Training Effectiveness

SCCE – Nashville Regional Virtual Compliance & Ethics Conference
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Presenters

- Sasha Glassman,
Assistant General Counsel, Rogers Corporation

- James Rose,
Managing Director, SunHawk Consulting LLC

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Training Effectiveness Presentation Overview

- Why should you bother?
- How to discuss incidents at your organization within your training?
- Pros and cons of off-the-shelf training?
- How to make your training effective – and know that it is, in fact, effective?

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Compliance Training –
Why should you bother?

Are you running a check-the-box exercise or additive addition to your compliance objective?

How does an effective training program support an effective compliance program?

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Compliance Program Effectiveness – Select U.S. Federal Regulatory Enforcement Perspectives

- Federal Sentencing Guidelines
- Justice Manual FCPA Corporate Enforcement Policy (March 2018 and November 2019)
- Benczkowski Memorandum (October 2018)
- Policy on Evaluation of Corporate Compliance Programs (June 2020 Update)
- Justice Manual, Cooperation Guidelines (May 2019)
- Justice Manual, Corporate Compliance Program Guidance (July 2019)

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Compliance Program Training Requirements – Example State Regulations on Harassment Training

- California – 2 hours for supervisors within six months of becoming a supervisor and every two years thereafter; 1 hour for non-supervisory staff
- Illinois – All staff annually
- Other states with requirements: Connecticut, Delaware, Maine, New York
- Many other states have requirements for public employees and/or suggested training expectations.

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Strategy Alignment:

The Business Case for an Effective Compliance Program

As the global regulatory and enforcement focus on financial and corporate fraud, corruption, and national security crimes intensifies, a compliance and ethics program has never provided more value to companies. An effective compliance program demonstrates a company's commitment to responsible conduct and can result in substantial and direct benefits to a company's bottom line.

What are the bottom line benefits of an effective corporate compliance and ethics program?
Prevention of violations: A compliance plan tailored and implemented to address the real risks faced by a company should prevent most violations. In preventing violations, a compliance program can more than justify associated costs and investments. The cost of non-compliance

to financing may be constrained during the pendency of an investigation, regardless of its final resolution, Fitch Ratings reported recently[1].

In order to be effective, a program needs to have a demonstrated commitment to compliance at the highest levels, Board of Directors' oversight, an empowered compliance infrastructure, relevant training, regular auditing and monitoring, reporting procedures, remediation, discipline, and recordkeeping.

Competitive advantage: A compliant company "will have a more resilient business, be an employer of choice for recruiting and can gain a competitive advantage as a preferred choice of ethically concerned customers, investors, suppliers and other stakeholders."[2] Compliant companies also offer the stability derived from avoidance of the

Competitive advantage: A compliant company "will have a more resilient business, be an employer of choice for recruiting and can gain a competitive advantage as a preferred choice of ethically concerned customers, investors, suppliers and other stakeholders."[2] Compliant companies also offer the stability derived from avoidance of the delays and disruptions caused by investigations, interim suspension orders, intensive licensing reviews, or other, more stark, penalties. By implementing an effective compliance program, a company can highlight its commitment to stable and enduring business relationships, putting to rest anxieties about global trading and risk management pitfalls.

Clifford Chance (Global Law Firm) – Briefing Note August 2011

Strategy Alignment:

ETHICS

We Shouldn't Always Need a "Business Case" to Do the Right Thing

Harvard Business Review

by Alison Taylor
September 19, 2017

"…arguments for ethical business tend to focus heavily on the upside of risk prevention: avoiding the possibility of regulatory investigation or reputational scandal. While the argument for risk prevention can be compelling, it ignores the culture of most private sector organizations. Human beings are goal-oriented, competitive, and highly social, with limited memories and attention spans. People are generally overconfident when they assess risk, more comfortable focusing on its probabilities than on potential impacts. Given that senior decision makers in organizations often attained leadership precisely because they are keenly competitive, audacious people, they are particularly unlikely to be swayed by calls for caution . . .

"On the other hand, senior executives often respond enthusiastically to the potential of business integrity to provide an inspirational narrative. Amid the world's faltering political will to tackle long-term social and environmental challenges, business is well-placed to assume a leadership role. Most corporate leaders know this. They understand the power of reputation and relationships. They think often and hard about their personal legacy at the company and their opportunity to change the world for the better. They are less subject to short-term operational pressures, and accordingly less risk-averse."

Polling Question 1:

How hard is it to make the case for an effective compliance program training within your organization?

1. Everyone is onboard!
2. We have support from the top – but difficult to implement.
3. Uphill daily struggle but at least the topic is alive.
4. What is compliance? Never discussed.

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How to discuss incidents at your organization within your training?

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The Foundation of Effective Compliance Training is your Organization's Risk Assessment

- Identify Authoritative Sources
  - Law and regulations related to your organization
- Identify Relevant Compliance Frameworks
  - SOX, COBIT, HITECH, COSO, ISO
- Prioritize Risks
  - Develop enterprise prioritization framework
- Discuss Root Cause and Actions Taken
  - De-identify and Share
  - But – be consistent with your culture (fair, balanced discipline)

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Areas of Potential Risk

- Depending on the size of your organization and services offered some potential risk areas include:
  - Federal Reserve / Banking
  - Local Licensing
  - Taxing Jurisdictions / Intercompany Pricing
  - Conflict of Interest Management
  - Sanction Checking – LEIE
  - HIPAA Privacy
  - Any open investigations
  - Hotline calls
  - Vendor Management
  - OSHA
  - Department of Insurance

According to NAVEX Global 2018 survey – 73% of firms include training based on *the organization's risks and individual roles.*

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U.S. Federal Sentencing Guidelines

Federal Sentencing Guideline Element
Risk Assessment Process
Policies and Procedures
Training and Communications
Confidential Reporting & Investigations
Third Party Management
Mergers and Acquisitions
Commitment by Management
Compliance Resources
Incentives and Disciplinary Measures
Continuous Improvement and Periodic Testing
Investigations & Root Cause Analysis

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How Does the DOJ Evaluate Effectiveness?

- **Three Areas of Focus:**
  - Design - Is the compliance program well-designed?
  - Implementation – Is it applied earnestly and in good faith?
  - Operation – Does it work in practice?

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DOJ and Program Effectiveness – <u>Design</u>
What do we highlight during training?

- Is there a risk assessment? Formal or informal?
- Do effectiveness metrics tie to the key risks?
- Are resources prioritized toward high-risk areas?
- Are policies, procedures and expectations well communicated?
- Are compliance failures responded to appropriately?
- Are investigations appropriately conducted, scoped and results addressed?

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Compliance Risk Management – Compliance Risk Categories

General Compliance Risks	Mortgage Compliance Risks	Corporate Compliance Risks
Planning Risks:	**Execution Risks:**	**Execution Risks:**
• Compliance Leadership & Succession Planning	• Anti-Money Laundering	• Securities Regulations & Filings
• Regulatory Forecasting	• Equal Credit Opportunity Act	• 10K / 10Q
• State Regulators	• Fair Credit Reporting Act	• Form 4
• Federal Regulatory	• Fair Debt Collection Practice Act	• Section 16 filers
• Non-US Regulatory	• Fair Housing Act	• Disclosures
Execution Risks:	• Privacy of Consumer Financial Information	• NASDAQ regulatory guidelines
• Compliance Staffing	• Truth in Lending Act	• Investor Communication / Fair Disclosure
• Compliance Organizational Design and Accountability Assignment	• Real Estate Settlement Procedures Act (RESPA)	• Tax filings (federal and state)
• Compliance Reporting	• Secure and Fair Enforcement for Mortgage Licensing	• Income tax (fed / state)
• Compliance Risk Assessment	• Unfair, Deceptive, or Abusive Acts or Practices	• Sales tax (state)
• Fraud, Waste & Abuse Assessment	• Telephone Consumers Protection Act	• Heavy weight use tax (fed)
• Ethical Conduct	• Homeowner Protection Act	• Contractor 1099s
	• Service Members Civil Relief Act	• Conflict Minerals (Form SD)
Manufacturing Compliance Risks	• Fair and Accurate Credit Transactions Act	• Dodd-Frank reporting
Execution Risks:	• EFT	• Census reporting
• HUD	• Loan Originator Compensation Rule	• Information Security
• OSHA	• FTC Advertising Rules	• Privacy Regulations
• EPA	• E-sign Act	• HIPAA
• State code compliance (modular)	• OFAC Compliance	• GDPR
• Reporting of shipped homes to states	• IRS 1098 requirements	• Contract Adherence
• Licensing	• PCI – Debit/Credit Card Security	• Contract management
• Plant	• Foreclosure requirements—state statutes	• Intellectual Property
• Retailers	• Bankruptcy Code(?)	• Litigation Management
• Salespeople	• Government Loan Annual Renewal (FHA, VA, RHS)	• Government Procurement
• Contractor licenses (e.g., installation)	• Loan file retention policy	• Advertising Laws
• Validate Retailer Licenses	• CFPB	• Human Resources
	• Vendor management	• DOL Requirements
	• Customer Complaint Process	• FLSA
		• Minimum Wage
		• Hiring Discrimination

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DOJ and Program Effectiveness – <u>Implementation</u>
What do we highlight during training?

- Autonomy of compliance personnel (versus management obstruction)
- Adequate resources for compliance program
- Increased risk tolerance for pursuit of new business or revenues?
- Publication of discipline (and causes) and consistent treatment of similar instances of misconduct
- Incentives for compliance performance
- Is the Board and C-Suite engaged?
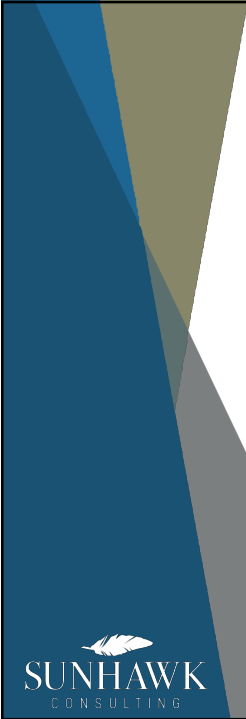
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Compliance Personnel and C-Suite Engagement

- Does everyone know who is the Compliance Officer / Head of Compliance and how to contact them?
- Does the CEO / Board Chairman make statements and presentations regarding compliance?
- Is how to call the Hotline number clear to all employees?
- How rapidly are new acquisitions, partners, and vendors incorporated into your program?

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DOJ and Program Effectiveness – <u>Operation</u>
What do we highlight during training?

- Are investigations focused on root causes and identifying accountability lapses among supervisory managers and senior executives?

- Is the volume, frequency and scope of audits appropriate?

- Are gap analyses for compliance program conducted regularly?

- Is there an organization-wide polling of all employees to determine impression of management's commitment to compliance?

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Employee Engagement and Feedback

- Does the company have an annual engagement survey that discusses compliance and ethics?

- Does your training program elicit feedback on the Company's approach to compliance?

- What culture "audits" and "surveys" are in place?

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Polling Question 2:

Do you use the U.S. Federal Sentencing Guidelines (FSG) elements to organize your compliance and training program?

1. Yes and we assess how we adhere to the FSG elements, periodically with **independent external review.**
2. Yes and we assess how we adhere to the FSG elements, **using internal resources.**
3. Yes but **we have not assessed** how well we adhere to the FSG elements.
4. No, we have a compliance program but **do not align to the FSG elements.**
5. What is compliance? We do not have a compliance program.

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Pros and cons of off-the-shelf learning?

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Off-the-Shelf Learning Counter-Arguments

Pros

-Easy to Implement

-Easy Check-the-box

-Cheaper to implement

Cons

-Cookie Cutter

-Doesn't Foster Your Specific Culture

-Not personalized by cohort

Hybrid Approach

- Use off-the-shelf for standard topics (harassment, anti-corruption, cyber-security) and more involved delivery (taped role play, external parties)
- Use personalized delivery for company / role specific messaging

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Essential Components to your Training

- Your Code of Conduct
- Your key regulatory frameworks and policies
- Your focus on employee / customer / member safety
- Your specific compliance program initiatives
- Your Hotline and Ethics help line

- Specific areas: Workplace harassment, wage and hour, anti-bribery, cyber-security, and corruption.

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Focused and Tailored Approach

- One Training for All or by Cohort
  - Sales
  - Overseas
  - Specific Risk Areas
    - Healthcare – Billing, Patient Safety, Privacy
    - Construction – OSHA, Architecture/Engineering Regulation
    - Financial – BSA, AML
  - Executive Level versus Staff Level
  - Board members
  - Regional variation
  - Language options
  - Work at home

According to NAVEX Global 2018 survey – 54% of firms assign courses based on learner role or risk. That same statistic rises to 90% of firms that consider themselves as advanced compliance programs.

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Training Options

- On demand video
- Large In-Person
- Small In-Person (Live video / Zoom classroom)
- Micro learning
- For all venues, **focus on engagement**
  - Questions
  - Dialogue
  - Personal values and goals
  - Quizzes, reflections
  - Panel discussions

According to NAVEX Global 2018 survey – 22% of firms use micro learning (defined as 3-7 minute courses).

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Polling Question 3:

How do you develop your training?

1. Purchased Externally
2. Purchased Externally but with Company Specific Additions
3. Entirely Company Specific
4. We Are Not Conducting Routine Training

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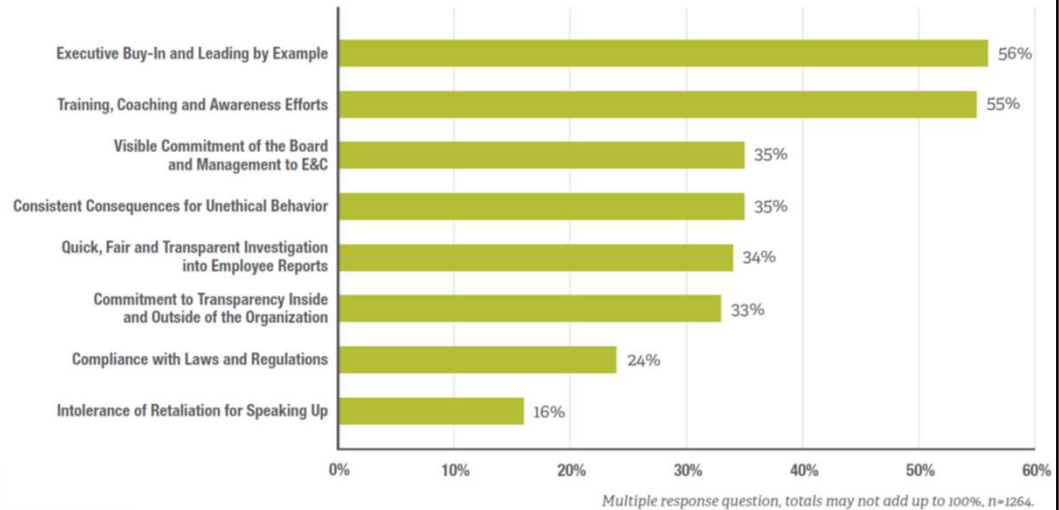How do you make your training effective – and know that it is in fact effective?

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Compliance / HR Leader Perspectives

In Your Opinion, What Are the Most Effective Ways to Pursue a Culture of Ethics & Respect?

Executive Buy-In and Leading by Example	56%
Training, Coaching and Awareness Efforts	55%
Visible Commitment of the Board and Management to E&C	35%
Consistent Consequences for Unethical Behavior	35%
Quick, Fair and Transparent Investigation into Employee Reports	34%
Commitment to Transparency Inside and Outside of the Organization	33%
Compliance with Laws and Regulations	24%
Intolerance of Retaliation for Speaking Up	16%

Multiple response question, totals may not add up to 100%, n=1264.

Source: Navex Global 2018 Ethics and Compliance Training Benchmark Report

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Creating Effectiveness

- Engaging
  - Tone, Style, Relevance
- Periodic Reinforcement
- Targeted Updates
- Industry Case Studies
- Company Specific Lookback Sharing

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Marketing and Branding your Compliance Training Program

- Review current compliance experience
- Ensure leadership buy-in
- Outline compliance program's core competencies and mission statement
- Identify the benefits your compliance program delivers to employees

Questions

- What is your company's compliance department known for?
- Is the compliance department known for being trustworthy, responsive and innovative?
- Is the compliance team known for taking up employee time with meaningless "check the box" tasks?

Source: Jenkins, Stephanie; *Essential Steps for Ethics and Compliance Program Branding and Marketing*; The Complete Compliance and Ethics Manual; SCCE 2019

Consistency and Reinforcement in Messaging

- Do you have a reinforcement strategy in place?
  - Repeat key messages in interesting ways so employees remember these core values and can easily recall them
  - Research has indicated that a message needs to be repeated multiple times before it effectively sticks with individuals.
    - Some studies say that number could be as high as 7 times
- If the messaging is not consistent in terms of style, words, and focus then:
  - Employees may be confused
  - Trust in organization leadership may be harmed
  - The reinforcement principle is destroyed
- Is senior management reinforcing the same core messages to employees?

Embed Compliance Into the Business

- Create a unified corporate culture across subsidiaries
- Ensure clarity on how compliance is part of corporate strategy
- Ensure clarity on corporate values
- Develop a common risk language
- Engage leaders in proactive consideration of all risks that may impact corporate strategy and values
  - Strategic
  - Operational
  - Financial
  - Compliance

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Methods for Incorporating Compliance Into the Business

Enterprise Risk Management

- Business leaders should be discussing risk holistically.
- Compliance matters should have their distinct place within that discussion.
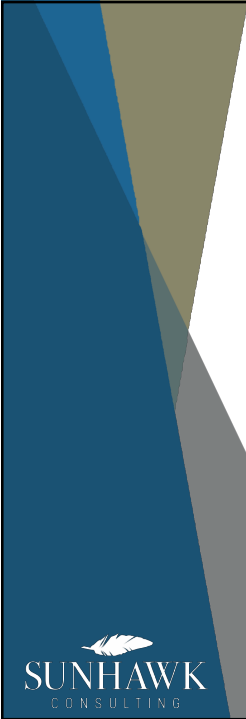
Governance, Risk and Control Methodologies

- Business controls and monitoring efforts should give compliance risks the appropriate weighting.
- When using GRC software systems, compliance matters should be embedded in overall operations dashboards – not separate modules / systems.

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Embed "Compliance Training" Inside Strategic Discussion

- Strategy Retreats
- Department Meetings
- Operational Updates
- Board / CEO / COO Presentations

- Discuss "Culture" and "Expectations" within the context of strategic and financial goals
- Hold one-hour sessions on "How culture drives strategy" during all-day retreats.

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Measuring Effectiveness

- Learning Management Systems
- HR System Integration
- Ethics Call Levels
- Inquiries and Conversations
- Quizzes and Knowledge Checks

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Determining Effectiveness

1. Figure out what you want to measure.
2. Were employees satisfied with the training? What is their engagement?
3. Did the employees actually learn anything?
4. Are employees applying your training?
5. What's the quantitative business impact of your training?
6. ROI: bringing it all together.

Source: Fox, Thomas; *The Effectiveness of Compliance Training*; The Complete Compliance and Ethics Manual; SCCE 2019

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Polling Question 4:

Do you measure the effectiveness of your compliance training program?

1. Yes – we track elements such as completion, feedback on the training, where employees learned of the hotline when then call in, increases in calls in relation to timing of training...
2. Yes – but only with feedback surveys on how employees liked the training and thought it was useful.
3. No – we only track completion of the training not effectiveness.
4. What is compliance? We do not have a compliance program.

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What Does Success Looks Like......

Enterprise Risk Management

- Conversations about risk happen normally throughout the day.
- We have clarity on corporate / department / site-specific key risks.
- Compliance risk tolerance is understood.
- We have driven long term value creation by appropriately managing all categories of risk.

Compliance Program

- We demonstrate in word and deed how we align with expectations for a corporate compliance program.
- The compliance program supports and reinforces our shared values toward our employees, customers and shareholders.

Employee Engagement

- We track and understand the level of employee engagement.
- We have a high level of employee engagement based on clear expectations, trust and shared purpose.

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Recap and Questions

- Why should you bother?
- How to discuss incidents at your organization within your training?
- Pros and cons of off-the-shelf training?
- How to make your training effective – and know that it is, in fact, effective?

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Available Educational and Operational Tools

- Compliance Program Assessment Tool – Cross Walk to DOJ Expectations

- Metrics That Matter – Metrics for Compliance Programs

- Enterprise Risk Management Category Examples

- SCCE, <u>The Complete Compliance and Ethics Manual</u>

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Questions:

- Sasha Glassman,
Assistant General Counsel, Rogers Corporation

- James Rose,
Managing Director, SunHawk Consulting LLC
James.Rose@SunHawkConsulting.com

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