipedia; <https://en.wikipedia.org/wiki/Training>
- Training creates the “**knowledge worker**”. Peter Drucker defined knowledge workers as high-level workers who apply theoretical and analytical knowledge, acquired through formal training, to develop products and services.
 - Drucker, Peter (1959), Landmarks of Tomorrow, Canada: Heinemann Publisher.
- Training is defined as **managing knowledge to develop the organization's culture**, to enhance individual performance and to strengthen the organization's capability
 - Kreml S.F., & Pace W.R., (2001). Training across multiple locations: Developing a system that works. San Francisco: Berrett Koehler Publishers Inc.

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Basic Elements of Training

Six Steps for Building Effective Training Programs

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Basic Elements of Training

1. Identify training requirements and goals
2. Develop learning objectives
3. Design training materials
4. Implement the training
5. Develop an annual training and communication plan
6. Evaluate the effectiveness of the training

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1. Identify Training Requirements and Goals

Developing an effective institutional compliance training program takes thought and planning:

- Identify statutory requirements for training
- Identify regulatory guidance for training (See Federal Sentencing Guidelines)
- Identify institutional policy/procedure requirements for training

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Statutory Requirements

State and local laws:

New York, for instance, adopted a requirement that all employers must provide “Combating Sexual Harassment” training to all employees, including employees working any portion of their time in New York. (N.Y. Lab. Law § 201-g); New York Division of Human Rights (NYDHR)). Training requirements are very specific:

- All Employers must use the model sexual harassment prevention training program provided by the New York Division of Human Rights (NYDHR) and New York Department of Labor (NYDOL) or establish a program that equals or exceeds the minimum standards of the model program.
- Training must include an explanation of sexual harassment consistent with guidance issued by the NYDOL and the NYDHR; examples of unlawful sexual harassment; and information concerning federal and New York statutes on sexual harassment and remedies available to victims of sexual harassment.

For a listing of anti-harassment training requirements by state, see reference chart compiled by the Ballard Spahr law firm:

<https://www.ballardspahr.com/-/media/files/alerts/2019-january-sexual-harassment-training-reqs.pdf?la=en&hash=F7C28CE2BC345B3E2DEBF22CCE531BBE>

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Federal laws:

Clery Act requires:

“Programming, initiatives, and strategies that are sustained over time and focus on increasing understanding of topics relevant to and skills for addressing dating violence, domestic violence, sexual assault, and stalking, using a range of strategies with audiences throughout the institution and including information stated in the required description of the institution’s primary prevention and awareness programs for all incoming students and new employees.” 34 CFR Part 668, Institutional Security Policies

https://www.ecfr.gov/cgi-bin/text-idx?SID=915c4528a072d83493a1ddd05151ce4f&mc=true&node=se34.3.668_146&rgn=div8

OSHA states:

“Many OSHA standards, which have prevented countless workplace tragedies, include explicit safety and health training requirements to ensure that workers have the required skills and knowledge to safely do their work. These requirements reflect OSHA’s belief that training is an essential part of every employer’s safety and health program for protecting workers from injuries and illnesses.” <https://www.osha.gov/Publications/osh2254.pdf>

Regulatory Guidance

Federal Sentencing Guidelines:

- a. Under common law principles, in order to fulfill their fiduciary obligations, Boards of Directors/Trustees must ensure that their organizations have “effective compliance programs,” which follows the requirements set forth in the U.S. Federal Sentencing Guidelines, Section 8B2.1, (Guidelines). See *In re Caremark International Inc. Derivative Litigation*, 698 A.2d 959 (Del. Ch. 1996).
- b. Guidelines require training and communication programs regarding organizational compliance responsibilities.
- c. Guidelines state “(A) The organization shall take reasonable steps to communicate periodically and in a practical manner its standards and procedures and other aspects of its compliance and ethics program ... (B) by conducting effective training programs and otherwise disseminating information appropriate to such individual’s roles and responsibilities.”

Regulatory Guidance

Federal Sentencing Guidelines (Continued)

- d. Guidelines provide that training should be:
 - i. provided to “members of the governing authority, high level personnel, the organization’s employees, and, as appropriate, the organization’s agents.
 - ii. appropriate given “the size of their workforces, the types of misconduct that are of concern given the organization’s operations and fields of activity, and other factors such as the job responsibilities of the persons being trained.”
- e. Guidelines anticipate that other forms of communication can be used to disseminate information about an organization’s compliance programs and legal obligations.
 - i. Examples: memos, emails, newsletters, pamphlets, posters, webpages, break room bulletin boards, staff meetings, etc. (See Appendix 1 for examples of newsletters, posters, webpages, and other forms of compliance communications).

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Institutional Policy Requirements

- a. Review Your University’s policies
- b. Does a policy require training (internal or external) to be implemented?
- c. Examples:
 - i. Reporting Policy
 - 1. Do your employees know where to report compliance issues?
 - 2. Do your employees know what to report?
 - 3. What training has publicized this policy?
 - ii. Non-retaliation Policy
 - 1. Do your employees know they cannot be fired for reporting a compliance issue?
 - 2. What training has publicized this policy?

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2. Develop Learning Objectives

Effective Training is best achieved when you first clearly identify the learning objectives you wish to achieve in the proposed training session or program. Consider these four steps when you develop your learning objectives:

- Identify overall purpose of training
- Identify expected outcomes
- Identify what must be in place before training begins
- Set standards for your learning objectives

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Identify the Purpose of the Training

- a. What does law/regulation require to be taught?
- b. What does policy/procedure require to be taught?
- c. What does the regulatory guidance require to be taught?

Identify Your Expected Outcomes

- a. Use action verbs to identify your expected outcomes.
- b. Consider completing a pre-survey and compare to post-survey.
- c. Consider identifying deadlines for surveying expected outcomes.

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- d. Ask questions:
 - i. What should audience remember?
 - ii. Are you trying to include too much content?
 - iii. Focusing on what is important or throw in the kitchen sink?
- e. Identify who ultimately decides what content will be included:
 - i. Conflicting views will result in disjointed and ineffective training exercise

Identify What Must Be In Place Before Training

- a. What materials need to be created?
 - i. Handouts, tutorials, or other materials
- b. How are you “encouraging” attendance?
- c. Do you have institutional buy-in?

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Set Standards for Learning Objectives

- a. Standards similar to performance goals
- b. Identify minimally acceptable standards in writing
- c. Training standards typically do not require proof of mastery of the subject; but, would minimally identify what is an acceptable performance goal
- d. Identify when training objectives must be met or demonstrated by employees

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Practice pointer: The learning flows both ways.

- Training can be used as an opportunity to achieve other compliance objectives, such as risk assessments.
- For example, if you are conducting a live presentation on privacy, you could ask audience members whether anyone has encountered use of social security numbers for personal identification purposes.
- Audience feedback can be a valuable way to identify other areas that need compliance or managerial attention. Even the types of questions audience members ask may provide valuable insight into potential compliance risks.

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3. Design Training Materials

There are a number of factors to consider when designing your training materials:

- What to call “training” sessions?
- Identify the target audience
- Mode of delivery
- What methods used?
- How often do you repeat the training?

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What do you call the “Training”?

- a. Consider your terminology rather than use the dreaded word “training”
 - i. How can you hide the vegetables?
 - ii. Examples: Regulatory updates, Orientation, Workshops, Discussion groups, Research updates

Identify the Target Audience

- a. One size does not fit all
 - i. Tailor to specific target audience
- b. Identify special needs or requirements
 - i. Remember accessibility requirements
 - ii. Remember any special language-based requirements
 - iii. Remember access/lack of access to computers

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- c. Identify who gets invited to specific training
 - i. Combine staff and supervisors?
 - ii. More diverse audience?
 - iii. Differences in educational levels?

Mode of Delivery

- a. In-person (or Video Conference, e.g. Microsoft, Google, Zoom?)
- b. Standardized Online Training Program
- c. Newsletters
- d. Blogs
- e. One on one
- f. Other customized training

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Training Materials Used

- a. PowerPoint
- b. Policies, Forms and checklists
- c. Outlines, manuals or other written materials
- d. Memo, letter, etc. from President, Provost, or other Executive

How Often to Repeat Training

- a. Annual
- b. Biennial
- c. After an emergency
- d. When the law changes

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4. Implement the Training

- a. Mandatory attendance?
- b. Permissive attendance?
- c. Logistics:
 - i. Where are you embedding the training?
 - ii. Who conducts?
 - iii. How are you engaging the audience?
 - iv. What group size?

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4. Implement the Training

- a. Is the training mandatory?
 - i. Training required by law or regulation?
 - ii. Training required by institution?
- b. Is the training permissive?
 - i. If permissive, how are you incentivizing participants to attend?
 - ii. Tie it to performance evaluation
 - iii. Gamification
 - iv. Certificate for the wall
 - v. Public or private recognition
 - vi. Offer rewards - monetary, specifically gift cards; swag
 - vii. Paid time off

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4. Implement the Training

- c. Consider venue logistics
 - i. Location on or off campus
 - ii. Size and shape of room
 - iii. Layout of room - including types of tables
 - iv. Be cognizant of ADA compliance
- d. Consider training logistics
 - i. Ask for input before and provide feedback afterwards
 - ii. Send out "save the date" as soon as possible
 - iii. Schedule timely and regular reminder notifications
 - iv. Pick a date/time that fits schedules
 - a) Scheduling faculty training in the summer will not work
 - b) Scheduling staff training on Friday afternoon will not work

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4. Implement the Training

- v. Develop your agenda and disseminate it before the meeting to ensure that attendees understand the value-added elements of the training
- vi. Make registration easy; consider mobile registration process
- vii. Plan for problems with technology
- viii. If not planning on printing handouts, what happens when technology fails?
- ix. Consider your audience
 - a) Level of education
 - b). English as a second language
 - c). Need for ASL interpreter

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4. Implement the Training

- e. Where embedding this training?
 - i. Stand-alone training
 - ii. New employee orientation
 - iii. New faculty orientation
 - iv. New student orientation
 - v. Squeeze in training when employees are already attending another meeting voluntarily
 - vi. Based on your culture, where would embed training?

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4. Implement the Training

- f. Who is conducting training?
 - i. Develop a facilitator/trainer guide to communicate institutional expectations for all institutional speakers
 - ii. Supervisor
 - iii. Internal authority figure (i.e. Faculty Senate officer; committee chair; etc.)
 - iv. Peer
 - v. Outside “expert” versus inside “expert”
 - a) Consider both

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4. Implement the Training

- g. How to engage participation from your audience?
 - i. Lead by example
 - a) Leaders take training (e.g. Board members, President, administrators, etc.)
 - b) Leaders endorse training
 - ii. Establish a positive and supportive environment to encourage interaction of ideas
 - iii. Ask audience to lead sections of the training (on the spot or pre-planned)
 - iv. Hospitality - beverages, meals, and snacks
 - v. Introduce ice breakers (cautious and appropriate use of humor)
 - vii. Giveaways - specifically gift cards; institutional swag; candy

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4. Implement the Training

- vi. Generate pre-excitement
 - a) Consider sending out “previews” of content to be discussed but do not reveal too much of the content
- v. Mini activities throughout training
- vi. Case study
- vii. Multiple choice quizzes using mobile app
- viii. Jeopardy quiz game

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4. Implement the Training

- h. What size of the group are you training?
 - i. Large group with similar interests
 - ii. Large group with dissimilar interests
 - iii. Department or unit specific
 - iv. One on one
 - v. Online

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4. Implement the Training

Practice Pointer: Inform and engage

- The key to training is the content. Training should not be designed simply to entertain the audience. You need to balance a fine line between presentation style detracting from the underlying training and ensuring that the audience actually receives and understands the content.
- Remember - an effective presentation must have both “fluff and stuff”.

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5. Develop an Annual Training Program

- Develop an annual compliance training program and communication plan using standard “Risk Management” techniques.
- In developing an annual training program consider:
 - Legal and policy requirements
 - Institution’s internal context (e.g. size, culture, operations)
 - Institution’s external context (e.g. changing federal government enforcement; regulatory examination or audit plans for your institution, which will often involve a review of institutional training programs)
 - Institution’s highest perceived compliance risk areas that would benefit most from a training program

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6. Evaluate Effectiveness of the Training

- a. Why assess effectiveness of training?
 - i. Ascertain if goals have been met
 - ii. Provides diagnostic feedback
 - iii. Research study
 - iv. Evaluates progress toward goals
 - v. Motivates performance
 - vi. Identifies what training methods were effective or ineffective

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6. Evaluate Effectiveness of the Training

- b. How to assess the effectiveness of training?
 - i. Theory - Respond, Reflect, and Review
 - ii. Pre-assessment and post-assessment
 - a). Timing of pre and post assessment important
 - b). Consider post-assessment 6 months to see what they remember
 - 1. Pros/cons: Creates a record that could be used for/against an institution
 - iii. More generalized attitude surveys
 - iv. Built in satisfaction surveys that could ask attendees how the training could be improved

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6. Evaluate Effectiveness of the Training

- v. Short writing assignment response
- vi. If a law/policy requires reporting, review the level of reporting after the training

- a) What does an increase or decrease mean?
- b) Both could be indicators that training was effective

Example: Climate survey associated with Title IX sexual misconduct issues could establish that XX% of students on your campus have experienced sexual harassment while on your campus; but, reporting of such incidents to the Title IX Coordinator is not at the same level of reported incidents through the campus climate survey. If reports of sexual misconduct increase after the training, would this establish that the training was effective?

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6. Evaluate Effectiveness of the Training

- c. Document training
 - i. Documentation serves multiple functions
 - a). Tool for holding employees accountable
 - b). Demonstrate compliance (or at least good faith) for reviewing agency
 - ii. How to document
 - a). Stone tablet
 - b) Excel spreadsheet
 - c) Hard copy file
 - d) Online system

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6. Evaluate Effectiveness of the Training

- iii. Where to store the data
 - a) Digitally in institutional database
 - b) Employee's HR file
 - c) Employee's file with supervisor
 - d) Employee's file associated with specific law, policy, or procedure for which training provided
- iv. What about those "informal" training opportunities?
 - a). Examples:
 - 1. During lunch with Student Affairs folks, talk about the implementation of the Missing Student Policy.
 - 2. Did you send out an interesting new case that highlighted institutional responsibilities for suicidal students?

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How to Scale-up Institutional Training

Addressing significant regulatory changes

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Scaling- Up Training

1. What are the best communication methods to inform the campus community of significant regulatory changes that require training?
 - a. Newsletter updates
 - b. Blast email messages
 - c. Communication trees or cascading communication - key leaders informed who inform their staff who tell their colleagues and so on
 - d. Institutional customized training
 - e. Consider video/presentation produced by institutional members
2. Who should be communicating to the campus community of significant regulatory changes?
 - a. Appropriate institutional official
 - b. Outside “expert” or inside “expert”

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Scaling- Up Training

3. What should be communicated?
 - a. Communicate institutional buy-in
 - b. Explain what is change
 - c. Explain why this change has mandated training
 - d. Explain how this new requirement is going to be implemented
 - e. Explain the timetable for implementation
4. What is the tone of the communication?
 - a. Tone of communication is important
 - b. Communicate urgency of training
 - c. Communicate need for employee buy-in to complete the training

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Scaling- Up Training


5. Can institutional committees assist with buy-in?
 - a. Think of committees as “institutional messengers”
 - b. Think of building a consensus to explain the importance of the training
 - c. What committees could be involved?
 - d. Could training originate at committee?
 - e. Could committee generate institutional buy-in?

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Best Practices

Summing Up

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1. Communicate, communicate, and communicate
 2. Stress and show importance of training
 3. Develop realistic goals for each training session
 4. Make training interesting and interactive
 5. Assess the effectiveness of training
 6. Build training into your institutional budget
 7. Develop a resource library to house all institutional training
 8. Appropriate documentation of training

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Questions?