

The HR Ringmaster: How to Juggle the Competing Demands of Compliance

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The World of Compliance and Ethics

- Employment/Civil Rights Legislation
- Benefits; Safety
- Corporate Governance
- Whistleblowing
- Federal Contractors
- Public versus Private Sector
- Privately Held versus Publicly Owned



THE IMPORTANCE OF COMPLIANCE

- Increasing governmental regulation and scrutiny
- More litigious and aware populace
- Volatile economy and willingness of individuals to challenge employment decisions
- Costs to the organization



COMPLIANCE IS COSTLY

But NON-COMPLIANCE is even more costly!

- Recent report by PONEMON INSTITUTE estimates the cost of non-compliance to be 2.65 times the cost to comply
- Director of Corporate Compliance and Ethics, Home Depot: on average compliance failure costs a company \$81 Million for every \$1 Billion in revenue
- Nearly one-third of midsized firms fined or penalized in the past year with average of six fines at average total cost of \$91,300.
- Other costs to the organization!



(Harkness, 2012)

COMPLIANCE CHALLENGES

- **Laws and regulatory guidance often conflict in different jurisdictions.**
 - Which laws apply to you?
 - Which laws supersede others?
 - What is the regulatory guidance du jour?

- **Constituents don't fully understand the law,** much less why policies and procedures are in place to ensure compliance and create a framework for consistent compliance decisions.

MORE CHALLENGES



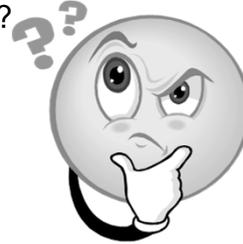
- Business leaders more concerned with “bottom line”

- Line managers resist compliance efforts on front lines; view compliance as creating more work and interfering with business objectives

- HR is often seen as the enforcer or the “Policy Police” rather than strategic business partner!

THE ETHICAL DILEMMA

- Business/organizational demands and needs of constituents can lead to moral and ethical dilemmas pressuring HR to compromise values and ethical standards!
- Do you ever feel pressured by other employees or managers to make exceptions to your organization's policies or compromise your own standards of ethical conduct to achieve business objectives?



What is your “Ethics Culture?”

National Business Ethics Survey, 2011

- 65% of employees reported that they had observed misconduct in their organization, up from 53% in 2007;
- 22% who reported misconduct experienced retaliation, up from 12% in 2007;
- 42% reported weak “ethics cultures,” up from 35% in the previous study.

(Bowman & Siciliano; 2012)

The Ringmaster's Challenge: Balancing Competing Interests

Management Interests:



- Profitability; viability of organization
- Achievement of strategic, mission critical objectives
- Financial health; cost containment
- Flexibility to manage the business/organization (Don't tell me I can't!)
- Business friendly solutions to problems
- Superior talent; strong work ethic
- Responsiveness to meet business needs and solve problems

The Ringmaster's Challenge: Balancing Competing Interests

Employee Interests:



- Fair treatment and effective supervision
- Know what's expected and what they get in return (value proposition)
- Have their voices heard
- Know the rules (boundaries)
- Opportunities for growth and development
- Help with balancing work and family
- Conflict resolution options

The Ringmaster's Challenge: Balancing Competing Interests

HR's Interests and Values:

- Ensure the organization is in compliance; minimize legal exposure
- Consistent decisions; adherence to policies; limited exceptions
- Risk management; not risk avoidance
- Fair and ethical decisions
- Win-win solutions
- Customer service (employees, managers, leadership)



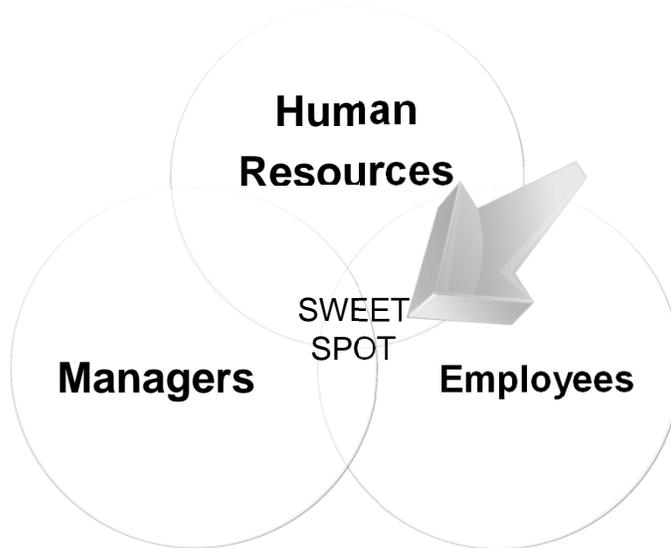
HR Values: One Model

Alabama State University HR Department

- Customer service focus
- Supportive partnerships
- Respect
- Open and honest communications
- Professional development and scholarship
- Diversity and inclusion



Finding the Sweet Spot!



The Compliance Sweet Spot: Where Interests/Needs Coincide!

Solutions/decisions that:

- Are ethical but practical
- Allow business objectives to be met
- Take employees' needs into consideration
- Balance risks with constituent needs/demands
- Provide win-win outcomes!



Finding the Sweet Spot: Building an Effective Compliance Program

According to Bradley Siciliano, Littler, Mendelson in NYC an effective compliance program:

- ✓ Guides an organization's employees and agents to make the best decisions possible for the organization;
- ✓ Prevents, detects and deters non-compliant conduct;
- ✓ Makes compliance part of the culture of the organization;
- ✓ Is tailored to the actual risk profile of the company (targets your highest risk areas);
- ✓ Adapts to the changes in the markets, an organization's activities, and the organization's risk profile;
- ✓ Is one that the government says is effective!

(Bowman, R. & Siciliano, B., 2012)

HR's ROLE: Institutionalizing an Effective Compliance Program

TWO KEY COMPONENTS:

- 1) Establish a solid compliance foundation
- 2) Partner with the business to uphold the law and achieve business success



Establishing a Solid Foundation: The Building Blocks



1) Start with HR Competence

- Know the law and your policies; “Sharpen the saw” in Covey terms!
- Know the business!
- Understand the competencies needed to hire HR staff who are comfortable with compliance.

Angela Gamble-Wong, VP, People Services, Rubio Restaurants: “The HR professional has quickly evolved from someone who ‘likes to work with others’ to someone who ‘likes to work with others to ensure that things are being done correctly and optimally from a business perspective.’”

(Gamble-Wong, 2012)

Establishing a Solid Foundation: The Building Blocks

2) Establish the framework for decision making: Policies and Procedures!

- Determine risk areas and compliance requirements and structure policies accordingly.
- Draft policies that are guides to decision making; include language that allows some discretion, such as “may,” “could,” etc...
- Remember that it is not possible to cover every contingency in a policy manual.
- Don’t practice HR like a Pharisee (Spraggins, 2013) or let corporate policies “override sensible employment decisions” (Leonard, 2013.)
- The Autozone Case



Establish the framework for decision-making: Policies and Procedures (cont'd)

- Keep policies current and adapt to changing conditions in the business and legal environments; audit regularly.
- Remember that having policies in place is not enough; they must be communicated, consistently applied, and embedded in the organization's culture.

ON THE OTHER HAND:

"A foolish consistency is the hobgoblin of little minds." Ralph Waldo Emerson



Establishing a Solid Foundation: The Building Blocks



3) Build compliance into technology systems

- Use technology systems to facilitate compliance, including monitoring, self-auditing and reporting, e.g. applicant tracking, time-keeping.
- Ensure that systems incorporate regulatory requirements and build in checks and balances to help prevent, deter and detect non-compliant behavior.
- Examine workflow and approval hierarchy and build systems around proper approvals.
- Find a balance between technology and decision-making processes involving people.

(Gamble-Wong, 2012)

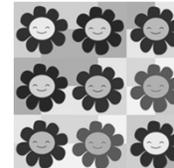
Establishing a Solid Foundation: The Building Blocks



4) Educate Constituents

- Train all employees within the institution, from top to bottom.
- Consider mandatory training, especially for supervisors in high risk areas.
- Provide on-going and refresher training, not just one shot!
- Evaluate training programs on an on-going basis to ensure that they are current and meeting stated objectives.
- Track participation in training (another way to use technology.)

Establishing a Solid Foundation: The Building Blocks



5) Create a positive work environment that is conducive to productivity and fulfillment

- Opportunities for growth and development
- Autonomy over work
- Clear expectations; value proposition (honest day's pay for honest day's work)
- Competitive rewards: pay and benefits
- Help with work life balance
- Conflict resolution options: avenues to have grievances heard and resolved without fear of retribution

Creating a Positive Environment: A Word About Engagement

- According to research by Bersin by Deloitte, American companies are spending \$720 million annually on improving employee engagement.
- A 2012 Gallup poll of US workers found that 30% are engaged, 52% are not engaged and 18% are disengaged.
- “Companies that manage employee work life cycles by having more engaged employees have less litigation and lawsuits than competitors, realizing a competitive advantage.”
Angela Gamble-Wong

(Babcock, 2013; Gamble-Wong, 2012)



RECAP: The Building Blocks of an Effective Compliance Program

- 1) HR Competence
- 2) Policies and Procedures
- 3) Technology Systems
- 4) Training
- 5) Engaged Employees



Strategies for Partnering with the Business

- **Build relationships:** Ask for assistance from business leaders in responding to a situation; show respect for their expertise.
- .
- **Build your business acumen:** You have demonstrated that you are an expert in HR; now you need to show your ability to apply that knowledge within the business context.



Strategies for Partnering with the Business



- **PLAY TO YOUR STRENGTHS!**
 - Drafting, deploying and enforcing workplace policies
 - Fielding formal and informal complaints
 - Conducting investigations
 - Dealing with employee discipline
 - And other tasks/functions that foster a culture of compliance
- We are, therefore, seen as the “standard bearers” for ethics and compliance!**

Strategies for Partnering with the Business



- **Don't tell business leaders what they can't do!**
 - Understand the business objectives and present compliance guidelines/requirements in that context.
 - Help leaders understand the "why" and how compliance can actually contribute to and facilitate achieving business objectives.

Strategies for Partnering with the Business



- **Provide Context**
 - Gather information through surveys, focus groups, new hire feedback, exit interviews and other methods of obtaining intelligence about your institution.
 - Keep your ear to the ground!
 - What's working and what isn't relative to policies?
 - Do employees feel free to come forward with their concerns?
 - How are your supervisors implementing policies in their own operations? Are they "doing their own thing?"
 - What problems are supervisors/managers/employees encountering?

Strategies for Partnering with the Business



- **Provide Context (continued)**
 - Study trends in your industry and watch for litigation (Penn State example!)
 - Build relationships/networks with other HR professionals.
 - Take a proactive approach to address trends that may pose potential risks.
 - Benchmark, if you can get information about what peer institutions are encountering and spending.

Strategies for Partnering with the Business

- **Hold business leaders accountable for their employment decisions.**
 - Provide guidance and expertise, but remind them that ultimately the decision is theirs to make.
 - Leaders should own their decisions, NOT use HR as the reason they are making the decision (HR told me to do it.)
 - Help business leaders understand and consider the risk/reward tradeoff. (What are the consequences of not following policies? Is it worth it?)



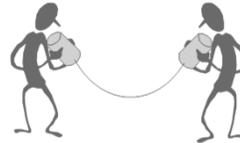
Strategies for Partnering with the Business

➤ Keep the lines of communication open

- Remember that communication is a two-way street.
- Be open, honest and transparent and listen with an open mind.
- Break down silos; be attuned to gaps that may lead to misunderstanding.
- Remember that an employment relationship is just like any other and must be grounded in mutual respect and trust to succeed.
- Be responsive; follow through; do what you say you will do and give straight answers if you can't.

Nothing drives managers and employees more crazy than feeling they are getting the run-around!

(Williams, 2012)



Strategies for Partnering with the Business

➤ When all else fails:

- Call in outside counsel;
- Do not compromise your ethical standards; give clear guidance on what you are willing to do;
- Emphasize the consequences of poor decisions, including personal and criminal liability, but use “scare tactics” sparingly; your first priority is to gain cooperation, not threaten or coerce someone into doing something!



RECAP: Strategies for Partnering with the Business

- Build relationships and business acumen
- Play to your strengths
- Don't tell business leaders what they can't do
- Provide context
- Hold business leaders accountable
- Keep the lines of communication open



Questions?



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