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Institutionalizing Compliance With Company-Wide Training Programs

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Corporate Compliance

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Many companies have failed to implement effective legal training programs despite the fact that they have long-standing legal compliance policies and codes of conduct. However training programs are likely to receive increased attention as a result of the U.S. Sentencing Commission Guidelines which require that companies reinforce their compliance programs with training. The most common training activities are distribution of policy statements and other publications and the use of seminars and workshops. This article explains how corporate counsel can implement these training activities for their clients.

Recent legislation at the federal and state level has imposed new standards of criminal conduct and tough new fines. [\[FN1\]](#) Examples of new laws imposing stiff criminal sanctions include the Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act of 1990, the Securities Enforcement Remedies and Penny Stock Reform Act of 1990, the Clean Air Act of 1990, and the California

Corporate Criminal Liability Act of 1990. Another recent trend has been the adoption by regulators of rules and policies that provide reduced penalties when a compliance failure occurs despite an effective compliance program. [FN2] Initiatives in this area include the Sentencing Guidelines [FN3] that were issued by the United States Sentencing Commission and a Policy Statement [FN4] issued by the Department of Justice to encourage voluntary compliance efforts. Although both the Guidelines and Policy Statement encourage voluntary compliance programs, the Guidelines require that compliance programs include training programs that educate the workforce via seminars and publications.

Administration of Training Programs

Needs Assessment

A key step in establishing a training program is an assessment of the company's training needs followed by preparation of an action plan of the activities that are indicated by the assessment. [FN5] First, the legal areas that present the greatest potential for pitfalls or problems should be identified. Next, a planning calendar should be developed with dates, places, and groups targeted for publications and seminars during a one, two, or five year planning cycle.

Administrator

Administration of a corporate training program involves planning, budgeting, and oversight. Traditionally, corporate training programs were limited to skills training and were the responsibility of a director of training or manager of human resources. Companies with training programs sometimes assign administrative responsibility to a director of compliance. Regardless of which corporate manager administers the training program, the advice and counsel of the company's lawyers [FN6] will be needed in view of the complex laws governing corporate conduct and the serious consequences of compliance failure.

Trainers

The training administrator should carefully select trainers for the program and assign them responsibility for leading seminars and writing guidebooks, memoranda, and newsletters. The use of outside counsel is advisable when inside counsel does not

have the expertise needed for a training session or publication. In some cases, teaming of inside and outside counsel may be appropriate. In other cases, a non-lawyer outsider can be invited to participate, for example, a regulator or ex-convict. [FN7] In any event, every seminar and publication should receive the support of top management to demonstrate the company's sincere commitment to legal compliance. [FN8]

Budgeting

Separate budget accounts for training should be established for the out-of-pocket expenses incurred for training activities. [FN9] The use of separate budget accounts is useful for comparing the cost of training programs against benefits. Separate accounts also facilitate a comparison of estimated expense against amounts that are actually incurred. For example, underspending on seminars during the year might indicate an excessive number of canceled seminars while overspending on newsletters might indicate overemphasis on graphics or paper quality.

Reporting

The administrator of corporate training programs should report to the company's board of directors at least quarterly on training activities. [FN10] In order to facilitate board reports, a log can be used to record the dates and details of training programs. The log can be as simple as a chronological listing of seminars and publications or it can be supplemented with details on topics covered, the business unit addressed and the number of employees involved. In addition to facilitating board reports, the log also can be used to analyze needs for additional programs.

Evaluations

It is important to evaluate training activities to be certain that they are effective. An evaluation form can be distributed with publications and at training sessions. [FN11] The evaluation forms will provide valuable feedback on the usefulness of training material and provide for upstream communication by employees to the training administrator. A summary of evaluations can be included with compliance reports to the company's board of directors.

Legal Policy Statements

At the foundation of every compliance training program are policy statements and codes of conduct. [FN12] Corporations adopt written legal policy statements to inform managers of their legal and ethical responsibilities. The legal areas most frequently covered in policy statements are anti-boycott, antitrust, corporate political activity, environmental, employee relations, and securities laws. These legal areas are popular targets for compliance policies since they are subject to rigorous enforcement by government agencies and violations can result in heavy fines and penalties.

Content and Distribution of Policy Statements

Legal policy statements usually contain a summary of the law and indicate that employees must conduct their activities in compliance with the law. Policy statements usually set forth procedures for reporting and investigating violations and policies on disciplining employees. Policy statements also can instruct employees when to contact corporate counsel for advice. For example a policy on antitrust compliance could warn managers to contact antitrust counsel before they terminate a distributor and a personnel policy could instruct managers to consult labor counsel before terminating an employee. Corporate policy statements are usually distributed to senior managers at the time the policies are adopted or amended.

Codes of Conduct

Codes of conduct are used by a high percentage of companies to communicate a variety of legal topics to rank and file employees, including government relations, customer/supplier relations, employee relations, and relations with competitors. [FN13] Although the goals of compliance codes include promotion of lawful conduct they do not contain the detailed discussions that appear in legal policy statements. The types of conduct regulated by codes of conduct include conflicts of interest, confidentiality of corporate information, misappropriation of corporate assets, bribery, and political contributions.

Distribution

Most companies distribute their codes of conduct to directors, officers, and employees when they join the company. Several companies distribute their codes of conduct on an annual basis to all employees and require that recipients sign a

certificate acknowledging that they have received the code, read and understood it, and agree to comply with it. Although annual distribution of a code serves as a reminder of compliance obligations, some companies lack the resources to follow up with employees who fail to return their certificates or report exceptions. And, top management support is needed to assure that the annual certification does not become a meaningless ritual.

Publications

The most popular publishing activities utilized in corporate training programs include law department brochures, legal guidebooks, memoranda of law, and law department newsletters. Publications can be distributed in mass to corporate employees and can be used as handouts at corporate training sessions.

Law Department Brochures

Some corporate law departments have prepared brochures to help managers identify who to contact for particular problems. [FN14] Photographs and biographical information can be included to make managers aware of the accomplishments of in-house attorneys and to establish personal rapport. Brochures are an important compliance tool because they facilitate communications between attorneys and managers. They can be updated quarterly or annually.

Law Department Newsletters

Newsletters are an effective method for advising employees about changing laws and regulatory requirements. [FN15] Unfortunately, newsletter production requires a major commitment of time in order to produce them on a regular basis. For corporations that lack resources for in-house newsletters, guidebooks and memoranda are better alternatives.

Guidebooks

Guidebooks can be prepared in-house or acquired from commercial publishers or industry trade associations. Factors affecting the "make" or "buy" decision include the resources of the department in time and funds and the availability of commercially prepared texts that fit the company's situation. For example, many law

departments have prepared guides to antitrust laws because commercially prepared books do not fit their corporate culture. Conversely, many companies purchase materials to educate managers about their responsibility under anti-discrimination [FN16] and securities [FN17] laws since legal issues are fairly uniform regardless of corporate environment.

Memoranda of Law

Memoranda of law can be distributed as needed to alert management to important developments as they occur. For example, the implications of the recent adoption of laws governing employment of disabled workers is a good candidate for a special memorandum. A variation of this technique is to obtain permission to distribute copies of articles from newspapers or periodicals that contain a good analysis of a legal development. The article can be accompanied by a memo from the law department with recommended action for compliance.

Training Sessions

Training sessions are becoming a popular method for promoting compliance in the workplace. [FN18] They are usually targeted to small groups of managers to sensitize them to their legal responsibilities. The format utilized for training sessions will vary depending on the size and expertise of the audience and the subject matter to be presented. All training sessions should provide "how to comply"; information and allow sufficient time for questions and interaction with the audience. A variety of formats are available for training sessions, including lecture, group discussions, and the case method.

Lectures

Lectures are the preferred form of presentation when interaction or discussion is not possible or is not wanted. For example, lecture style training sessions may be desirable if the participants are not very knowledgeable or are very opinionated or if people of different status are to be grouped together, and it seems likely that give-and-take will be inhibited. Lectures are also desirable if it is necessary to present an important legal topic to a large group in a short time period, such as a presentation on new antitrust regulations to a group of sales representatives whose time at company headquarters will be brief.

Group Discussions

Group discussions provide an opportunity for the audience to freely exchange ideas and opinions. The role of the trainer is to encourage discussion through questions, controlling the length and focus of each participant's comments, and concluding the discussion with an analysis of the discussion. Group discussions are useful when the subject is one that is misunderstood and one for which people have many facts or opinions to share. For example, a group discussion on sexual harassment in the workplace might be useful for a training session for division managers or department heads.

Case Method

Although the case method has been traditionally used as an instructional technique in law and business schools, it did not become popular with corporate trainers until recently. The leadership skills of the trainer and the motivation of the audience are critical to the success of the case method when it is applied in the corporate setting. At the conclusion of a case method training session, the trainer should summarize the learning points or issues developed by the cases. This technique might be useful, for example, in instructing credit managers on how to comply with fair credit laws.

Videos

Commercially produced video programs are available to facilitate training sessions. [FN19] For example, a video of an executive fumbling through a deposition is an excellent tool for educating managers about the dangers of civil discovery procedures. Well made videos on antitrust, discrimination, and securities laws can retain audience attention longer than a conference room lecture. Videos also can be loaned to employees for home or office viewing at their convenience.

Conclusion

Compliance training is essential for preventing illegal conduct and for seeking a mitigated sentence when there has been a compliance failure. Regulators and prosecutors have begun to recognize the value of training efforts when imposing sanctions for criminal conduct. The training methods outlined in this article can be

implemented by corporate counsel and their clients to prevent and (if unavoidable) reduce exposure for stiff criminal sanctions in a climate of increasing criminalization of undesirable corporate conduct.

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FOOTNOTES

1. The Increasing Criminalization of Business Conduct, an Overview, *Business Law Update*, Jan./Feb. 1991, at 1.

2. See Sigler and Murphy, *Interactive Compliance: an Alternative to Regulatory Compulsion* (Greenwood Press 1988).

3. United States Sentencing Commission, *Sentencing Guidelines for Organizational Defendants*, issued April 26, 1991 [hereinafter the Guidelines].

4. United States Department of Justice, *Policy Statement*, issued July 1, 1991 [hereinafter *Policy Statement*]. See *The U.S. Department of Justice and the U.S. Sentencing Commission Encourage Preventive Law Activities*, *ACCA Docket*, Fall 1991, at 44.

5. *Minimizing Corporate Civil and Criminal Liability: a Second Look at Corporate Codes of Conduct*, *Georgetown Law Journal*, April 1990, notes 484-487 and accompanying text.

6. *Corporate Compliance Programs: Counsel's Role*, *ACCA Docket*, Fall 1989, at 32.

7. *Making the Most of Sentencing*, *The National Law Journal*, Feb. 22, 1988.

8. *The Code a Company Lives By*, *Directorship*, April 1986, at 1.

9. See Hancock, ed., Law Department Management Business Laws, Inc. 1991) at 104.
10. See 15 Tips for Building a State-of-the-Art Compliance Program, The Lawyer's Brief, January 15, 1990, at 17.
11. See Chapter 700 (Law Department Effectiveness Questionnaires) in Hancock, supra note 15.
12. See Hancock, ed., Company Policy Statements (Business Laws, Inc. 1988).
13. See Ethics Resource Center, Creating a Workable Company Code of Ethics (1990).
14. Client Brochures Take on New Dimension as a Tool for Promoting Preventive Law, Preventive Law Reporter, September 1990, at 3.
15. Advising Managers with a Law Department Newsletter, ACCA Docket, Fall 1986, at 25.
16. Bureau of National Affairs, Primer on Equal Employment Opportunity.
17. CCH, Responsibilities of Corporate Officers and Directors Under the Federal Securities Laws (1991).
18. See Goldblatt, Organizing Successful Client Seminars (American Bar Association 1990). But see Anti-Discrimination Training Haunts Employer in Bias Suit, Wall Street Journal, July 31, 1991, at B-1.
19. Legal Videos - How to Compile a Videography, Legal Publishing Preview, May/June 1989.

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