InfoPAK^{SM}

Training Non-Legal Employees

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Providing law-related training for non-legal clients (i.e., for managers and, to a lesser degree, non-managerial personnel) is an important function of every in-house legal department. This is especially vital in the area of corporate compliance, where training on pertinent laws and regulations can help prevent and detect legal problems and limit or mitigate the organization's exposure if violations occur.

Beyond compliance issues, in-house counsel may also find it useful to train non-legal personnel on how to perform certain quasi-legal functions that might otherwise consume a busy legal department's scarce resources. For example, with the appropriate training and tools, non-legal managers may be able to lead contract negotiations and drafting, or investigate employee complaints (with attorneys providing advice and oversight as needed). This cross-functionality frees up attorneys from what can be time-consuming tasks and enhances the value of the non-attorney managers' job functions. This InfoPAK will discuss the practical and logistical challenges of planning and executing these training initiatives.

The information in this InfoPAK[SM] should not be construed as legal advice or legal opinion on specific facts, and should not be considered representative of the views of WeComply or ACC or any of its lawyers, unless so stated. This InfoPAK is not intended as a definitive statement on the subject, but rather to serve as a resource providing practical information for the reader.

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I.   Compliance Training

No organization needs or wants legal problems. At a minimum, they're distracting to management and employees, harmful to the organization's reputation, and costly to deal with – even if the organization has done nothing wrong. Legal problems can lead to litigation, judgments, significant fines or even prison terms for individuals, debarment from government contracting, huge drops in market capitalization, and, as we've seen all too often in the last decade, an organization's demise.

Some of these problems originate at the highest levels of an organization, where those in control presumably understand their legal and ethical constraints but nevertheless choose to act unethically or unlawfully. Arguably, no amount of ethics and compliance training can change these individuals' behavior.

However, many legal problems originate at lower levels, where employees may act improperly out of ignorance, misunderstanding, or a devil-may-care disrespect of the laws, regulations, rules, and policies governing their day-to-day job responsibilities. Many of these problems can be mitigated or completely avoided through employee training.

The following sections are intended to help you (i) understand the legal and business drivers for employee training as part of your organization's compliance program; (ii) develop training content that effectively conveys essential compliance information to employees; (iii) deliver that information in an engaging, convenient, and efficient manner; (iv) follow up to ensure that all employees who need training actually receive it; and (v) track all of these activities so that you can easily prove each employee's training participation, if needed. While it may initially seem that your organization can't afford the time and cost of a comprehensive training program, there are resources and technologies available to make the process easier and less expensive than you might think. Indeed, you may conclude that your organization can't afford *not* to institute a robust training program.

A.   Why Bother: Legal and Business Drivers

Until the late 1990s, compliance training was only a priority in heavily regulated industries, such as healthcare and securities, and on issues considered high-risk because of past compliance failures, such as antitrust and foreign bribery. But organizations today, in every industry, face a constantly thickening regulatory scheme covering an increasingly broad range of issues. Organizations whose employees don't know, understand, and follow all applicable laws and regulations can no longer expect to fly under the radar.

1.   It's the Law — The Legal Case for Training

In addition to a plethora of industry-specific laws and regulations, a growing number of federal, state, and local laws impose compliance requirements on organizations *in almost all industries and of almost all sizes*. Consider how many of the following laws apply to some or all parts of your organization:

a.   Federal Laws/Regulations

i.   In the Workplace

- Discrimination and Harassment: Title VII of the Civil Rights Act of 1964 (covering discrimination on the basis of race, color, sex, religion, or national origin), the Pregnancy Discrimination Act, and the Americans with Disabilities Act (ADA) apply to organizations with 15 or more employees.

- Age Discrimination: The Age Discrimination in Employment Act (ADEA) applies to organizations with 20 or more employees.

- Wage/Hour Issues: The Fair Labor Standards Act (FLSA) and the Equal Pay Act apply to organizations with an annual volume of business of $500,000 or more.

- Employee Leave: The Family and Medical Leave Act (FMLA) applies to organizations with 50 or more employees during at least 20 workweeks per year.

- Immigration: The Immigration and Nationality Act (INA) applies to organizations of all sizes.

ii.   Data Privacy and Security

- Personal Health Information: The Health Insurance Portability and Accountability Act (HIPAA) applies to organizations of all sizes whose activities involve the use or disclosure of personal health information.

- Financial Information: The Gramm-Leach-Bliley Act (GLBA) applies to organizations of all sizes that provide any type of banking, lending, securities, insurance, or trust services to consumers.

- Consumer Information: The Fair and Accurate Credit Transactions Act (FACTA) applies to organizations of all sizes that maintain or service personal accounts with a foreseeable risk of identity theft.

- Personal Information Received from the EU: The European Data Protection Directive applies to U.S. entities that receive personal data from affiliates or divisions based in the European Union, Iceland, Liechtenstein, and Norway.[1]

- Student Information: The Family Education Rights and Privacy Act (FERPA) applies to all educational institutions receiving federal funds that handle personal information relating to students.

iii.   Health and Safety

- Health Insurance: The Affordable Care Act creates a host of new requirements for group health plans that organizations with 50 or more full-time employees must meet.

- Employee Injuries and Illnesses: The Occupational Safety and Health Administration (OSHA) requires most organizations with more than 10 employees to keep injury and illness records, and requires organizations of all sizes to report any workplace incident resulting in a fatality or the hospitalization of three or more employees.

- Environmental Health: Most environmental health laws and regulations (e.g., CERCLA and RCRA) apply to organizations of all sizes.

iv.   General Business

- <u>Consumer Protection:</u> The Dodd-Frank Act created the Consumer Financial Protection Bureau and authorized it to regulate the financial products and services industries.

- <u>Code of Conduct and Ethics</u>: The Sarbanes-Oxley Act requires publicly traded companies to disclose in their annual reports whether they have adopted a code of ethics applicable to certain high-level employees and, if not, why they have not done so.

- <u>Fair Competition</u>: U.S. antitrust laws and their EU and Canadian counterparts (so-called "competition laws") apply to organizations of all sizes.

- <u>Anti-Corruption</u>: The Foreign Corrupt Practices Act (FCPA) applies to organizations of all sizes.

- <u>Anti-Money Laundering</u>: The USA PATRIOT Act requires all financial institutions (defined broadly by the Act) to train employees to recognize and prevent money laundering.

- <u>Securities Trading</u>: Federal laws prohibiting insider trading and selective disclosure of material, nonpublic information apply to organizations of all sizes.

- <u>Foreign Trade</u>: The Office of Foreign Assets Control (OFAC) sanctions programs and trade embargoes apply to organizations of all sizes.

- <u>Imports/Exports</u>: U.S. customs and export-control laws and regulations apply to organizations of all sizes.

b.   State and Local Laws/Regulations

Every state and many counties, cities, and other localities have laws and regulations on many of the above topics (and others) applying to organizations of all sizes.

2.   It's Good for the Organization — The Business Case for Training

a.   It Helps Prevent and Detect Improper Conduct

The primary objectives of a compliance program are to prevent and detect misconduct and ensure that an organization conducts its activities in compliance with all applicable laws, regulations, and rules. For any such program to be successful, employees must know and understand these legal requirements and know how to respond appropriately when problems arise.

While most employees have a common-sense understanding of what types of workplace conduct are obviously improper, many legal and policy requirements are not obvious or may run counter to some employees' social or cultural norms. Nowhere is this more true than in the realm of workplace discrimination and harassment, where the essentially zero-tolerance approach of U.S. federal, state, and local laws is difficult for many employees to grasp and follow. Likewise, there are subtleties in laws related to data privacy, information security, anticompetitive conduct, insider trading, record management, acceptable Internet usage, and similar workplace issues that require much more than just a common-sense understanding.

By developing a training plan that helps employees understand the laws and policies that apply to them, an organization demonstrates its commitment to furthering the primary objectives of its compliance program. Active enforcement of that training plan could well determine how – or

whether – law-enforcement authorities pursue a claim of wrongdoing against the organization and/or its officers and employees.[2]

b.   Good Ethics Is Good Business

Research indicates that a solid commitment to ethics and compliance has economic and other payoffs, as well. In one study, organizations with an explicit commitment to doing business ethically "produced profit/turnover ratios at 18% higher than those without a similar commitment."[3] In another study, organizations with an explicit commitment to a code of conduct showed a market-value-added three times larger than organizations that did not mention ethics publicly. And in a third study, organizations with a strong ethical culture – that is, those that effectively made "doing the right thing" a priority – had less than half as many incidents of financial and other misconduct as other organizations.[4]

Likewise, an organization's commitment to its compliance program and training plan can yield economic benefits. One study found that for every dollar allocated to an organization's compliance budget, on average, "damages, settlements, and fines [decreased] by $1.37."[5] Another found that organizations investing "an above-average amount on training were projected to have returned an average of 45% more than the S&P 500 index."[6]

c.   It Bolsters the Organization's Defenses to Liability

i.   It Supports Written Policies and Procedures

While having written policies and procedures is imperative for any compliance program, if they go unread and unheeded they can be riskier than having none at all. An organization's policy manual can provide prosecutors and plaintiffs' attorneys with a roadmap to standards that were set but not met and, from there, to inferences of liability. Having a written record showing that employees received training on, demonstrated an understanding of, and agreed to abide by all applicable policies and procedures can only help the organization's cause.

ii.   It Supports the "Errant Employee" Defense

Even the most comprehensive training plan does not guarantee that employees will always do the right thing. For instance, picture an OSHA inspector who has spent hours in a factory and has found nothing to cite. The inspector approaches an employee, asks for an explanation of the health hazards of a bottle of monitor cleaner at the employee's workstation, and gets a blank stare in response. The inspector then writes up a citation for failure to follow the "Hazard Communication" standard. If the organization can show that it offered a HazCom training course in which the employee participated, it could assert a colorable "errant employee" or "isolated instance of employee ignorance" defense to the citation.

iii.   It Undermines the "Nobody Told Me" Excuse

Now picture an executive who looks the HR manager straight in the eye and says, "You can't fire me. No one ever told me that my kidding around with Jack was sexual harassment. Policy? What policy? My lawyer says that if you fire me, I can sue for sex discrimination, wrongful discharge, and defamation."

While the executive could indeed sue, s/he is unlikely to recover if the organization has trained all employees on its anti-harassment policy. By producing an attendance roster or online transcript of

the training, the organization may be able to avoid the lawsuit entirely, or at least settle it favorably.

d.   It Provides Mitigation Under the Federal Sentencing Guidelines

The Federal Sentencing Guidelines for Organizations provide a powerful incentive for organizations to develop a compliance program that includes employee training. The revised guidelines specify criteria for judges to consider when sentencing an organization for an employee's criminal misconduct. The Guidelines include mitigating factors that can substantially reduce an organization's fines and penalties – in some cases by up to 90%. Among the most important mitigating factors is whether the organization has an effective compliance program in place. The Guidelines specify seven elements of an effective program, one of which is that the organization *communicates and trains all its employees and agents in the compliance program.*

e.   It Creates Better Employees

By dedicating time and resources to training employees on all applicable laws and regulations, as well as its code of conduct and other policies, an organization communicates to employees that they are important and that employees are responsible for understanding and following them. Training can thus help create better employees, instilling in them an appreciation of, and commitment to, the organization's compliance and ethics goals.

B.   Developing a Training Plan

Once your organization has committed to implementing compliance training, in-house counsel needs to ensure that the training provided is:

- On all relevant topics;
- Customizable to the organization's specific needs;
- Sufficiently detailed to provide an adequate understanding of the topic and a useful defense if needed;
- Consistent in its message to all employees throughout the organization; and
- Documented in a manner that enables the organization to later prove who was trained on what and when.

We'll look at these issues in the sections that follow.

1.   Designing a Compliance Curriculum

a.   Courses for All Organizations

The range of high-risk areas that organizations should address in employee training will differ depending on each organization's industry and operations. However, the following courses are simply "no-brainers" for organizations of all sizes and in all industries:

i.   Code of Conduct

Every organization's compliance curriculum should begin with annual training on the

organization's code of conduct.[7] This training should express the organization's core values and reinforce the essential business practices and ethical standards expected of all employees. In today's regulatory environment, it is not enough simply to distribute a copy of the code to employees each year and have them acknowledge that they received and read it. This approach does not demonstrate a strong commitment to an effective ethics and compliance program and will not satisfy the training requirement of the Guidelines.

Because a typical code of conduct addresses a dozen or more topics, a training course covering all of them at once can be quite time-consuming and complex. Some organizations choose to emphasize a different subset of topics in each year's training course, while others may break up the training into shorter courses offered quarterly or semiannually.

ii.   Preventing Discrimination, Harassment, Bullying, and Retaliation

Claims of discrimination and harassment in the workplace are still prevalent, as are claims of other abusive workplace conduct (bullying) that don't fit neatly into a legally protected classification such as gender, race, religion, etc. Claims of retaliation against employees who complained of harassment are also on the rise and can present even greater threats of liability to an organization than the underlying complaint. The U.S. Supreme Court has established defenses that organizations can use to avoid or minimize liability in such cases,[8] of which employee training is a key part. A brief or simplistic discussion of discrimination, harassment, and retaliation as part of a full-blown code of conduct course, though, may be insufficient to take advantage of these defenses.

Thus, even in states where it is not legally required,[9] periodic anti-harassment training of *all* employees (managerial and non-managerial employees alike) is undoubtedly a best practice. Some organizations require this training annually, others biannually with brief refresher courses in-between. All organizations should also make anti-harassment training part of every new employee's orientation process to ensure that every employee fulfills this training requirement in each training cycle.

iii.   Data Privacy and Security

As noted earlier, numerous federal laws address the privacy and security of personal information in various contexts – healthcare (HIPAA), personal finance (GLBA), identity theft (FACTA), etc. More federal legislation of data privacy and security is in the offing, and many states have more expansive regulatory schemes reaching well beyond their state borders.[10] In sum, to the extent your organization comes into contact with personal information (whether of employees, customers, consumers, or others), it is likely subject to one or more federal and/or state laws prescribing administrative, physical, and technical safeguards for that information. Most of these laws or their implementing regulations include requirements that employees in the data-handling flow be trained on appropriate privacy and security practices.

Thus, some or all employees in every organization need training on information-security basics: how to properly handle, transmit, store, and dispose of information in any form. Depending on your organization's industry and specific operations, the training may need to focus on the specific requirements of a certain law or regulation (e.g., "HIPAA Privacy and Security" for healthcare organizations or "FACTA Red Flags" for creditors).

iv.   Appropriate Internet Use

The Internet has undoubtedly revolutionized the workplace. Some 62% of U.S. employees now use the Internet for their work and 27% report "constant" use.[11] But with all the potentially positive uses of the Internet comes the potential for abuse as well. Between 60 and 80 percent of the time employees spend on the Internet at work has nothing to do with work.[12] Of 1,200 companies surveyed about Internet usage, 54% reported catching employees browsing websites unrelated to their work – some for up to eight hours a day! Improper or indiscriminate use of email, text- or instant-messaging, blogs, Facebook, Twitter, etc. can lead to issues of workplace discrimination and harassment, copyright infringement, securities-law violations, antitrust violations, the loss of trade secrets, and many other legal and practical problems.

Accordingly, every organization should train most or all of its employees on basic rules and common-sense guidelines for appropriate use of the organization's electronic-communication systems. This training should include a discussion of social networking, including the issues of employees making work-related postings from personal computers or using their personal social-network accounts from computers at work.

v.   Dealing with Difficult Situations

While not strictly a "compliance" topic, training employees to prepare for and respond appropriately to a range of difficult situations can bolster an organization's overall compliance efforts. Having all employees up to speed on how to deal with natural disasters, terrorist attacks, workplace-violence incidents, unannounced government inspections, and encounters with law-enforcement personnel will serve the organization's business-continuity interests and reduce the risk of liability and personal injury. In addition, by training employees to respond to media inquiries with "no comment" and a referral to a predetermined spokesperson, an organization can reduce the risk of reputational harm from unauthorized and off-message communications.

vi.   Managing within the Law

As workplaces grow increasingly complex, every organization needs to ensure that its managers know and understand the legal requirements and ramifications of their daily management activities. The stakes are too high for managers to learn through trial and error: the possibility of costly wage-and-hour litigation, low employee morale and productivity, high and costly turnover, and claims of discrimination, harassment, bullying, retaliation, and wrongful termination, among other things.

Managers are an organization's front line for receiving complaints, and they routinely make decisions that can have long-range and far-flung legal consequences. Without a sufficient understanding of the law, managers can make costly and sometimes devastating mistakes. In some states, managers can also be held personally liable for workplace harassment or retaliation. And managers play a pivotal role in wrongful-termination suits arising from any number of potential legal missteps.

Thus, an organization should offer all managers a primer on topics such as interviewing, wage-and-hour basics, the distinctions between employees and independent contractors, employee leave, employee privacy, disability and religious accommodation, conflict management, performance reviews, responding to complaints, conducting and participating in investigations, and avoiding retaliation.

vii.   Workplace Health and Safety

Many standards issued by the federal Occupational Safety and Health Administration (OSHA) and its state counterparts explicitly require organizations to train their employees on the health and safety aspects of their jobs. Under well established case law, an organization may successfully defend against otherwise valid OSHA citations by demonstrating that it took every feasible step to avoid the occurrence of an accident and that the employee's actions violated a uniformly and effectively enforced work rule on which the employee was trained.

Thus, every organization should offer at least a basic course on workplace health and safety to employees and follow up with more specific training for employees whose job responsibilities expose them to higher levels of risk (e.g., driving a forklift or handling hazardous materials).

b.   Courses for Larger, Global, and/or Publicly Traded Organizations

Larger organizations should consider supplementing the basic curriculum described above with these additional courses.

i.   Fair Competition

As the complexity of the business world multiplies, so do potential competition-law problems for business enterprises throughout their organizational chains. An intricate matrix of federal, state, and international laws and regulations poses significant danger to organizations of both intentional and inadvertent antitrust violations: organizations may be fined, mergers and acquisitions may be thwarted, enormous litigation costs may pile up, and employees may be sent to prison. Just as important, though, organizations and their employees can become afraid to be inventive, aggressive, and competitive in wholly legitimate ways.

Thus, it is crucial that organizations train their upper-management and sales/marketing employees on the basic "what, why, and how" of competition-law enforcement: (1) what the basic legal principles in each relevant jurisdiction are, and what problems can occur in real-world dealings with colleagues, customers, competitors, suppliers, and business partners; (2) why compliance with U.S., EU, and/or Canadian law is integral to the organization's business goals, and why avoiding violations and civil and criminal penalties is so important; and (3) how to recognize potential problems and deal with them appropriately, and (4) how to compete creatively and legitimately.

ii.   Anti-Corruption/FCPA

With the increasing globalization of our economy, organizations are faced with new opportunities and new challenges. An important part of today's global environment is compliance with laws, such as the Foreign Corrupt Practices Act (FCPA), regulating the way U.S. companies transact business internationally. Recent international initiatives, including the Inter-American Convention against Corruption and the OECD's Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, have focused the world's attention on anti-corruption measures. These international efforts to battle corruption mean that U.S. companies can compete on their merits with increasing certainty that they will not be undercut by a competitor's illicit payment to a foreign-government purchaser. They also mean that there is increased emphasis on enforcing anti-corruption legislation worldwide and particularly on enforcement of the FCPA within the U.S., making compliance more important than ever.

Thus, an organization should offer FCPA/anti-corruption training to all employees involved in international business activities.

iii.   Insider Trading/Regulation FD

News reports of fortunes won and lost in the stock market can tempt employees to try to capitalize on inside information they learn at work before it is available to the general public. But whether these employees buy or sell stock themselves or "tip" others to do so, their activities could violate federal securities laws and lead to severe fines and even prison sentences for themselves, their supervisors, friends and family, and their organization.

Thus, it is essential that public companies (and organizations that come in contact with material, nonpublic information about public companies) provide their employees with a basic understanding of insider trading and selective-disclosure law and policy.

c.   Additional Training Areas

The following are additional topics that some organizations may deem training-worthy in more detail than would be covered in a basic code of conduct course:

- Advanced Antitrust – Abuse of Market Power
- Advanced Antitrust – Distribution Systems
- Americans with Disabilities Act
- Anti-Boycott
- Anti-Money Laundering/USA PATRIOT Act/Know Your Customer
- Careful Communication
- Conducting Effective Investigations
- Conflicts of Interest
- Contract Law Basics
- Corporate Political Activity
- Customer Privacy
- Defensive Driving
- Employee Privacy/HIPAA
- Environmental Health & Safety
- Export Controls
- Fair Labor Standards Act
- Family and Medical Leave Act
- Finance Basics for Managers
- Financial Integrity/Sarbanes-Oxley
- Hazard Communication/Right To Know

- Immigration Law
- Maintaining a Cooperative Workforce (Union Avoidance)
- OFAC Sanctions and Embargoes
- Product Liability
- Record Management
- Trade Secrets and Intellectual Property Protection
- U.S. Customs Compliance
- Worker Classification
- Workplace Bullying
- Workplace Diversity

For some organizations, the compliance training curriculum may extend well beyond these topics — whether due to the industry in which the organization operates, or because risks in certain areas are uniquely higher than in others. Common additional topics include:

- Corporate Espionage
- EU Privacy Directive
- FACTA "Red Flags"
- Gramm-Leach-Bliley Act
- Healthcare Fraud and Abuse
- HIPAA Privacy and Security
- PCI-DSS Compliance
- Protection and Use of Company Assets
- Whistleblowing (DRA Compliance)
- Workers Compensation Management
- Workplace Violence Prevention

Organizations doing business with the U.S. government may need to address additional training areas. In recent years, the government has shown an increased willingness to fine, withdraw or cancel contracts, or otherwise penalize organizations that run afoul of procurement laws. Moreover, many states and municipalities base their acquisition and procurement rules on federal regulations.

Accordingly, some of the following topics may also apply to federal, state and local government contractors:

- Accurate Labor Charging under Government Contracts
- Drug-Free Workplace Act
- Federal Acquisition Regulation (FAR)

- Equal Opportunity and Affirmative Action (OFCCP) Compliance

- Organizational Conflicts of Interest

- Procurement Integrity in Government Contracting

- Quality, Testing and Substitution

- The Truth in Negotiation Act (TINA)

In addition, there is an extensive web of laws and regulations (some of which are listed in Section II.A.1, *supra*) containing numerous industry-specific training requirements. It is your responsibility as in-house counsel to determine what (if any) additional training requirements these laws and regulations impose on your organization.

2.   Developing the Training Content

Once you have decided on an initial training curriculum, you need to consider how you will develop the training content. If you're incredibly lucky, your organization already has excellent training materials on hand and/or a happy and cost-effective relationship with an outside-counsel trainer or third-party training provider. Or perhaps you're the very rare in-house attorney who has the time and inclination to reinvent the wheel and develop numerous training courses from scratch.

If none of these is your reality, take heart — the compliance-training industry offers you several other options:

- ACC Resources: ACC offers sample training modules on dozens of compliance topics, with downloadable PowerPoint presentations that include a presenter's script, interactive exercises and games, and printable handouts. You can also search ACC's legal resources repository for top-ten lists, compliance checklists, InfoPAKs, meeting/program materials, and similar resources from which to develop your own training courses. Finally, you can network with other ACC members who are willing to share training material they've developed or inherited.

- Web Resources: Use a search engine to locate training slides and related materials that universities, government agencies, and even private organizations have made publicly available. Be sure to vet these materials thoroughly, however, to ensure that they are current and substantively accurate.

- Outside Counsel: Ask outside counsel for training slides, legal memoranda, client briefings, or other materials that could give you a head-start on developing your own course materials. If feasible from a budgetary and logistical standpoint, consider having outside counsel develop and/or provide the training with you or for you.

- Third Party Training Providers: License the training courses you need from a reputable provider. Ask your colleagues for recommendations of providers they've used and with whom they've had good experiences, both in terms of content and the administrative support provided for their training initiatives. Ask potential providers for a preview of one or more courses to gauge whether their approach is appropriate to your organization's culture and, if the training will be online, your network

infrastructure. If the content of a provider's off-the-shelf programs is not a perfect fit, find out if you can customize the content and, if so, how much it would cost and how long it would take.

3. Deciding on a Delivery Option

Keep in mind, however, that there's more to an effective training initiative than just a great set of PowerPoint slides. Not only will you want the training to be interactive enough to engage employees, you'll need to take steps to ensure a high participation rate (as close to 100% of the target audience as possible) and a provable record of each employee's completion of all assigned training. These additional considerations can weigh heavily in your choice of whether training will be delivered through instructor-led training, e-learning courses, or a blend of the two approaches.[13] In this section, we'll discuss the benefits and drawbacks of each.

a. Instructor-Led Training

Instructor-led training usually refers to traditional classroom training, in which an instructor teaches a course to a room of learners. It may also refer to live "webinars," where an instructor presents to a virtual classroom of learners participating in real time by telephone or computer.

The principal benefits of instructor-led training are immediate access to the instructor for questions and the ability to engage the group in role-playing and discussions. Some organizations prefer instructor-led training for their board of directors or high-level executives to provide a more personal touch. In some organizations (e.g., manufacturing or retail), instructor-led training may be the only feasible option.

Other benefits of instructor-led training include:

- ■ When presenting in person, the instructor is able (and often more likely) to project passion into the topic area. The excitement and animation of the instructor (through voice, body movements, and overall physical presence) is projected to/felt by the employee-attendees, and they can build upon that momentum.

- ■ Because of the direct interaction between the instructor and employees, it is easy to adapt to the particular needs of the group based on this give-and-take. Employees can steer the discussion to a specific issue or topic that the instructor did not anticipate, and adapting spontaneously benefits the entire group.

- ■ Learning among peers occurs naturally, when the give-and-take between the employee-participants flows effortlessly. If the instructor creates a solid learning environment, the employees can learn from each other by sharing their own experiences and valuable knowledge.

- ■ The instructor can adapt to the employees' specific needs, depending on their particular learning types (visual, auditory, and kinesthetic); and

- ■ The instructor can set or change the pace for the course to reflect the group's needs.[14]

There are several drawbacks to instructor-led training:

- Because it is "synchronous" in nature, scheduling can be difficult. There may be gaps in time from when an employee is hired until s/he receives training in all necessary areas, which can present significant risks for the organization.

- It is generally more expensive than e-learning on a per-employee basis, especially if outside counsel or other professional trainers are retained to conduct the training.

- It is logistically difficult to train employees in far-flung locations.

- If multiple instructors are utilized, there is a danger that the instructors will not convey training content consistently.

- If training must be conducted in multiple languages, the cost and logistical difficulties may increase significantly.

- It may be difficult to track employee participation and comprehension of the material.

- It may be less effective than e-learning as a compliance-training tool.[15]

b.   E-learning Courses

E-learning is computer-based training, whether via the Internet, a local network (intranet), or other electronic means (e.g., CD-ROM, telephone, etc.). It is typically "asynchronous," meaning that employees can take courses at any time and without regard to the schedules of instructors or other learners. There are several benefits of e-learning:

- For organizations in which employees work in multiple locations or on different shifts, e-learning is substantially less expensive than instructor-led training.

- Because courses are available 24-7 and can usually be completed in multiple sessions as time permits, e-learning is more convenient for employees.

- E-learning is more time-efficient, since employees can learn at their own pace. Typically, content can be covered in 35% to 45% less time than in instructor-led training.

- If the e-learning materials are interactive and engaging, employees may absorb more of the content in a self-paced e-learning course than in instructor-led training.

- If an e-learning course is delivered via a learning management system (LMS), employee participation and comprehension are much easier to track and report on.

- E-learning courses are generally easier to deliver in multiple languages than instructor-led training.

- Utilizing e-learning enables delivery of a consistent training message to all employees across the globe.

- If the LMS supports it, employee participation can be driven by automated "reminder" emails, typically yielding a much higher completion rate with much less actual legwork than would have been achieved otherwise.

At the same time, there are some drawbacks to e-learning:

- Creating your own e-learning courseware from scratch requires buying course-authoring software and learning how to use it, or working with others in your

organization who know how to use it.

- Licensing e-learning courseware from third-party providers can be expensive, and some providers are better at supporting their products than others.

- There may be additional up-front costs for content customization or translation and infrastructure (e.g., computer kiosks in break rooms for employees without computer access).

- There could be a risk of network or data insecurity, particularly if a third-party provider maintains the LMS and related administrative tools.

LMS 101

Like most industries, the training industry has its share of acronyms, many of which have meaning and importance only to full-time training professionals. But there's one acronym you should know and understand (and will come to love) in your role as in-house counsel and compliance-training overseer: Learning Management Software ("LMS"). An LMS is a software application that handles the administration, tracking, and reporting of training activities.

While training initiative**s** can work without one, an LMS makes the process significantly easier and more time-efficient by handling (at a minimum) these tasks:

- Importing a list of the employees in your target audience and assigning them the courses they need to take.

- Automatically sending initial "assignment" and subsequent "reminder" email messages to those employees to alert them to their training assignments and pester them periodically until they complete all of their assigned training.

- Notifying supervisors of employees who have not completed their training assignments by the specified deadline.

- Tracking all employee-training activities—e.g., when each employee started, stopped, and completed a course, his/her score on any assessment in the course, his/her acknowledgment of (or refusal to acknowledge) a certification in the course, etc.

- Creating useful reports of training participation.

Some organizations purchase or license an LMS for their internal use, and some have LMS functionality available in their HR software platforms. If neither is true for your organization and you choose to outsource any part of your training initiatives, be sure to select a third-party provider who supplies LMS functionality as part of its training services.

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c.   Blended Learning

Some organizations use a blend of instructor-led training and e-learning, depending on the training topic, audience, and location. There are several variants of blended learning:

- An organization may use instructor-led training for some employees and e-learning for

others. As noted above, some organizations use instructor-led training for executives or manufacturing employees, while e-learning may be better suited to office workers with computer access and skills.

- An organization may use instructor-led training for certain topics and e-learning for others. For instance, an organization might utilize instructor-led training with extensive role-playing and group discussions for a workplace-diversity training session, but e-learning for compliance topics that are less interpersonal in nature.

- An organization may alternate instructor-led training and e-learning courses between training cycles (e.g., classroom instruction one year and an e-learning refresher course the next year).

- An organization may make an instructor available, even if the course is delivered via e-learning, to answer questions via instant-messaging or telephone.

4.   Selecting Trainer(s) and/or Vendor(s)

With these content-development and course-delivery options in mind, you'll need to decide whether to implement your training initiative using internal or external resources, or a combination of the two. Your decision may hinge on some or all of the factors discussed above, including logistics, your workload and the workload of other possible in-house trainers, your ability to create an interactive e-learning course, whether your organization has an LMS or another means of tracking and reporting on employee participation, as well as the degree of upper-management support and the budget with which you have to work.[16]

C.   Implementing the Training

Before you finalize your decisions on the various content-development and course-delivery options, you may want to look ahead to some of the implementation issues associated with each option.

1.   Instructor-Led Training

As you undoubtedly know from experience (whether as a presenter or audience member), it is not easy to deliver an effective and informative classroom-training course. Here are some tips that might help you with your next training presentation:

- Practice in advance — and not just immediately before the training session. Know your outline thoroughly and be familiar with and comfortable using overheads, visual aids, etc. Rehearse the entire presentation until you can deliver it smoothly.

- If you are introduced to the audience at the beginning of the presentation, thank your host for recognizing the importance of your topic and thank your audience for their time and attention.

- Tell the audience who you are and briefly describe your qualifications for conducting the course. If the topic is a new law or regulation, admit that you are only slightly ahead of the audience on the topic and ask for their patience and forbearance.

- Consider forgoing a cheesy introductory joke (unless you're a born comedian).

- Distribute all of the handouts at once in the order you plan to use them, or have them stacked in order at each seat in advance.

- Motivate the audience to pay attention by explaining why this topic is critical to them. Tell them what their responsibilities are and how this course will help them discharge those responsibilities.

- Introduce the key points that you want your audience to remember.

- Engage your audience in the topic by introducing a hypothetical or administering a quiz and then discussing it together.

- Don't worry if the audience's questions and discussion consume a substantial part of the time allotted for the course. In most cases, they will learn more this way than if you curb the discussion and revert to more obscure points in your outline. Nonetheless, you should occasionally steer the discussion back on topic to reinforce your key points. Remind the audience where they can find pertinent policies or other materials for which they are accountable and encourage them to contact their supervisor or the relevant department (and/or the legal department) if they have more questions later.

- Remember that the audience is counting on you to run a useful training session and not waste their time. Don't monopolize the discussion or let any member of the audience do so.

- If there is a professionally produced videotape or DVD on your topic, consider using it (or a portion of it) to make the training more visual and memorable. Contact ACC or your colleagues for information on resources they may have available.

(For additional information on instructor-led training, see ACC Article, "Teaching the Trainer," *available at* http://www.acc.com/legalresources_teachingthetrainer).

2.   E-learning

There are many ways to implement an e-learning initiative, some more elegant than others. In its simplest form, you could email the PowerPoint slides from an instructor-led course to the target audience and require them to review the slides by a stated deadline. In its most sophisticated form, you could contract with an e-learning provider to develop a customized course administered through your organization's LMS (or the training provider's LMS) in a manner that is fully trackable and reportable. Obviously, the "effectiveness" of these approaches as a compliance tool will be quite different, as will the lead-time and cost.

Most organizations would be well served by an approach somewhere in between these two extremes, with an eye to the following four "abilities":

a.   Accessibility

All employees in the target audience must have access to the course, preferably on a 24–7 basis to account for differences in time zones and work schedules. If the course is housed on your organization's intranet, be sure that all employees have intranet access. Likewise, if the course is on the Internet, be sure that all employees can reach the site, even if other web-browsing activities are restricted or blocked. If the course requires special hardware or software (e.g., speakers for audio or the Flash plug-in for audio and video), be sure that all your organization's computers have what's needed or that employees have the ability and authorization to download and install it. Ensure that employees with disabilities have screen-reading software or other accommodations

as needed and that the assigned courses are accessible in this manner.

b.   Customizability

Just as your organization has tailored certain policies to its particular culture and industry, certain training courses may need to be customized to fit both the letter and spirit of these policies. Consider whether generic, off-the-shelf training content is likely to be adjudged "effective" in training employees to handle difficult industry- or company-specific issues that may arise. If you determine that some of your training courses should be customized for your organization, be sure that whatever third-party provider you select supports content customization and can execute it reasonably quickly and cost-effectively.

c.   Assessability

A common criticism of e-learning is that employees can simply click through a course quickly without paying attention. A well-designed course will include interactivity throughout (games, pop-quizzes, video vignettes, etc.) that engage employees and serve as virtual "speed bumps" to slow them down and focus their attention on the more important material. Most courses include a final quiz or assessment (perhaps in the form of a training game) through which employees must demonstrate some level of comprehension of the material in order to complete the course.

For example, the quiz might be penalty-scored, requiring employees to answer at least one question correctly on their first attempt on each of the major topics in the course in order to receive a certificate of completion. Employees who answer incorrectly (such as those who may be trying to guess their way through the quiz as quickly as possible) are then required to answer a second (and, if needed, a third) question on the same topic. The course should primarily engender a sense of success for employees, rather than the threat of failing, but employees should nonetheless have to earn their certificate of completion by thinking through the issues presented.

d.   Accountability

In many organizations, it's one thing to invite a group of employees to take an e-learning course (even a required one) and another for them to actually do so. Attrition may be understandable – people are busy, email invitations may fall through the cracks, etc. – but it can also put your organization at substantial risk. In many cases, it takes a monumental effort just to launch a new training initiative, let alone to follow up comprehensively and ensure that all employees complete their assigned courses. If your organization has an LMS or has outsourced administration of the training initiative to a third-party provider, the follow-up process should be automated, likely through a series of periodic "reminder" emails that pester employees until they complete their training assignments. The difference in completion rates when follow-up is handled in this manner, rather than manually, can be staggering – often the difference between a completion rate of 25% and 95%.[17]

Perhaps even more frustrating is when an organization implements a successful training initiative but is unable to track employee participation reliably and provably. Here again, administering the initiative through an LMS can generally give you employee-specific tracking data and the ability to configure custom reports showing participation rates across the entire target audience.

3.   Blended Learning

A blended-learning implementation presents the additional challenge of ensuring that all

employees receive a consistent training message, regardless whether they take the training in a classroom or on a computer. If a problem were to arise that called your organization's training efforts into question, you might need to be able to prove whether an employee received classroom or online training and what (if any) substantive differences the different versions of the courses contained. Having your instructor-led and e-learning courses share the same content obviates this potential proof problem.

You may also need to track the participation of classroom trainees through manual means, while e-learning trainees will be tracked automatically. Some LMSs can track classroom-training participation, and others might have a mechanism to enable you to import participation data from classroom sessions. Ideally, you should be able to use a single system (rather than a pile of attendance forms or classroom sign-up sheets) to run reports showing the participation of *all* employees in the target audience.

4. Following Up

Even after successfully implementing a training initiative, you can't rest on your laurels for too long. Periodic retraining, even if only with brief refreshers, is the best way to keep compliance information at

the forefront of employees' minds. In addition, repeating a training session annually or biannually covers training gaps created by personnel changes and turnover and helps ensure that training reaches every employee with a "need to know" a given policy or law.

Even in-between training and refresher sessions, you should find occasions to reissue revised policies, distribute news articles relevant to subjects covered in training, or send around links to compliance quizzes, tips, or top-ten lists. Any or all of these small but important efforts will contribute to the overall "effectiveness" of your organization's compliance program.

II. Other Law-Related Training Topics

A. Contract Law

Many organizations find it useful to provide non-legal employees with the training and tools to draft and negotiate contracts with oversight from the legal department as necessary. This can benefit the organization by reducing the demands on its legal department and enhancing non-attorney managers' job functions. In addition, deals can sometimes be concluded more quickly by non-legal personnel, since attorney involvement often raises the stakes in negotiations and draws out the contracting process, making it less effective overall.

For these reasons, in-house counsel may find it worthwhile to create training courses for some managers on contract law and the significance of common contract terms (e.g., so-called "boilerplate"). This training should cover the fundamentals of what a contract is, how contracts are formed, issues of performance and breach, and how contract litigation works.

Look to common situations that have arisen when managers in the organization handled contracts and set goals for your training course specific to your organization's needs. For example, if many

of the organization's legal issues relate to managers' failure to understand how and when a binding legal obligation was created, the training should emphasize offer and acceptance. Managers should also be trained to recognize when they need to contact the legal department for assistance.

Determine what managers in your organization need in order to accomplish their business objectives while minimizing legal exposure, and which managers need it. Certain managers will likely benefit from additional training tailored to your organization's particular contract forms, contract processes, legal problems specific to your business or industry, and issues commonly encountered in negotiations.

B.   Responding to Complaints

As a general rule, organizations should be prepared to conduct a prompt, thorough, and fair investigation of every good-faith employee complaint. In-house counsel may want or need to conduct certain investigations personally or through outside counsel, but circumstances may dictate that non-legal managers conduct or participate in some investigations, as well.

Managers should be trained on how to respond to employee complaints, including whether to initiate an investigation, how to assemble a team to conduct the investigation, how to conduct interviews and document the investigative process and any remedial actions, how to preserve attorney-client privilege throughout the process, and how to avoid retaliating against employees involved in the investigation. Here again, managers also need to recognize when they should contact the legal department for assistance.

III. About the Author

WeComply, a Thomson Reuters business, is a leading provider of ethics and compliance training for employees in all industries and offers more than 100 courses that are easily customized and available in multiple languages both online and offline.

Companies can host courses in their own Learning Management System (LMS) or use WeComply's patented system, which provides centralized administration, custom reporting and other advanced features. WeComply is the exclusive compliance training partner of the ACC Alliance and forms part of the Thomson Reuters Accelus offering of market-leading solutions for enterprise Governance, Risk and Compliance (GRC) management. For more information, visit http://www.wecomply.com

IV. Additional Resources

A. ACC Docket Articles

David Markatos, "Going Global: Low-Cost Training Can Yield Dividends," *ACC Docket* 27, no. 9 (Nov. 2009), *available at* http://www.acc.com/legalresources/resource.cfm?show=721645.

Russ Berland and Sara Lujan Miller, "Making Training Effective by Making it Sticky," *ACC Docket* 27, no. 9 (Nov. 2009): 46-55, *available at* http://www.acc.com/legalresources/resource.cfm?show=721265.

Marla G. Zwas, "Inspire Your Business Colleagues During Your Next Legal Training," *ACC Docket* 26, no. 6 (July 2008): 68-77, *available at* http://www.acc.com/legalresources/resource.cfm?show=20786.

James A. Nortz, "Business Ethics: Awaken the Zombies!" *ACC Docket* 24, no. 7 (Aug. 2006): 86, *available at* http://www.acc.com/legalresources/resource.cfm?show=14645.

George Madison, "Tips and Insights: Board Training with George Madison," *ACC Docket* 24, no. 1 (Apr. 2006): 90, *available at* http://www.acc.com/legalresources/resource.cfm?show=14686.

Dinah Seiver, "Setting Up a Compliance Department from Scratch," *ACC Docket* 23, no. 9 (Oct. 2005), *available at* http://www.acc.com/legalresources/resource.cfm?show=20822.

"Conquering Compliance Training: How

Three Companies Use Online Programs for Better Results," *ACC Docket* 23, no. 4 (Apr. 2005): 52-56, *available at* http://www.acc.com/legalresources/resource.cfm?show=16989.

Teresa Kennedy ET AL., "About That Compliance Thing: Creating and Evaluating Effective Compliance Programs," *ACC Docket* 22, no. 10 (Dec. 2004), *available at* http://www.acc.com/legalresources/resource.cfm?show=17013.

Albert C. Peters II ET AL., "Teaching Contract Law to Nonlawyers: Training Techniques That Really Work," *ACCA Docket* 19, no. 10 (Nov. 2001): 44-55, *available at* http://www.acc.com/legalresources/resource.cfm?show=147989.

B. ACC InfoPAKs[SM]

"Framework for Conducting Effective Compliance and Ethics Risk Assessments," ACC InfoPAK (July 2010), available at http://www.acc.com/legalresources/resource.cfm?show=19642.

"Effective Compliance and Ethics Programs for the Small Law Department – Doing More with Less," ACC InfoPAK (July 2010), available at http://www.acc.com/legalresources/resource.cfm?show=19635.

"Corporate Compliance," ACC InfoPAK (Aug. 2009), available at http://www.acc.com/legalresources/resource.cfm?show=19684.

C.   ACC Program Materials

Thomas A. Boardman ET AL., "Use of Nonlegal Managers to Perform Legal Functions," ACC 2004 Annual Meeting, Session 511, *available at* http://www.acc.com/legalresources/resource.cfm?show=20448.

Philip P. Crowley ET AL., "Automated & Online Compliance Training: The Future Is Now," ACC 2004 Annual Meeting, Session 105, *available at* http://www.acc.com/legalresources/resource.cfm?show=20419.

Michael J. Lotito ET AL., "Workplace Law Training: A Key Affirmative Defense for Small Law Departments," ACC 2004 Annual Meeting, Session 702, *available at* http://www.acc.com/legalresources/resource.cfm?show=20398.

Theodore L. Banks ET AL., "You Have An Effective Code of Compliance- Now What? Running An Effective Compliance Program," ACCA 2003 Annual Meeting, Session 811, *available at* http://www.acc.com/legalresources/resource.cfm?show=20490.

Nestor Barrero ET AL., "New Ideas in Compliance Strategies: Educating Nonlegal Managers About Their Legal Responsibilities," ACCA 2003 Annual Meeting, Session 711, *available at* http://www.acc.com/legalresources/resource.cfm?show=20504.

Eileen Morgan Johnson ET AL., "Teaching Contract Law to Non-Lawyers II," ACCA 2003 Annual Meeting, Session 202, *available at* http://www.acc.com/legalresources/resource.cfm?show=20553.

Jack O'Neill ET AL., "Teaching Contract Law to Non-Lawyers: Training Techniques That Really Work," ACCA 2001 Annual Meeting, Session 503, *available at* http://www.acc.com/legalresources/resource.cfm?show=20687.

D.   Other Resources

Dr. Susann Wolfgram et al. "Workshops on Innovative Approaches to Legal and Compliance Training," ACC Presentation (June 2013), *available at* http://www.acc.com/legalresources/resource.cfm?show=1343426.

Shaun Day, "Contract Training of the Non-Attorney," ACC QuickCounsel (Dec. 2011), *available at* http://www.acc.com/legalresources/quickcounsel/ctofna.cfm.

"Law Department's Role in Developing and Implementing Compliance and Ethics Programs," ACC Leading Practices Profile (July 2005), *available at* http://www.acc.com/legalresources/resource.cfm?show=16802.

"Compliance Tools," ACC Sample Forms and Policies (July 2005), *available at* http://www.acc.com/legalresources/resource.cfm?show=13033.

"Management Compliance Training Manual," ACC Sample Forms and Policies (Apr. 2005), *available at* http://www.acc.com/legalresources/resource.cfm?show=13767.

Other ACC compliance and ethics sample forms and policies are available at http://www.acc.com/legalresources/forms/index.cfm?pafilterID=5

V. Endnotes

[1] Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, *available at* http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31995L0046:en:HTML

[2] *See* U.S. DEPARTMENT OF JUSTICE, UNITED STATES ATTORNEYS' MANUAL § 9-28.800 (rev. Aug. 2008), *available at* http://www.justice.gov/usao/eousa/foia_reading_room/usam/title9/28mcrm.htm#9-28.800; Memorandum from Mark Filip, Deputy Att'y Gen., to Heads of Dep't Components and U.S. Attys ("Filip Memo") (Aug. 28, 2008) *available at* http://federalevidence.com/pdf/Corp_Prosec/Filip.Memorandum.2008.pdf

[3] SIMON WEBLEY & ELISE MORE, INSTITUTE OF BUSINESS ETHICS, DOES BUSINESS ETHICS PAY? ETHICS AND FINANCIAL PERFORMANCE, (2003), *available for purchase at* http://www.ibe.org.uk/publications/listofpublications.htm.

[4] ETHICS RESOURCE CENTER, THE IMPORTANCE OF ETHICAL CULTURE: INCREASING TRUST AND DRIVING DOWN RISKS (2010), *available at* http://www.ethics.org/files/u5/CultureSup4.pdf.

[5] GENERAL COUNSEL ROUNDTABLE, BENCHMARKING COMPLIANCE PROGRAMS (2003).

[6] Laurie Bassi & Dan McMurrer, *Do Firm's Investments in Education and Training Pay Off?*, UNISYS WORLD, July 2001.

[7] Organizations without a formal code of conduct can train employees on the same topics in an "Ethics and Compliance Basics" course without reference to a code. Organizations that do government contracting need to augment their basic code of conduct training with instruction on the Federal Acquisition Regulation (FAR).

[8] *Faragher v. City of Boca Raton,* 524 U.S. 775, 807 (1998); *Burlington Indus., Inc. v. Ellerth,* 524 U.S. 742, 765 (1998) (holding that in sexual harassment cases where no tangible employment action (e.g., termination or demotion) was taken, the employer may assert as an affirmative defense that it "exercised reasonable care to prevent and correct promptly any sexually harassing behavior," and "that the plaintiff employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise").

[9] A growing number of states now require anti-harassment training for supervisors in both the public and private sector. They include California, CAL. GOV'T CODE §12950 (2009), Connecticut, CONN. GEN. STAT. § 46a-54(15)(B) (2005); CONN. AGENCIES REGS. § 46a-54-204 (2010), and Maine, ME. REV. STAT. ANN. tit. 26, §807(3) (2010). Several other states officially "encourage" such training in the both the private and public sectors: they include Colorado, 3 COLO. CODE REGS. § 708-1 (2010), Massachusetts, MASS. GEN. LAWS ch. 151B, § 3A (2010), New Jersey, *Gaines v. Bellino,* 173 N.J. 301 (2002), Rhode Island, R.I. GEN. LAWS, § 28-51-2(c), -3 (2010), and Vermont, Vt. Stat. Ann. tit. 21, § 495h(f) (2010). Many other states mandate training for various public-sector employers.

[10] For example, a new Massachusetts data-security regulation, 201 MASS. CODE REGS. 17.00 (2010), covers personal information pertaining to any resident of Massachusetts, regardless of where the information is stored.

[11] With an Internet connection, a laptop or netbook, and a cell phone or PDA, many employees are fully equipped for their work wherever they are. Indeed, nearly half of employed Americans now work from home at least some of the time—and 18% do so every day or almost every day.

[12] Ugrina, Joseph C. and Pearson, J. Michael, "The Effects of Sanctions and Stigmas on Cyberloafing," Computers in Human Behavior (May 2013).

[13] A new form of employee training leveraging social-networking technology, known as "social learning," is being developed, but is still in its infancy and not yet well defined enough to be recommended as an effective format for compliance training. Available for purchase at http://www.sciencedirect.com/science/article/pii/S074756321200310X.

[14] ACC Article, "Teaching the Trainer," (Sept. 2010), *available at* http://www.acc.com/legalresources_teachingthetrainer.

[15] While high-quality online training is typically very "interactive," instructor-led training can be less so – especially in larger groups. It is not unusual to see classroom participants checking their email or text-messaging out of sight of the instructor, or excusing themselves briefly (or not so briefly) to "make an

important call." If one of these absentee learners were the focal point of a compliance issue in the future, his/her absence or inattentiveness during the training session could come back to haunt the organization.

[16] For resources on this topic, see ACC Compliance & Ethics Portal, *available at* http://www.acc.com/practiceareas/complianceethics.cfm.

[17] Gretchen A. Winter and David J. Simon, "Code Blue, Code Blue: Breathing Life into Your Company's Code of Conduct," *ACC Docket* 20, no. 10 (Nov. 2002): 86, *available at* http://www.acc.com/legalresources/resource.cfm?show=1 49724.