9 Implementing an Ethics Program

Bloomberg/Getty Images

Learning Outcomes

After reading this chapter, you should be able to do the following:

- Explain how an organization can structure and manage an ethics program.
- Develop a code of conduct that articulates standards to company stakeholders.
- Create an ethics training and communications plan.
- Evaluate mechanisms for obtaining advice on ethical issues and reporting ethical misconduct.
- Design an effective monitoring and auditing system.

Introduction

Ethics Program Pays Off for Morgan Stanley

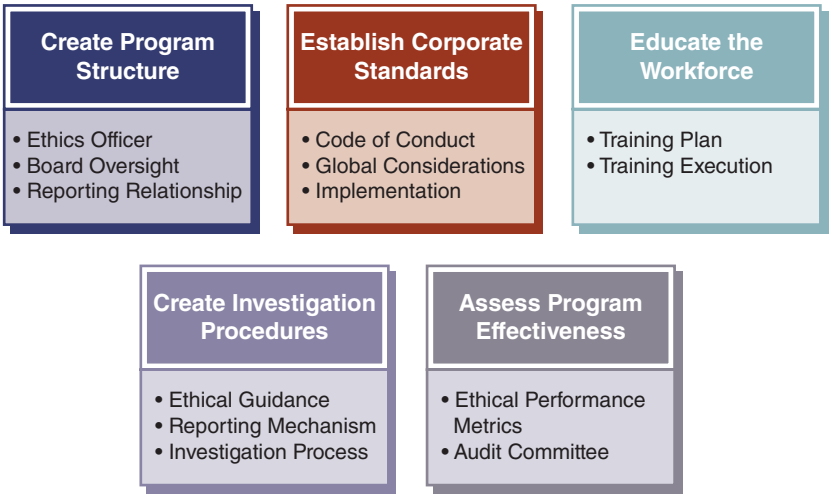
On April 25, 2012, Garth Peterson, former managing director for Morgan Stanley's real estate business in China, pleaded guilty to violating the Foreign Corrupt Practices Act (FCPA) and for conspiring to evade Morgan Stanley's internal controls for meeting securities laws for investment advisers (United States Department of Justice, 2012). From 2004 to 2007, Peterson cultivated a relationship with a Chinese official to obtain business approvals. In 2008, executives at Morgan Stanley discovered the violations, reported them to the U.S. Securities and Exchange Commission (SEC), and fired Peterson (Lucchetti & Kendall, 2012). Department of Justice officials declined to bring any enforcement action against Morgan Stanley because of its documented ethics and compliance program, stating:

> According to court documents, Morgan Stanley maintained a system of internal controls meant to ensure accountability for its assets and to prevent employees from offering, promising or paying anything of value to foreign government officials. Morgan Stanley's internal policies, which were updated regularly to reflect regulatory developments and specific risks, prohibited bribery and addressed corruption risks associated with the giving of gifts, business entertainment, travel, lodging, meals, charitable contributions and employment. Morgan Stanley frequently trained its employees on its internal policies, the FCPA and other anti-corruption laws. Between 2002 and 2008, Morgan Stanley trained various groups of Asia-based personnel on anti-corruption policies 54 times. During the same period, Morgan Stanley trained Peterson on the FCPA seven times and reminded him to comply with the FCPA at least 35 times. Morgan Stanley's compliance personnel regularly monitored transactions, randomly audited particular employees, transactions and business units, and tested to identify illicit payments. Moreover, Morgan Stanley conducted extensive due diligence on all new business partners and imposed stringent controls on payments made to business partners. (United States Department of Justice, 2012, para. 6)

The experience of Morgan Stanley shows that companies with excellent ethics and compliance programs may be protected should their employees violate standards. An excellent ethics and compliance program meets five common elements set forth in the U.S. Federal Sentencing Guidelines for Organizations (FSGO), the FCPA, the U.K. Bribery Act 2010, and the Organisation for Economic Co-operation and Development (OECD) Good Practice Guidance on Internal Controls, Ethics, and Compliance. Although the language differs, each of the four guidelines recommends the following steps: 1) create program structure, 2) establish corporate standards, 3) educate the workforce, 4) create investigation procedures, and 5) assess program effectiveness (see Figure 9.1 for the key elements to implementing an organizational ethics program).

Figure 9.1: Key elements to implementing an organizational ethics program

An excellent ethics and compliance program meets five common elements.



Though prescriptive in the steps needed to create an effective ethics and compliance program, none of the aforementioned guidelines specifies the method to be used. Rather, each organization may tailor its program to applicable industry practice or standards, the size of the organization, and the risk of misconduct (United States Sentencing Commission, 2013). Ethics professionals typically share initiatives that work for their company (best practices) so that other organizations can model their ethics and compliance programs on proven strategies.

This chapter presents practical steps for implementing an effective organizational ethics program. The first step involves creating a structure to manage and oversee the organization's ethics and compliance program. This is followed by clear communication of standards of acceptable behavior that address potential risks for misconduct. The third step is to educate the workforce via a training program that resonates with the audience and encourages ethical behavior as the norm. The fourth entails creating procedures to respond to reported misconduct through a transparent and fair investigation process. The final step involves monitoring and assessing program effectiveness to identify any areas for improvement. The chapter provides best practices as a foundation for an organization to design an ethics and compliance program that meets its distinct requirements.

9.1 Creating a Program Structure

As demonstrated by the Morgan Stanley example, simply creating an organizational ethics program is not sufficient for preventing misconduct. To ensure the effective implementation of an ethics program throughout an organization, a designated individual or group must have the authority and responsibility to oversee it.

There are three components to an effective ethics program structure. The first is an appointed **ethics officer** who oversees compliance with legal and ethical standards and acts as a steward of the ethics and compliance program within the organization (Ethics Resource Center, 2007). The second component is oversight of the ethics and compliance function by the organization's governing body (e.g., the board of directors). The third is the relationship between the ethics officer and whomever he or she reports to, which can help or hinder the effectiveness of the ethics and compliance program.

Approaches to managing an organizational ethics program vary. Some companies have a distinct department for managing the ethics and compliance program, such as the Corporate Office of Ethics and Business Conduct at Lockheed Martin (Lockheed Martin Inc., 2007). Other companies assign responsibility for ethics and compliance to existing functions, such as human resources or legal departments. An informal survey by the Ethics & Compliance Officer Association (ECOA) found that less than a third of the companies (31.6%) had a separate functional area for ethics, whereas almost half (47.4%) included ethics as part of the legal/general counsel function (Kane, 2014).

Companies gain advantages by structuring ethics and compliance programs appropriately within the organization. Organizations should consider the following questions when designing an ethics and compliance program:

- How does the ethics and compliance function relate to the business, chief executive officer (CEO), and top management?
- How does the ethics and compliance function relate to functional departments or divisions of the company?
- What should the ethics and compliance relationship be with external stakeholders (e.g., customers, suppliers, regulators)?
- How does the ethics and compliance function relate to the board of directors or owners?
- What should the ethics and compliance function report about and to whom, how, and when?

The reporting structure must allow the ethics officer to address delicate situations in which executive management may be involved in wrongdoing. The OECD Good Practice Guidance on Internal Controls, Ethics, and Compliance recommends that senior corporate officers have a duty to oversee "ethics and compliance programmes or measures regarding foreign bribery, including the authority to report matters directly to independent monitoring bodies . . . with an adequate level of autonomy from management, resources, and authority" (OECD, 2010, p. 3). The concept of an appropriately designed program suggests that the designated ethics officer have sufficient authority and responsibility to perform duties to ensure compliance of legal and ethical standards throughout the organization.

The Role of the Ethics Officer

What are the responsibilities of an ethics officer? The Society for Human Resource Management (SHRM) states that the ethics officer "serves as the organization's internal control point for ethics and improprieties, allegations and complaints, and conflicts of interest; and provides corporate leadership and advice on corporate governance issues" (SHRM, 2014,

para. 1). This description provides the purpose of an ethics officer in general terms, which may not reflect the breadth of responsibilities for a larger organization. The Ethics Resource Center (2007), on the other hand, provides an example of a job description for a chief ethics and compliance officer with responsibilities for the conduct of employees worldwide:

> Corporate Officer with responsibility to provide global leadership on compliance and ethics; oversee all compliance and ethics programs and initiatives of the company; ensure that appropriate programs, procedures and policies are implemented to reduce the chances of illegal or unethical conduct by the company. (p. 7)

Regulatory guidelines stipulate that the ethics and compliance function be led by high-level personnel (United States Sentencing Commission, 2013) or top-level managers (Ministry of Justice, 2011). Recall in Chapter 1 that there was a shift from a solely compliance focus in the early 1990s to either a combined compliance/ethics or solely ethics focus in the 2000s. The managerial level, title, and department name can reflect the organization's commitment to the ethics program and its emphasis on ethics versus compliance. For example, the ethics and compliance function at Cisco resides in an ethics office, whereas most ethical issues at Harley-Davidson are referred to the legal department and the chief compliance officer/general counsel (Cisco, 2014; Harley-Davidson, n.d.). A study found that a title of chief, such as chief ethics officer or chief compliance officer, is the most common in larger companies (28%), followed by vice president (10%), executive vice president or senior vice president (9%), director (7%), manager (4%), and officer (3%) (Weber & Wasieleski, 2013). See a sample of titles for the ethics professional in the feature box *Consider*: *What's in a Name of an Ethics Professional?* to recognize variations in naming ethical departments and the responsible manager.

Consider: What's in a Name of an Ethics Professional?

A review of the ECOA member listing shows some of the titles that may be used for ethics professionals:

- Chief compliance officer
- Chief ethics and compliance officer
- Chief ethics officer
- Chief risk, compliance and ethics officer
- Vice president, corporate responsibility
- Vice president, global compliance and ethics
- Director of business conduct
- Director of integrity, security and compliance
- Director, corporate compliance and ethics
- Director, ethics and integrity programs
- Director, ethics and regulatory compliance
- Senior manager, ethics and non-financial corporate policies and procedures
- Senior manager, global ethics and compliance
- Senior vice president, global [corporate social responsibility] and risk management
- Manager, business integrity and compliance
- Manager, ethics and employee issues

(continued)

Consider: What's in a Name of an Ethics Professional? *(continued)*

Questions to Consider

1. Why does the ethics function vary among organizations? What company factors would lead to the wording of the ethics function?
2. Which titles reflect a focus on compliance only? Which titles reflect a focus on ethics?
3. Does a title provide sufficient authority to oversee an organization's ethics program? Does the title of the ethics professional indicate a level of autonomy in addressing ethical issues?

The diverse titles of ethics professionals imply that the duties of the ethics officer vary among organizations. The Ethics Resource Center (2007) identifies typical responsibilities of ethics officers:

- Oversee assessment of organizational risk for misconduct and noncompliance;
- Establish organizational objectives for ethics and compliance;
- Manage the organization's entire ethics and compliance program;
- Implement initiatives to foster an ethical culture throughout the organization;
- Supervise ethics and compliance staff embedded throughout the organization;
- Frequently inform the board of directors and senior management team of risks, incidents, and initiatives driven by the ethics and compliance program, and progress toward program goals;
- Implement a program of measurement to monitor program performance; and
- Oversee periodic measurements of program effectiveness. (p. 2)

A key role of the ethics officer is to coordinate the ethics program with other company managers in the areas of human resources, finance, communications, risk management, and governance. Additionally, the ethics officer may communicate regularly with customers, suppliers, and the media on ethical issues relating to the company or industry. A survey of 800 ethics and compliance professionals from financial service firms in 62 countries found that the typical week of an ethics officer includes, on average, a little more than a day of addressing regulatory developments, such as tracking and analyzing regulatory developments (15% of time during the workweek) and amending policies and procedures (7%) (Hammond & Walshe, 2013). Another day involves communicating with the legal department, conducting internal audit and risk functions (16%), and reporting to the board (6%). During the rest of the week, the ethics and compliance professionals reported focusing on compliance tasks including monitoring activities, training, and provision of advice and guidance (56%).

The Ethics Resource Center (2007) has identified 11 qualifications expected from the designated lead of an ethics program. They include:

- Substantial business experience (15 years+);
- Ability to communicate (public speaking, professional writing, with executives, etc.);
- Ability to develop and deliver training;
- Familiarity with Sarbanes-Oxley, Federal Sentencing Guidelines [FSGO] and other relevant compliance standards;

- Familiarity with leading thinking and research in business ethics and compliance;
- Understanding of the auditing process;
- Understanding of the risk management/risk assessment process;
- Comfort with eLearning, learning management systems, and other IT [information technology];
- Project management skills;
- Substantial management experience (10 years+); and
- Ability to motivate and inspire people. (p. 26)

As formal ethics and compliance education is only a recent offering in higher education, many ethics officers come from legal, auditing, or human resources disciplines. Over half of ethics professionals in vice president or director roles have a law degree, while less than 5% of all ethics professionals are certified public accountants (Society of Corporate Compliance and Ethics, 2013). To gain knowledge in ethics and compliance, professionals seek certification from the ECOA and the Society of Corporate Compliance and Ethics (SCCE). According to an SCCE survey, the average compensation for ethics professionals ranges from $214,118 for vice presidents to $71,894 for assistants/specialists, whereas compensation for certified professionals are slightly higher (Society of Corporate Compliance and Ethics, 2013). See Table 9.1 for more detailed information about compensation for ethics professionals.

Table 9.1: Average compensation for ethics professionals

	Vice President	Director	Manager	Assistant/ Specialist
Average total compensation	$214,118	$139,582	$102,324	$71,894
Certified Compliance & Ethics Professional from SCCE	$230,637	$166,109	$113,875	$78,580
Other certifications*	$170,425	$128,571	$103,376	$69,352
No certification	$236,479	$134,857	$93,586	$70,904

* Includes industry-specific certifications in healthcare, fraud examination, internal auditing, information systems

Source: Society of Corporate Compliance and Ethics. (2013). 2013 cross-industry compliance & ethics staff survey (pp. 40). Minneapolis, MN: Society of Corporate Compliance and Ethics.

The relationship of the ethics officer to the governing authority of an organization shifted from informal or nonexistent to a formal reporting requirement with the enactment of Sarbanes-Oxley (Chapter 4) and similar legislation worldwide, which placed greater responsibility for accurate financial reporting on the board of directors. The 2004 and 2010 amendments of the FSGO encourage companies to allow the chief ethics and compliance officer access to the board of directors to report on observed misconduct. To create an effective program structure, organizations ask, "What is the appropriate involvement of the board of directors in the ethics and compliance program and what should be the relationship between the board and the ethics office?" The next section explores these questions.

Board Oversight

Oversight of the ethics program by the governing body of an organization differs from the daily management by the ethics officer. The role of the board of directors is to monitor management practices and performance in achieving company goals, as well as to protect the organization from reputational and financial risks resulting from ethical misconduct. Board members may be responsible to stockholders for monetary damages if they fail to set up procedures guarding against misbehavior that results in fines and penalties. Recall from Chapter 1 how Medicare and Medicaid fraud resulted in scrutiny of the healthcare industry and the subsequent Caremark decision of 1996 statement that directors have a duty to assure that accurate information and reporting systems are in place and followed (Cohan, 2002; Robinson & Pauzé, 1997). The realization that Enron's board of directors twice waived its conflict of interest policy for establishing special purpose entities with its chief financial officer increased regulatory attention to the board's responsibility to oversee the ethics program (Felo & Solieri, 2003).

The FSGO outlines the responsibilities of the board of directors and senior management relating to ethics and compliance as follows:

- The board of directors must be knowledgeable about the organization's ethics and compliance program, including information on the compliance risks facing the firm and the programs installed to combat those risks.
- Senior management must ensure that the organization has an effective compliance program.
- Those individuals with day-to-day operational responsibility for ethics and compliance must "be given adequate resources, appropriate authority, and direct access" to the board of directors or an appropriate subgroup of the board (United States Sentencing Commission, 2013, p. 497).

A board of directors faces many challenges when implementing an adequate monitoring process to stop illegal and unethical behavior within the organization (Prentice, 2012). One challenge is that company ethics may not receive attention on the board agenda. The CEO and management team typically set the agenda for board meetings and are the primary source of information for the board members (Sharpe, 2011). Another challenge is achieving the right degree of monitoring to demonstrate aggressive detection and punishment for violations of ethical standards without creating an atmosphere of distrust that erodes innovation (Cohan, 2002). Board members must be able to ask the right questions and provide an environment of trust among the ethics office and the board.

The FSGO accepts that a board cannot manage every aspect of the ethics and compliance practices within a business, allowing for "Specific individual(s) within the organization [to] be delegated day-to-day operational responsibility for the compliance and ethics program" (United States Sentencing Commission, 2013, p. 497). The board looks to the ethics officer to create an ethical culture that emphasizes proper conduct, and that increases brand value and reputation, necessitating regular communication and reports between the board and the ethics officer. Table 9.2 provides sample questions that board members should ask the ethics leader of the organization.

Table 9.2: Sample questions the board of directors should ask the chief ethics officer

Board Oversight Questions	Element of Ethics Program	The Board Needs to Ensure That . . .
Do we have the right model to oversee, manage, and implement the company's ethics and compliance (E&C) program?	Program structure Governance Executive oversight Resources	A chief ethics and compliance officer (CECO) or equivalent appointed. The CECO has sufficient personnel and resources commensurate with company needs. The CECO is sufficiently integrated with the company's executive team. The CECO has the ability to report directly to the board or board committee formally or informally.
How do we assess adherence to company standards? How do we determine effectiveness?	Code of conduct and appropriate policies	There is a code of conduct for all employees, the board, senior management, and third parties. The board is periodically educated on the company's code of conduct.
How do we ensure the visibility of high-risk matters arising in the business units?	Code of conduct and appropriate policies	High-risk policies are in place. Policies address systemic and industry-specific risks.
How do we train our employees? How do we raise employee awareness of the company's E&C program?	Targeted training and communications	Periodic training and education for all employees, management, and critical third parties takes place. Training and code certification process is tracked and that further inquiries take place when issues arise. The company issues regular communications to all employees on E&C topics. The board receives appropriate code of conduct and other relevant integrity education periodically.
Are we identifying and prioritizing the company's compliance risk?	Periodic risk assessment	There is full understanding of the company's risk profile. Risk assessment is completed periodically. Risk assessment and management target high-risk areas for the business. Senior management IS accountable for risk management. A relationship exists between E&C risk assessments and enterprise risk management.

(continued)

Table 9.2: Sample questions the board of directors should ask the chief ethics officer *(continued)*

Board Oversight Questions	Element of Ethics Program	The Board Needs to Ensure That . . .
Are we auditing for priority compliance risk?	Monitoring, investigating, and auditing	Periodic monitoring and auditing of E&C program is completed with reports to the board. Routine internal audits occur. Key compliance indicators (fines, penalties, warning, violations) are reviewed. An investigations protocol is in place and is followed; reports received on overall results. Exit interviews occur.
Do we have the right systems in place to ensure observed misconduct is reported? Ensure employees are comfortable raising issues?	Anonymous reporting and helplines	A system is in place for employees and others to report and discuss concerns without fear of retaliation. Concerns are addressed and resolved. The board receives periodic reporting of statistics about hotline or other reported issues, including trend lines, comparisons to peer companies, and overall business statistics.
How do we measure E&C program effectiveness?	Continual review and improvement of E&C program	Lessons are learned from mistakes; board seeks examples. Accountability for improvements is demanded from senior management. Proof of implementation of improvements is provided. E&C considerations are factored into performance evaluations. The CECO is encouraged to become a member of peer associations to access materials, benchmarking, and best practices.

Sources: Adapted from Tables 1 & 4, pp. 12, 18 in Bonime-Blanc, A., & Brevard, J.E. Ethics and the Board: Integrating Integrity into Business Strategy. *Council Perspective CP-013 © 2009 by The Conference Board, Inc.*

The ethics officer must be able to inform the board of directors and senior management team of risks, incidents, and activities related to the ethics and compliance program without fear of retaliation (Ethics Resource Center, 2007). To provide regular updates to the board, the ethics program needs a system for collecting the statistics and qualitative findings of risks, program effectiveness, and potential misconduct. Ethics officers should provide board members with easy to read dashboards of quantitative information such as helpline/hotline call statistics, material investigations, training completion, communications reach, code of conduct certifications, employee ethics culture survey results, employee turnover counts, and exit interview feedback. Qualitative information that the ethics officer should provide includes new laws or

regulations, internal audit findings, and risk assessment reports. Reporting to the board can be time-consuming, as one study found that 36% of ethics professionals spent more than four hours a week creating and amending information for the board, with more than 70 organizations spending more than 10 hours a week preparing information for the board (Hammond & Walshe, 2013).

Reporting Relationship

The ethics officer's credibility and authority with the board and the company is heavily influenced by whom he or she reports to within the organization. Michael Hoffman, a noted professor of business ethics at Bentley University, stresses that the reporting structure can affect an ethics officer's objectivity, independence, power, and influence to ensure ethical integrity throughout the organization (Hoffman, 2010). He stated, "There are many signs that the role of the day-to-day ethics officer, the person who really does the ethics work, is being marginalized rather than strengthened" (p. 744).

Hoffman describes three ways that the reporting relationship of ethics officers influences their objectivity, independence, power, and influence. One reason refers to the point that was made in the previous section on Board Oversight: if the ethics officer does not have access to the board of directors, it reduces his or her influence and power to provide accurate information on the organization's ethical program. Another reason is that a conflict of interest occurs should ethical misconduct by the ethics officer's supervisors be observed. This conflict of interest can restrict the ethics officer's objectivity and independence when enforcing the organization's ethical code. The final reason is that inadequate resources or authority minimize an ethics officer's power and influence over other departments.

In some organizations, an ethics officer reports to a senior executive in a legal, human resources, or internal audit department. Most studies show that ethics and compliance officers most often report to the general counsel with increasing numbers reporting directly to the CEO (SAI Global, & Baker & McKenzie, 2013; Weber & Wasieleski, 2013). An ethics officer may be in the tenuous position of both monitoring the ethical integrity of and reporting to senior managers who have the power to have him or her promoted or fired. Senior managers may recommend ignoring unethical conduct, or fail to take action on an ethics officer's recommendation.

Treviño, den Nieuwenboer, Kreiner, and Bishop (2014) recounted an example where an ethics officer was ignored:

> We had a big investigation . . . that involved senior officers of an alleged ethical violation that was quite serious. . . . Senior management didn't take it very seriously. . . . A couple of years later it recurred and this time they realized the seriousness of it and responded fully. . . . So that was kind of a game changer . . . because senior management, including the Board of Directors, saw how a good ethics program identifies and can help solve problems before they get big. (p. 196)

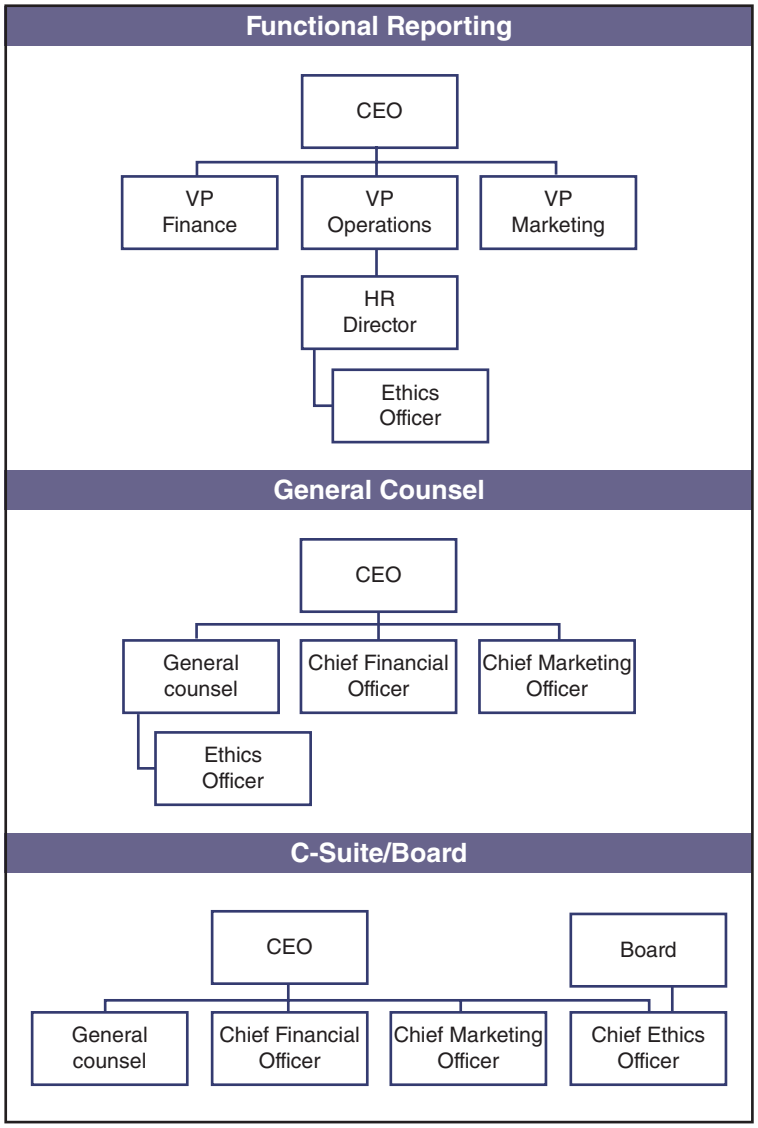
According to the Ethics Resource Center (2007), the ideal reporting structure will allow the ethics officer to:

- Have employment decided and terminated only by the direction of the board of directors;
- Directly report to either the board or the CEO;
- Have direct, unfiltered access to the board; and
- Achieve performance goals as defined by the board and CEO. (p. 2)

Consider how each of the reporting relationships in Figure 9.2 enhances or restricts the objectivity, independence, and influence of the ethics officer.

Figure 9.2: Progression of reporting relationship of the ethics officer

The reporting relationships of the ethics officer can vary by organization.



The individual that an ethics officer reports to has discretion to allocate resources for promoting ethical standards, educating the workforce, monitoring compliance, and investigating potential violations. The FSGO stipulate that organizations ensure that the individual delegated with operational responsibility of the ethics and compliance program has adequate resources to perform his or her role effectively (United States Sentencing Commission, 2013). Program resources include dedicated personnel and a sufficient budget for salaries, training, the reporting hotline, and other expenses.

The number of resources varies among organizations, including the dedicated staff and budget for ethics and compliance. A 2013 study found that most companies with fewer than 1,000 employees have three or fewer ethics professionals, whereas more than half of companies with 50,000 or more employees have more than 10 dedicated ethics staff members (SAI Global, & Baker & McKenzie, 2013). A 2014 study of more than 1,000 companies found that 12% of firms do not have a separate budget for ethics and compliance activities, yet almost one third estimate an annual budget of more than $1 million for their ethics program (PWC, 2014).

The number of ethics staff and the specific budget for the ethics program vary depending on the size of the company and whether it is part of a heavily regulated industry. How can the board ensure that an ethics officer has adequate resources? The Ethics Resources Center (2007) suggests that resources should include:

- Sufficient funds and content expertise to review, refresh, and distribute the corporate code of conduct to every employee and the board once a year;
- Sufficient funds to comprehensively train every employee and the board on organizational standards and core compliance risks;
- Sufficient staffing to work with management to promote the values of the organization;
- Sufficient staffing and funds to conduct thorough compliance audits, monitoring, and risk assessments;
- Sufficient resources to ensure the effectiveness of ethics and compliance controls;
- Sufficient staffing to maintain an anonymous helpline (or to outsource this function), and to investigate incidents that are reported;
- Sufficient staffing to separate the proactive communication and training functions from the receipt of calls and follow-up investigations; and
- Sufficient staffing to serve as a resource to the board and senior management. (p. 24)

With adequate authority and resources, the ethics officer can encourage compliance with legal and ethical standards found in the company's code of conduct.

9.2 Developing a Code of Conduct

The ethics office is typically responsible for creating the company's code of conduct, which forms the foundation of an ethics and compliance program. Employees of companies with a formal code of conduct report greater satisfaction with outcomes of ethical dilemmas than

those working for companies without one (Adams, Taschian, & Shore, 2001). A study by Erwin (2011) found that companies with a high quality ethics code are seen as leaders in corporate citizenship, sustainability, ethical behavior, and trustworthiness.

Despite these findings, Enron's accounting scandal and Alcoa's corruption scandal occurred with corporate ethics codes in place, which begs the question of whether a code of conduct has an impact on ethical behavior. One European study shared the following perspective of formal corporate codes:

> The head of sales at an investment bank explained, "It is very good that everyone has to read them, but as long as something is not illegal, people will do it anyway." Ethics activities would be empty, symbolic gestures with no intention of having a practical impact. (Norberg, 2009, p. 218)

Much research in behavioral ethics looks beyond the mere existence of a code of conduct to explain ethical behavior in the workplace, recognizing that the quality of the content and familiarity with the code are key factors for creating an ethical culture (Andreoli & Lefkowitz, 2009; Kaptein, 2011; Treviño, Weaver, Gibson, & Toffler, 1999). Individual and organizational factors affect employee acceptance of a code of conduct (Andreoli & Lefkowitz, 2009). For example, familiarity with an industry code of conduct and perceptions of usefulness lessen when an uncertain business environment creates role ambiguity (Chonko, Wotruba, & Loe, 2003). Additionally, managers with a relativist ethical orientation (believing that it is impossible to make claims of right or wrong) are less likely to consider the ethics code binding than idealists (people who act on their moral ideals in all situations) (Chonko et al., 2003).

Even the title of the code can influence whether employees uphold the desired conduct of the organization (see *Consider*: *What's in a Name of an Ethics Code?*). The title should convey the purpose of the document. A **rules-based code** appears punitive, with a "thou shalt not" aspect, and typically includes company standards and rules applicable to an issue area (Ethics and Compliance Officer Association Foundation, 2008). Naming the document a *compliance code* sends a message to the workforce that following the law is sufficient, rather than the concept of business ethics being about choice and judgment in following company values. **Values-based codes** like *Every Day Values: The Harley Davidson's Code of Conduct* connect company values with employee behavior (Harley-Davidson, n.d.; Martens, 2012; Treviño et al., 1999).

Multinational companies need to consider the wording of the code's title carefully as some concepts may present difficulties in translation. For example, the term *ethics* can have moralistic connotations in some regions, while *compliance* can evoke feelings of imposition of company standards (Martens, 2012). A review of the 200 largest global corporations found strong variances in the titles of codes with 36% containing the word *conduct*, 17% containing *principles/guidelines*, 9% containing *ethics*, 6% containing *values*, and 4% containing *integrity* (Kaptein, 2004).

Consider: What's in a Name of an Ethics Code?

The document that summarizes the company's ethical and legal standards can go by many names, including:

- Code of conduct;
- Code of ethics;
- Code of business conduct;
- Code of ethical and legal standards;
- Ethics guide;
- Code of employee conduct; or
- Standards of professional and business conduct.

The title of the document can create a brand for the company's ethics and compliance. The content becomes relevant to the workforce when the code ties the ethics and compliance program to the company's mission or business strategy. The title can make that connection and serve as a theme throughout the document. Consider these titles for company code of conduct documents:

- Setting Our Sights High (Bausch & Lomb Incorporated);
- Follow the Right Road (The Auto Club Group); and
- Inside the Lines (Nike).

Sources: Ethics and Compliance Officer Association Foundation, 2008, p. 58; Martens, 2012.

Questions to Consider

1. How does the title of a company's ethics document affect your attitude about the content? Is one title more attractive than another?
2. What is the overall message that the title of the code of conduct conveys? Does it reflect the purpose of the document to provide employee guidance on expected conduct?
3. Propose creative titles for ethics codes for a pharmaceutical company and a restaurant.

Implementing an effective code of conduct is not a simple task. One study found that a code for equal opportunity in the hiring process limits discrimination only when enforced by management and integrated into normal practice (Petersen & Krings, 2009). Enforcement of the document requires close attention to the tone and terminology, such as phrases like "may result in disciplinary action." The U.S. courts find that such ambiguous penalties for noncompliance negate contractual obligations to comply with a code of conduct (Kenny, 2007). The design of the document and the communication of the code play a critical role in embedding the ethical standards for conduct throughout the organization (Kaptein, 2011; Verbos, Gerard, Forshey, Harding, & Miller, 2007). The following sections outline best practices in designing a code of conduct document.

Code Content

Designing a code of conduct includes identifying the topics and tone that will resonate with the workforce, as the code's purpose is to guide employee behavior. This is particularly important as studies have shown that employees generally have difficulty naming specific behaviors that the code requires or prohibits (Adams et al., 2001). To make the content more memorable, *The Ethics and Compliance Handbook* cautions against codes that are generic, bland, or legalistic (Ethics and Compliance Officer Association Foundation, 2008). In reality, there is no such thing as a generic organization. Therefore, those designing the code should tailor it to reflect the organization's unique culture, risks, and history, which ultimately shape the ethical issues covered by the code and the manner of conveying acceptable conduct. Content may vary because of the regulatory environment for the industry or geographical region. Some content is applicable to all employees, while others may be specific to a function such as accounting or sales. The code of conduct should clearly address expectations on topics relevant to the intended audience in language that is readily understood.

Recommended Elements of a Code

Given that an organization can tailor a code of conduct to meet the needs of its workforce and industry, the elements or sections of the code will vary accordingly. As the foundation of the ethics and compliance program, the code of conduct should provide sufficient guidance to develop an ethical culture. *The Ethics and Compliance Handbook* identifies eight sections recommended in a code of conduct (Ethics and Compliance Officer Association Foundation, 2008). They include:

1. An introductory letter from senior management or the CEO reinforcing top management support for ethics and compliance in the organization;
2. A mission statement, statement of values, and guiding principles of the company;
3. An ethical decision-making framework to guide employees in making choices;
4. Resources for seeking advice and reporting misconduct;
5. Substantive rules and guidance for acceptable and unacceptable behavior for risk areas;
6. Disciplinary rules and enforcement procedures for unethical behavior;
7. Protection against retaliation for reporting misconduct; and
8. An acknowledgment or certification that employees have received and read the company code of conduct.

The quality of the code of conduct contributes to its effectiveness in deterring misconduct. A review of company codes in the 1970s showed limited inclusion of relevant ethical issues and few procedures for seeking advice, reporting misconduct, or taking disciplinary actions (Cressey & Moore, 1983). By sharing best practices, more companies are developing codes of conduct that incorporate all eight recommended sections. Ethisphere Institute has developed criteria to evaluate the quality of a code of conduct, as shown in Table 9.3. Codes of conduct meeting these components are effective tools in setting and reinforcing expectations for ethical behavior.

Table 9.3: Evaluation components to benchmark the quality of a corporate code of conduct

Component	Component Description
Public Availability	The code should be readily available to all stakeholders. What is the availability and ease of access to the code?
Tone from the Top	Level at which the leadership of the organization is visibly committed to the values and topics covered in the code.
Readability and Tone	What is the style and tone of the language used in the document? Is it easy to read and reflective of its target audience?
Non-Retaliation & Reporting	Is there a stated and explicit non-retaliation commitment and dedicated resources available for making reports of code violations? If so, is it presented clearly?
Commitment & Values	Does the code embed corporate values or mission language? Does it identify the ethical commitments held to its stakeholders (e.g., customers, vendors, communities)?
Risk Topics	Does the code address all of the appropriate and key risk areas for the company's given industry?
Comprehension Aids	Does the code provide any comprehension aids (questions and answers/ frequently asked questions, checklists, examples, case studies) to help employees and other stakeholders understand key concepts?
Presentation and Style	How compelling (or difficult) is the code to read? This depends on layout, fonts, pictures, taxonomy, and structure.

Sources: Erwin, 2011; NYSE Governance Services, 2014.

The Morgan Stanley code of conduct titled "Doing the Right Thing" is an example of a document that meets the Ethisphere Institute's evaluation criteria. A common element in both *The Ethics and Compliance Handbook* and Ethisphere Institute evaluation criteria is a demonstration of top management's commitment to the ethics and compliance program. The first page of Morgan Stanley's code of conduct includes a statement by James P. Gorman, the chairman and CEO, stressing "an unwavering commitment to the highest standards of ethical conduct" and concludes with, "Like you, I am proud to be part of a Firm that has such a distinguished heritage and promising future. Thank you for doing your part to uphold our greatest tradition" (Morgan Stanley, 2014, p. ii).

The code of conduct is values-based, tying ethical behavior to Morgan Stanley's values of putting clients first, leading with exceptional ideas, doing the right thing, and giving back. Throughout the document, sections begin with the word *we*, denoting that the code of conduct applies to everyone. The section titled "We Make Ethical Decisions" includes a series of questions to assist employees in choosing the right action when faced with an ethical dilemma. Disciplinary procedures, resources for reporting, and non-retaliation

procedures are presented early in the document. The following are the major headings featured in the code:

- What This Code Means to Us;
- We Make Ethical Decisions;
- We Treat Others with Dignity and Respect;
- We Support Our Communities;
- We Protect Our Franchise and Address Conflicts of Interest;
- We Protect and Prevent the Misuse of Confidential and Material Nonpublic Information;
- We Follow the Letter and the Spirit of the Laws and Regulations;
- We Protect Our Interests;
- We Are Honest and Fair in Our Communications with the Public;
- We Report Information and Cooperate with Requests Relating to Litigation, Investigations, Inquiries and Complaints; and
- Code of Conduct Acknowledgement.

The key ethical issues and acceptable behaviors outlined in Morgan Stanley's code of conduct guide employees in everyday conduct through simple, concise language and concrete examples to aid in comprehension. The document specifically states, "Throughout this Code, we include questions and answers that address situations that commonly arise and illustrate how particular policies apply in practice" (Morgan Stanley, 2014, p. 2). The code is 15 pages long, with detailed policies and procedures for 34 ethical topics. It is unlikely that all of the ethical issues are relevant to all employees. Therefore, in addition to the full table of contents, the code of conduct provides a summary listing of the 15 ethical issues that have generated the most questions from employees.

Focusing the Code on the Organization's Key Risk Areas

The focus of company codes of conduct changes over time and varies by geographical location. A review of codes of conduct in the 1970s recognized a focus on misconduct that directly impacts company profit, such as conflict of interest, rather than responsibilities to others (Cressey & Moore, 1983). A review of global companies' codes in 2009 found that U.S. companies focus more on accounting fraud, conflict of interest, and insider trading, while global companies tend to emphasize security, human rights, bribery, and money laundering (Sharbatoghlie, Mosleh, & Shokatian, 2013). Table 9.4 lists possible topics for codes of conduct from *The Ethics and Compliance Handbook*. The list is extensive and inclusion of all topics is neither practical nor necessary for most organizations.

Table 9.4: Possible topics for codes of conduct

• Anticorruption	• Gifts, entertainment, and gratuities
• Antitrust/competitive information/unfair competition	• Government contracting, transactions, and relationships
• Billing for services	• Government relations and lobbying
• Books and records/financial reporting and recordkeeping	• Harassment (sexual and otherwise)

(continued)

Table 9.4: Possible topics for codes of conduct *(continued)*

• Community or civic activities	• Investigations (internal and government)
• Complying with laws	• Licensure and professional certifications
• Confidential and proprietary information	• Marketing, sales, advertising, and promotions
• Conflicts of interest	• Media relationships
• Copyrights, patents, and intellectual property	• Money laundering
• Customer service and customer relations	• Political contributions
• Discrimination	• Privacy and safeguarding information
• Document retention	• Procurement/purchasing
• Environment, health, and safety	• Professional standards, competence, and due care
• Equal employment and affirmative action	• Respect and fair treatment
• Expense reimbursement and time reporting	• Securities trading and insider information
• External inquiries/public disclosure and reporting	• Security
• Family and personal relationships (e.g., nepotism)	• Social media
• Fraud	• Work-life balance
	• Workplace violence

Source: The ethics and compliance handbook: A practical guide from leading organizations. *Copyright © 2008 The Ethics & Compliance Officer Association Foundation. Reprinted with permission.*

When identifying key risk areas to include in a code of conduct, executives must consider external forces, internal perceptions, and historical data. The first consideration, external forces, represents the legal, regulatory, and competitive environment that can elevate an issue to warrant attention in the formal code of conduct. For example, in the United States, regulations provide specific topics that should be addressed, including policies on conflict of interest, insider trading, and bribery (Ethics & Compliance Officer Association Foundation, 2008; NYSE Governance Services, 2014).

Second, internal forces such as the industry, size, or international scope of the company can determine topics to emphasize in the code of conduct. For example, a company manufacturing products in emerging markets may place more emphasis on environmental impact, human rights, and safety. Additionally, a survey of employees can reveal internal perceptions regarding what ethical issues they consider likely to occur, providing issues to include in a code of conduct.

Lastly, the ethical topics that the company has struggled with in the past should be included in the code of conduct. Audit findings, regulatory investigations, or common employee violations are sources for historical data of relevant ethical topics. It is useful to organize the key issues by stakeholders, corporate values, or internal employee conduct (Kaptein, 2004).

Global Considerations

International companies have additional considerations when designing a code of conduct that applies to employees in multiple countries. The first decision is whether to develop one common code for all countries or separate documents for each country. Some organizations may consider one code impractical or unrealistic because of variations in legal requirements, cultural norms, and languages among the countries. Benefits of a common code include: a) there is only one definition of what is right or wrong, b) employees are clear on expected behavior no matter where they travel on business, and c) the company avoids liability associated with inconsistent practices. One solution is to create one common code with regional or country variations that bridge gaps between local laws or customs and company standards (Martens, 2012).

Companies that intend to implement a global code of conduct that applies across the organization must make careful considerations during the code drafting process. Best practices dictate that companies seek input from a legal team, managers, and workers while developing the code. This team can help identify and address:

- Key ethical and legal concerns;
- Cultural or historical issues that affect business operations;
- Workforce dynamics that could either promote or interfere with the adoption of the code of conduct in their country or region; and
- Language or terminology issues. (Ethics & Compliance Officer Association Foundation, 2008, p. 62)

An effective code of conduct provides guidance for employees to manage contradictions between individual or local norms and the company's standards. Chapter 5 described how cultural differences influence ethical positions and increase the potential for conflicts within a global organization. One study relates how an ethics officer investigating a report that "a high-level executive had been making sexist and ageist 'jokes' during business-related conference calls" discovered that the executive, who worked outside the United States, was unaware that his remarks were offensive and potentially discriminatory because they would be acceptable in his country (LRN, 2006, p. 3).

Halff (2010) found that the majority of the world's largest corporations fail to acknowledge contradictions between local norms and corporate norms, leading to hidden and overt violations of the company code of conduct. Global codes that include negative language such as "employees must never" can lead employees to feel that the company is not considering local norms (Martens, 2012). Organizations that do acknowledge differences take varying approaches such as to seek advice, apply the stricter rule, follow local norms, or comply with corporate code. Companies like Lockheed Martin and Cisco serve as role models for multinational companies striving for a global code of conduct. Their codes of conduct are provided in multiple languages, include symbols for navigation, and provide examples relevant to diverse employees. Global companies can follow practices suggested for a suitable global code of conduct such as:

> First acknowledge that sets of norms might contradict, second give clear priority to one set of norms (local or corporate) and thirdly provide specific instances and/or examples of how and when to apply the priority rule. They

> are particularly precise about gift-giving, facilitating payments, employment of relatives, and the entertainment of public servants. (Halff, 2010, p. 364)

Global companies should avoid region- or country-specific terms or phrases when drafting the code for an international audience. For example, a U.S.-based firm should not refer to a non-U.S. government employee in anti-bribery sections as a foreign government official. The local employees would not consider their government officials, customs agents, or public employees as foreign. Some terms in codes of conduct relate to country regulation, such as affirmative action or equal employment opportunity in the United States. Use of country-specific terms fails to convey the ethical standard of nondiscrimination to workers in other countries. Table 9.5 provides suggestions for replacement terms to make culturally-specific terminology more global.

Table 9.5: Replacement terms for culturally-specific language

Term	Country	Replacement Term
Equal employment opportunity	United States-centric	Fair hiring practices/no discrimination
Antitrust	United States-centric	Fair competition
Antimonopoly	United Kingdom-centric	
Bullying/mobbing	United Kingdom and Europe	Harassment, disrespectful treatment
Anti-bribery	United Kingdom	Improper payments
FCPA	United States	

Source: L. T. Martens, 2012, Globalising a Business Ethics Programme*, p. 25. Copyright 2012 by the Institute of Business Ethics.*

The graphic design of the document should reflect cultural sensitivity through the use of color, symbols, and photos (Martens, 2005). For example, red print may trigger negative feelings of forced compliance in Western countries where red is used as the symbol for danger. Universal symbols are preferable, although not always practical when a standard or example requires a currency amount. For example, a reference to accepting or giving gifts over $25 should include the equivalent amount in euros or yen. Photos should represent the international character of the company and not be offensive in any part of the world. A global code of conduct should be a useful guide to appropriate behavior for all employees.

Implementation of a Code of Conduct

To implement a code of conduct, organizations must formulate a plan to ensure that workers receive the code and understand its purpose. The plan should include distributing the document to all employees, providing tools to help them apply the code in their daily activities, and recording their acceptance of it. All communication surrounding the code is vital to its success. Employees become more familiar with and supportive of a code of conduct when senior management demonstrates support for the code and employs diverse communication activities for educating workers on the content and application of the code (Kaptein, 2011).

Distribution of the code can take various forms, but it should remain easily accessible to employees and available to all stakeholders (NYSE Governance Services, 2014). Every new employee should receive a printed copy upon hiring and during orientation. Current employees could receive copies through the company mail or e-mail communications periodically or when the code has been revised. Companies often create websites to communicate information regarding the ethics program and code of conduct. Some companies require an online course to introduce the policies and procedures contained within the code of conduct.

To increase accessibility and use of the code of conduct, many companies have begun offering an electronic version. More than just a PDF, an electronic code provides employees with an interactive tool for finding specific information, links to resources, and a variety of learning scenarios (NYSE Governance Services, 2014). Morgan Stanley includes a statement in its code of conduct that says "The electronic version of this Code includes links to policies and procedures" (Morgan Stanley, 2014, p. i). See *Business Best: Cisco eBook Code of Conduct* for an example of a company that delivers the code electronically to a global audience.

Business Best: Cisco eBook Code of Conduct

In 2012, Cisco released an interactive eBook version of the company code of business conduct (COBC) to its mobile, global workforce. The online interactive COBC is able to reach the 85% of Cisco employees working from home or traveling (World Watch, 2013). The COBC eBook provides many tools to make it easier for employees to find information on ethical issues, such as pop-up frequently asked questions, links to other Cisco tools and resources, an "Ask/Report" list of ways to obtain help on any topic, embedded videos, and pop-up definitions (Cisco, 2014). Cisco's 2013 Corporate Social Responsibility Report states:

> Our Code of Business Conduct sets out our expectation for everyone at Cisco to behave ethically in everything they do. Through regular training and a new interactive eBook version of the Code, we equip employees with the knowledge and skills to make the right decisions if they are ever confronted with an ethical dilemma. (Cisco, 2013, p. B2)

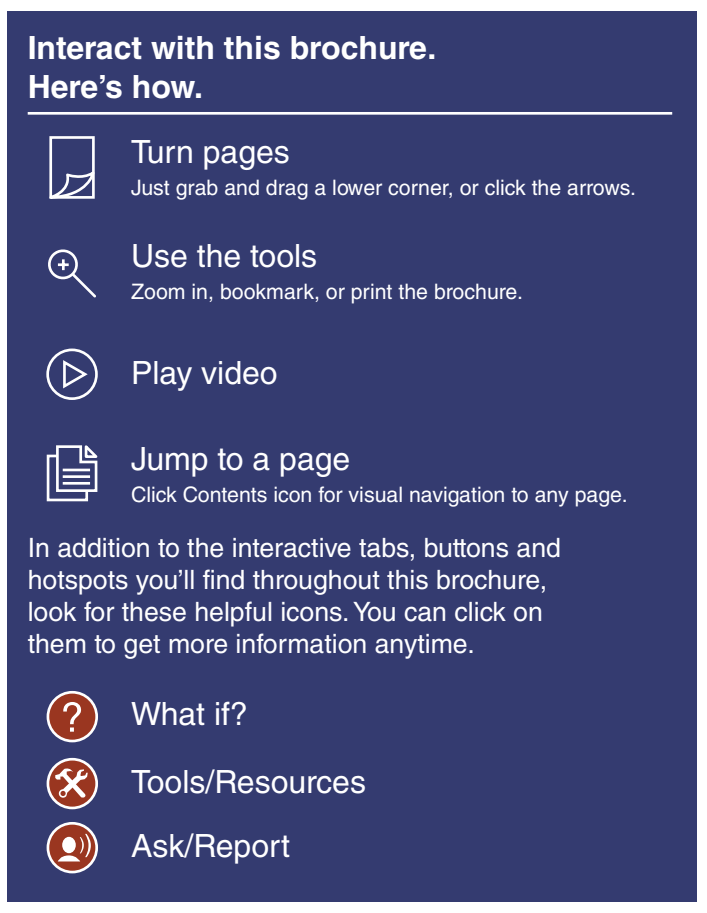
The eBook is easy to navigate and includes universal symbols for interactive functions. See Figure 9.3 for a snapshot of the instructions for the user on the first screen. Though the interactive eBook is only available in English, an introductory video features employees from all countries stating, "I know the code" in their native languages. Translations of the Cisco COBC are available on the Ethics@Cisco website page as a PDF with hyperlinks.

(continued)

Business Best: Cisco eBook Code of Conduct *(continued)*

Figure 9.3: Instructions for navigating Cisco's COBC eBook

Cisco's COBC eBook contains universal symbols for the interactive functions.



Source: Reprinted with permission from Cisco. (2014). Code of Business Conduct.

Following the launch of the eBook, an employee survey showed improvement in almost all measures regarding the ethical culture (Cisco, 2013). More than 92% of employees in 2013 felt that Cisco was taking ethical business concerns seriously (up from 90% in 2011). In just two years' time, the percentage of employees who agreed with the statement, "The management team sets a good example of company values, culture, and the Code of Business Conduct" increased from 81% to 89%. Finally, by 2013, 89% of employees knew where to report an ethics question or concern compared to 83% in 2011.

(continued)

Business Best: Cisco eBook Code of Conduct *(continued)*

Questions to Consider

1. What are the advantages and disadvantages of an interactive online code of conduct? Why should printed or PDF formats continue to be offered, even when there is an online version?
2. Does an electronic format provide advantages in Cisco's ability to make further improvements to its code over time?
3. Access the eBook to view the table of contents and a few pages. Would the eBook meet Ethisphere Institute's evaluation criteria for an effective code of conduct?

Many organizations require employees and management to sign a statement certifying that they have received and read the code of conduct. Certification statements are one way a company can demonstrate to regulators that it is committed to the ethics and compliance program (NYSE Governance Services, 2014). These statements allow companies to:

- Confirm receipt of the code of conduct;
- Obtain acknowledgement from employees that they have read and understood the code of conduct;
- Establish that employee abides by, or will abide by the code of conduct;
- Obtain confirmation that employees reported any breaches of the code;
- Confirm that management has discussed the code with their team. (IBE, 2012)

Code certification holds employees accountable for their actions. In a study by the Institute of Business Ethics, about half of the companies referred to code certification statements during disciplinary decisions involving code of conduct violations (IBE, 2012). Whether a company can obligate an employee to sign an acknowledgement form may depend on local labor laws (IBE, 2012). Should an employee refuse to sign, additional ethics training or discussions with the employee's manager may occur.

As the foundation of the ethics and compliance program, companies recognize the importance in thoroughly educating the workforce on the content and use of the code of conduct. Code certifications do not ensure that the employees have read and understood the content of the code of conduct, and explaining the code of conduct only when employees are first hired or when the codes are first distributed is no longer a sufficient way to show a good faith effort to educate employees on ethics and compliance.

9.3 Educating the Workforce

Organizations that invest in educating the workforce to comply with legal and ethical standards expect their employees to apply what they have learned consistently over time. However, ethics training tends to have a similar effect on people as when they witness a traffic accident—they slow down and drive carefully for a week or so, then gradually fall back into their old driving habits. Research has shown that one-time ethics training can have transient

effects if organizations do not provide ongoing, interactive training and offer organizational support (Martin, 2010; Richards, 1999; Warren, Gaspar, & Laufer, 2014). In order for employees to fully learn concepts, their formal training should include a period during which they can practice applying ethics in the workplace. A well-planned ethics training program can result in the establishment of a culture of ethics and compliance (Ethics Resource Center, 2013b; Valentine & Fleischman, 2004). In a study of bank employees before and after the introduction of formal ethics training, Warren et al. (2014) found that participants displayed sustained, positive effects in identifying unethical behavior, intentions to behave ethically, and perceptions of organizational efficacy in managing ethics.

Developing a Training Plan

The objective of ethics training is to help employees make decisions that are consistent with the organization's values. Training should provide methods for employees to manage contradictions between individual values and the company's ethical standards. To address the specific challenges in ethics training, Knouse and Giacalone (1996) outline the major components of ethical education in business that remain relevant today (see Table 9.6). They recommend providing employees with a foundation in how ethical orientations affect ethical decision making, as well as offering opportunities to practice applying the company's ethical standards.

Ethics training should align with company values and connect ethical concepts to daily actions. To make that connection, some organizations are adopting a giving voice to values (GVV) approach to their business ethics training. Based on Mary Gentile's (2010a) book, *Giving Voice To Values,* regarding how individuals address values conflicts in the workplace, the GVV approach has seven foundational pillars that correlate to the components for ethical training in Table 9.6: 1) values; 2) choice; 3) normality; 4) purpose; 5) self-knowledge, self-image, and alignment; 6) voice; and 7) reason and rationalization. Incorporating GVV in an organizational ethics program can help employees develop methods to voice their concerns. The program appears to address employee apathy and indifference to potential and existing ethical issues.

Table 9.6: Components of ethics training in business

Component	Objectives	GVV Pillar
Provide trainees with an understanding of ethical judgment philosophies and heuristics for making ethical judgments.	Seek common ethical values among employees and with the organization. Encourage actions consistent with employee values and those of the organization. Use critical thinking strategies that include questions for ethical decision making.	Acknowledging shared values Choosing to act
Provide industry-/profession-specific areas of ethical concern.	Address ethical issues particular to employee positions, professions, or industry.	Normalizing values conflicts

(continued)

Table 9.6: Components of ethics training in business *(continued)*

Component	Objectives	GVV Pillar
Provide trainees with organization's ethical expectations and rules.	Encourage compliance with ethical expectations contained in employee handbooks, codes of conduct, and training.	Purpose as an employee
Provide trainees with an understanding of their own ethical tendencies.	Recognize that individual differences and personality traits impact ethical actions.	Understanding one's self
Take a realistic view; elaborate on the issues that can hamper ethical decisions.	Understand traps for ethical misconduct to avoid falling into them. Become more effective in responding to others' rationalizations.	Anticipating reasons and rationalizations
Have the trainees practice and apply in the workplace.	Apply concepts in daily work life. Encourage discussion, sharing, and feedback on ethical actions.	Using one's voice

Source: Gonzalez-Padron, T., Ferrell, O., Ferrell, L., & Smith, I. (2012). A critique of giving voice to values approach to business ethics education. Journal of Academic Ethics, *1–19.*

To develop the most effective training, companies need to tailor the program to the target audience by identifying and prioritizing key risks by employee segment. For example, training on data privacy and security are relevant to employee groups that use computers. Training in the proper use of company resources should consider the functions most likely to commit occupational fraud—individuals working in accounting, operations, sales, customer service, and purchasing (Association of Certified Fraud Examiners, 2012). Training on bribery is most relevant to executives and sales staff working in international markets. Managers and supervisors would most benefit from hiring policies regarding discrimination. All employees should receive training on reporting misconduct, social media use, and harassment.

The training plan should identify the frequency and depth for each key issue. The frequency of training then depends on the level of likelihood that an ethical issue will occur. Determining how much detail and attention the training requires depends on whether the target group can create, identify, or simply understand the risk. For example, discrimination is a key issue for many companies. Managers or supervisors with responsibilities to hire, promote, evaluate, and terminate employees have the potential to put a company at risk of lawsuits. Therefore, their training requires in-depth and possibly frequent instruction on policies and procedures to demonstrate nondiscriminatory practices. Training of all employees should focus on identifying and reporting discriminatory practices. The training plan for discrimination requires awareness training supplemented with a communication program that provides regular reminders to all employees through e-mails, newsletter articles, and posters that help them to recognize discrimination in the workplace.

While ethics training often involves asking employees to watch formal presentations, it is perhaps even more important for those conducting the training to listen to employees and engage them in dialogue. The workforce consists primarily of adults with a great deal of experience and knowledge that contributes to the learning process (Bixby, 2011). Telling someone not to cheat on an expense report is not as effective as addressing rationales for the misconduct. In order to design a training program that fits the needs of the workforce, ethics trainers must listen to the concerns and questions raised by employees about ethical issues or company practices. Listening is a powerful communication tool that requires being present in the dialogue without multitasking or succumbing to distractions (Schloss, 2012). See *Consider: Active Listening* for an exercise to develop active listening skills.

Consider: Active Listening

Active listening requires paying attention to the content of what someone is saying. Too often people focus on how to respond to someone talking before the end of the conversation. Practice listening to all of what someone is saying with this exercise.

1. First, find a partner.
2. Then designate one person to initiate speaking (Person A).
3. Person A will begin a brief conversation of a few sentences. This could relate to the weather, common interests, or what he or she did last weekend.
4. When Person A stops talking, Person B must begin a conversation using the LAST word that Person A spoke as the FIRST word of the first sentence. For example, if Person A stops speaking with the phrase, "I ate so much," Person B could begin with "Much of my time is spent . . ."
5. Similarly, when Person B stops talking, Person A must begin a conversation using the LAST word that Person B spoke.
6. Repeat Steps 4 and 5 for about 10 minutes.

Questions to Consider

1. How well did each of you listen to what the other was saying? Were you able to catch the other speaker's last word each time?
2. Did you strive to make the exercise easy for your partner or difficult? For example, ending a conversation with an adjective may be more difficult to start another conversation, such as "I was so hungry."

Training Delivery

To ensure that each member of the workforce receives and engages with the ethics training materials, organizations can incorporate a wide variety of training and communication methods that accommodate diverse learning styles, varying risk levels of misconduct, and a dispersed workforce. These methods include lectures and presentations, case studies and scenarios, role-playing, videos, and various e-learning platforms. Table 9.7 outlines the pros and cons of each.

Table 9.7: Pros and cons of training methods

Delivery	Advantages	Disadvantages
Lectures and presentations	Reach a large number of people, quick to implement	Trainees are passive and do not experience multiple viewpoints
Case studies and scenarios	Generate discussion and participation	Can have focus that is too narrow in the issues addressed
Role-playing	Highly interactive and insightful	Some people may be unwilling to participate
Videos	Realism	Too specific and not participative
E-learning (online or computer training)	Easy to implement and highly flexible	Limited opportunity for discussion and interaction

Source: Ferrell & Ferrell, 2009, p. 50.

Advances in technology offer innovative approaches to engaging employees in ethics training. Awareness training can include short, targeted messages on common ethical issues. Lockheed Martin periodically distributes its Integrity Minute series to employees. The series features short soap opera style videos that highlight key ethics topics of relevance to employees. The videos reinforce company policies and generate dialogue among the workforce. If timed correctly, such as just before employees submit expense reports, travel to high-corruption locations, or meet with government officials, these types of videos can be particularly effective. Customizable video clips on ethical issues are available from ethics and compliance system vendors such as Corpedia and NAVEX Global. Corpedia offers a series of RealBiz Shorts featuring Second City Communications actors in funny video clips of consequences for failing to follow ethical policies. NAVEX offers Burst Learning videos, which feature engaging street interviews and humorous scenarios in which characters address ethical dilemmas.

Informal training can occur through social media, company discussion boards, or regular lunch and learn sessions. Formal training sessions can be online, face-to-face, or as a hybrid program (French, 2006). Classroom training can be time-consuming for employees, increase travel expenses, slow the delivery time of course material, and result in inconsistent content. In-person training is preferable for executives who must delve into high-risk areas, or for topics that require interaction such as interview tactics for investigations of ethics violations. Deloitte Touche Tohmatsu Limited offers blended learning, which requires completion of an online training of procedures prior to meeting in person (Sweeney, 2007). For example, training on harassment policies is online, while role-playing and discussions take place during live sessions in a classroom setting. Challenges in adopting online learning in business include:

- Resistance to change and cultural resistance to learning online, more often from senior and middle management;
- Cultural acceptance of online learning delivery in international training; and
- Insufficient bandwidth on Web-based systems, hindering the ability to provide quick and effective interactive learning packages. (Macpherson, Elliot, Harris, & Homan, 2004)

For routine training, online instruction can be more effective than classroom instruction (Sitzmann, Kraiger, Stewart, & Wisher, 2006). Advantages of online training include less travel

and control over timing for completion of the course. Online training allows users to search for supplemental information easily and avoid distracting classmates (Sweeney, 2007). This training may be more expensive to design, but offers cost savings and the ability to track completion rates through automated systems. Regardless of the method used, frequent ethics training and regular communications can empower employees to make ethical decisions and identify misconduct.

9.4 Reporting Misconduct

To support a culture that encourages ethical behavior, it is crucial that employees feel comfortable seeking advice on ethical concerns and reporting misconduct. A simple approach is to establish an open door policy through which employees may seek counsel from any manager. IBM began implementing this approach during the early years of their ethics program (Carroll, 1991). In the United States, Sarbanes-Oxley and the 2004 amendments to the FSGO require that an organization create and publicize a system to address and respond to employee inquiries about ethics and compliance issues (Sarbanes-Oxley Act of 2002; United States Sentencing Commission, 2013). The U.K. Bribery Act 2010 includes a provision for "the reporting of bribery including 'speak up' or 'whistle blowing' procedures" (Ministry of Justice, 2011, p. 22). Compliance with regulation appears to be driving company investments in formal reporting systems for ethics and compliance violations. A review of U.S. ethics and compliance programs has shown that more than half (55%) of the surveyed companies created internal reporting mechanisms after the Sarbanes-Oxley requirement (Weber & Wasieleski, 2013).

Developing a Reporting Mechanism and Providing Ethical Advice

Designing an advisory and reporting mechanism entails decisions on a number of details that contribute to a successful implementation. These include:

- What will the service be called? How will it be branded?
- How will the service be communicated to employees?
- What types of calls will not be handled by ethics and compliance (e.g., payroll questions will be directed to human resources)?
- What types of reporting formats will be utilized: phone, Internet, e-mail, fax, text message?
- Will "24/7" advice and reporting be available?
- What languages need to be supported?
- Is reporting unethical or illegal activities mandatory or encouraged? (Ethics & Compliance Officer Association Foundation, 2008)

A system that employees are comfortable using requires providing for anonymous inquiries, protecting confidentiality, preventing retaliation, and disclosing investigation of reports where possible.

Employees may fear that an inquiry will lead to an investigation, retaliation by coworkers, or scrutiny of their own actions. Labels for those who expose misconduct include *tattletale*,

snitch, *informant*, and *rat*, or in German, *Spitzel* (snitch or spy) (Riebl, 2004). To overcome barriers for speaking up, organizations need to provide a variety of channels for obtaining ethical advice to allow inquiries to occur in the manner most comfortable for the employee. Methods should be easily accessible, simple to use, and facilitate reporting suspicious activity. For example, Cisco provides an ethical decision tree to help employees find information about an ethical concern, has a "Sharing Ethical Concerns" link on the Ethics@Cisco website, and the company's interactive code of business conduct eBook has a link on each page to ask questions or report misconduct (Cisco, 2014). Mechanisms for advice and reporting can include:

- A dedicated telephone helpline (where technology protects anonymity);
- A dedicated fax number;
- A dedicated Web-portal or e-mail inbox;
- A dedicated postal address;
- Personal phone call or meeting with members of the ethics and compliance team;
- An organizational ombudsman;
- Specific members of the human resources team;
- Direct supervisors and managers;
- Specific members of the general counsel's office;
- Internal or external auditors; and
- Designated members of the audit committee of the board of directors. (Ethics & Compliance Officer Association Foundation, 2008, p. 81)

The name of a reporting system can affect whether employees consider it an appropriate avenue for their ethical concern. When they see the word *hotline*, workers may assume that their concern needs to be urgent or a significant violation to warrant reporting. Over the past 20 years, there has been a marked increase in the number of companies that have switched from calling their telephone reporting systems hotlines to calling them helplines (Weaver, Treviño, & Cochran, 1999; Weber & Wasieleski, 2013). Other names that organizations use for telephone reporting systems include ethics advice line, share concerns, ethics connect, ethics line, and integrity line (Ethics & Compliance Officer Association Foundation, 2008).

Confidential, Neutral, and Independent

It is vitally important that employees can make inquiries that are confidential and receive advice from a neutral and independent source. When reporting is confidential, employee identities are protected and names are not revealed. Having the option to remain anonymous provides the workforce with a sense of trust in the company's ability to maintain confidentiality. Some companies assign a tracking number to anonymous reports so the employee can receive an update on his or her report or query (Riebl, 2004). United Technologies (2014) recommends that employees not use company computers for communications to their eDIALOG ethics advice and reporting program in order to protect confidentiality.

Neutral advice refers to clear and understandable guidance that does not advocate a specific party. In order for employees to receive independent advice, the telephone reporting system must operate separately from management. When implementing a reporting system, companies can adopt one of three models—in-house, outsourced, and hybrid—all of which influence workers' perceptions of independence (Riebl, 2004). In 1994, the majority of U.S. organizations managed a telephone reporting system with internal staff (Weaver et al., 1999). By 2010, 65% of the companies were using third party vendors for helplines or

hotlines, with only 26% of the organizations assigning their own employees to handle all calls (Weber & Wasieleski, 2013). The use of outside vendors guarantees employees the assurance of anonymity. Hybrid models share the duties for processing inquiries and reports between in-house staff and outside vendors, where inquiries seeking guidance on company-specific policies require internal staff expertise.

Despite company efforts to offer confidential reporting via a neutral and independent system, employees still struggle with using these methods to report misconduct. In the 2013 National Business Ethics Survey®, the Ethics Resource Center found that U.S. employees preferred to approach a supervisor regarding ethical concerns, with only 16% of those reporting misconduct using anonymous hotlines. In continental Europe, the use of anonymous reporting mechanisms is low, with one third of employees saying that their organization has an anonymous speak up mechanism (Basran, 2012). Due to French privacy laws, employees located in France have restrictions on matters that are eligible for anonymous reporting.

Employees of multinational companies tend to perceive that advice and reporting mechanisms are only for workers in the country where headquarters is located (Riebl, 2004). Call centers that provide translation services or have native language abilities can accommodate employees worldwide. Even with native language resources, a survey by the ECOA found that only 36% of the companies with international employees felt that employees outside of the home country were comfortable using the resources (Riebl, 2004). The feature, *Reputation Ruin: Olympus Hotline* brings attention to many of the barriers for reporting misconduct.

Reputation Risk: Olympus Hotline

Olympus Corporation is a Japanese manufacturer of endoscopic medical devices as well as cameras and other imaging devices, microscopes, and information and communications equipment. For the fiscal year ending in March 2011, Olympus reported sales of $10.6 billion. In the same year, Michael Woodford became CEO and discovered dubious accounting at Olympus. He shared his concerns with the board of directors and was subsequently fired. Because of Woodford's suspicions and dismissal, an independent special committee panel exposed hidden investment losses of 117.7 billion yen ($1.5 billion) dating back to the 1990s (Verschoor, 2012).

Woodford is the most visible whistle-blower in the company scandal, but he is not the only one to experience retaliation for speaking up. Masaharu Hamada, a salesperson for Olympus, alleged being demoted and harassed after making a report to the hotline in 2007. Hamada was concerned that his boss was poaching employees from a client, which would harm the client relationship and was contrary to ethical standards of the industry. Following his report, the hotline office informed Hamada's boss of the complaint, which then led to retaliation for reporting the unethical activity. According to the independent panel report, at least one employee reported an accounting problem involving fake vouchers to the hotline but withdrew the report when asked to provide his or her name (Osawa, 2012).

According to *The Wall Street Journal* investigation, Olympus launched a compliance hotline in 2005 following the enactment of the whistle-blower protection laws of 2004. The special committee found that employees attempting to make anonymous reports of misconduct to the compliance hotline were encouraged to disclose their identity or told the allegations would not be investigated. In Japan, a tradition of lifetime employment and a strict seniority

(continued)

Reputation Risk: Olympus Hotline *(continued)*

system dictates that employees show unbounded loyalty to their coworkers. Few reports made it to the hotline for fear of retaliation from coworkers. Designers of the hotline recommended that external parties handle employee inquiries to overcome fears of retaliation. The corporate auditor, Hideo Yamada, opposed having a third party manage the reporting mechanism, instead electing to manage the hotline with his staff. As a result, the special committee described the culture at Olympus as "a stuffy atmosphere that prevented people from speaking freely" (Osawa, 2012, para. 8).

Since the scandal, Olympus has suffered from a damaged reputation and a volatile stock price. Tsuyoshi Kikukawa, chairman and former CEO; Hisashi Mori, director and executive vice president; and Yamada resigned and were subsequently convicted in a Tokyo court for their roles in the cover-up of investment losses. The costs relating to the 13-year fraud was 700 million yen ($7 million) in fines, a 10 million pound (1.2 billion yen, $15.4 million) settlement to Woodford for unlawful dismissal and discrimination, 17 billion yen ($166.49 million) in lawsuit damages by 2014, and a pending lawsuit seeking 27.9 billion yen ($272 million) (Knight, 2014). In addition, Hamada won Japan's first whistle-blower case, and received 2 million yen ($20,000) in damages from Olympus (Kageyama, 2013).

Questions to Consider

1. Evaluate the Olympus reporting mechanism for confidential, neutral, and independent characteristics. What should Olympus do to improve ethics reporting in the organization?
2. How does the Japanese culture impede the effectiveness of an ethics reporting system?
3. What steps could Olympus take to demonstrate a commitment to ethics and compliance?

Receiving Reports

Regardless of the preferred method for providing guidance on ethics and compliance issues, employees expect a response that is timely, credible, and trusted. Therefore, supervisors need training on how to handle inquiries regarding potential violations of ethical standards. Active listening is critical, as employees may not be able to clearly articulate their ethical concerns. Some companies provide employees with a list of questions that helps organize their thoughts before filing a report. The ethics professionals who receive the reports can use checklists to gather sufficient information to determine the appropriate response and action. All inquiries need to be documented for tracking purposes without compromising confidentiality.

It is crucial that employees do not fear becoming the subject of the investigation when reporting a violation. However, they need to be aware that false accusations are subject to disciplinary action. *The Ethics and Compliance Handbook* provides a list of red flags that could indicate that the motive for reporting influences the accuracy of the claims, including if the employee: a) makes frequent allegations, b) is involved in a work or personal dispute with the subject of the report, or c) is facing disciplinary action or poor performance evaluation (Ethics & Compliance Officer Association Foundation, 2008). The process for receiving reports must prevent dismissing an allegation as false because of a perceived motive of the accuser. Determining the validity of the report is part of the investigation process.

Investigations

Investigation of an allegation of unethical or illegal behavior involves establishing exactly what happened and what the organization can learn about preventing future misconduct. No single investigative process can meet the needs of all organizations. A large organization with a dispersed workforce may require additional coordination among regional management. A small organization may have an accelerated process. Some allegations will move through an investigative process quickly, while others may require extensive resources and time to complete. The four steps to investigating a report of unethical or illegal activity (shown in Figure 9.4) are: 1) determine the nature of the allegation, 2) make a plan, 3) develop the facts, and 4) document the investigation.

Figure 9.4: Steps for investigating a report of unethical activity

The four steps to investigate a report of unethical or illegal activity are the same for large and small companies.

Source: Tracy Gonzalez-Padron, representation of material in Jones, E., O'Neill, K., & Winter, G. (2013). Conducting lawful and effective global investigations. Paper presented at the ECOA 21st Annual Ethics & Compliance Conference, Chicago.

In most companies, the ethics and compliance staff are responsible for investigating allegations. Small companies that do not have dedicated ethics professionals may rely on legal counsel or human resources to conduct investigations. The investigation process is triggered by the documentation of the allegation, which may originate from an external helpline, the ethics office, or a functional supervisor. The individual receiving the report must make an immediate assessment to determine if the alleged conduct endangers life or property and requires immediate attention. It is important that all points of reporting know when calling 911 or notifying security is necessary.

Determining the nature of the allegation includes identifying the scope and seriousness of the issue, which can establish who should be involved in the investigation. It should first be determined whether the ethics and compliance function should conduct the investigation. Some reports are handled more efficiently at a functional level, such as a production safety issue in which an employee is not following scheduled equipment checks. The person conducting the investigation should have skills that match the type of misconduct. Questions to ask during this stage in the process include:

- What specific misconduct or actions have been reported or alleged?
- Who is the source of the allegation, if known?
- Does the allegation seem to be a plausible and legitimate concern?
- What are the initial facts?
- Are there any inconsistencies in the initial facts?
- What evidence suggests that the misconduct did not occur?
- Are there any mitigating circumstances?
- How serious does the potential violation appear to be?
- Is the scope broad enough to enable the company to take appropriate remedial action, including determining the extent to which internal processes should be modified?
- Will the investigation findings likely be reported to third parties such as law enforcement or regulators (Jones, O'Neill, & Winter, 2013)?

The next step is to develop a plan that outlines the parameters to guide the investigation. The plan builds from the analysis in Step 1 to address the questions that must be answered by the investigation. Once the investigator has the information, he or she must determine what information is missing. A detailed plan should answer the following questions:

- "Who will be interviewed as witnesses and in what order?"
- What topics will be addressed in witness interviews?
- "Which documents will be examined?"
- Which documents will be shared with witnesses?
- "At what stage of the process will the subject(s) of the allegation be told what she or he is, or they are, being accused of?"
- "Beyond interviewees, who will be notified of the investigation?" (Ethics & Compliance Officer Association Foundation, 2008, p. 100)

Implementation of the investigation plan involves gathering the facts of the case through various methods. The first task is to identify and review the policies, procedures, regulations, and ethical codes that relate to the alleged misconduct. The second task is to assemble relevant documents such as personnel files, e-mails, security video, and business records. The

third task is to prepare questions for interviewing witnesses and schedule adequate time to meet with each witness. Investigators should explain to witnesses that they are only gathering information at this time and that witnesses should not discuss their interviews with coworkers. During the interview, active listening must be used to obtain a witness's full story. An approach to interviewing known as the funnel technique can be helpful, which begins with open-ended questions to encourage the witness to talk, prompting with questions to gather all information possible. Once the witness feels that all the facts have been conveyed, he or she should be asked for specific details to clarify the story. The interview should end with the question "is there anything else?" to confirm that all information has been exhausted.

The final step is to document the investigation to deliver to management. The facts should be stated clearly, and supported by documentation and interview notes. Investigators should avoid making conclusions or inserting personal opinions. They must consult with management to determine if sufficient evidence is available to reach a conclusion and determine if disciplinary action will occur. Once the document step is completed, the investigation can be closed. Disclosing the results of an investigation demonstrates a commitment to enforce ethical standards. At a minimum, it is important to inform the person who made the initial report. If confidentiality can be maintained, the results may be disclosed to the supervisor of the subject of the investigation. The results of ethics investigations may be reported to the board of directors. Another way of disclosing the results of ethics investigations is to present them as learning cases during training, even if disguising the subjects to maintain confidentiality.

9.5 Monitoring and Assessing Progress

The FSGO require a regular review of a company's ethics and compliance program to "ensure that the organization's compliance and ethics program is followed, including monitoring and auditing to detect criminal conduct; and to evaluate periodically the effectiveness of the organization's compliance and ethics program" (United States Sentencing Commission, 2013, p. 498). After the Olympus scandal, Japanese companies are feeling pressure to instill a culture of ethics and compliance within their organizations (McNulty, 2011; Verschoor, 2012).

Companies should not wait for a crisis to assess their ethics and compliance program. Corporate controllers and the board of directors want to see a return on their investment in ethics training, communication, investigations, and program management. Regulators want companies to monitor for compliance to ensure that policies and procedures are followed. A 2013 survey found that "81% of organizations can demonstrate the effectiveness of their code of conduct," 77% assess training programs positively, and 72% can show consistent use of policies and procedures (SAI Global, & Baker & McKenzie, 2013, p. 12). However, the true impact of the ethics and compliance program is measured by how well the efforts modify employee awareness of ethical issues and policies, attitudes toward ethics and compliance, and behaviors.

Measuring Ethical Performance

Measuring program effectiveness entails asking, "What has the program achieved, and where are opportunities for improvement?" Periodic program evaluations provide a better

understanding of employee knowledge and perceptions of the ethics and compliance culture. Insights gained can inform senior management of compliance trends that may require program adjustments. There are two approaches for measuring a program's effectiveness: measuring activity and measuring outcomes. Table 9.8 lists common metrics for measuring ethics and compliance programs. Many companies rely on activity metrics, as they are easier to track, rather than measuring behaviors. These metrics focus on the number of transactions with each program element, often relating to the number of people that the program touches. Surveys of ethics officers have found that over half of the companies rely on audit results, training completion rates, and number of hotline/helpline calls (PWC, 2014; SAI Global, & Baker & McKenzie, 2013). Outcome metrics seek to quantify the impact that the program has on changing behaviors, focusing on reducing misconduct.

Table 9.8: Common metrics for measuring ethics and compliance programs

Ethics and Compliance Program Component	Measuring Activity	Measuring Outcomes
Overall ethical culture		Employee questionnaire and culture surveys Exit interviews Supplier surveys Customer surveys Web content Press coverage
Code of conduct	Number of code of conduct certifications	Number and type of substantiated violations of code of conduct
Training	Number of training courses completed Percent participation	Employee surveys Number and type of ethical violations
Advice and reporting mechanisms	Number of hotline/helpline calls Number of reports of misconduct	Anonymous vs. identified callers (percentage of employees fearing retaliation) Number of reports leading to investigation
Investigations	Number of completed investigations	Number of disciplinary actions Number of revised policies, procedures, and program elements
Monitoring and auditing	Number of audits completed	Benchmarking to best practices Number of issues addressed

Sources: PWC, 2014; SAI Global & Baker & McKenzie, 2013.

There are multiple methods for measuring the impact of the ethics and compliance program. Employee surveys can assess awareness of the program, relevant policies and procedures, and confidence in acting ethically. Similar surveys of suppliers can uncover risks of noncompliance

with company standards. Surveys, however, can be expensive, and employees may not trust the company to maintain confidentiality (Edwards, 2010). An underutilized method to gain insight into the ethical culture of the organization is exit interviews. Only one third of companies use exit interview information and miss an opportunity to uncover issues that prompt employees to leave the company (PWC, 2014; SAI Global, & Baker & McKenzie, 2013). Another source for perceptions of a company's ethics are expressions of company stakeholders on social media. PricewaterhouseCoopers recommends that companies consider emerging data-driven measures such as analyzing the Web content of customers, employees, investors, and other stakeholders:

> Social expressions regarding customer satisfaction, perceptions of fair dealing and integrity and/or a sense of trust, pride or loyalty by employees, customers and investors can provide insight into elements relevant to the overall objectives of an ethics and compliance program. (PWC, 2014, p. 20)

Evaluating perceptions of all stakeholders, not just employees, can provide valuable insights on how the ethics program influences behaviors. Yet less than 20% of companies monitor press and public statements as a measurement of public trust in the company's ethics (PWC, 2014). For a comprehensive assessment of an organization's ethics and compliance program, companies should seek input from all stakeholders, including top management and the board of directors.

Monitoring and Auditing the Ethics Program

Monitoring and auditing the ethics and compliance program differs from assessment. Whereas assessment focuses on the program's achievements and areas for improvement, the functions of monitoring and auditing focus on whether the process is effective. Monitoring refers to "a system of activities that provide an organization with a self-appraisal of its control system's performance" (Hedley, & Ben-Chorin, 2011, p. 69). Monitoring an ethics program involves setting controls for compliance and early identification of noncompliance. Examples of ongoing monitoring activities include reviewing and approving travel expenses, utilizing a quality assurance checklist, listening to customer service calls, and surveying company e-mail. The degree of monitoring for compliance varies by organization, but excessive controls can give employees the impression that the company does not trust them, reducing their commitment to the organization.

Auditing involves a periodic review of company compliance with ethical and legal standards to determine whether all the elements of an effective ethics and compliance exist. For public companies, the audit committee of the board of directors is responsible for overseeing the ethics and compliance program. In the United States, the Sarbanes-Oxley Act of 2002 requires the audit committee to select external auditors and to establish reporting mechanisms to receive and act on anonymous concerns regarding accounting, internal control, and auditing (Felo & Solieri, 2003). The types of questions that an auditor might ask include:

- Does the company have all of the necessary standards and procedures in place, given the applicable legal and regulatory framework?
- Has the company appropriately distributed those written standards and procedures, including its code of conduct?

- Has the company provided ongoing training programs to educate its employees, officers, and (where appropriate) agents and contractors?
- Has the company devoted adequate resources to the operations of its compliance program, and does the compliance officer have sufficient authority within the organization?
- Are employees actually following the company program?
- Have there been any internal investigations of alleged noncompliance with the program? If so, what were the results?
- If internal investigations have taken place, were the proper procedures for investigations followed?
- Were remedial actions taken upon discovery of wrongdoing? (Gordon, 2013, pp. 58–59)

Through formal audits, ongoing monitoring efforts, and periodic evaluations of the ethics and compliance program, a company can continuously improve the ethical environment of the organization. Sharing best practices allows all organizations to learn from the successes and failures of others. No two ethics and compliance programs are identical. The size, industry, location, and company history can influence the implementation of each component of the ethics program.

Summary & Resources

Chapter Summary

An ethics and compliance program should be developed to meet the needs of the organization. Implementing an effective organizational ethics program consists of five steps. First, designers must create a structure to manage and oversee the ethics and compliance program within an organization. An ethics officer is a steward of this program within the organization, and should be given sufficient authority and resources to encourage compliance with legal and ethical standards.

Second, the ethics and compliance program must communicate clear standards of acceptable behavior that address the organization's risks, typically in a code of conduct. The individuals designing the code should tailor it to reflect the organization's unique culture, risks, and history. Content may vary due to the regulatory environment of the industry or geographical region.

Third, the organization needs to educate the workforce via a training program that resonates with its audience and encourages ethical behavior as a norm. Educating the workforce involves ongoing and interactive training, regular communications, and follow-up support by management. The objective of ethics training is to help employees make decisions that are consistent with company values. Organizations should consider a wide array of training and communication methods, including classroom and online learning.

Fourth, procedures should be put in place to respond to reported misconduct through a transparent and fair investigation process. A system that employees are comfortable using requires providing for anonymous inquiries, protecting confidentiality, preventing retaliation, and

disclosing investigation of reports where possible. Multiple methods should be offered for employees to seek advice on ethical concerns and report suspicious activity. An investigation of an allegation of unethical or illegal behavior involves establishing exactly what happened and what the organization can do to prevent future misconduct.

The final step in developing an ethics program involves monitoring and assessing program effectiveness to identify areas for improvement. Monitoring of the ethics program involves setting controls for compliance and early identification of noncompliance. The two approaches used to determine the effectiveness of an ethics and compliance program are measuring activity and measuring outcomes. Activity metrics focus on the number of transactions with each program element, often relating to the number of people that the program touches. Outcome metrics seek to quantify the impact that the program has on changing behaviors, focusing on reducing misconduct. The auditing function involves a periodic review of company compliance with ethical and legal standards to determine whether all the elements of an effective ethics and compliance exist.

Key Terms

ethics officer A steward of the ethics and compliance program within an organization.

rules-based code An enumerated list of issue areas along with the company standards applicable to that issue area.

values-based code A code of conduct connecting company values with employee behavior.

Critical Thinking and Discussion Questions

1. How could a company of 75 employees implement an ethics program with limited resources?
2. Choose an organization that you work for or are interested in working for. Locate its code of conduct (or code of ethics/code of business standards). Score the code of conduct using Ethisphere Institute's benchmarking criteria. How does this organization compare to similar firms in the industry? Write a code of conduct for a small fictitious business.
3. How can a company determine if ethical training is effective other than showing completion of online courses or attendance?
4. Should reporting of observed misconduct be mandatory? If so, how could the policy be communicated and enforced? What are the unintended consequences of potential disciplinary action if an employee does not speak up?
5. Why would questions on the ethical culture of an organization be valuable during an exit interview? What questions would you ask?

Suggested Resources

Cisco Code of Business Conduct

http://www.cisco.com/assets/about/ethics/cobc/ebook/page/04-i-am-ethical.html

Ethics & Compliance Officer Association

http://www.theecoa.org

Ethics Resource Center

http://www.ethics.org

Ethisphere Institute

http://www.ethisphere.com

Federal Sentencing Guidelines

http://www.ussc.gov/guidelines-manual/2014/2014-ussc-guidelines-manual