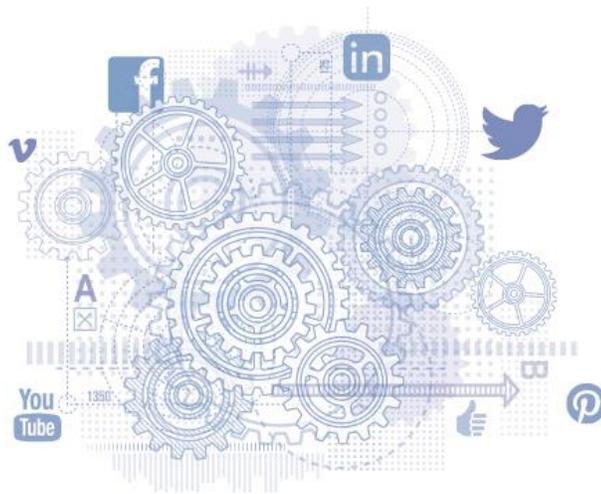


SOCIAL MEDIA RISK MANAGEMENT TOOLKIT

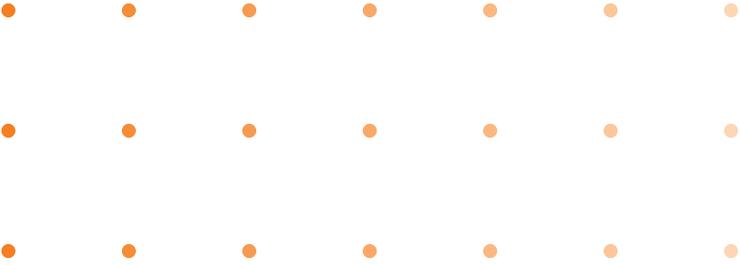
Explore four areas key to managing social media use by employees in your organization. Craft a best practice social media policy, navigate the legal landscape, and view examples of organizations that have established social media guidelines.

*By Ingrid Fredeen,
J.D., VP, Ethical
Leadership Group,
NAVEX Global*



Social Media Policy

A solid social media policy is the first step in controlling and reducing risks associated with employee misuse. But proceed with caution; the legal landscape continues to shift. By following a few simple tips, employers can navigate this complex area of policy development.



SOCIAL MEDIA POLICY BEST PRACTICES IN 6 STEPS

Introduction

A solid social media policy is the first step in harnessing social media use and reducing risks associated with employee misuse. But proceed with caution: the legal landscape continues to shift, and there are many things you must consider before you can establish an effective and legally defensible policy. By following a few simple steps, employers can navigate this complex area of policy development.

1: Align Policy Objectives with Your Culture

There really is no one-size-fits-all when it comes to social media policy. The policy must reflect your culture, your risks, and your organization. Start by thinking comprehensively. Consider issues that may be raised in different areas and departments within your organization. Determine if groups have unique needs and may require tailored guidelines due to specific business use requirements.

You then need to gather a wide team of contributors who will help shape the policy. Consider including people from such areas as HR, Audit, Corporate Communications, Finance, Legal, and Marketing.

2: Determine If Your Policy Will Be Permissive or Restrictive

Many employers are moving away from policies that restrict social media use or try to ban it altogether. With most employees able to access their social media accounts using personal devices, monitoring and ensuring compliance with this type of rule is impossible. Organizations are therefore focusing on smart and ethical use, finding ways to support employees who want to be brand ambassadors.



Before you get to work on your policy, determine whether your culture supports a permissive policy (where employees are allowed to use social media) or a very restrictive one. Talk with contacts in other organizations and find out what is and is not working for them.

3: Identify Your Organization's Key Legal and Reputational Risks

Your social media policy must take into consideration your organization's unique risk areas and opportunities. Organizations like hospitals that deal with private, highly sensitive information, for example, are likely to have different risks than an organization that manufactures goods and advertises heavily on social media.

Some risks are likely to be common across a wide array of organizations; for example, most organizations want to protect confidential and proprietary information, prevent the loss of intellectual property, prevent misuse of others' intellectual property, address antitrust issues, protect brand image, and prohibit employees from engaging in harassment and cyber bullying. But other risks may be unique to your sector or even your organization. Here are some examples of risks that your organization may need to address:

- Customer privacy
- Health Insurance Portability and Accountability Act
- Product liability
- Antitrust
- Federal Communications Commission rules regarding advertising
- Children's Online Privacy Protection Act

4: Define What You Want Your Policy to Accomplish

There are many important areas that you may want to address in your policy or guidelines. Before you start drafting, create a list of items that you want to be sure to address. A few of the things you may want to consider in your policy include the following:

- Define appropriate use of social media
- Address expectations of privacy
- Educate employees regarding proper etiquette
- Protect the company's confidential information and trade secrets
- Encourage employees to be brand ambassadors
- Support employees who are active social networkers



5: Get to Work and Craft Your Policy

One of the most important aspects of developing your policy is to work with a lawyer who has experience in this area. Your lawyer must be familiar with the shifting legal landscape and the current rules and limitations placed on employers. If not, your policy will likely be ruled unlawful.

As you craft your policy, consider the following tips:

- Don't trample on employee rights under the National Labor Relations Act; your policy language must be specific and aligned with current National Labor Relations Board (NLRB) positioning.
- Look at the [NLRB acting General Council's third memo](#) (dated May 30, 2012) and the policy that the NLRB thinks is okay. It's a great place to start. Check out other [policies and guidelines](#).
- Don't violate state laws that protect employees who engage in lawful off-duty conduct and that protect employee social media passwords.
- Decide how specific you want to be about using such sites as Facebook, YouTube, Instagram, Twitter, and LinkedIn. The more specific your policy is, the more likely it will quickly become outdated.
- Make the language reader-friendly; don't let it read like a legal treatise.
- Keep the policy language tight and clear. Avoid blanket statements and broad generalizations.
- Include a savings clause; even if it is unsettled whether it will save your policy, it can't hurt. A savings clause excludes protected Section 7 activity from the scope of a social media policy. The clause may not save a policy that is overly broad, but it may save one that is only slightly flawed.
- Review and update your policy every six to 12 months. This is an area that is changing rapidly.
- Ensure consistency by aligning the social media policy with other documents that mention social media use, such as:
 - New employee materials and training
 - Employee training courses (live and e-learning)
 - Annual policy certifications
 - Employee handbooks
 - Code of conduct



6: Communicate and Train on Your Policy

A policy is helpful only if employees know about it and understand what is expected of them. You should train all employees, including managers. Ensure that employees attest to your social media policy regularly and keep a record that they have viewed and accepted its terms.

Whether you develop training in-house or use a third-party vendor, make sure your training is effective, engaging, and interesting—that's what social media users expect.

Consider using [Burst Learning](#) training, such as that provided by NAVEX Global. Our fresh, high-quality solution teaches rather than preaches to your employees and offers organizations a quick, cost-effective, and mobile-ready solution that can get your message out today.

For some additional innovative ideas about how to bring your policy to life, check out these YouTube videos:

- [Citrix Social Media Best Practices](#)
- [Zurich Insurance Company Ltd. – Social Media: See how social media is changing the way we communicate](#)
- [Sodexo Social Media Guidelines](#)

Conclusion

Crafting a policy on social media use is no simple task. It is a collaborative effort that requires a comprehensive approach. And once you get it right—it matches your culture, complies with the law, and is effectively communicated to your employees—don't let it collect dust on the shelf. Revisit the policy regularly. This area is in a constant state of evolution, and if you aren't paying attention, your policy may quickly become outdated or, worse, unlawful.

About NAVEX Global

NAVEX Global is the trusted ethics and compliance expert for more than 8,000 clients in over 200 countries – the largest ethics and compliance community in the world. A merger of industry leaders ELT, EthicsPoint, Global Compliance Services and PolicyTech, NAVEX Global provides a comprehensive suite of solutions to manage governance, risk and compliance (GRC), providing critical cross-program insights through unmatched expertise and actionable data.



NAVIGATING THE SOCIAL MEDIA LEGAL LANDSCAPE

Introduction

When it comes to social media, the legal landscape is constantly shifting. New rights are uncovered and new laws are passed that provide even greater protection to employees. Employers are left scratching their heads and wondering if there is much they can do to protect their organization and its reputation. Employers cannot sit idly by and allow employees to use social media without rules or guidance, however. And before establishing or updating rules, employers must get a sense of the current legal landscape. Two areas that have a dramatic impact on limits that employers can place on employees include the National Labor Relations Act (NLRA) and laws protecting employee passwords.

The Legal Landscape: Section 7 of the NLRA

Under the National Labor Relations Act, non-supervisory employees have the right to discuss the terms and the conditions of their employment. This right applies to employees in both unionized and nonunionized workplaces. This means that employees are free to talk about such things as wages, policies, and working conditions. Protected activity under the NLRA typically involves two or more employees acting together to improve working conditions.

In the past 18 months, the National Labor Relations Board (NLRB) has taken an [aggressive stance](#) against employer social media policies that infringe or chill this critical right under the NLRA. And the law and agency rules continue to evolve in very employee-friendly ways.

The NLRB (through decisions and [memos](#) issued by the General Counsel) has sent a strong message to employers: social media policies and other rules will be closely scrutinized and invalidated if they could limit employee speech in the social media context.

Some policy language that has been found to be unlawful and overly broad includes:

- Blanket prohibitions on defamatory language (as appeared in Costco)
- Statements prohibiting information sharing about co-workers
- Prohibitions on the use of the company's logo and materials



But the NLRB has also provided some guidance on the type of policy language that may be appropriate. The May 30, 2012, [Operations Manual Memo](#) contains an approved policy and is a great place to start.

Can You Request Employee Passwords?

Another important area of developing law relates to an employer's right to request or demand that an employee or applicant give his or her private social media account password to the employer. Employees have reported that managers (and employers) have demanded passwords to private networks as part of the recruiting process and as part of an investigation. In some instances, managers may simply want to find out what is being posted about the workplace.

As of March 2013, six states have laws that make the request unlawful: California, Delaware, Illinois, Maryland, Michigan, and New Jersey. In addition, 23 states have pending legislation and some discussion about a legislative ban at the federal level.

Employers should advise all managers to not request passwords unless the request has been cleared with HR and Legal. Because this area of the law is evolving, it is important to carefully review each situation before taking any action.

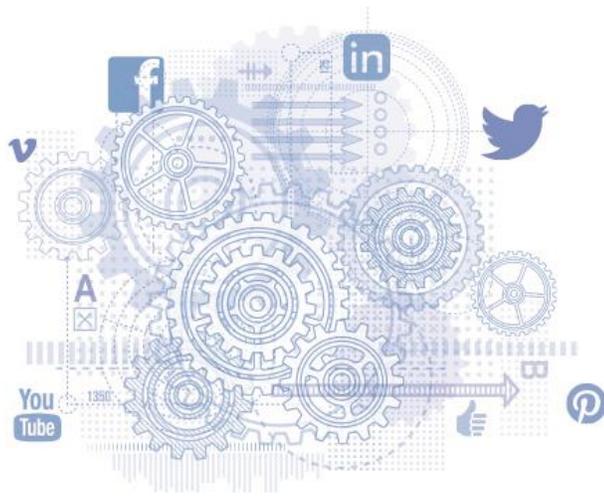
Conclusion

Don't assume that the rules relating to social media won't change. Social media continues to evolve at an incredible pace—a pace that is difficult for the law and employers to keep up with. Unlike other risk areas, you should expect to see many new developments that will affect how your organization can address and mitigate risks. Employers should not only craft a policy that complies with the law but also be sure to review and update it on a regular basis.

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Training

Effective training educates employees on appropriate use of social media in the workplace. Learn how social media is raising new concerns with respect to harassment training in our latest survey. View a Burst Learning video demo on social media to see how you can deliver short, impactful training to your employees.



Workplace Harassment Benchmark Survey

Executive Summary

NAVEX Global, the world's largest provider of workplace ethics and compliance solutions, conducted a survey of 500+ ethics and compliance business professionals to identify trends in broader workplace harassment, discrimination and retaliation. As some of the most pervasive, people-driven risks facing employers today, prevention measures are also evolving to tackle these core compliance issues.

Key learnings from the Workplace Harassment Benchmark Survey are placed in context with broader industry and NAVEX Global research to arrive at the following important trends to watch:

1. Beyond a myopic focus on sexual harassment, retaliation continues to be a pressing risk for employers
2. Employers are not properly prepared to handle risks associated with employee use of social media
3. Employers are rethinking harassment in general, the most common compliance risk
4. Global and generational viewpoints will be important to tackle moving forward

1

BEYOND A MYOPIC FOCUS ON SEXUAL HARASSMENT, RETALIATION CONTINUES TO BE A PRESSING RISK FOR EMPLOYERS

Key takeaway: Prevention efforts are an integral part of avoidance and risk mitigation.

Retaliation charges are still the most frequently filed claim (38.1%) with the EEOC (greater than even sex and race discrimination). Retaliation charge numbers have increased steadily over the past 15 years.

Supporting the EEOC trend, an October 2012 NAVEX Global survey on **Retaliation in the Workplace** concluded that retaliation claims will continue to be a vexing problem for employers.

- 18% of respondents from the NAVEX Global Retaliation survey said they expect retaliation claims to rise in the next year, and a majority said their levels will remain the same as this year.

Those numbers align with NAVEX Global's March 2013 Workplace Harassment Benchmark research:

- 18% of survey participants saw an increase in retaliation complaints in the past 12 months.
- 16% saw an increase in bullying complaints in the past 12 months (where bullying is present, a culture of fear and silence is often established, resulting in low reporting rates, and bullying can be sited as a form of retaliation).

HARASSMENT TRAINING EVOLVED

In the face of strong retaliation trends in charge numbers and in litigation – and with increased regulatory and judicial focus on expanding protections for whistleblowers – employers are taking this risk more seriously and focusing on prevention.

- Training and employee communication efforts are critical; they help keep risk down and ensure a healthy culture of compliance and integrity.
- Most NAVEX Global Workplace Harassment Benchmark survey participants are taking multiple actions designed to help prevent retaliation. The most frequently-utilized measures include:



2

EMPLOYERS ARE NOT PROPERLY PREPARED TO HANDLE RISKS ASSOCIATED WITH EMPLOYEE USE OF SOCIAL MEDIA

Key takeaway: Employers should expect to see continued increase in complaints tied to social media use.

Social media use by employees (even during the workday) is here to stay.

- Users spend 700 billion minutes per month on Facebook according to usage statistics.
- Participants don't need employer property to access social networks during the work day.

Social media presents new opportunities for old school misconduct like inappropriate discussions, harassment, bullying and even retaliation – and employers are already feeling the increasing risk.

- Courts recently upheld a \$1.6 million verdict in favor of an employee with a disability who was harassed by co-workers on a blog outside the workplace. The employee reported the harassment but the employer failed to take effective action. The employer was found liable because it was aware of the harassment and didn't stop it.¹
- In 2012, an employer paid \$2.3 million to settle a lawsuit brought by the EEOC alleging sexual harassment and retaliation. A store manager allegedly sent sexually charged text messages to an employee who reported the harassment to her direct supervisor; that supervisor was then fired after reporting the incidents to the legal department.
- The Workplace Harassment Benchmark survey found that 6% of survey participants saw an increase in complaints via social media in the past 12 months

¹ **Social Media Takes Workplace Harassment To New Levels**, Joan Farrell, JD, November 7, 2012, HR.BLR.com

EMPLOYERS RETHINK HARASSMENT

Even given the risks, a significant number of employers have not properly protected themselves with simple but effective mitigation measures.

Employers are missing a huge opportunity to mitigate risk and set expectations with their employees. Two simple actions to enact:

- Have clear and detailed rules about what is appropriate, including limits on 'personal' activity that still has a material impact on the workplace.
- Communicate the rules to employees with high-quality training.



Absent a commitment to these simple fundamentals, risk will continue on its upward trajectory.

3

EMPLOYERS ARE RETHINKING HARASSMENT IN GENERAL, THE MOST COMMON COMPLIANCE RISK

Key takeaway: Harassment, unlike other compliance areas, is one where all employees have the ability to create risk for an organization and dramatically impact culture.

Even though 78% of survey respondents provide harassment training every year or every other year, employers should be asking themselves:

- If their current harassment training curriculum reflects today's trends and issues?
- Whether it has been effective at changing behaviors?
- Whether it's merely a check-the-box experience?

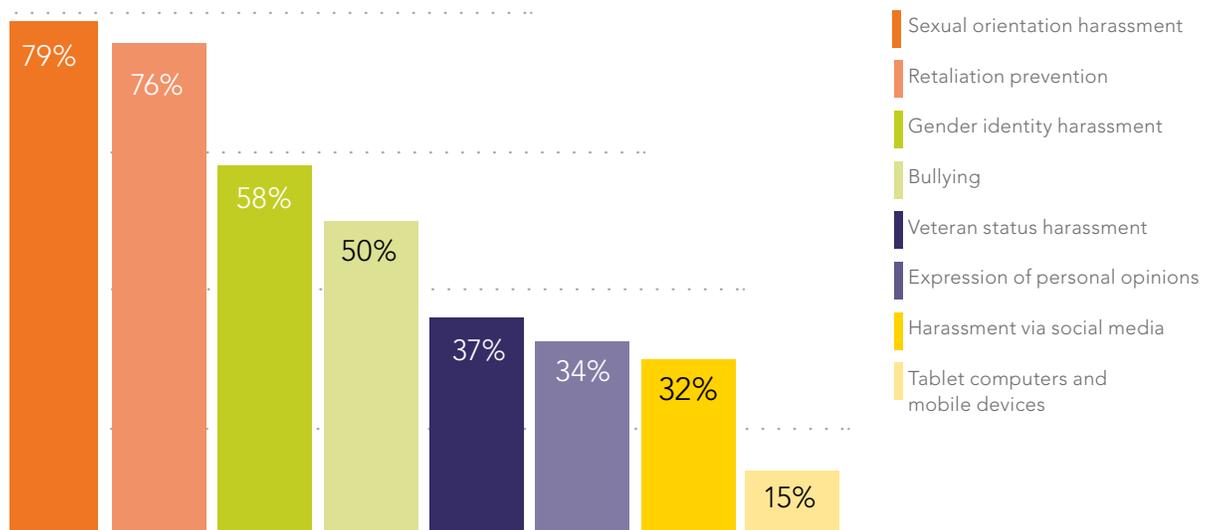
The numbers suggest that few employers have used AB1825 (the California law mandating sexual and other forms of harassment training for managers every two years) to help inform their approach to training employees and managers.

- In the years since AB1825 became law, employers have not evolved their training programs to reflect the gold standard California requirements.
- HR professionals who responded to the Workplace Harassment Benchmark survey said that, as a result of AB1825:
 - ▶ 23% improved training for employees and managers in California only
 - ▶ 37% now provide up to two hours of training to all managers, regardless of location
 - ▶ But for nearly 40%, no changes were made to their harassment program to align with California training mandates.

- Creating one approach to address harassment risk based on legal mandates and another where mandates do not apply is a high-risk decision—one that can backfire in litigation and when defending charges of harassment before the EEOC or state agencies.

High-quality sexual harassment and general harassment training (not-check the box training) improves employee behavior. However, programs must be fresh and relevant to engage learners. New harassment trends that emerge must be addressed (i.e. social media); failing to cover new trends in training programs leaves a hole in an organization’s risk mitigation and culture efforts.

So what hot trends are being covered in harassment training?



4

GLOBAL AND GENERATIONAL VIEWPOINTS WILL BE IMPORTANT TO TACKLE MOVING FORWARD

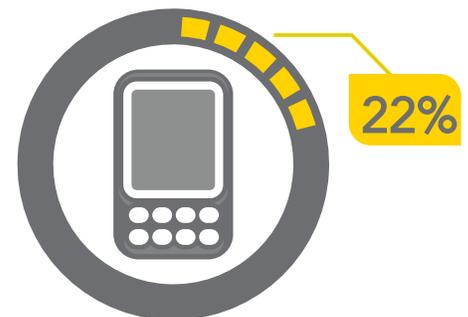
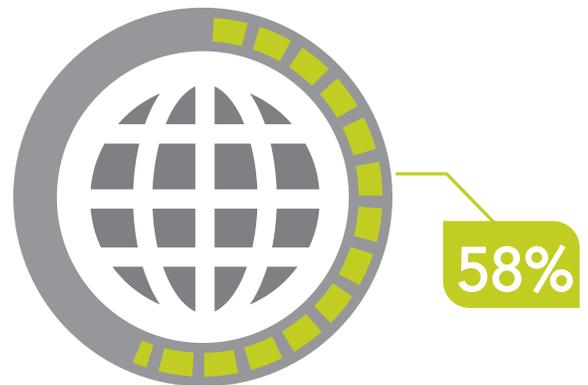
Key takeaway: Messages and modes of delivery across generations and geographies will be necessary to fully address harassment risk, increase message retention and enact behavioral change.

Another important trend revealed by the Workplace Harassment Benchmark survey results is the growing importance of creating a global message of respect and intolerance for harassment.

- Harassment is not just a U.S. issue; employees around the globe are exposed to it routinely. And even though global laws may not be as mature as the US laws, or may not even be enforced, that does not make harassment tolerance acceptable.
- U.S.-specific training does not address the issue appropriately for global audiences – scenarios should be relevant, cultural nuances are critical to address and in-language training makes a critical difference.
- Also increasing in importance for compliance officers will be the ability to deliver the right local policy as part of localized training as the trend around combining policy attestation and training efforts continues to grow.

MOBILE TRAINING TREND EMERGES

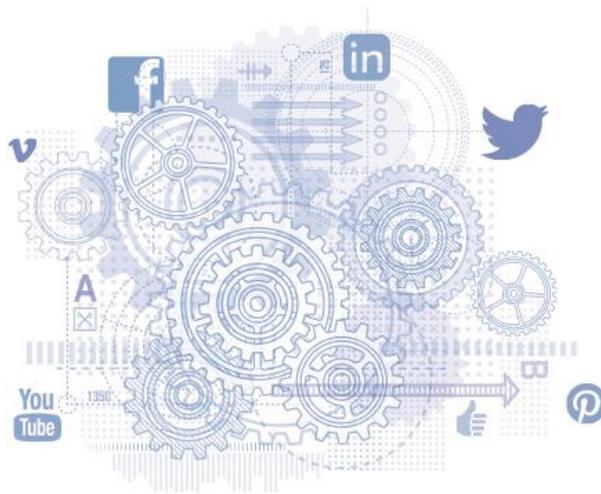
- Harassment has devastating effects on culture, morale and employee productivity – wherever employees are located. Exporting this vital message around the globe is not only good for employees, it's good for business.
- The Benchmark survey revealed that, of employers with global employees, 58% are now providing harassment training to employees outside the US
- Employers are also starting to think differently about how they deliver training to their employees and managers:
 - ▶ Mobile learning is an area that is increasing in utilization – giving employers the power to deliver training when and how they want to, and to utilize shorter, more frequent training to keep important messages top of mind for their employees.
 - ▶ 22% now offer some form of compliance training on mobile devices or tablets.



ABOUT NAVEX GLOBAL

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Reporting & Retaliation

Social media has simplified global communication, but ease of use can result in a false sense of anonymity or lack of personal accountability. Harassment linked to social media is on the rise. Employers should make employees aware of how and when to report violations and address the issue of retaliation. You can learn more about retaliation risk in our Retaliation Survey report and learn how a Culture Assessment can investigate perceptions about retaliation in your organization.

Retaliation in the Workplace

Executive Summary

NAVEX Global™, the world's largest provider of workplace ethics and compliance solutions, conducted a September 2012 survey of ethics and compliance officers, human resources, internal auditors, legal counsel and other senior executives.

The survey explored the ways in which ethics and compliance programs can cultivate trust and engagement between workers and management. The top three findings focused on transparency, the evolving definition of retaliation and the importance of data.

1

ORGANIZATIONS LACK TRANSPARENCY WHEN IT COMES TO SHARING ETHICS AND COMPLIANCE DATA.

Findings indicate that while policies, programs and training are in place for whistleblowing and retaliation, employees may not be clear as to how their organization actually handles non-compliance, unethical behavior or even the fact that the data is tracked organization-wide. There is a surprising lack of transparency with organizations sharing issues and claims reporting data with employees.

2

THE DEFINITION OF RETALIATION IS MATURING, BOTH AMONG SENIOR EXECUTIVES AND EMPLOYEES.

Retaliation claims are expected to rise in volume, and the very definition of retaliation is also changing among employees. The survey results suggest a richer understanding of retaliation among both senior executives and rank and file employees. While once viewed as strictly a firing or demotion, the definition of retaliation now includes being shunned or being the target of negative comments from peers. Social media is also creating a new dimension to potential retaliation, as employers determine how to handle emerging issues such as cyber bullying and social media disclosures. Overall, there is an expected increase in whistleblowing reports within the next year, which may be due in part to the Dodd-Frank provisions that protect whistleblowers from retaliation.

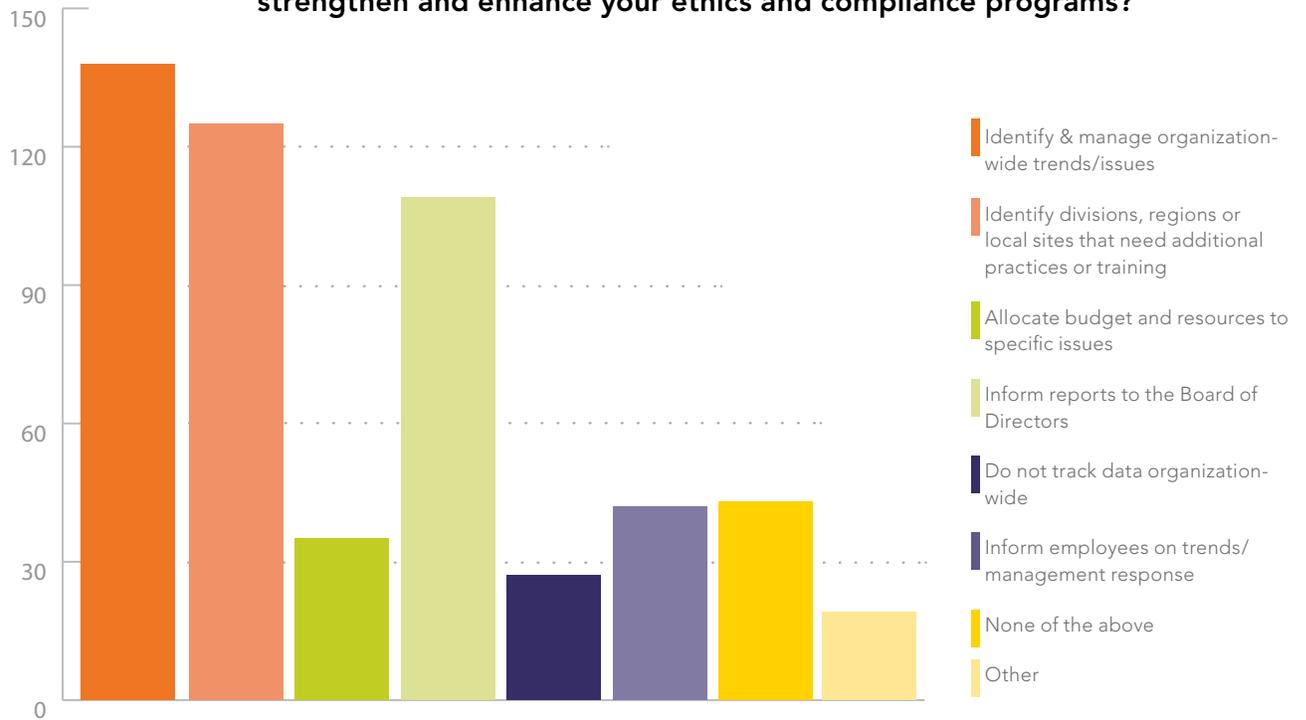
3

DATA IS THE KEY TO IMPROVING ETHICS AND COMPLIANCE PROGRAMS AND IMPACTING THE BOTTOM LINE.

There is an opportunity to further educate employees on how seriously their organization takes whistleblowing and retaliation claims. With a greater commitment to transparency, companies can demonstrate how they address reports of misconduct, including more information on how cases are processed, publication of trend data and the release of 'sanitized' examples of recent cases that detail how they were handled by the company. Half of respondents said their organization uses whistleblower reporting data to strengthen their ethics and compliance programs by identifying and managing organization-wide trends and issues. Additionally, 40 percent of respondents use that data to inform reports to the Board of Directors.

RETALIATION IN THE WORKPLACE

How does your organization use whistleblower reporting data to strengthen and enhance your ethics and compliance programs?



1 TRANSPARENCY MATTERS

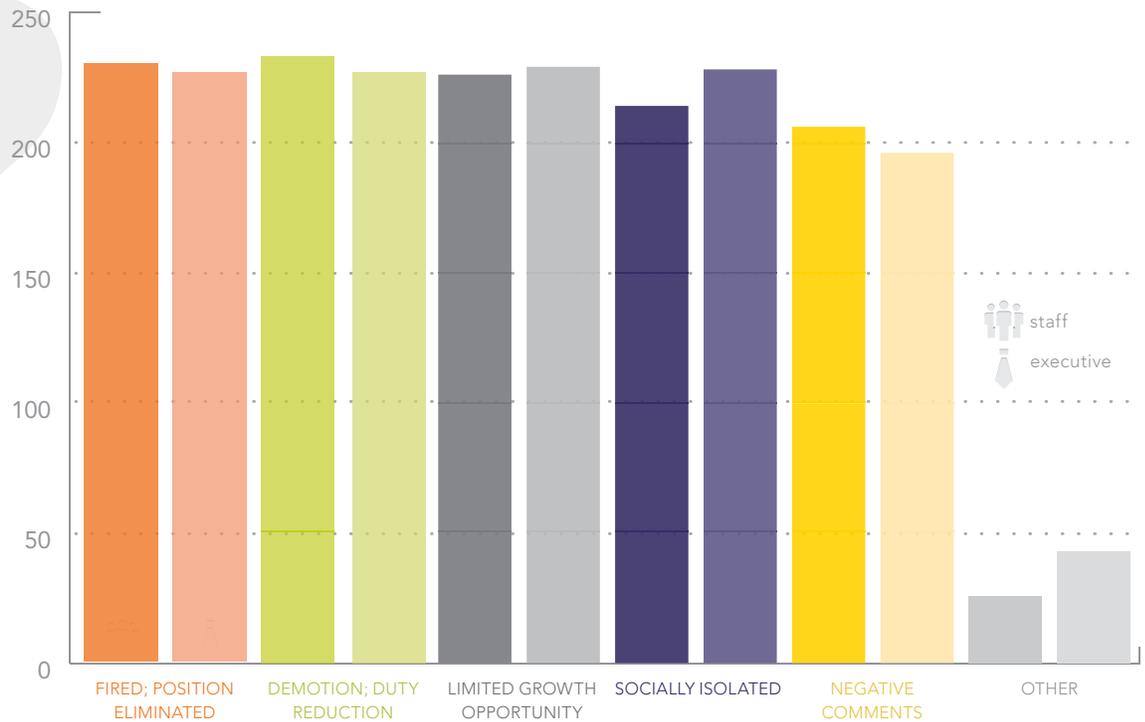
It is important to educate employees about how seriously the organization takes whistleblowing and retaliation claims by demonstrating how the organization addresses the issues – from case management and escalation, to internal investigations to appropriate corrective actions.

Only 15 percent of respondents said organizations inform employees about retaliation trends and reporting – a low and concerning statistic.

Retaliation claims are expected to rise in volume in the next year, according to 18 percent of respondents. While the majority said they do not expect a change in volume, it is concerning that more or the same volume of claims is expected in the future. Additionally, 21 percent of respondents have seen an increase in retaliation claims in the past year. That supports the Ethics Resource Center’s (ERC) retaliation supplemental report¹, which found retaliation rates had an 83 percent increase in the past five years.

1 ERC’s retaliation supplemental report of the 2011 National Business Ethics Survey

HOW do you define RETALIATION



2

THE MATURATION IN DEFINING RETALIATION

The definition of retaliation is changing among employees. Respondents typically share the same view as front line employees when it comes to defining retaliation. The majority of respondents classified retaliation as a broad range of behaviors and outcomes - a firing, a demotion, lack of promotion or being socially shut out by co-workers and managers. When asked how front line employees define retaliation, this definition also included negative comments from their peers.

Half of respondents noted online training is conducted annually for all employees and management. However, 29 percent had no training to address retaliation prevention, which is a surprisingly high percentage. This statistic implies that more formal processes and training are needed to directly address retaliation issues within organizations.

Respondents generally agreed (72 percent) that whistleblowers who report issues to the government have already reported the issues internally and felt it wasn't adequately addressed. It is important to note how these statistics could change over time given Dodd-Frank provisions and recent highly-publicized whistleblower financial rewards from government agencies. Bounties for external whistleblowing may curb the number of first reports being made internally.

In terms of actions vs. words, respondents were asked what type of action is taken when managers engage in retaliatory behavior. Thirty-five percent of respondents said executives or high performers are coached after they engage in retaliation, as opposed to more formal disciplinary measures. Twelve percent responded that no action is taken.

THE SOCIAL MEDIA GAMBIT

Digital and social media are increasingly impacting ethics and compliance issues. In terms of how organizations manage and avoid retaliation claims in responding to employee social media activities that negatively impact the company, the majority of respondents noted that a written social media policy and counseling are still needed.

Increasingly, social media can also be the vehicle for retaliatory conduct. Today, negative comments are not just conveyed via whispers at the water cooler. As noted earlier, the fear of 'negative comments' is now a part of the accepted definition of retaliation with the rise of social media avenues and usage.

"Up until now we have not had an adequate process."

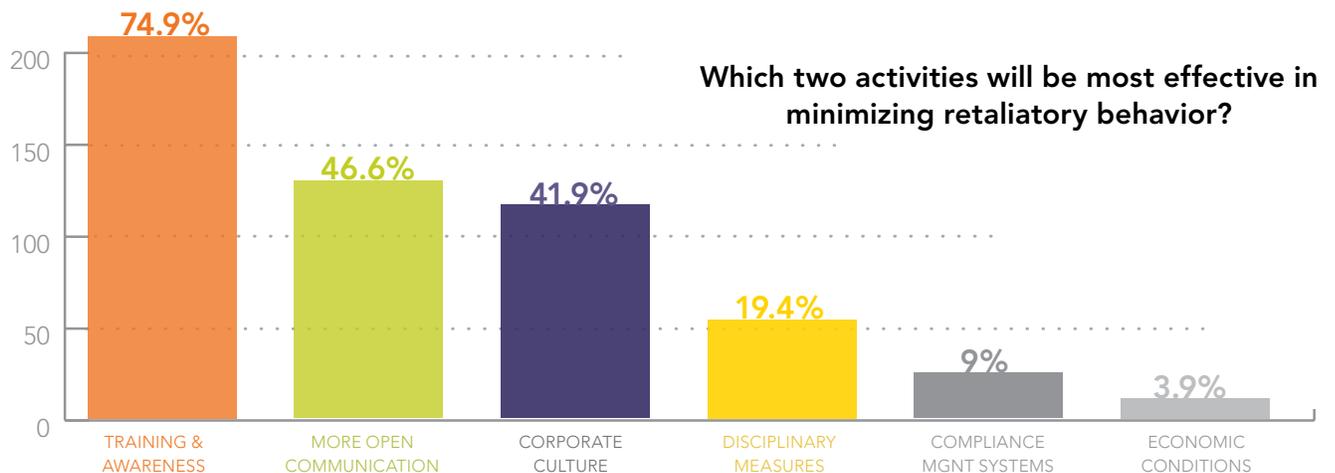
"Strong policies and coaching."

"No policy restrictions at this time."

"Social media policy outlines consequences for airing of grievances."

3 DATA AND THE BOTTOM LINE

Half of respondents said their organization uses whistleblower reporting data to strengthen their ethics and compliance programs by identifying and managing organization-wide trends and issues. Forty percent use the whistleblowing reporting data to inform reports to the Board of Directors. When asked what activities they believed would be most effective in minimizing retaliatory behavior, responses include:



1. Effective training and awareness programs: 74 percent
2. More open communications between management and line workers: 45 percent
3. Enhanced corporate culture: 41 percent

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Organizational Culture Assessment

Building a Sustainable Ethical Culture

A company's ethics and compliance program must not only meet legal requirements and industry standards it must also be designed to align with the company's mission, goals, traditions, norms and values.

An Organizational Culture Assessment explores whether the "tone at the top" is understood and accepted by the employees on the front line and where messages must be strengthened or new communication methods must be adapted. employee.

NAVEX Global's Ethical Leadership Group consultants have done pioneering work over eighteen years to develop a methodology and extensive set of tools and benchmarks designed to solicit employee perceptions of their company's ethical culture. The methodology enables our Expert Advisers to go deeper into an organization than is possible using surveys alone and to produce insights that go beyond a "check the box" approach.

Our methodology includes:

- An internal analysis which studies your corporate history and compares the rhetoric with actions to see where gaps exist;
- Interviews conducted by our senior consultants that listen to leaders and subject matter experts and gather information about their perceptions;
- Employee focus groups using a process refined over many years to gather open, candid insights. Our Expert Advisers conduct real-time, anonymous sampling of opinions during group sessions using wireless keypads.
- Benchmarking to provide you with industry-specific insight using the world's largest database of proprietary benchmarking data, creating a thorough comparison when combined with additional qualitative and quantitative industry research;

We then deliver:

- In-depth reports identifying the multiple subcultures within your organization.
- Data analysis that dissects and compares our findings against the proprietary benchmarks aggregated in analyzing millions of records.
- Practical recommendations on how your culture can be strengthened to better support ethics and compliance and to align with the ethical expectations you have for your employees.

Advanced Policy Management

Training is a critical element of your compliance program, but it's only as effective as the **policies and procedures** you're training against.

If you're like most Healthcare organizations, policy creation, management, and distribution is an ongoing challenge. Ask one of our compliance experts about integrating policy management with your training systems.

ABOUT ELG: NAVEX GLOBAL'S ADVISORY DIVISION

How are you training against your policies?

Having your policies and procedures organized and easily managed is critical to your compliance program, and the overall health of your business. But how do you know your staff and vendors have **read and understand them?**

Ask one of our compliance experts about NAVEX Global's complete online training systems.

The Ethical Leadership Group™ (ELG), the advisory services division of NAVEX Global, was formed in 1993 with a straightforward mission – to help companies develop and promote cultures of integrity. Since then we have served more than 25% of the Fortune 200 to: assess employee perceptions about ethics and compliance programs as well as corporate cultures; assist companies in the development of best practice ethics and compliance programs; train boards, management and front-line employees; assess risk; and provide expert professional consultation for any business conduct need that may arise. We have traveled around the world and worked with companies across dozens of industries, and we have a passion for what we do.

We have created a multi-discipline, multi-dimensional consulting team expressly suited to leveraging employees and other existing company resources into an effective ethics and compliance program. Our consultants have extensive experience in human resources, engineering and management, as well as audit and the law. We have subject matter experts trained in healthcare, organizational behavior, social psychology, statistics, logic, philosophy, theology, finance, law and business operations.

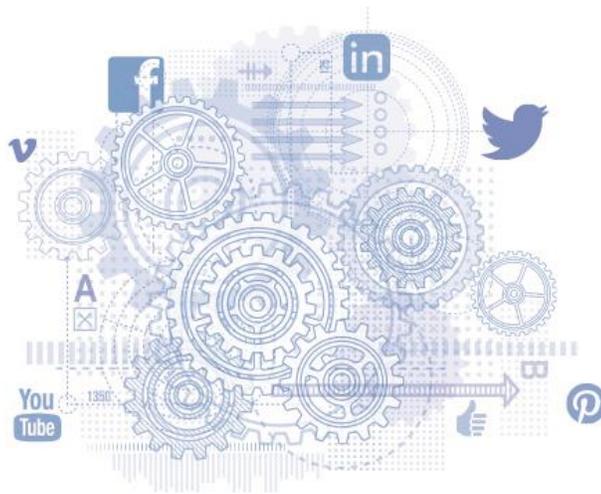
Our team encompasses recognized thought leaders as well as individuals who have managed ethics and business conduct functions in large, multi-national organizations. Our experience includes work in every major industry with companies widely perceived as embodying best practices. We have served on the U.S. Sentencing Commission's Advisory Group that revised those Guidelines in 2004, led the Ethics and Compliance Officer Association, and we have lead and organized more than fifty ethics and compliance best practice conferences worldwide. This unmatched level of experience helps us offer practical insight and cost effective recommendations for improvement.

ELG earns new clients and business primarily by its business reputation and the recommendations of its client base. Annually, the majority of our business is generated from clients who initiated relationships with us in prior years, and have asked us to do additional work for them. We believe this is the single best indicator of the quality we demonstrate in all of our work and our obsession with client service.

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A Comprehensive Approach

Organizations today are often hampered by poor coordination and communication between functions that are essential to proper management of compliance risks. As issues such as social media use put compliance efforts in the spotlight, organizations must evolve their approach to compliance and break down traditional silos. A more holistic approach to risk mitigation will result in a more effective program.

Ethics & Compliance: 14 Emerging Trends in 2013

BY ED PETRY, PH.D.

Vice President, The Ethical Leadership Group, Advisory Services division of NAVEX Global

A Risk by Any Other Name

One of the hallmarks of an effective ethics and compliance program is on-going planning for what's next. Whether you call it risk assessment or strategic alignment, the idea is to anticipate the ethics, compliance and reputational issues that your organization may face in the coming months and beyond, and then take steps to prepare.

Unfortunately, unless you have a crystal ball, looking into the future can be difficult. To help, we've asked industry experts, our colleagues at NAVEX Global, and ethics and compliance officers for their predictions. We've gathered their best thinking and prepared a summary of ideas that may help you plan for the New Year and beyond.

1

THIRD PARTY RISK IS THE ETHICS AND COMPLIANCE ACHILLES HEEL

After years of globalization, more and more companies are dependent on complex, multi-level supply chains and distribution networks that span the globe. At the same time, the public – including investors but also employees and consumers - are increasingly demanding transparency and corporate social responsibility throughout the manufacturing and distribution process. The result is that companies face reputational harm from revelations of abuses and lapses in the supply chain, even though they may have limited knowledge or control over their far-flung business partners.

No company is immune. Even Apple, with its loyal followers, had to scramble when it was criticized for the working conditions at Foxconn, its Chinese manufacturer of the iPhone. Expect more of the same and look for cases to include distribution networks as well as suppliers.

2

ETHICS AND COMPLIANCE ISSUE GO VIRAL

If you want to lose sleep, think how easy it would be for a video depicting what appear to be poor working conditions in one of your manufacturing plants to go viral; or for employees – like those at a fast food chain a few years ago – to post a YouTube spoof about your customer service; or for Facebook postings and Tweets to spread the news that a senior executive of the organization falsified his or her credentials. Before you know what happened, your reputation, and your sales, are in a free fall. Few companies are prepared for such a fast moving crisis requiring a coordinated response from various corporate functions.

ETHICS AND COMPLIANCE: 14 EMERGING TRENDS FOR 2013

3

THE INTERNATIONALIZATION OF ETHICS AND COMPLIANCE

The ethics and compliance world has shrunk. Increasingly, we all play by the same rules. One consequence of this is the internationalization of ethics scandals. Not too long ago a list of top business ethics scandals would be dominated by US-based companies. But in recent years, we've added to the list: Siemens, NewsCorp, BAE Systems, Barings Bank, Standard Chartered, Olympus, Societe Generale, to name just a few.

4

ELECTION RESULTS MEAN MORE OF THE SAME

In the U.S. the re-election of President Obama will likely mean that there will be a continuation in government philosophy toward regulation and enforcement. As has been the case in recent years, much of the 'action' will take place within the bureaucracies as agencies continue to promulgate rules and regulations to implement recent legislature especially in healthcare and financial services. Further, many of these agencies have now put in place their own investigative and enforcement staff dedicated to monitoring and prosecuting key contractors for wrongdoing.

Recent enforcement actions are a pretty good road map to risk areas that you need to address. Review your code, policies and training to make sure that the right people are getting the right information, especially on these topics:

- Insider trading
- Antitrust/fair competition
- Business partner/supply chain integrity
- Employment issues (Safety, rights, wage and hour)
- Data privacy and security
- Government contracting and inappropriate government relations i.e. conflicts of interest
- Fraud, tax and accounting issues
- And of course, bribery and corruption

5

ETHICS AND COMPLIANCE PROGRAMS BECOME SAFE HARBORS

Another related trend to watch is the degree to which government agencies will take into consideration the effectiveness of ethics and compliance programs when determining whether or not to charge an organization.

While prosecutorial discretion has long been an option, it wasn't until last year that an example grabbed international headlines. In a 2012 Foreign Corrupt Practices (FCPA) case, the US DOJ declined to prosecute Morgan Stanley because of strong internal controls and cooperation with government investigators.

While this is a good sign, one lesson from the case is that it's not enough to simply have an effective program; you need to be able to show the documentation including helpline trend data, case management and investigation files, training records, and up-to-date policies and procedures with role-relevant certifications.

6

TOO BIG TO JAIL

As noted above enforcement agencies are now more likely to weigh whether or not an organization has an effective ethics and compliance program when exercising prosecutorial discretion. But that trend may give rise to another.

Last year the British bank HSBC agreed to pay US \$1.9 billion, the largest penalty ever for a bank, for advising drug traffickers as well as sanctioned countries including Cuba, Iran, Libya, Myanmar and Sudan on how to circumvent U.S. laws. But, the U.S. DOJ decided not to prosecute the bank's executives on the grounds that doing so might trigger a bank collapse and further damage the fragile global economy. Critics quickly characterize this case as an example of 'too big to jail' and they warned that it could set an unwise precedent. Look for 'too big to jail' to become a rallying cry for Wall Street critics.

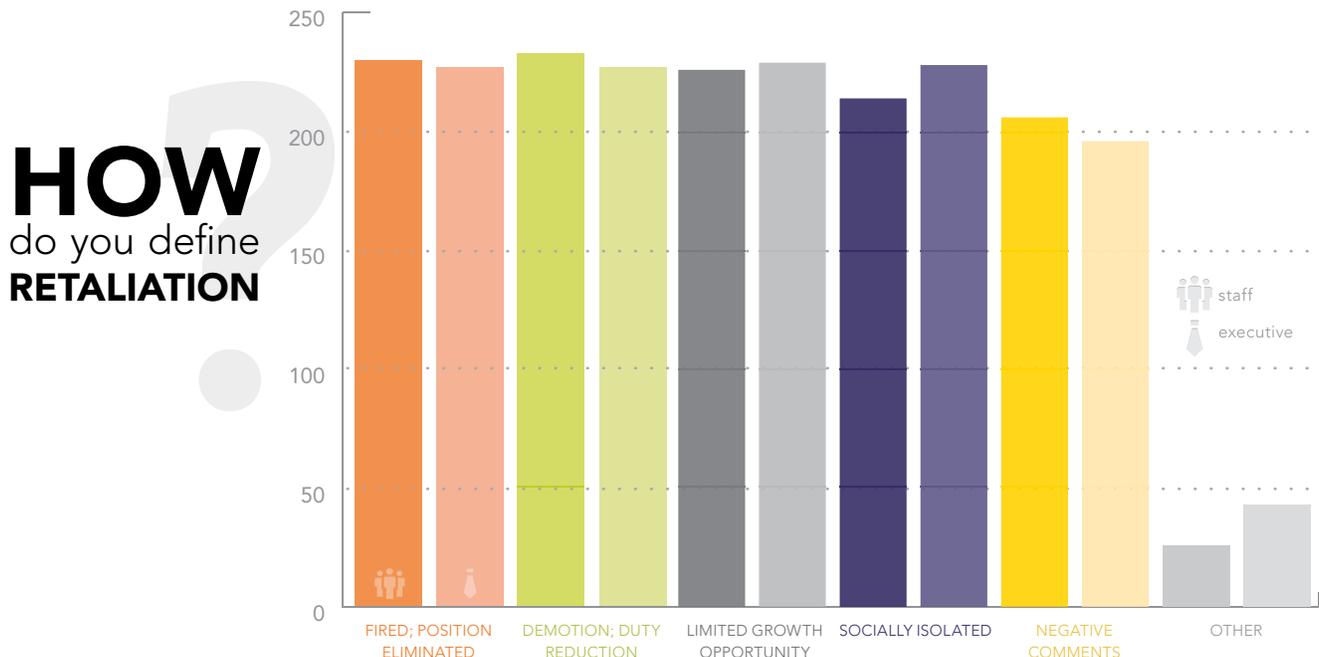
7 WHISTLEBLOWER CASES DOMINATE THE HEADLINES

Nothing gets the public's attention like a classic underdog story and a contemporary version of the story is that of the whistleblower challenging authority. The public's opinion of big business and government has rarely been lower, and that is undoubtedly part of the reason why whistleblower cases generate so much attention. And further, as whistleblower rights and protections expand, we should expect even more jaw-dropping whistleblower awards. The year 2012 saw the largest federal payout in U.S. history - \$104 million. How long will we go into 2013 before a new record whistleblower bounty is paid out? Not long, I suspect.

8 RETALIATION TAKES AN UNEXPECTED TURN

While retaliation and what to do about it has been a topic we've discussed for many years, we believe 2013 may see the rise of a new type of retaliation that companies may not be prepared for. A recent survey conducted by NAVEX Global suggests a shift in how retaliation is defined. While once viewed primarily as a management action against an employee, such as firing or demotion, the definition of retaliation now includes being shunned or being the target of negative comments or behaviors from peers.

When you combine this broader understanding of retaliation with the popularity of Twitter and similar sites, we expect to see incidents in the coming year of retaliation via social media – a corporate version of cyber-bullying.



GREATER EXPOSURE HIGHER EXPECTATIONS STRICTER ENFORCEMENT STEEPER PENALTIES

9

EVEN MORE FOCUS ON ACCOUNTABILITY AT THE TOP

There is no doubt that progress has been made in raising the awareness of ethics and compliance among Boards of Directors and senior leaders. While progress in improving the ‘tone at the top’, in 2012 we saw high-profile cases that illustrated how vulnerable Boards and leaders can be and how ethics and compliance failures can occur at any level.

And, if further evidence was needed that leadership needs to take its ethics and compliance responsibilities seriously, 2012 saw a rise in ‘clawback’ provisions requiring the return of bonuses for non-culpable executives. Such provisions are increasingly being included in Corporate Integrity Agreements and settlements in the healthcare industry. Expect to see such provisions in other settlements and other industries as well.

10

A BRIDGE TO HR

On a daily basis no corporate function touches more employees more often than Human Resources. Hiring, firing, discipline, performance reviews, and compensation – how these key areas are handled shapes morale and corporate culture far more than anything else. Given their importance – which was singled out in the 2004 amendments to the Sentencing Guidelines – it is astounding how we still find companies that have not yet found a way to align HR and its initiatives with ethics and compliance. 2013 may be the year that HR practices become a ‘hot’ topic in ethics and compliance circles.

11

CRACKS IN THE IVY TOWER

Academia has not escaped ethics and compliance scrutiny over the years though for the most part their transgressions have involved compliance with athletic regulations, but the Penn State University scandal reminded us that far more serious issues can exist within academia’s walls.

Universities are large, complex institutions. They can be exposed to many of the same ethics and compliance risks as large corporations. Not only do they employ hundreds of staff and faculty but they invest million or even billion dollar endowments, bid on and manage government contracts, maintain employee and student private information, engage in political lobbying and collaborate with civic institutions, vigorously compete for students and funding, straddle conflicts of interest between faculty and businesses, not to mention harassment and discrimination issues that often far exceed the challenges faced by companies. And yet, though some have taken steps to change, most have only the vestiges of an ethics and compliance program.

Given the exposure to so many ethics and compliance risks, it seems to be only a matter of time before academic institutions have their share of problems. And when the inevitable happens, the repercussions will be significant since colleges and universities are often the cornerstone of communities and they are business partners and suppliers to industry on a number of levels.

12

IPOs AND CONFLICTS OF INTEREST IN 140 CHARACTERS OR LESS

In 2012 we heard allegations that investment bankers tried to influence how information was pitched to research analysts ahead of Facebook’s initial public offering. The allegations centered on conflicts of interest that may have led the bankers to favor larger investors. While banks have policies and controls that are intended to prevent such abuses, enforcement is difficult and the temptation to cross the line is high. Of course few IPOs attract small and inexperienced investors like those that were excited about Facebook, and since they are the type of investor most likely to be harmed by such schemes, most such shenanigans go under-reported. But watch out for a repeat of the same scenario if Twitter goes public next fall.

13

WHEN YOUR CONFIDENTIAL INFORMATION TAKES A WALK

Tablets and smartphones have become the preferred information tools for a new generation of employees. What are the risks to information security and privacy when there is mobile access to confidential information? Are companies' internal controls, systems, policies and training up-to-date for this new reality?

On a more positive note, look for ethics and compliance training and reporting systems to also go mobile in 2013.

14

TAMING ETHICS AND COMPLIANCE 'BIG DATA'

'Big data' has become a buzz word that refers to data that exceeds the capacity of conventional database systems; is too big, moves too fast, or can't be easily managed by conventional means. While difficult to manage, this data can contain valuable patterns and information for both analysis and predictions that may be hidden because of the amount of work required to extract it. .

Ethics and compliance offices are just beginning to mine 'big data' to improve their analysis and predictive capabilities. Advocates point to the possibilities of understanding patterns of behavior and what is most likely to happen under given conditions. If true, 'big data' would be a game changer in the field of risk assessment. Others however caution that the idiosyncrasies inherent in complex human behavior may be a limiting factor and the science and technology still have a way to go. In addition, ethical issues of privacy can't be ignored.

The next year may be the time for us to say just what the true potential is. In any event, mining 'big data' is something we all need to think seriously about.

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About the Author

Ed Petry, Ph.D., joined the Ethical Leadership Group (ELG) – the advisory services division of NAVEX Global – in 2004 after almost ten years as executive director of the Ethics and Compliance Officer Association (ECO). Ed served on the Advisory Panel to the U.S. Sentencing Commission which was responsible for the 2004 revisions. Earlier in his career he was a tenured professor of ethics and a prolific author and researcher. While others may claim to know best practices, Ed's work with the ECOA and the Sentencing Commission actually helped establish those practices as well as the standards by which they are measured. As vice president with ELG, Ed applies his more than 25 years of experience to help companies assess their ethics and compliance programs. He has also written many of the most admired codes of conduct for companies worldwide and representing nearly every industry.

ADVISORY SERVICES

Ethics and Compliance Program Assessment

NAVEX Global also offers:

An **Ethics & Code of Conduct training course** to help you train and educate your employees on code basics.

A **policy management solution** to help you keep your code up-to-date and make uniform changes as policies within the code are updated.

Awareness campaign design and implementation services to increase knowledge and usership of the code and other ethics and compliance tools among employees and stakeholders.

Is Your Compliance Program Meeting Expectations?

An Ethics and Compliance Program Assessment evaluates whether a company is meeting legal requirements and industry standards and it also reviews the effectiveness of existing ethics and compliance initiatives.

An assessment helps reduce risks, reinforces organizational reputation and increases employee engagement by recommending cost effective, practical ways of improving an ethics and compliance program.

A full range of inventories, closeouts, inspections and office visits our ethics and compliance program assessments are designed to evaluate your program with respect to globally recognized ethics and compliance requirements. In our evaluation of effectiveness, we also draw on guidance from government bodies and our best practice research developed over the past eighteen years. Our pioneering work using focus groups and interviews to assess employee and leader's perceptions has been relied upon by many corporations and external parties.

Our Expert Advisors review your program in six main areas:

1. Structure and Leadership
2. Communications and Training
3. Reporting and Response
4. Integration with HR
5. Monitoring and On-going Assessment
6. Risk Assessment Processes

Our Expert Advisers deliver their findings in a format that has been proven to be well accepted by executive leadership and Boards. Our in-depth reports include: analysis and detailed assessment of each program area and practical and prioritized recommendations on how your program can be improved.



ABOUT NAVEX GLOBAL'S ETHICAL LEADERSHIP GROUP

The Ethical Leadership Group™ (ELG), the advisory services division of NAVEX Global, was formed in 1993 with a straightforward mission – to help companies develop and promote cultures of integrity.

We have served on the U.S. Sentencing Commission's Advisory Group that revised those Guidelines in 2004, led the Ethics and Compliance Officer Association, and we have lead and organized more than fifty ethics and compliance best practice conferences worldwide. This unmatched level of experience helps us offer practical insight and cost effective recommendations for improvement.

ELG earns new clients and business primarily by its business reputation and the recommendations of its client base. Annually, the majority of our business is generated from clients who initiated relationships with us in prior years, and have asked us to do additional work for them. We believe this is the single best indicator of the quality we demonstrate in all of our work and our obsession with client service.

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Ethics and Compliance Risk Assessments

NAVEX GLOBAL ALSO OFFERS:

A **Compliance Program Assessment** helps reduce risks, reinforces organizational reputation and increases employee engagement by recommending cost effective, practical ways of improving an ethics and compliance program.

Developed in partnership with Litter Employment Law experts and endorsed by SHRM, our comprehensive **Online Training solution** ensures all employees, leaders, stakeholders, and third-party providers understand your policies and procedures. And it's been a proven solution to increase knowledge and usership of the code and other ethics and compliance tools among employees and stakeholders.

An Ethics and Compliance Risk Assessment can cost-effectively evaluate the ethics and compliance risks specific to your organization, industry or region, whether you currently have a program in place or not.

To identify and prioritize risks, Navex Global's expert advisors at ELG examine the following questions:

- What are our major risks, including those that are the most likely to occur based on the company's history, industry, region and regulatory environment?
- What employees (by function, level, business unit or location) are most likely to expose us to these risks?
- How effective are our mitigation efforts in our primary risk areas?
- How do we prioritize our mitigation efforts given that we have many risks and finite resources?

Utilizing in-person interviews, focus groups and surveys, our expert advisors:

- Research and evaluate your ethics, reputational and compliance risks;
- Identify the relevant laws, rules and industry standards with which you must comply; and
- Execute a high-level review of your ethics and compliance risk mitigation efforts, focusing on policies, practices and processes and documents.

An Ethics and Compliance Risk Assessment alerts you to the possible frequency and magnitude of your risks. You will receive a prioritized, forward-looking ethics and compliance plan guiding you on how to address the risks that are unique to your industry, region and organization. Our action plans will provide you with the steps to take to address and remedy gaps.

ETHICAL LEADERSHIP GROUP: DEFINING COMPLIANCE FOR A NEW WORLD

Sample list of risks

While each company confronts different risks, the following list is a sample starting point for our risk assessments:

Conflicts of Interest--Organizational	Product Quality and Safety
Conflicts of Interest--Individual	Political Activity
Bribery and Corruption	Export Control
Supplier Practices	Employment Law and Policy
Competition Law	Employee Health and Safety
Sales and Marketing	Anti-boycott
Confidential Information/IP	Environment
Insider Trading	Licensing
Data Privacy	Misuse of Company Resources
Government Relations and Contracting	Money Laundering

ABOUT ELG

The Ethical Leadership Group™ (ELG), the advisory services division of NAVEX Global, was formed in 1993 with a straightforward mission – to help companies develop and promote cultures of integrity. Since then we have served more than 25% of the Fortune 200 to: assess employee perceptions about ethics and compliance programs as well as corporate cultures; assist companies in the development of best practice ethics and compliance programs; train boards, management and front-line employees; assess risk; and provide expert professional consultation for any business conduct need that may arise. We have traveled around the world and worked with companies across dozens of industries, and we have a passion for what we do.

Our team encompasses recognized thought leaders as well as individuals who have managed ethics and business conduct functions in large, multi-national organizations. Our experience includes work in every major industry with companies widely perceived as embodying best practices.

We have served on the U.S. Sentencing Commission’s Advisory Group that revised those Guidelines in 2004, led the Ethics and Compliance Officer Association, and we have lead and organized more than fifty ethics and compliance best practice conferences worldwide. This unmatched level of experience helps us offer practical insight and cost effective recommendations for improvement.



TRUST THE COMPLIANCE EXPERTS

We have created a multi-discipline, multi-dimensional consulting team expressly suited to leveraging employees and other existing company resources into an effective ethics and compliance program. Our consultants have extensive experience in human resources, engineering and management, as well as audit and the law. We have subject matter experts trained in healthcare, organizational behavior, social psychology, statistics, logic, philosophy, theology, finance, law and business operations.

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