

Implementing a Values-Based Approach to Your Compliance Program

In an article in the March issue of *Inside Counsel* entitled, “*Interactive Ethics*” author Brian Martin, Senior Vice President and General Counsel of KLA-Tencor Corp., discussed some of the lessons learned when his company transformed its compliance and ethics training from a rules-based training program to an ethics-based training program. I found it to be a useful review of training for the compliance practitioner.

He began by discussing a similar point recently raised by Preet Bharara in his Key Note speech to Compliance Week 2011; that is compliance with laws is not synonymous with ethical decision making, it is bigger. As lawyers, we are trained to counsel clients as to where the line is that they may not cross and then tell them not to step over it. Both Preet Bharara and Brian Martin make clear that this approach can lead companies into significant difficulties. Bharara focused on the difficulties in which a company can find itself in if it is embroiled in a Foreign Corrupt Practices Act (FCPA) investigation. He offered one piece of advice, which I found particularly persuasive, and that was that if your company is so fragile that one subpoena from or a visit by the Department of Justice (DOJ) investigators will effectively destroy it, you should not be anywhere close to the line of violating the FCPA. Martin provides another perspective, which is that “We have too many examples where corporate troubles ensued from a culture setting the behavioral expectation at compliance with laws i.e., as long as its legal approach.”

Martin related that his company moved from a rules-based compliance training to an ethics-based approach. He cited three general areas where his company had changed its approach in a manner to encourage employees to behave ethically, they are (1) The Code; (2) Ethics Training; and (3) You Make the Call.

1. The Code

Martin opined that most company Code of Conduct are heavy on “formalistic and complex policy and legal compliance statements.” However, they do not set forth a clear statement on “values and ethics”. This leads many non-lawyers in a company to find it very difficult to implement their company’s Code of Conduct in the everyday scenarios they face in the business world. Martin argues that this gap between a Code of Conduct and the real business world should be “filled in by the company’s values.” At Martin’s company this issue was addressed by reorganizing its Code of Conduct around the company’s core ethical values and renaming the Code of Conduct “Values in Action” to reflect the primacy of the company’s values and ethical standards.

2. Ethical Training

Martin next addressed the issue of training at his company. He recognized the difficulty of training ‘ethics’ with some type of rules based approach. He said that ethical training is much broader than simple rules and regulations training. A company must approach ethics in all facets

of its business activities and in all roles throughout the company. This begins with Human Resources in the hiring process where a company should hire only ethical candidates. It should continue throughout the employment tenure by not only providing the stick of disciplining those employees who commit ethical violations but providing a structure to incentivize and reward those employees to do business ethically. He concluded this section by noting that “ethical training is not an event; it is delivered through observation and consistent leadership.”

3. You Make the Call

In part of his company’s overall ethical-based values training, Martin included a module, entitled “*You Make the Call*”, in which he asked employees questions about scenarios which raised ethical concerns. He presented scenarios which could not be answered by simple reference to company policies. Rather employees were asked to address the scenarios and to discuss how they would handle each matter before the entire training class. Martin noted that he found these discussions “fascinating” as employees from different disciplines within the company formulated how they would think through and act on the scenarios. He said that the answers generally involved some type of reference to both personal and company values but at the end of the day it reinforced what the training was designed to convey “doing the right thing”. Martin concluded by noting that such training “equipped the business teams with ethical decision-making paradigms that are more durable than any policy could be.”

I certainly found Martin’s article very instructive in ways to think through the difference in rules-based compliance program and a values-based ethics program. His approach in training will provide the compliance practitioner with solid tools to implement in his or her company’s compliance training program which will help drive home the ethical values that you should try to impart. This may go a long way towards implementing Preet Bharara’s advise to do “more than the minimum” because aspiring to the minimum in a corporate compliance program because only doing the minimum is a recipe for disaster.

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