

## **The Role of Human Resources in FCPA Compliance**

One sign of a mature Foreign Corrupt Practices Act (FCPA) compliance and ethics program is the extent to which a company's Human Resources (HR) Department is involved in implementing a solution. While many practitioners do not immediately consider HR as a key component of a FCPA compliance solution, it can be one of the lynch-pins in spreading a company's commitment to compliance throughout the employee base. HR can also be used to 'connect the dots' in many divergent elements of a FCPA compliance and ethics program. My next couple of postings will discuss the role of HR in such a program. The first installment will discuss training, employee evaluation, succession planning and hotlines and investigations. In the next posting, we will discuss background screening, doing 'more with less' and finally, what to do when the government comes calling.

### ***Training***

A key role for HR in any company is training. This has traditionally been in areas such as discrimination, harassment and safety, to name just a few, and based on this traditional role of HR in training this commentator would submit that it is a natural extension of HR's function to the area of FCPA compliance and ethics. There is a training requirement set forth in the US Sentencing Guidelines. Companies are mandated to *"take reasonable steps to communicate periodically and in a practical manner its standards and procedures, and other aspects of the compliance and ethics program, to the individuals referred to in subdivision (B) by conducting effective training programs and otherwise disseminating information appropriate to such individuals' respective roles and responsibilities."*

What type of training should HR utilize in the FCPA compliance and ethics arena? The consensus seems to be that there are three general approaches to ethics and compliance training which have been used successfully. The first is the most traditional and that is in-person classroom training. This gives employees an opportunity to see, meet and interact directly with the trainer, not an insignificant dynamic in the corporate environment. It can also lead to confidential discussions after such in-person training. All FCPA compliance and ethics training should be coordinated and both the attendance and result recorded. Results can be tabulated through short questionnaires immediately following the training and bench-marked through more comprehensive interviewing of selected training participants to determine overall effectiveness.

### ***Employee Evaluation and Succession Planning***

What policy does a company take to punish those employees who may engage in unethical and non-compliant behavior in order to meet company revenue targets? Conversely what rewards are handed out to those employees who integrate such ethical and compliant behavior into their individual work practices going forward? One of the

very important functions of HR is assisting management in setting the criteria for employee bonuses and in the evaluation of employees for the bonuses. This is an equally important role in conveying the company message of adherence to a FCPA compliance and ethics policy. This requirement is codified in the Sentencing Guidelines with the following language, *“The organization’s compliance and ethics program shall be promoted and enforced consistently throughout the organization through (A) appropriate incentives to perform in accordance with the compliance and ethics program; and (B) appropriate disciplinary measures for engaging in criminal conduct and for failing to take reasonable steps to prevent or detect criminal conduct.”*

Does a company have, as a component of its bonus compensation plan, a part dedicated to FCPA compliance and ethics? If so, how is this component measured and then administered? There is very little in the corporate world that an employee notices more than what goes into the calculation of their bonuses. HR can, and should, facilitate this process by setting expectations early in the year and then following through when annual bonuses are released. With the assistance of HR, such a bonus can send a powerful message to employees regarding the seriousness with which compliance is taken at the company. There is nothing like putting your money where your mouth is for people to stand up and take notice.

In addition to employee evaluation, HR can play a key role in assisting a company to identify early on in an employee’s career the propensity for compliance and ethics by focusing on leadership behaviors in addition to simply business excellence. If a company has an employee who meets, or exceeds, all his sales targets, but does so in a manner which is opposite to the company’s stated FCPA compliance and ethics values, other employees will watch and see how that employee is treated. Is that employee rewarded with a large bonus? Is that employee promoted or are the employee’s violations of the company’s compliance and ethics policies swept under the carpet? If the employee is rewarded, both monetarily and through promotions, or in any way not sanctioned for unethical or non-compliant behavior, it will be noticed and other employees will act accordingly. One of the functions of HR is to help ensure consistent application of company values throughout the organization, including those identified as ‘rising stars’. An important role of HR in any organization is to help in building trust throughout the company and recognizing the benefits which result from that trust.

### ***Hotlines and Investigations***

One of the requirements under the Sentencing Guidelines is that a company *“... have and publicize a system, which may include mechanisms that allow for anonymity or confidentiality, whereby the organization’s employees and agents may report or seek guidance regarding potential or actual criminal conduct without fear of retaliation.”* This requirement is met by having a hotline. One of the traditional roles of HR in the US is to maintain a hotline for reporting of harassment claims, whether based on EEOC violations or other types of harassment. It is a natural extension of HR’s traditional function to handle this role. HR can assist in formulating an initial response to a hotline report to claims that may be (1) unfounded, (2) require immediate action, or (3) require a

consistent workflow towards resolution. In addition to this initial assessment function, HR can assist in understanding if a report incident is localized in nature or system and in providing a consistent application of response. Lastly, HR is tasked with not only reporting, but tracking such incidents, and this recordation of data is critical to maintain the integrity of a FCPA compliance and ethics program in a company.

Regarding investigations, HR can bring broad benefits to any FCPA compliance and ethics program through an efficient investigation process. It is recognized that a Legal or Compliance Department may wish to take over and complete an investigation process. However, HR can bring a consistency in both the process and any discipline which is imposed. Such consistency reinforces the senior management's message of commitment by the company to FCPA compliance and ethics. Such a function by HR can lead to an understanding of emerging risks. Lastly, it may be that employees are more willing to speak up to HR and the building of trust can be utilized to assist in overall risk mitigation.

The Human Resources Department in any multi-national company has a significant role in not only managing the employee base but in assisting to set the correct expectations. Consistent applications of these core beliefs and values will assist any company in remaining compliant and driving home the message that the company takes FCPA compliance seriously.

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*The author will discuss this topic in greater depth in an upcoming webinar on the role of HR in FCPA compliance, Tuesday, May 18<sup>th</sup> at 2 PM CDT. For information and registration details go to <https://secure.confertel.net/tsregister.asp?course=509107>.*