


WHITE PAPER

**MAXIMIZING
THE IMPACT
OF YOUR ETHICS
& COMPLIANCE
PROGRAM:
WHAT WORKS BEST?**



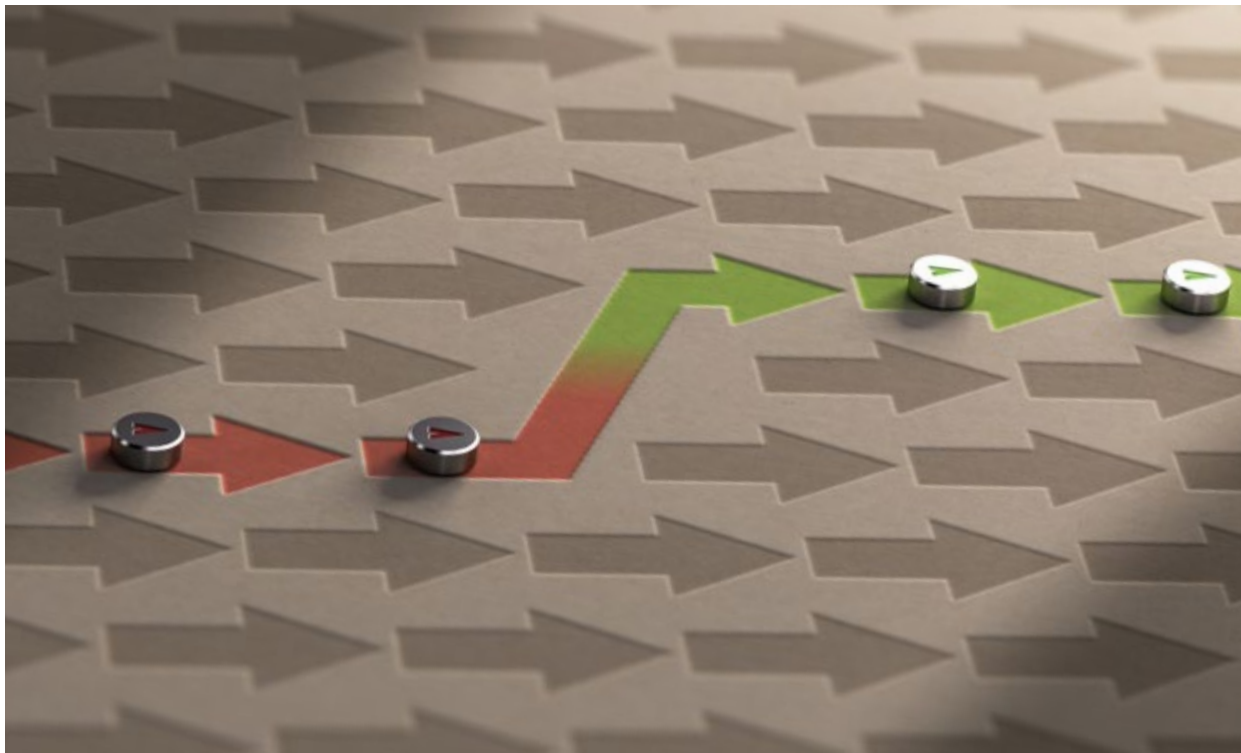
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Ethics and compliance professionals are the ultimate multi-taskers in the corporate world today. Their responsibilities can (and should) include policies, procedures, training, assurance, advice, communications, investigations, hotlines, root cause analyses, promoting ethical behavior, insuring organizational justice, measuring ethical culture, reporting to management and the board, and encouraging employees to speak up and preventing retaliation when they do. Not to mention advising regarding acquisitions, mergers, and new operations in challenging cultures and countries. And, if an ethics and compliance failure does occur, going back over “all of the above” to make things right.

Add to that the increasing focus by regulators on results, not just program design and implementation. That is seen vividly in the U.S. Department of Justice’s [Evaluation of Corporate Compliance Programs \(ECCP\)](#), which was updated in May 2019. The guidance was created to assist prosecutors in assessing “whether, and to what extent, the corporation’s compliance program was effective.” One of the three sections of the guidance focuses on whether the program at issue is well designed but the clear weight is on the last two – “is the program being implemented effectively,” and does the program “work in practice.”

As the role of the E & C professional has expanded and regulators have become more demanding, budgets, staffing and pace of innovation haven’t necessarily kept pace. To take but one relevant example, [LRN’s 2019 Program Effectiveness Survey](#) indicated that only 55% of the nearly 500 E & C programs surveyed can deliver training to employees’ mobile devices, despite the peripatetic, global nature of today’s workers. Thus, the question of what are the “must haves” that drive program effectiveness and without which, programs fail, has become even more important to E & C professionals struggling





with limited resources. Combining our expertise as two former Chief Ethics and Compliance Officers and practitioners, our joint research and experience points to five areas that can act as catalysts, driving ethical culture and principled behavior and transforming a less impactful program into a more effective one.

Studies in behavioral ethics and behavioral economics, which analyze how individuals make decisions under different circumstances, consistently reveal that cultures of compliance are primarily driven by two factors: managers “practicing what they preach” and employee perceptions of organizational justice. The studies also indicate that a particularly effective way to assess the strength of compliance culture is by measuring the willingness of employees to speak up.

Likewise, LRN’s extensive research and work with ethics and compliance programs over 25 years conclusively demonstrates that programs aimed at embedding values such as trust, respect, organizational fairness and transparency into the workplace are significantly more effective than those based [principally on rules](#). Rather than asking employees to do the bare minimum to meet specific requirements, these programs seek to inspire ethical behavior across the board.

With that in mind, here are our top five priority action areas that underpin ethics and compliance program effectiveness and advice on how to implement them:

Drimmer, Jonathan, Matthew Herrington and Tom Best. “Behavioral Ethics and Economics, Compliance Culture and Meeting DOJ’s Compliance Expectations.” Anti-Corruption Report. 26 June 2019.

1

MANAGERS MUST PRACTICE WHAT THEY PREACH

If employees see their managers modeling behaviors and following the rules, there is a good chance the employees will do the same.

The converse is also true:

if a manager engages in unethical behavior himself or herself, it legitimizes misconduct in their teams. The bottom line is that ethics and compliance messages are only effective when they are incorporated into the actions of the company and its management at all levels.

Since many managers are not familiar or necessarily comfortable with ethics and compliance topics, practical training to provide them with the resources they need and incentives to do so as part of performance management are good investments to consider. Manager training that emphasizes the important role they play in driving an ethical culture and includes scenarios that pit compliance against competing pressures is a good starting point. Coaching managers on how to intake and respond to employee concerns appropriately should also be part of the training. [LRN's 2019 Moral Leadership Report](#) found that managers who practiced moral leadership were 9 times more likely to foster an ethical workplace.

Another step is building the concept of supervisory accountability and workplace respect into key policies: for example, a separate managers' section in a code of conduct, which specifically identifies the importance of modeling ethical behavior, listening to employee concerns and avoiding retaliation. Going a step further, embedding ethics and compliance criteria into tangible employment processes for managers, whether for promotions, goals or bonus criteria, makes such behavior part of successful performance. LRN's 2019 Program Effectiveness Report showed a substantial increase in the number of companies including such considerations in their [performance and bonus evaluations](#). Some companies go even further and hold managers accountable if they fail to deal effectively with misconduct on the part of their subordinates, such as by overlooking ethical lapses in giving performance ratings.



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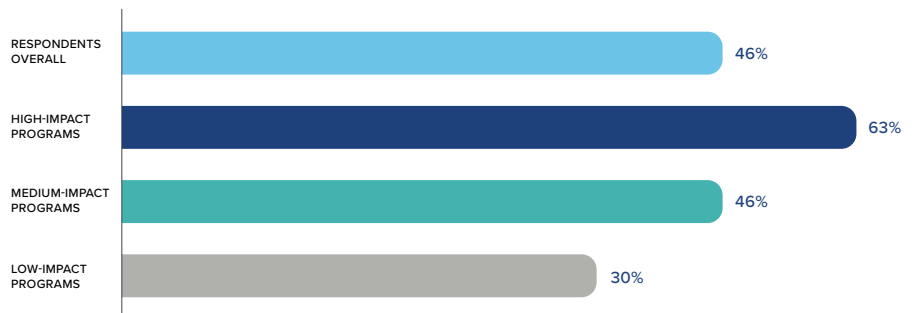
ORGANIZATIONAL JUSTICE

Employee perceptions that the company is “fair” in allocating both rewards and sanctions is both a foundation and driver of ethical culture. Research shows that employees obey authority when they think the organization is ethical and evenhanded, thus earning moral authority. Studies also show that employee perceptions of overall workplace fairness strongly correlate to occurrences of misconduct – the less perceived fairness, the more misconduct, and vice versa. Thus, failure by an organization in this critical area is costly. It undermines an E & C program’s entire edifice of rules, policies, training and procedures.

Consistent with this insight, [LRN’s 2019 Program Effectiveness Report](#) shows that organizational justice is a key differentiator between high-impact E & C programs and those that are less effective:

CRITICAL ROLE OF LEADERSHIP

Senior leaders in my organizations support effective sanctions or penalties on executives and high performance involved in misconduct.



There are concrete steps companies can take to drive organizational justice. One is to develop and embrace transparent and clear standards for determining workplace rewards and sanctions, including hiring and firing, promotions and demotions, bonus calculations, pay-raises or decreases, transfers to other units, vacation days, work expectations and work schedules, job assignments, performance evaluations and public recognition. A key component should include formal audits or assessments in these areas – with transparent results – to verify that organizational justice is taken seriously and working as intended (or warrants refinement).

A second major step is to take an open approach to investigations and disciplinary actions. Simple measures such as a disciplinary matrix to identify how compliance breaches will be evaluated, an outline of investigative process to identify the steps taken when a concern is lodged and sanitized summaries of significant investigation results can build trust in the organization’s processes. Introducing independence into investigations, whether through external investigators, including functions outside the business unit in the investigation, or otherwise also engenders confidence. Consistent open engagement with individuals reporting concerns as well as witnesses can reduce the risk that employees will view the company or its processes as unfair, opaque, abusive or subjective. Sending out a short, five question survey at the end of an investigation to the parties involved is also a good way to capture feedback and ensure that any concerns are heard.



3

SPEAKING UP AND LISTENING UP

Research shows that the level of speak-up culture in an organization correlates closely to whether managers are trusted to practice what they preach and the organization is perceived to be fair. As such, it is a key indicator of a culture of compliance. One behavioral ethics study distilled 45 potential predictors of misconduct to five factors that strongly predict the frequency of misconduct in an organization*. At the top of the final five was lack of speak up culture – specifically driven by “fear of retaliation and discomfort with speaking up.”

Yet many organizations content themselves with a hotline rather than casting as wide a net as possible to capture employee input and concerns. Employees may be comfortable lodging concerns in different ways, most often by talking informally with their managers according to the research. Offering and advertising multiple channels of reporting, such as email, messaging, internet drop-boxes, external compliance committees or ombudsmen, helps to accommodate those differing preferences. Training managers how to listen to employee concerns and providing a means of intake and resolution for such employee feedback can go a long way to promoting speaking up in the normal course of business and facilitates more robust data collection.

Companies should also consider collecting data through channels other than reporting. Workplace surveys are one effective means, whether done periodically throughout the year, as part of annual Sarbanes-Oxley testing, at the end of live or online training sessions or at the conclusion of internal investigations. Employee input from small group roundtables with the E & C team or neutral third parties can also encourage input and provide insight into data collected by company surveys.

Equally important is to understand and demonstrate an understanding of the issues being raised. Consider analyzing the information collected through these sources to gain a picture of the level of speak-up culture at each location and the company overall, broken down by geography, typology, reporting channel, supervisory involvement and other factors. Compare trends between offices and divisions or functional units to identify internal divergences, as well as potential red flags regarding retaliation or intimidation. Report these metrics internally to demonstrate that the company is listening to concerns, paying attention to them and taking them seriously.



*Michael Griffin & Tracy Davis, *Corporate Executive Board Research Alert, Sourcing Competitive Advantage from Organizational Integrity: The Hidden Cost of Misconduct.*

4

SIMPLIFY AND OPERATIONALIZE

Figuring out how to turn laws and rules into policies and procedures that help everyone comply, rather than hinder the process, would seem to be an obvious best practice. But many company policies can be charitably described as a kitchen sink filled with every conceivable legal requirement and caveat (sometimes taken verbatim from statutes and regulations) in dense, formal language. Similarly, procedures to comply with policies can resemble mazes that the employee must navigate to obtain advice and/or approval. When this is the case, the ability of employees to understand what is expected of them and how to comply with those requirements is hindered. Policies and procedures that are simple, straightforward and easy to understand are more likely to be followed.

By the same token, policies and procedures should be highly accessible and convenient, something the DOJ recognizes in its revised guidance. Compliance is most effective when it is presented in a manner that matches day-to-day employee experiences. According to recent studies, the average American spends 24 hours per week online; in Canada, the number is even higher. Two billion people visit YouTube every month, nearly the same amount that visit Amazon. Every day, employees shop online, search for instructions online, send birthday cards and invitations online, are entertained online and otherwise engage in myriad online activities. The more compliance looks and feels like the websites people visit every day – where we fill out forms, click on thumbnail icons, watch videos or look at infographics with advice – the more accessible and effective a compliance program becomes.

To that end, the goal of E & C professionals should be “compliance at the speed of business,” as articulated by a leading chief ethics and compliance officer. A one sentence invitation that pops up on the mobile phone of an employee landing in China and invites them to click on the relevant gift and entertainment rules is more likely to be heeded than a five-page policy on the legal website.



5

LOCALIZE YOUR PROGRAM (BUT NOT YOUR VALUES)

Companies seeking to do business consistent with their Codes of Conduct in complex, challenging jurisdictions frequently get push back in the form of “you don’t understand how business is done here,” accusations that can translate as “bribery/kickbacks are part of the process.” Staying focused and uncompromising when it comes to fundamental values such as integrity, respect and transparency is essential but embracing local factors in crafting an ethics and compliance program will make it more effective.

That’s because compliance challenges are usually highly localized. Even within the same country, the risks in one location may differ greatly from another; and in the same location, risks associated with different activities or agencies can vary, and can change as local actors change. Similarly, some compliance approaches can resonate more deeply based on local culture, education and other factors. The more a program is tailored to the local jurisdiction where it operates, the more effective it can be. For example, one non-profit organization in Africa persuaded a local pop star to record a song about preventing HIV that went on to become a smash hit.

Localizing a program means gaining a firm grasp on the particular nuances of complex geographies. For instance, compliance professionals should seek to understand what training techniques or messaging is most effective in a given location. Inviting local speakers to help deliver that training or compliance messages can build relationships as well as enhance impact. Local training that describes the fraud schemes that arise in that geography, and which government agencies or officials can pose the greatest complications or risks better prepares employees to deal with challenges. Global subscription databases in complex jurisdictions may not capture key risks with respect to suppliers or other third parties, but online domestic resources – such as national tax identification numbers, or litigation databases – can be more useful.

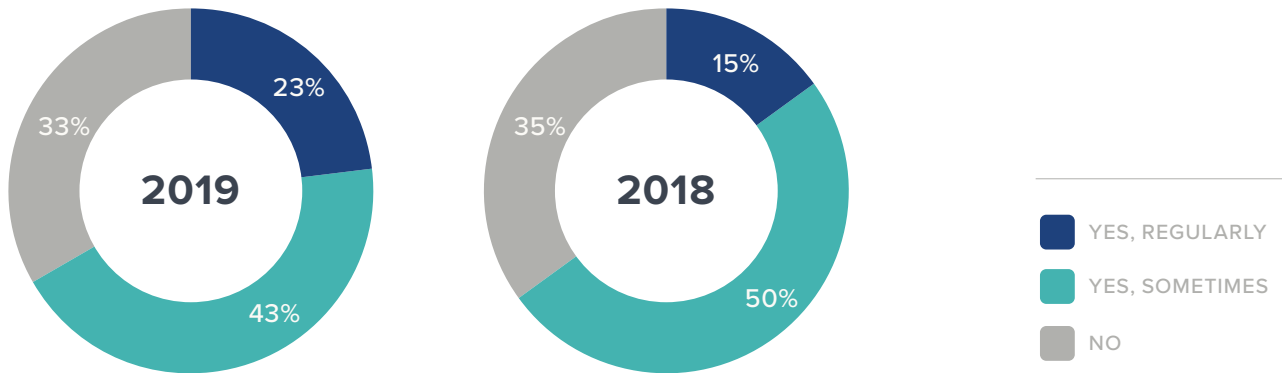
Local company employees also are an important and often overlooked resource, as they frequently have an understanding and feel for how frauds are perpetrated in their communities. Engaging them using methods that account for their particular preferences can be highly useful. Staying true to underlying values but soliciting input, creativity and participation from the community can help companies better identify local risks and design strategies to mitigate them.



CONCLUSION

Finding ways to make compliance programs practical and effective is a common goal shared by regulators, responsible businesses and E & C professionals. Indeed, the proverbial rubber meets the road for E & C programs if they meaningfully impact the organization’s decision-making. [LRN’s 2019 Program Effectiveness Report](#) indicated that there is room for improvement in this area:

IN THE PAST YEAR, DID YOUR ORGANIZATION’S CONSIDERATION OF E&C RISKS OR FACTORS SUBSTANTIALLY MODIFY OR LEAD TO THE ABANDONMENT OF A BUSINESS INITIATIVE?



Too many E & C programs still spend most of their resources and efforts on rules and checklists, the “skeleton” that outlines the program’s structure and components. By focusing on elevating manager behavior, implementing organizational justice and speaking up/listening up, an organization can establish and enhance an ethical culture, the “heart” of any effective E & C program. Going further by simplifying, operationalizing and localizing the program puts it in “the bloodstream,” making it part of how the organization makes decisions and operates.

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ABOUT LRN

LRN offers education, tools, and advisory services to help organizations develop values-based cultures and leadership, strengthen ethics and compliance efforts, and inspire principled performance. Founded in 1994, LRN is a global company that has educated more than 20 million employees and has worked with more than 700 companies in 100 countries worldwide.

LRN's work is grounded in HOW®, a philosophical framework for individual and organizational behavior in a world that is increasingly complex and interdependent.

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