



Tuesday, May 1
3:15 pm - 4:20 pm

Implementing Your New Compliance Program

Karyn Boston

Chief Compliance Officer and Associate General Counsel-Litigation
YMCA of the USA

David Simon

President
WeComply, Inc.

Steven Smart

Director, Ethics and Compliance
National Oilwell Varco

Faculty Biographies

Karyn Boston

Karyn Boston is the chief compliance officer and associate general counsel for YMCA of the USA, located in Chicago, Illinois. YMCA of the USA is the national resource office for the nation's 2,714 YMCAs, which serve nearly 21 million people each year, including 9.4 million children under the age of 18.

Ms. Boston was responsible for developing YMCA of the USA's ethics and compliance framework and infrastructure around nonprofit Sarbanes-Oxley compliance, including oversight of the records and information management and whistleblower programs. Other areas of focus include privacy, child protection/safety, internal investigations, HIPAA and FCPA. She is also responsible for a portfolio of legal matters, including litigation, intellectual property and contracts, as well as oversight of the enterprise risk management program.

Prior to joining YMCA of the USA, Ms. Boston served as associate general and head of the Escalated Customer Complaint Group for Sears Holdings Corporation. During her employment with Sears, she managed civil and criminal government enforcement actions, litigation, advertising/trade practices and regulatory work. As a former prosecutor for Denton County, Texas, she gained extensive trial and appellate experience.

Ms. Boston received her Bachelors of Science degree from Hampton University and her law degree from Detroit College of Law at Michigan State University. She also earned the designation of Certified Compliance and Ethics Professional (CCEP) through the Compliance Certification Board.

David Simon

David Simon is president of WeComply, Inc. A trial and appellate lawyer for 14 years, he has helped develop hundreds of computer-based training courses for both lawyers and non-lawyers.

Since founding WeComply in 1999, Mr. Simon has been a frequent speaker on compliance and employee-training issues and has written articles for ACC Docket, Corporate Counsel magazine, Director's Monthly, and numerous other publications.

Steven Smart

Steven Smart is director, Ethics and Compliance with National Oilwell Varco (NOV), a manufacturer and supplier of equipment and services to the oil and gas industry worldwide. At NOV he manages an international compliance team of five other attorneys as well as paralegals and product classification specialists.

Prior to joining NOV, Mr. Smart was associate general counsel for Ethics and Compliance with Tesco Corporation, where he developed and implemented the company's first comprehensive compliance program. He has also been in-house counsel at Halliburton and in private practice in Toronto, Canada, and Bogota, Colombia.

Mr. Smart is based in Houston, Texas, and currently serves as chair of ACC's Compliance and Ethics Committee.

Mr. Smart graduated from Harvard University with a BA and from the Osgoode Hall Law School of York University in Toronto, Canada with a JD.



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- You've written out the elements of your program and implementation plan
- You have Board and senior management approval
- You have a budget...



How will you breath life into your program?

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Goals of a Compliance Program

- To effectively **prevent** and **detect** non-compliance within your organization (per Federal Sentencing Guidelines)
- To identify and protect your organization from compliance-related risk



- Effectively preventing non-compliance requires everyone to be:
 - aware of relevant legal requirements, and
 - integrating them into their respective job functions
- This requires:
 - information (training), and
 - “permission”



- Most people want to do the right thing but may not believe they **can** while meeting job requirements and management expectations
- “Permission” to do the right thing depends on leadership and tone, both from senior management (“the top”) and from the immediate supervisor
- Not everyone agrees: you need to make rogue employees visible



- Implementing a compliance program is about fostering change:
 - Cultural change
 - Organizational change where necessary
- Be aware of momentum and build on it
- Work toward a broad consensus for change



- Why has your organization decided to implement a compliance program?
 - Proactive vs. reactive
- The answer will affect who supports your effort and who may become a source of resistance or opposition
- Key allies: legal, internal audit, logistics, human resources, IT



Should the Compliance Officer report to the General Counsel?

- Some people in government have discouraged this
- Many companies do it
- There are advantages and disadvantages
- If it makes sense for your organization, don't be afraid to adopt this model
- Ensure direct communication with the Board



Gaining Support and Commitment

Communication of Commitment

- Board resolution
- Written endorsement

Obtain Buy-In

- CEO
- Corporate leadership
- Support from key external sources

Establish Resources and Financial Commitment

- Compliance budget
- Staffing
- Ongoing activities



Building Consensus

EVERYONE should be involved

- Compliance efforts must be ingrained into the culture
- Everyone owns compliance, so everyone must feel connected



Compliance Committee Considerations

Membership

- Senior Management
- Legal Counsel
- HR
- Managers of key business units
- Audit
- Finance

Engagement

- Chart of work
- Sub-committees
- Rotation of members
- Mandatory attendance
- Process for member removal
- Incentives



Building and Keeping Momentum

Inclusion of Compliance into the Culture

- Staff job descriptions
- Performance evaluations
- Vendor program
- Third-party relationships



Building and Keeping Momentum

Compliance Awareness Campaigns

- Visible markers
- Monthly newsletters
- Email comedy shorts
- Compliance Week
- Employee recognition



Publishing Program Metrics

- Percentage of employees completing Code of Conduct training

Common Obstacles

- Lack of buy-in and support from the top
- Lack of ownership/leadership
- Lack of financial resources and labor support
- Lack of enforcement authority
- Lack of access to CEO/Board
- Lack of independence
- Lack of variation in education
- Cultural and geographic challenges
- Fear of retaliation
- Failure to monitor and improve



Training – Four Essential Steps:

1. Developing the training
2. Delivering the information in an engaging way
3. Ensuring that all employees receive training
4. Tracking and reporting all training activities



Determining Areas of Need

- Respond to **reactive** input as required
- Be proactive by –
 - ✓ Surveying managers/employees
 - ✓ Consulting checklists of recommended topics
 - ✓ Benchmarking against other organizations



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Delivery Options

- Instructor-led
- E-learning
- Blended
- Booklets
- Other

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Tracking/Reporting

- Paper-based
- LMS
- HRIS add-on
- Third-party options



Case Study

ABM Anti-Harassment Certification and Training

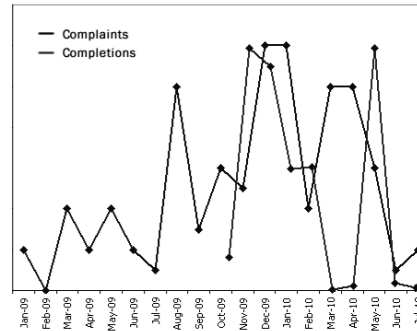
- 110,000 employees
- Non-computer-based
- Multi-language
- Asynchronous



Real-World Results

Telephone-based course has yielded –

- High completion rates
- Increase in complaints
- Usable evidence for defense of claims



Looking Ahead

- Compliance “apps” for tablets and smartphones
- Short-form “refreshers”
- User-definable “styles”
- Text-messaging
- “Social learning”





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Disclaimer

The opinions expressed in this presentation are those of the presenters and do not necessarily reflect the views of their organizations.

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Compliance Program Implementation Checklist

COMPLIANCE PROGRAM IMPLEMENTATION ACTION PLAN			
COMPLIANCE PROGRAM KEY ELEMENT			
	ACTIONS	RESPONSIBLE PARTY	COMMENTS
<i>Compliance Officer and Committee</i>			
	Select a Compliance Officer (CO)		
	Select a Compliance Committee (CC)		
	Provide compliance and risk area training to the compliance committee		
	Identify specific compliance sub-topics for implementation		
	Create sub-committees or task forces		
	Assign each task force to a specific compliance sub-topic		
	Ensure CC meets weekly during implementation		
	Ensure CC meets monthly after implementation		
<i>Risk Assessment</i>			
	Identify any well-known industry risk areas		
	Identify all relevant laws, regulations, government, or regulatory body guidance		
	Identify any areas of previous compliance problems within the organization		
	Identify any areas of previous operational or financial problems within the organization		
	Identify any human resources-related problems within the organization		
	Request all human resources-related problems within the organization		
	Request all departments to list their department's areas of weakness or potential weaknesses		
	Complete the risk matrix		

COMPLIANCE PROGRAM KEY ELEMENT		RESPONSIBLE PARTY	COMMENTS
	ACTIONS		
	Draft compliance code of conduct		
	Obtain approval of code of conduct		
	Distribute and explain to all employees		
	Obtain signed certification of code of conduct from all employees		
	Draft "structural" policies and procedures		
	Mission/goals/directives of compliance		
	Role of compliance officer		
	Role of compliance committee		
	Role of management and board of directors		
	General compliance training		
	Specific compliance training		
	Annual compliance re-training		
	Testing of compliance education retention		
	Anonymous reporting mechanism		
	Open lines of communication		
	Feedback on reports		
	Non-retaliation policy		
	Auditing and monitoring		
	Auditing schedule		
	Auditor independence		
	Continuous/regular monitoring		
	Non-retention of sanctioned individuals		
	Disciplinary action guidelines		
	Enforcement of disciplinary action		
	Corrective action plans		
	Responding to search warrants, subpoenas, and other formal requests for documents by external entities		
	Draft "substantive" policies and procedures		
	Complete risk assessment (described above)		

COMPLIANCE PROGRAM KEY ELEMENT		RESPONSIBLE PARTY	COMMENTS
ACTIONS			
	Draft specific substantive policies and procedures that address identified risk areas		
	Obtain approval of policies and procedures from compliance committee		
	Obtain approval of policies and procedures from executive committee		
	Obtain approval of policies and procedures from board of directors		
	Distribute and explain the policies and procedures to all employees		
	Obtain signed certification of receipt and understanding of policies and procedures from all employees		
	Review of Policies and Procedures		
	Annually:		
	Review all compliance-related policies and procedures		
	Update policies and procedures as needed		
	Create new policies and procedures for new risk areas identified		
	Obtain required approvals of revised policies and procedures		
	Distribute revised policies and procedures to all appropriate employees/contractors		
	Obtain signed certification of receipt and understanding of revised policies and procedures from all applicable policies and procedures		
	Upon revision of a process:		
	Review all compliance-related policies and procedures		
	Update policies and procedures as needed		
	Obtain required approvals of revised policies and procedures		
	Distribute revised policies and procedures to all appropriate employees/contractors		
	Obtain signed certification of receipt and understanding of revised policies and procedures from all applicable policies and procedures		

COMPLIANCE PROGRAM KEY ELEMENT		RESPONSIBLE PARTY	COMMENTS
ACTIONS			
	Review of Other Departmental Policies and Procedures		
	Prepare a departmental policy and procedure request memo (upon creation/implementation of the compliance program and annual thereafter)		
	Designate a task force or delegate specific policy and procedure to various task forces to review and recommend compliance-related revisions to each policy		
	Provide recommendations back to the departments with a timeline for each department to submit the revision or submit a written explanation of the process as it is and why it can't be revised		
	Sign off on each revised policy and procedure and each policy and procedure that does not require revision		
Training and Education			
	Identify all employees that require general compliance training		
	Identify all employees that require specific compliance training		
	Identify all vendors and contractors that require compliance training		
	Identify all customers that require compliance education		
	Identify any other community members or other entities that require compliance education		
	Determine content and duration of general compliance training		
	Determine content and duration of specific compliance training		
	Determine content and duration of contractor/vendor compliance training		
	Determine content of community/customer/other entity compliance education		
	Determine frequency of training required		
	Determine most appropriate mode of general training		
	Determine most appropriate mode of specific training		
	Determine most appropriate mode of contractor/vendor training		
	Determine most appropriate mode of customer/community training		

COMPLIANCE PROGRAM KEY ELEMENT			
	ACTIONS	RESPONSIBLE PARTY	COMMENTS
	Determine most appropriate trainers		
	Develop training materials and presentation Determine mechanism for tracking who has and has not been trained		
	Document training and education plan and schedule developed through above activities		
	Provide training		
	Create evaluation forms for training		
	Collect evaluations and synthesize feedback		
	Refine training program		
	Track who has and has not been trained		
	Identify alternative training/education methods		
	Implement alternative training/education methods		
	CO and CC regular attendance at high-level compliance conferences/seminars		
	Subscribe to compliance journals/newsletters		
	Join compliance-related organizations		
	Subscribe to government and other listservs		
Auditing and Monitoring			
	Complete risk assessment (described above)		
	Draft audit plans for each risk area identified		
	Determine the objectives of the audit		
	Determine the appropriate sample selection method for each audit		
	Determine which documents will be audited		

COMPLIANCE PROGRAM KEY ELEMENT			
	ACTIONS	RESPONSIBLE PARTY	COMMENTS
	Determine the audit criteria		
	Determine if legal counsel should be involved in the audit process		
	Develop an audit schedule based on prioritization from risk matrix		
	Determine the appropriate party to conduct each audit		
	Certify the independence/objectivity of the auditor		
	Conduct the audit		
	Determine the appropriate corrective action plan for any problems identified		
	Prepare a written audit report		
	Determine if legal counsel should be involved in the audit resolution based on findings		
	Develop surveys specific to each audience Survey employees, customers, and other individuals on compliance issues		
	Flow Chart		
	Flow chart specific processes		
	Identify potential compliance weaknesses in the process		
	Identify areas that lack sufficient checks and balances		
	Add areas identified to audit plan/schedule		
	Improve processes as indicated		
	Re-flow chart corrected process		
	Educate changes to affected employees		
	Hold "round table" discussions regarding compliance		

COMPLIANCE PROGRAM KEY ELEMENT		RESPONSIBLE PARTY	COMMENTS
ACTIONS			
	Quiz employees during staff meetings		
	Receive regular reports from compliance committee on concerns in their respective departments		
	Forms Review		
	Request from each department any forms that may cause a compliance problem		
	Review the forms		
	Provide recommendations for revisions to forms, as needed		
	Request to review the revised forms within a specified amount of time		
Effective Communication			
	Publicize the chain-of-command for reporting		
	Create a mechanism for anonymous reporting		
	Maintain open lines of communication		
	Ensure that processes are in place to protect employees from retaliation		
	Develop a mechanism for providing feedback to anonymous reporters		
	Communicate with employees creatively and on an ongoing basis		
Disciplinary Guidelines			
	Determine an appropriate disciplinary action plan		
	Ensure that employees know and understand the consequences of noncompliance		

COMPLIANCE PROGRAM KEY ELEMENT		RESPONSIBLE PARTY	COMMENTS
ACTIONS			
	Enforce disciplinary action plans when situations of noncompliance arise		
	Involve human resources and legal when appropriate		
Responding Appropriately to Detected Offenses			
	Investigate the report of misconduct in a timely manner		
	Interview appropriate personnel		
	Conduct site visits and walk throughs		
	Research applicable laws, regulations, and guidance		
	Audit processes/documents as needed		
	Obtain legal opinions, if needed		
	Maintain all investigation documentation		
	Determine if misconduct has occurred		
	Develop a corrective action plan		
	Create or revise policies and procedures to ensure misconduct is not repeated		
	Create or revise forms that may have influenced misconduct		
	Provide education to employee who acted inappropriately		
	Provide education to all employees on the specific misconduct		
	Revise flow charts or entire processes as needed		
	Implement the disciplinary action plan, as appropriate		
	Regularly audit and monitor processes affected to ensure future compliance		