

Tailoring Ethics and Compliance Training for Individuals

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Whether you need to promote ethics and compliance in the workplace is no longer a question you can ask in polite company. Organizations of all types acknowledge that they must set the expectation with employees and other stakeholders that ethical and compliant behavior is expected.

Similarly, the need to educate employees is becoming a generally accepted assertion. Well-written policies will be cast aside on a shelf, or (to update it for the Internet age), bookmarked but never read. Employers who want their employees to have an understanding of what is expected of them must educate that population about compliance and doing the right thing. And that education usually means training.

So, you need training. Just do it, right? Go out on the Internet, find a program, replace their name with your organization's name, and copy it. Okay – ready, set, go!
No! Stop!

You cannot just buy an off-the-shelf program. That may be a good start, but it is just that – a start. Government and industry expect-

tations are that your program will reflect the unique aspects of your business. For example, the Federal Sentencing Guidelines for Organizations state that training, as one of the seven components of an effective ethics and compliance program, should be geared toward "individuals' respective roles and responsibilities."

Similarly, the recently issued Federal Acquisition Regulation Part 3.10 (Improper Business Practices and Conflicts of Interest), which requires many government contractors to have formal ethics and compliance programs, states that programs, including training, must:

- Be suitable to the size of the company and extent of its involvement in federal government contracting;
- Facilitate timely discovery and disclosure of improper conduct in connection with such government contracts; and
- Ensure corrective measures are promptly instituted and carried out.

Thus, the question for any organization that is serious about training is: How do you tailor the program to meet your organization's objectives, and satisfy external expectations? You must approach designing and implementing your training program as the strategic project that it is, which means carefully evaluating your industry, your organization's structure, infrastructure, resources, and employees' needs. Every firm needs to consider the following factors.

Industry considerations

First, review regulatory requirements for your



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industry and analyze the trends in training among your peers and competitors. Is your organization in an industry where training on certain topics has become routine, if not required? For example, the federal government and many states require training on harassment and discrimination prevention for their employees. As mentioned above, large government contractors (with contracts valued at \$5 million or more) now must train their employees on their compliance and ethics program.

In the health care industry, the medical privacy rules under the Health Insurance Portability and Accountability Act, as well as certain state laws, also require that training on privacy protection be tailored to the industry and individuals' roles. The text of the Deficit Reduction Act of 2005 strongly recommends training on fraud prevention, but statements from the U.S. Office of the Inspector General suggest that training is, in fact, required. Banking and financial institutions must train on securities rules and insider training.

Beyond training requirements, consider also whether recent changes in the law, or common violations within your or your competitors' organizations, suggest that training on a specific topic is needed.

Organizational structure and infrastructure

Structure: Is your organization a public company? If so, stock exchange rules likely will require or expect that you educate your employees on issues such as financial integrity and how to report a compliance violation. Your board members will need to be trained on their special responsibilities, including their duty of loyalty to the corporation.

Culture. Is your culture one that welcomes training or, do employees tend to see training as a waste of time? (Be honest). Is the proverbial “tone from the top” one that promotes the compliance function as worthwhile, or will it be a struggle to implement any training program? You must truthfully evaluate your culture, and build a plan to ensure buy-in from employees and championing by senior management. You don’t want to roll out an extensive program now, only to realize a year later that it has become a “check the box” exercise. If you are concerned that your organizational culture is one that frowns on training, then better to start with a smaller, targeted program that is successful and create a model for a later, wider rollout.

Resources. Does your organization and, specifically, your office have access to the personnel, money, and time necessary to conduct a comprehensive training program? Will you be able to target all employees in all locations? Developing and implementing a large-scale training program using solely in-house resources will require assigning several employees, including subject-matter experts, training specialists, and possibly information technology (IT) gurus. On the other hand, hiring a vendor frees up your internal staff, but costs hard dollars. Establish at the outset what your budgeted resources will be. Determining who and what can be dedicated to developing and implementing a training program is vital to its success.

Location(s) of employees. Is your organization located in a state that requires training on certain subjects? For example, California requires harassment-prevention training for supervisors at organizations with 50 or more employees. But many other states require training or have set the expectation that harassment-prevention training will be done. These states include Colorado, Connecticut, Illinois, Maine, New Jersey, Rhode Island, Vermont, and the Virgin Islands. New York State requires public employers to train their employees on workplace violence prevention.

Employee Population. Different kinds of employees need different kinds of training, and it is important to segment them to best target their needs. Here is a sample breakdown of employees and what training may be most meaningful:

1. Board and C-level: Boards of directors and senior management must have a high-level but comprehensive education regarding their responsibility to model ethical behavior and to monitor the organization for ethical and compliant behavior. The message of the training should focus on the importance of supporting and promoting an ethical culture by establishing the right “tone at the top” that other employees will want to emulate.
2. Compliance officers, HR, and in-house counsel: Similar to those at the board and executive level, employees responsible for building a culture of ethics and monitoring behavior must understand the importance of their role. They also should be taught practical skills to enable them to do their jobs. For example, they should be trained on how to conduct an internal investigation, as well as on best practices and changes to the legal and regulatory environment.
3. Supervisors: Because supervisors deal directly with employees on a daily basis,

it is especially important for them to understand what is acceptable behavior and what it is not. Supervisors should be trained on “managing and the law” topics, such as interviewing and hiring lawfully, lawful and effective discipline, avoiding wage-and-hour violations, family and medical leave, accommodation of religious practices, dealing with disability accommodations, I-9 compliance, workplace violence prevention, and harassment and discrimination issues (including the specific responsibilities of supervisors in these areas).

4. Line employees: All employees should receive training on certain basic compliance issues, including basic code of conduct and ethics, harassment and discrimination prevention, and workplace violence prevention. Basic code-of-conduct and ethics training topics may include, for example, general conflicts of interest, confidentiality, use of technology, and reporting concerns. Beyond these issues, you should study employees’ job functions and correlate training topics to those different functions. For example, sales representatives and marketing specialists working with foreign entities should be trained on antitrust compliance, the Foreign Corrupt Practices Act, and other anti-bribery/anti-corruption issues. Anyone working on a government contract should be trained on the rules of engagement with the government.

Employee training considerations

Beyond considering employees’ job functions, you also need to understand your employee population’s capabilities. What level of education do the employees have? Experts recommend that a code of conduct be written at an eighth-grade level. Similarly, any training program should be designed at a level that will align with most employees’ cognitive

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aptitudes. Also, does a significant portion of the population speak a language other than English? You will have to provide training programs in those languages, if they do.

The next step is to determine how training will be delivered to employees. Will the training be classroom-based or online? Will you use internal or external resources? Three key factors in this decision are the size of the organization, number of locations, and employee access to technology. An organization with thousands of employees and numerous locations may find it impractical to conduct classroom-style training. Ensuring consistency among the trainers and sessions could be difficult, as could finding available trainers for so many sessions. Thus, for a larger organization, or one with employees who are geographically disbursed, online training may prove to be the better option. It will be important, however, to ensure that employees have access to the technology needed to complete an online program.

Instructor led, classroom-style training, on the other hand, may work best for smaller popula-

tions or smaller, targeted groups of employees within a larger organization. Also, instructor-led training can be best utilized for specific groups of employees on critical training that will enhance their job abilities. For example, HR professionals and compliance officers should be trained on how to manage and conduct internal investigations. This type of training may include role-plays that will enable specialists to practice conducting investigations.

Finally, some organizations may choose a hybrid approach. For example, organizations where most employees have access to computers may use an online program for those employees, then use the same program as the basis for classroom training at sites where employees do not have computer access.

Training program evaluation

Just putting a program in place, even after completing your due diligence, is not enough to ensure employees receive optimal training. Content must be refreshed to ensure its timeliness and accuracy. Content must always reflect the latest guidelines, regulations, and legislation; otherwise employees will be

unaware of new rules.

Companies must also establish a means to track when employees have completed training modules. By using an learning management system (LMS) with online training, an organization can:

- Create varying registration methods (e.g., pre-registration, on-demand registration),
- Customize registration fields,
- Deliver targeted e-mail messages that allow the set-up of timed messages to different groups of employees, and
- Utilize reporting and tracking capabilities to ensure course completion.

Organizations must be committed to a culture of integrity. Many solutions are available for ensuring ethical and compliant behavior in an organization. Through a robust and flexible training program, an organization demonstrates its commitment to its employees and stakeholders. With a training program tailored to meet employees' needs, a standard ethics and compliance program becomes a successful one. ■

SCCE IS LOOKING FOR INFORMATION

Making the "Value Proposition" for Compliance and Ethics Programs

Companies have been quick to implement plans and training initiatives – either because of internal issues or in reaction to the cautionary tales of high-profile scandals – as a way of dealing with problems that arise when people fail to follow the organization's values.

Companies and organizations are concerned about good governance and being seen to do the right and lawful thing. In terms of compliance, they need to satisfy standards established by regulators, legislatures, and securities commissions. In terms of integrity, whether or not rules are in place, companies want to assess and compare their performance in social, economic, and environmental terms.

If you asked a company leader the purpose of the organization's values, they would probably tell you that values dictate a standard of workplace conduct that will benefit the company and the internal and external communities it serves.

SCCE is building a new "Values" section on our Web site. This section will be listed under "Resources" and include; articles, white papers, surveys, and feedback from compliance professionals on how to develop a "value proposition" for compliance and ethics programs.

Check our Website at: www.corporatecompliance.org for compelling information on this issue. If you have information to contribute, please send it to: marlene.robinson@corporatecompliance.org.