Compliance, Ethics Top List of General Counsel Concerns

Jaclyn Jaeger

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Despite calls from enforcement agencies to separate the legal and compliance roles, the legal department still worries itself with ethics and compliance issues. In fact, they're at the top of the list.

According to the Association of Corporate Counsel's annual chief legal officer survey, compliance and ethics issues are the biggest concern to in-house counsel, with 87 percent ranking them as the biggest worry over the past year. Compliance replaces reducing outside legal costs and staying informed of changes to the law as the top concerns. “Concerns have now shifted a little,” says James Merklinger, vice president and general counsel of the ACC.

Additionally, 61 percent of respondents said they spend the majority of their time on compliance issues. “I think it's fair to say compliance and ethics topics seem to grow higher in priority every year,” says Christopher Santomassimo, general counsel and chief compliance officer of global manufacturing and technology company Agfa Corp. “This year is no exception.”

When asked to rank business issues according to the priorities of their law departments for the coming year, the top five issues cited by 1,100 global in-house counsel included:

· Awareness of company activities that may have legal implications;

· Keeping senior management apprised of legal developments that may affect business decisions;

· Staying current and well-informed of changes in the law;

· Reducing outside legal costs; and

· Improving internal efficiencies through technology.

Corporate legal departments across a broad spectrum of industries say the greater focus on ethics and compliance issues has to do with the intensifying regulatory and enforcement environment over the last few years.
“We've definitely seen an increase in the complexity of the regulatory environment, an increased focus on privacy and cyber-security, as well as a continued focus on anti-corruption,” says Jo Levy, global director of ethics and legal compliance at Intel Corp.

Levy is hardly alone in her observations. In the ACC survey, 81 percent of in-house counsel ranked regulatory and legislative changes as the second highest overall concern. “Just keeping abreast of those regulations is a challenge for in-house counsel,” says Merklinger.

Another reason ethics and compliance issues are creating more anxiety for legal departments is because of the greater focus placed on them by the board and C-suite. “They are more and more of a concern at the highest levels of the company,” says Jeffery Spalding, chief anti-corruption counsel and assistant general counsel at oilfield services giant Halliburton.

At Halliburton, the board is really focused “not only in terms of their oversight responsibilities of the company, but also in terms of derivative actions that the company may be facing as a result of ethics and compliance problems, failures, and enforcement actions,” Spalding says.

A tougher regulatory environment and a greater focus on ethics and compliance by senior executives and boards may explain why 78 percent of in-house counsel who responded to the ACC study said they've been called upon in the last year to advise senior executives and participate in strategic corporate matters.

That means in-house counsel are in the hot seat more than ever before; aside from having to keep apprised of legal developments that may affect business decisions, in-house counsel still have to provide legal services, advice, and counsel. At a global company such as Halliburton that operates in 80 countries with more than 72,000 employees, “it's a 24/7 job,” says Spalding.

Levy says another change she's seeing is an increased focus in specialized skills, “particularly in compliance areas.” The ACC survey supports this observation. The top three non-legal skills many survey respondents are seeking to develop within their department include business management (63 percent), communication (53 percent) and project management (52 percent).

**Legal vs. Compliance**

While in-house counsel might fret more about compliance issues, that doesn't mean they have responsibility for the compliance department. Just over one-third (35 percent) said compliance reports to legal, followed by 31 percent who said compliance reports to the chief executive officer.

“The regulatory environment has increased the corporate legal department's focus on compliance programs, which in my mind go beyond legal advice and training to thinking about more robust and systemic approaches to compliance,” says Levy.
Even though the U.S. Sentencing Guidelines explicitly call for chief compliance officers to report directly to the board, this reporting structure does not always work for everyone.

Some corporate lawyers say benefits can be gained from the compliance and legal functions being combined. At Intel, for example, every individual in the legal department is a “legal-compliance attorney,” says Levy. “Every lawyer has a role in promoting not only compliance, but also our company’s code of conduct and our commitment to integrity across the company.” That means Intel has hundreds of advocates within the legal department out in the field every day who are promoting the company's compliance objectives, she says.

At Halliburton, compliance reports dually to the general counsel with a direct line to the board, so that independence is still there, says Spalding.

“I wouldn't say there is a one-size-fits-all solution,” says Levy. It depends on the company.

Separating the legal and compliance functions may be an especially “tough sell” in a small- or mid-cap company, says Santomassimo. In smaller companies with typically far fewer resources, for example, having two full-time employees devoted to each of those roles is not always practical.

In-house legal counsel also shared ways they keep up with laws and regulatory developments on a global level. Halliburton, for example, depends on its in-house lawyers around the world to monitor any regulatory changes in their respective regions that may affect the company.

**WHAT KEEPS CLOS UP AT NIGHT**

Below is a chart from the Association of Corporate Counsel survey ranking respondents' answers to what issues are very important, important, and somewhat important.

<table>
<thead>
<tr>
<th>Issue</th>
<th>Percentage</th>
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<tbody>
<tr>
<td>Ethics and compliance</td>
<td>87%</td>
</tr>
<tr>
<td>Regulatory or governmental changes</td>
<td>81%</td>
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<tr>
<td>Information privacy</td>
<td>75%</td>
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<tr>
<td>Protection of intellectual property</td>
<td>73%</td>
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<tr>
<td>Data breaches and protection</td>
<td>68%</td>
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<tr>
<td>Mergers and acquisitions</td>
<td>59%</td>
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<tr>
<td>Social media management/technology</td>
<td>57%</td>
</tr>
<tr>
<td>Anti-bribery</td>
<td>45%</td>
</tr>
<tr>
<td>Healthcare reform</td>
<td>45%</td>
</tr>
<tr>
<td>Whistleblower issues</td>
<td>38%</td>
</tr>
</tbody>
</table>

**Source:** Association of Corporate Counsel.
In addition, Halliburton is “taking a proactive role in building our compliance and ethics space globally,” says Spalding. This is being achieved through aggressive in-person training, education, and outreach.

An important part of that process is having people who know and speak the native language to conduct the training in those various countries. In that way, “you get a much more receptive employee base,” says Spalding. “You spend more money, but we think it is well worth it.”

One positive finding from the ACC survey: 66 percent of legal departments reported an increase in their total internal budgets over the past year, and 59 percent reported an increase in their outside budgets. Another sign of increased activity for legal departments, nearly half of the respondents said they expanded their law departments in 2012 and hired new staff, with in-house lawyers accounting for most of the new hires. Twenty-eight percent said they anticipate hiring more in-house counsel over the next 12 months.

So while the regulatory environment is growing more complex and in-house counsel are being placed in the hot seat more than ever before, there is much to be gained by business and legal working more collaboratively in the year ahead.

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