

**INSIDE THIS PUBLICATION:**

Fallout at Kobe Steel leads to governance overhaul

Q&A: Honor, culture, and compliance

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SEC's Clayton digs into the basics of company culture

Thwarting & responding to harassment must involve both HR and compliance

Keeping your harassment policies fresh and inspiring

How board members can prepare for #MeToo moment

# Ridding toxins from Corporate culture

## About us

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## Fallout at Kobe Steel leads to governance overhaul

Japan's embattled metal products manufacturer launches a slate of efforts to address its systemic issues of dishonesty and non-compliance. **Jaclyn Jaeger** has more.

**K**obe Steel's product quality scandal is far more troubling and widespread than the company originally let on.

In October 2017, Kobe Steel admitted that some employees had falsified inspection data concerning products and parts sold to its top customers, including many automotive and aerospace companies—Ford, GM, Mitsubishi, Toyota, Nissan, Honda, Mazda, Boeing, and Airbus, to name a few. As far back as 2007, Kobe Steel falsified inspection data as if it met customer specifications, or fabricated test data for unmeasured products as if they had been measured.

Such falsified data initially concerned Kobe Steel's copper and aluminum products, but later engulfed its steel products, as well. From a broader risk and compliance standpoint, Kobe Steel's actions bring into question the safety and performance of all products with Kobe Steel components, initially believed to have affected 525 global companies.

Once the cover-up was revealed by quality self-inspections on the group's shipments from September 2016 through August 2017, Kobe Steel established an independent investigation committee (IIC), chaired by Gan Matsui, former superintending prosecutor of

the Fukuoka High Public Prosecutors' Office. That investigation found that some 163 other customers—not originally accounted for—were affected by the misconduct.

The investigation also found that the misconduct took place not only within Kobe Steel's Aluminum & Copper Business, but also at other divisions and group companies. "We take it very seriously the fact that the misconduct took place at many locations within the Kobe Steel Group," the company stated.

In its Aluminum & Copper Business, two executives were aware of misconduct taking place, but failed to report it to their superior, the then-head of that unit. "These executive officers did not themselves engage in the misconduct," Kobe Steel stated.

Another executive who became aware of the misconduct in April 2017 did no more than decide, as a basic policy, "to gradually eliminate the production and shipment of non-conforming products and only instructed his staff to improve manufacturing processes and stop accepting part of the orders," according to the company.

Of former executive officers, two were found to have been directly involved in the misconduct before taking office as an executive officer. Even after becoming executive officers, they neither reported the misconduct to the board nor took any actions to have the misconduct halted or corrected.

The company's troubles have only just begun: Kobe Steel CEO Hiroya Kawasaki has resigned, effective April 1. Civil complaints against the company and its subsidiaries are springing up like weeds. Kobe Steel USA, a U.S. subsidiary of Kobe Steel, must now answer to the U.S. Department of Justice, which has requested the production of documents related to non-conforming products sold by the company, subjecting the company to additional legal and financial risk.

And, even though Kobe Steel said as of Feb. 1 that it has not confirmed any cases requiring the immediate suspension of use, or immediate recall of, non-conforming products, Japanese authorities revoked its Japan Industrial Standards (JIS) seal. The company also lost ISO 9001 quality certification for

all its major plants.

The number of public apologies the company has made at this point is one for the record books, but even more damning is that this is not the first time Kobe Steel has been caught up in a scandal. To cite just a few examples, Kobe Steel admitted in 2006 to falsifying soot emissions data from blast furnaces at two of its factories and further was found to have exceeded established limits for ground and water pollution that same year. It also failed to report income to tax authorities in 2008, 2011, and 2013.

Collectively, these past and present issues point to systemic problems within the company's overall culture. In a statement, Kobe Steel admitted as much: "Considering the facts relating to the misconduct that were found by the group's quality self-inspections and the IIC's investigation, together with multiple compliance incidents in which the company was involved in the past, we must acknowledge that the company is facing deep-seated issues concerning its organizational culture and awareness of its officers and employees, as well as its compliance systems."

In the process of investigating what caused the misconduct, Kobe Steel said it realized the need to perform a complete overhaul concerning its governance, executive team, and operational processes relating to its quality assurance. It further acknowledged other deep-seated issues that require consideration, including the desirable state of the board, division system, methods of personnel allocation and development, and formulation of management plans.

On March 6, in response to the IIC's findings, Kobe Steel published a report that consisted of an analysis of the causes of the misconduct based on the findings of the investigation, along with the outcomes of discussions at the quality governance restructuring deliberation committee and its quality problem investigation committee and reporting and measures to prevent a recurrence.

#### Causes of misconduct

Considering the results of the IIC's investigation and its own internal examination, Kobe Steel attributed

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"We take it very seriously the fact that the misconduct took place at many locations within the Kobe Steel Group."

Kobe Steel Group



the causes of the misconduct to the following three ethics, compliance, and internal audit failures:

**Management style that overemphasized profitability and the inadequate corporate governance.** “To align with the head office’s emphasis on profitability, each business division felt the need to adopt an attitude that led them to accept purchase orders without reviewing their production capacities,” Kobe Steel stated. Further, it acknowledged, a large-scale transfer of authority from the head office to individual divisions weakened the ability to assume centralized control over the entire Kobe Steel Group.

In turn, the head office could not manage a compliance program that ensured effective quality assurance. Several factors related to corporate governance failures prevented misconduct from being detected at an early stage. For example, even pertaining to past misconduct, “management did not take drastic enough measures to address such issues. Internal audits at each division, moreover, were not sufficiently extensive.”

**Imbalanced operation of plants that resulted in the reduced awareness of quality compliance among employees.** The following factors created the motive for engaging in misconduct:

- » The manufacturing of products based on customer specifications not matched to process capability;
- » A culture that prioritized winning purchase orders and meeting delivery deadlines over ensuring quality;
- » An insular organization where personnel were rarely exchanged or transferred between different divisions;
- » The absence of appropriate quality-related education/training and disciplinary actions;
- » A false assumption that products falling short of customer specifications could be shipped to the extent that they had no safety issues; and
- » The employee’s quality compliance awareness dulled by a combination of the situations above.

**Insufficient quality control procedures that allowed the misconduct to take place.** According to Kobe Steel, the misconduct was provoked by certain issues relating to quality management processes, such as inspection processes enabling data falsification or fabrication, isolated and rigid operational systems, and the establishment of internal standards to which it was impossible to conform.

At Kobe Steel’s board of directors meeting held on March 5, Hiroya Kawasaki submitted a formal request to resign from his position as CEO, president, chairman, and representative director, effective April 1. Consequently, the board at a meeting held March 9 appointed Mitsugu Yamaguchi as the new CEO and president.

Also on March 5, Kobe Steel announced the resignation of Executive Vice President Akira Kaneko, as well as the dismissal of two other executive officers—Takumi Fujii and Nobuaki Isono, managing executive officers in the Aluminum & Copper Business—and an 80 percent reduction in remuneration for four months for Seiji Hirata, assistant to the head of the Aluminum & Copper Business.

Moreover, all directors (excluding independent outside directors and members of the audit and supervisory committee) and all other executive officers will have 10 to 50 percent of their basic remuneration reduced for a period of one to four months.

“These resolutions reflect our company’s taking to heart the substantial troubles we have caused our customers, suppliers, shareholders, and many other people in connection with misconduct that took place within the Kobe Steel Group,” the company stated.

Kobe Steel announced its intent to make other governance changes as well, including ensuring that at least one-third of its board members are independent outside directors. Additionally, the new board chairman will also be an independent outside director. “At the same time, we will abolish the Office of Executive Chairman and create a nominating and compensation committee as a voluntary advisory body to the board,” Kobe Steel stated.

Its current structure under which all division heads are directors will be no longer. Instead, one director position will be assigned to each of the following units: the materials business; the machinery business; and the electric power business. Kobe Steel said it will also appoint a director to oversee compliance and another director to oversee quality management.

Other changes announced by Kobe Steel include:

- » **Appointment of a compliance director and establishment of a new compliance management department.** To improve its corporate governance further, the company will appoint a director with responsibility for overseeing compliance and risk management activities. Additionally, Kobe Steel’s compliance management section of the legal department and the risk management function

of the planning and development department (which manages company-wide risks) will be combined into a single compliance management department. This new department will oversee risk management activities and engage in activities to increase awareness for managing risks across business divisions.

- » **Risk management revisited.** Kobe Steel acknowledged that in the past its risk management activities “lacked substance, because over time we did not improve our activities, and even though we were supposed to review our risk management activities by discussing any issues when we held meetings for allocating budgets, we allocated little time to do so.” Moreover, it admitted that management was not provided with substantive information, and further that it failed to develop controls to detect risks in its daily operations.

Through the test of time, Kobe Steel has promised to change its risk management ways. Furthermore, it will evaluate the effectiveness of its risk management activities through a compliance awareness survey.

In the past, risk management activities were dependent on self-governance of each Group company, contributing to its quality problems. Moving forward, Kobe Steel said each of its Group companies will be required to establish its own code of conduct in accordance with Group Practice.

- » **New quality management department.** On Jan. 1, 2018, Kobe Steel established a Quality Management Department, with the goal of unifying the divisions’ Quality Assurance Departments, where decisions to ship products are made and audits related to quality are conducted. This department engages in company-wide measures related to strengthening the quality assurance system by collecting information—such as quality management indicators and incidents—related to quality assurance for each business division, determining problems, and reporting such information to and sharing it with the senior management periodically.

Furthermore, Kobe Steel established a Quality Assurance Department directly under each business division. This includes its Machinery Business; Electric Power Business; Technology Administration Department of the Iron & Steel Business; and under the Quality Management Department of the Welding Business.

- » **Improved quality control oversight.** Acknowledg-

ing its long history of quality problems, Kobe Steel said it will establish an independent quality supervision committee consisting of external experts “as a temporary measure to keep our effort to regularly monitor the status of correcting the misconduct and implementing remedial measures, as well as to provide a platform to discuss appropriate measures to overcome various quality compliance problems that the group may face in the future.”

In addition to issuing new “KOBELCO Quality Guidelines,” a quality assurance representative will be appointed to each head office of the foreign Group companies in each region by the end of fiscal year 2018. “These representatives and the Quality Management Department of the Head Offices will work together to review the audits of quality control and quality assurance conducted by our Group companies, as well as support them to offer education and training of quality control and quality assurance,” Kobe Steel stated. “That way, we will be able to promptly detect any problems which our Group companies experience, and we can strengthen our functions for ensuring and monitoring quality.”

### Similar investigations

Kobe Steel’s troubles seemed to have opened a Pandora’s box of other product quality scandals that have dogged several Japanese companies. In October 2017, an internal investigation revealed that certain subsidiaries of Mitsubishi Materials falsified data concerning products used in a wide range of sectors, including the automotive and aerospace industries, believed to have affected more than 300 companies. As the investigation continues, Mitsubishi Materials’ troubles are shaping up to be just as widespread and systemic as those of Kobe Steel.

In another example, Toray Industries, one of Japan’s largest producer of chemicals and advanced materials, admitted in November 2017 that one of its subsidiaries inappropriately overwrote data provided in inspection reports to customers. And in a fourth scandal, Japanese chemical company Ube Industries similarly discovered improprieties in quality checks for certain products at one of its factories.

Based on these recent revelations, risk and compliance officers should be on high alert and do their due diligence when doing business with Japanese companies. Likewise, companies under investigation for falsifying data should take a page from the hard-learned lessons of Kobe Steel. ■

# Q&A: Honor, culture, and compliance

The dean of Washington & Lee's school of commerce, economics, and politics weighs in on what role personal honor and integrity can play in the world of today's chief compliance officers.

**Bill Coffin** has more.

Washington & Lee University is unique among higher education institutions for its honor system. A single-strike policy overseen by the student body rather than by the school administration, the W&L Honor system is as simple as it is strict: No lying, cheating, or stealing. All papers and tests are signed with the pledge: On my honor, I have neither given nor received any unacknowledged aid on this [test, paper, project, etc.]. Those who break this covenant face immediate expulsion. Those who contest it may seek an honor trial before their peers. There is at least one honor violation every year, usually by freshmen who don't think the Honor System is as serious as it says it is. There is an honor trial on average once every four years or so. But the end result is a campus where computer labs are unlocked, students can schedule their own final exams, and where personal integrity takes on a deep meaning.

Compliance Week spoke with Bob Straughan, Crawford Family dean of the Williams School and professor of Business Administration at Washington & Lee. As the head of the "C-School," and having worked at the university since 2000, what were his thoughts on how something like the honor system—implemented shortly after the Civil War—can still relate to contemporary compliance and ethics officers? The answer, as you might expect, comes down to culture.

**What did you think when you first encountered the W&L honor system? What do you think is its greatest strength in a world where words like "honor" seem a bit antiquated?**

For those who have worked in industry before, the response to the honor system ranges from healthy skepticism to complete disbelief. It's so different from what all of us have experienced in other careers. When new faculty come in—and I experienced this 18 years ago—people tell you about it, but it takes a few months, if not a full semester, before you really believe it.

I can think to my days as a student, where I knew cheating was going on. I won't say it was common, but it was not unusual, either. I can also think about my early career teaching elsewhere, and how I had to spend a lot of time anticipating how people might cheat and tactics to counteract. It was not the best use of my time.

In terms of the honor system's benefits, it's about finding ourselves in a culture where there is an assumption of trust, and being able to reclaim the time spent watching over exams or screening papers through plagiarism databases, and focus on more valuable things.

I think this is an unusual aspect of the school's culture. Alumni ask about it: Are the students still taking care of the honor system? They place so much value on this thing which creates a presumption of trust and is entirely in the hands of the students. It is not perfect. There are honor violations. But if we want to reduce this to a cost-benefit analysis, it is clearly in favor of trusting the honor system.

I think it is important that it is framed in terms of honor. It is not a policy on cheating or dishonesty. It's framed in terms of an aspirational construct, and in the positive.

**Do you think there is an inherently higher temptation to cut corners or cheat in the world of business—specifically financial services—than in other professions?**



I am not sure that dishonesty is more common there. We have extensive rules and regulations in place and close governance of the issues to expose them in the financial sector more often than we might see in other areas. There are checks and balances in the accounting profession, and there have been a lot of scandals throughout the year focused on financial improprieties, in large part because people are watching there in ways they don't watch in other areas. If we imposed the same kinds of rules and regulations on HR and IT, maybe we would see things there that we would like to assume don't exist, but perhaps do.

I also sense that there may be a general issue at work. I am a product of business education in the 1970s and 1980s where it was all about maximizing shareholder return. That's what we were taught. The current generation and past generations of senior managers and analysts came through that school of thought. It feels normal to think in those ways and to make decisions to optimize a certain set of outcomes. In the current generation of students, however, there is a slightly different understanding of the mandate for business. There is a lot more discussion of parallel obligations, work-life balance, consumer welfare, and social impact while focusing on profit as well. That is a paradigm shift along the way that makes us look critically at the mindset of the 50- and 60-year-old business people that maybe we didn't look at 20 years ago.

**In the news, we see companies get in trouble, essentially, for lying, cheating, and stealing. In these cases, there is always an element of toxic culture. What is the role of culture and a business' ability to be honest with itself, its stakeholders, and its regulatory authorities?**

Culture does matter. When you enter an organization, it either conforms to your view or you conform to its view, or you get out.

But culture also matters at different levels. I have worked a lot in northern Europe. Their understanding of business as a component of a contemporary society is a little different than what we see in the

U.S. Part of that is macro culture. Here, we're focused on the individual, and maximizing "my" benefit. In other cultures, there is more priority on the benefits to the group, or the collective. That leads to a different set of criteria one might try to optimize.

A lot of firms in the U.S. are beginning to think about social impact and responsibility, but it is still secondary to the traditional focus of maximizing the bottom line. We're coming around on that, but I believe we've still got a way to go.

Sometimes, making a change like this requires a really disruptive moment, such as a big fine, or some negative publicity, to force an organization to step back and rethink things. But there are also some interesting trends to consider as larger companies grapple with this question. I can point to examples where large, mostly U.S.-based companies acquired smaller firms with a culture of social impact. I think part of the reason why they do that is it is the quickest way to import culture. As you might acquire a firm with a market penetration, you might also consider acquiring a firm with a management team where this kind of culture is already second nature.

**A lot of compliance officers are shifting their focus from transactional efforts (making sure certain rules are followed and documenting it) to strategic efforts (making sure the right culture is in place). Why do you think it's harder for some companies to embrace what you might consider at W&L to be an "honorable culture"?**

Some managers see the business case and social impact case as competing with each other. To maximize bottom-line profit, they may have to make sacrifices in HR policies or environmental impact, or the manner in which they interact with customers. Those firms, if they are doing anything formal with CSR [corporate social responsibility], they are probably at the 1.0 stage. They are compliance-driven, and probably focused on reducing risk in traditional ways.

The firms that accept the overlap in the Venn diagram between the business and the social case seek managers with expertise in finding that overlap so

they are trading one set of criteria for another. They look at the social impact as an opportunity rather than as a cost. They see these strategies as integrated and cease to see them as competing agendas.

There is growing evidence that focus on diversity issues as a socially responsible firm, and managers that can think in integrated manners are yielding higher market returns. In traditional ways, the market seems to be rewarding this in ways it didn't 15-20 years ago.

**Can you really legislate honesty and integrity? Can people really behave their best when spurred on by the threat of punishment?**

If someone is prone to cut corners, if they are different between doing the right thing and doing the easy thing, then those penalties matter. At some level, you find a threshold where you don't want to go to jail or have your career destroyed because you led your company into a situation that has a high level of risk.

But if the manager thinks in terms of integrated, ethical behavior, honor, and a moral mandate for businesses big and small, then you don't have to pay as much attention to the compliance guidelines because it's inherent to what you're doing. You're not even running up against that boundary.

I am sure in-house counsel and auditors demand it, but it's not a hard thing. It's not hard to cheat at W&L if you want to do it. And for those inclined to do that, say a freshman, there is a severe penalty, because the honor system is a single-sanction initiative. Maybe in the moment of transition to the culture here one might be tempted, look at that penalty, and decide it's not worth it. But I do believe some students come here—and others evolve to this mindset—where they are not even tempted. It's not in their makeup anymore. That is an indication that you have adopted the culture of this place in a positive way. If you go to work in a firm that thinks differently and presses to cut corners to make easy choices, that will feel uncomfortable to you.

I could point to personal experiences in other moments, when I have worked for other organizations,

and things didn't feel right. It made me ask myself, how do I personally reconcile that? Will I do what they ask me to do and rationalize it, or is this severe enough to look at other opportunities?

A bit of advice I give to students as they think about their careers outside of W&L, is to do your due diligence on these issues. Particularly for young graduates, they often fall into the trap of thinking, "I have to sell them on my capabilities." But you're also evaluating that employer. If you get a sense that the mindset of the firm is that of a bad firm, that is useful to know. But if you don't bother to look for the information and gauge if their philosophy matches your own, then you have missed an opportunity and may find yourself in an uncomfortable position down the road, when you could have made a more informed choice during your interview.

**In compliance, we speak often about establishing a "speak-up culture," but this is much more easily said than done. What advice do you have for graduates about to enter the business world who might encounter an opportunity to speak up, but fear it might hurt their career?**

That is where culture needs to translate into a process in a way that is transparent and empowers those persons who might otherwise feel that they lack the ability to speak up.

Have anonymous reporting mechanisms. Have mentoring programs where more senior colleagues from different parts of the company can act as a sounding board for more junior colleagues and even take the responsibility to carry complaints forward.

It does start at the top. If senior management is messaging this kind of approach as a strategic advantage of the firm—specifically in terms of recruiting the best folks and creating an environment where they want to come to work every day—and there arise examples of that reality being challenged, and those issues get attention, then it's easier for the organization to say, "We've got your back. We want to hear this." Sometimes, the best criticism we can receive is the hardest to hear, initially. ■

# Preventing sexual misconduct at work starts with culture

Allegations of sexual misconduct that have surfaced in recent months underscore how important it is to reevaluate how to address sexual harassment in the workplace. **Jaclyn Jaeger** has more.

**A**lthough attention has focused heavily on individuals in the entertainment and media industries, of late—starting with the downfall of Hollywood mogul Harvey Weinstein—the lessons the sexual harassment allegations impart apply to every company across every industry.

For companies learning to operate in this new normal, many ethics and compliance teams are starting to reevaluate how to address sexual harassment in the workplace, including whether they need to revise their anti-harassment policies, procedures, and training.

For all other prudent ethics and compliance officers, senior leaders, and board members looking to avoid a sexual harassment PR-crisis, consider carefully the following preventative measures:

**Pre-screen employees before making any significant appointments, particularly of senior executives and board members.** “There is a rich amount of material in the public domain,” Daniel Nardello, founder of investigations firm Nardello & Co., said during the Webinar, sponsored by law firm Morrison Foerster, addressing workplace misconduct issues. Examples of materials that should be extensively reviewed include past criminal records, social media communications, and any previous litigation filed against the individual, Nardello said.

**Do not underestimate the power of training.**

Conversations that cross the line between harassment and discrimination should not be allowed, but it's on employers to help employees navigate through these difficult conversations: Have employees been educated about the difference between respectful and disrespectful conversations? Do they understand what behavior is allowed and not allowed?

Anti-harassment training should be conducted at least every other year. And sign-in sheets should be kept as documentation to show not only that anti-harassment training has been provided, but also who has received that training, said Janie Schulman, a Morrison Foerster partner.

According to the findings of a new study, provided exclusively to Compliance Week from Neighborhood Watch for Corporations and based on an online survey of 400 U.S.-based employees who personally experienced sexual harassment on the job, 35 percent of respondents said they were not aware of employer-provided training. Twenty-six percent said they either had no option available to report sexual harassment or were not aware of how to report it.

**Ensure that communication channels for employees to report concerns are both available and effective.** A vital aspect of addressing anti-harass-

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“What you’re seeing now is that people are feeling much more emboldened to come forward without the fear of retaliation.”

Carrie Cohen, Partner, Morrison Foerster

ment issues in the workplace is ensuring that employees are aware of and have readily available and effective channels to report incidents. Today more than ever before, social media channels are providing a voice and a support network to victims of sexual harassment. “What you’re seeing now is that people are feeling much more emboldened to come forward without the fear of retaliation,” said Morrison Foerster partner Carrie Cohen.

The bottom line is that employees no longer need to rely on their employers to get issues resolved.

In fact, the Neighborhood Watch for Corporations survey indicated that employees today are far more likely to report an incident of sexual harassment using a guided third-party app in which users have the choice to remain anonymous than they are to report an incident of sexual harassment to a hotline or directly to a manager.

The average employee has a multitude of reporting channels with which to report incidents, from hotlines to Web forms or directly to a manager or

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“For every company—public and private—issues of culture, gender equality, discrimination and harassment are now rightfully coming to the attention of company boards.”

Sukhinder Singh Cassidy, Founder, theBoardlist

supervisor, and any one of these reporting channels could serve as a deterrent to reporting misconduct—if an employee has concerns about anonymity, for example. “This research confirms that employees feel underserved by the existing, increasingly outdated mix of hotlines, forms, and departmental e-mails,” says Neighborhood Watch for Corporations CEO Scott LaVictor.

“The good news for those who believe we can and

must do more to improve reporting methods is that we now have available the ability to provide employees an impersonal reporting channel that is more accessible, meaningful, and effective,” LaVictor adds. Neighborhood Watch for Corporations, for example, offers a machine intelligence solution that mimics an expert interview regarding workplace concerns via a platform that combines a mobile app, desktop app, and telephone hotline that enable anonymous, two-way communication.

**Investigate allegations promptly.** Keep in mind, information that triggers an investigation can come from anywhere, including allegations made in the media or through other unconventional reporting methods like social media. “It is important to air on the side of caution and look at these as credible allegations,” said Morrison Foerster partner Josh Hill.

An internal investigation should be conducted as promptly as possible. Determine whether to bring in outside help—forensic accountants or a reputable outside investigator, for example—and ensure that all appropriate witnesses are interviewed and that all relevant documents are reviewed and maintained.

When determining the scope of the investigation, consider the nature and gravity of the allegations; the source of the allegations; the circumstances under which allegations are received; and whether you’re able to corroborate the initial allegations. “Flexibility is key,” Hill said. “The scope that is set initially may not be the scope of the investigation as you continue.”

**Hold people accountable and monitor behavior.** Have a system in place in which supervisors and management understand and know how to handle different types of accusations. For example, what is the company’s policy for handling a he-said-she-said scenario that doesn’t necessarily amount to illegal misconduct but that may make an employee feel uncomfortable—a dirty joke, an inappropriate comment, a playful tap on the rear?

“The bottom line is that an investigation isn’t always going to yield a clear answer,” Schulman said. In these circumstances, employees should be

refreshed on the company's anti-harassment policy, and the employee coming forward with the allegations should be reminded of his or her anti-retaliation rights.

Important it is to keep in mind that the accused also has rights, Schulman added. Be careful that the investigation doesn't become a witch hunt, and that the employee isn't fired without substantiated allegations, because that could backfire on the company by turning into a wrongful termination claim, she said.

**Have “the talk.”** As uncomfortable of a conversation as it can be for everybody, sex needs to be addressed in the workplace. A survey conducted last year by theBoardlist found that 77 percent of 400 board members at public and private companies had not discussed accusations of sexually inappropriate behavior and/or sexism in the workplace. Moreover, 88 percent said they had not implemented a plan of action following revelations in the media, and 83 percent said they had not re-evaluated the company's risks regarding sexual harassment or sexist behavior at the workplace.

Common reasons cited in theBoardlist survey for not having discussed issues of sexually inappropriate behavior and/or sexism in the workplace included a perception that it was “not an issue,” “not a focus area,” or “not a concern for the company.” Other reasons included that the issue “just hasn't come up;” “board members are men;” or it wouldn't be “well-received.” Each of these reasons underscore the need for more discussions on anti-harassment at the board and senior-management level.

“For every company—public and private—issues of culture, gender equality, discrimination and harassment are now rightfully coming to the attention of company boards,” theBoardlist founder Sukhinder Singh Cassidy said. “Addressing these issues needs to become a standard practice, not an afterthought.”

**Learn from past experiences.** Prudent ethics and compliance officers should look twice at previously addressed harassment allegations. Learning from the past will help shape an ethical future. ■

## The law: employer's duty to prevent harassment

Morrison Foerster advises firms on how to prevent workplace harassment.

- » Adopt and disseminate anti-harassment policy
- » Establish employee-friendly reporting procedure
- » Monitor employee behavior
- » Conduct periodic training
- » Take all reports of harassment seriously
- » Investigate promptly and effectively
- » Take appropriate remedial action based on investigation
- » Protect against retaliation

### Good internal investigations:

- » Help identify and stop unwanted behavior
- » Comply with standards under relevant employment laws
- » Lay groundwork for a defense to harassment claims or damages, especially if coupled with solid complaint procedure
- » Help defend against shareholder litigation or securities class actions
- » Help prevent government enforcement actions

### Good internal investigations help protect:

- » Employees from misconduct of others
- » Accused from rush to judgment
- » Company's reputation
- » Employee morale, recruitment, and retention
- » Company stock price
- » Against parallel or subsequent government investigations

Source: Morrison Foerster





WHITE PAPER

# **Integrating Compliance with Business Strategy: The Skillsoft® Compliance Maturity Model™**

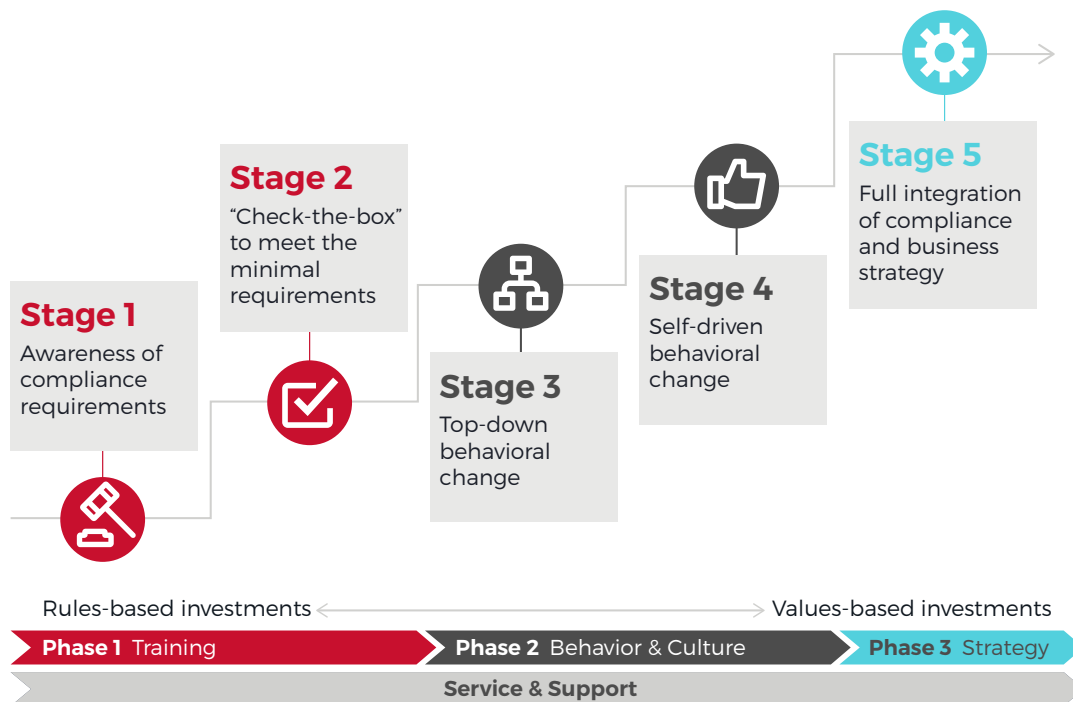
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## EXECUTIVE SUMMARY

Compliance training is a necessity to reduce the liability and legal risks businesses face on a daily basis. But how do businesses integrate compliance training with their business strategy? Skillsoft has developed the Skillsoft Compliance Maturity Model to help organizations identify the right learning content and approaches that will focus on behavior and culture to reap the full business benefits of investments in compliance programs. This paper explores the stages of the maturity model, citing specific examples of compliance successes and failures as they pertain to each stage. By defining compliance practices in this manner, businesses gain a better understanding of where their compliance program currently stands and what they can aspire to achieve.

## A NATURAL PROGRESSION FROM “TRAINING” TO “STRATEGY”

Starting from the perspective that compliance should benefit the company and its employees alike, Skillsoft examined the way organizations at different levels of learning maturity perceive compliance training. Having been in this market for more than 15 years, we noticed a distinct pattern that many organizations follow in expanding their compliance and ethics capabilities. To that end, we identified five stages of compliance achievement:



Ideally, organizations grow from an early focus on compliance training to a mid-cycle focus on behavior and culture to maturity, in which compliance learning becomes a fully embedded part of the business strategy. This progression also shifts the value basis of compliance investments from an emphasis on avoiding negative consequences of non-compliance to gradually placing a spotlight on a culture of compliance, which delivers powerful business benefits – positive brand recognition, attracting top talent, increased competitiveness and contribution to employee loyalty.

Between January 1, 2015, and June 2016, OSHA issued more than **500** citations with fines of more than **\$50,000**; two companies incurred penalties of more than **\$1.7 million**.<sup>1</sup>

Cybersecurity incidents continue to grow in both volume and sophistication, with **64%** more security incidents reported in 2015 than in 2014. The average total cost of a breach climbed to **\$4 million** per breach, with the average cost per record reaching **\$158**.<sup>2</sup>

## **STAGE 1 - AWARENESS OF COMPLIANCE REQUIREMENTS**

Organizations pay little attention to compliance and ethics requirements, and provide employees with minimal resources to meet baseline standards. They hope problems will not occur, and when issues do arise, these businesses typically end up paying steep fines, penalties and other damages. These organizations may or may not make any compliance training available to employees because, in their view, it is too expensive. If they do provide training, it is implemented only after a major violation has occurred to show they are trying to meet compliance standards.

## **STAGE 2 - “CHECK-THE-BOX” TRAINING TO MEET MINIMUM REQUIREMENTS**

Companies acknowledge that the only way to get the message of compliance organization-wide is to ensure that all employees are afforded appropriate access to training materials. Businesses emphasize successful completion of course materials so the business can provide a record demonstrating an effort was made to meet regulations and standards. In other words, they check the box on compliance training in an attempt to avoid the damages that can occur to Stage 1 companies.

Some organizations at this level establish rudimentary programs targeted to managers only, thereby putting the responsibility on each manager to ensure that his or her direct reports are made aware of the various requirements that apply to each of them. This approach lacks the clarity and transparency to prove whether or not an employee was informed. Other organizations may take a “shotgun” approach and assign the same training to all employees without regard to specific job roles, areas of responsibility or other role-unique attributes. While this approach ensures that all staff receive training and there is a record of completion, employees become disengaged when training is irrelevant to their day-to-day functions and covers topics that they will never encounter.

## **STAGE 3 - TOP-DOWN BEHAVIOR CHANGE THROUGH TRAINING**

Organizations understand how training impacts the fundamental behaviors of their employees in the processes and tasks they undertake. Here, companies begin to affect a “top-down” cultural change in working to incorporate lawful practices. Meaning, that it is the job of executives to enforce training on managers and managers enforce training on employees. Training is seen as more strategic. Assignments are made based on job roles and responsibilities. Site-specific information, including local policies and procedures, in addition to regulatory requirements, is addressed. Many organizations stop here on the maturity model because there is perceived accountability on all levels. However, this is not true accountability as there is no belief in the program. Compliance is maintained by avoiding being punished. Additionally, if managers never witness wrongdoing, how can they enforce policies?

<sup>1</sup> “Enforcement Cases with initial Penalties Above \$40,000.” United States Department of Labor Occupational Safety & Health Administration. <https://www.osha.gov/topcases/allstates.html> accessed 6/15/2016.

<sup>2</sup> “2016 Ponemon Cost of Data Breach Study: Global Analysis.” Ponemon Institute, June 2016.

The Bureau of Labor Statistics reported a decline in non-fatal workplace injuries and illnesses in 2014; part of a pattern of declines spanning more than a decade. Previous BLS reports have credited improved compliance training efforts as a key factor in declines in workplace accidents.<sup>3</sup>

## **STAGE 4 - SELF-DRIVEN BEHAVIOR CHANGE**

When an organization's approach to compliance becomes more mature, the focus shifts to empowering individual employees to make informed decisions to reinforce the company's lawful and ethical culture. This stage is a by-product of establishing a culture with high compliance awareness. Everyone in the company at all levels shares accountability for following a higher standard. Employees are self-directed to make the "right" decisions at this stage because everyone else is making these same decisions. Policies are understood and the reason why behind the policies are clearly explained. Engagement is high at this level because all members of the organization are now responsible for the success of the program.

## **STAGE 5 - FULL INTEGRATION OF COMPLIANCE AND BUSINESS STRATEGY**

Organizations see a seamless integration of compliance with business strategy and it is measured as a component of business performance. In accomplishing this level of sophistication, compliance programs are aligned to actually assist organizations in accomplishing their business goals as opposed to serving merely as a function of risk mitigation.

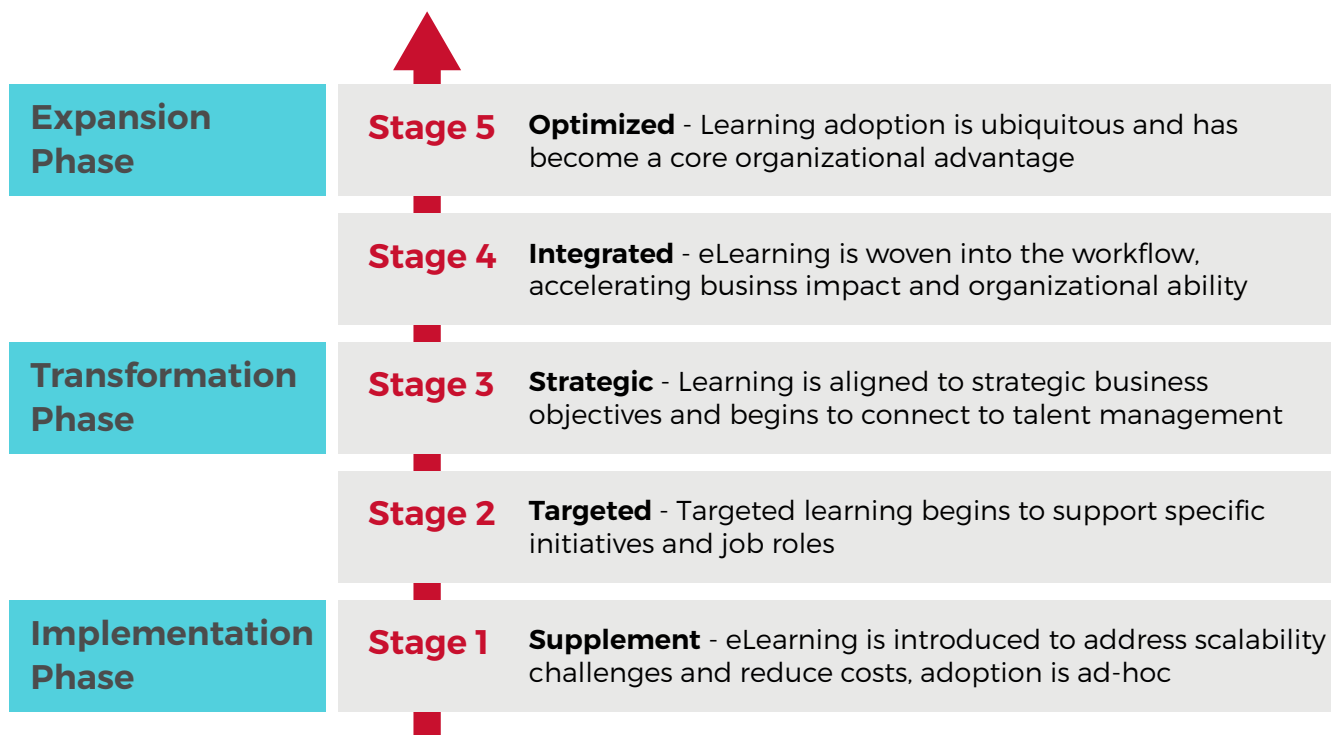
Some large government contractors have noted that many of the opportunities that they are awarded are due in part to their ability to demonstrate the integration of compliance with their business operations.

In order to reach this stage, an organization must maintain a comprehensive view of learning – a company's maturation to Stage 5 cannot happen overnight. By keeping focus on continued growth and maintaining an upward trajectory, a company can continually improve its processes and realize meaningful results along the way. Employees, managers, and executives alike see and understand their responsibility to the company by ensuring the success of the compliance program. Failure is not an option – as failure would mean a fundamental failure in the business strategy. Honesty, accountability, respect and leadership are principles of these organizations and transparency is a default.

<sup>3</sup> "News Release: Employer-Reported Workplace Injuries and Illnesses—2014." United States Department of Labor Bureau of Labor Statistics, October 29, 2015.



## HOW SKILLSOFT CAN HELP



Complex and continually evolving regulatory standards are placing increased pressure on our customers to “do the right thing and do it right now.” That’s why we’ve established Skillsoft Compliance Solutions, which offers training solutions and management tools to assist our customers in promoting ethical and lawful cultures, reducing legal and regulatory violations and minimizing their exposure to operational risk.

Skillsoft Compliance Solutions focus areas are divided into two groups: Legal Compliance and Workplace Health and Safety Compliance. We provide service to over 1,800 organizations worldwide – many of which are leading Fortune 500 companies. Skillsoft has one of the largest selections of compliance training, covering over 500 risk topics and localized in over 32 languages. We ensure organizations meet regulatory requirements, mitigate risk and address global audience requirements by employing a full adaptation strategy and developing awareness around critical risk areas. Skillsoft addresses these key initiatives, all while building a strong culture of compliance, through a comprehensive suite of training courses, services and technology.

## CUSTOMER SUCCESS STORY: FLINT GROUP

A printing, publishing, and digital printing company based in Luxembourg, Flint Group, wanted to provide relevant, appealing compliance training to approximately 3,000 employees—in 20 different languages. After a thorough review of the market, Flint Group determined that Skillsoft was the best fit for their needs.

What Lisa Johnson, Director of Capability and Talent, has to say about working with Skillsoft: “The account team actually came on site to Flint Group, met with our project team, and we built the course work together with the engineers, and were able to deploy a product that blended with not only Skillsoft product, but with our product as well.”

“Our partnership has had a very positive impact from a strategic level. We’ve been very pleased that we have been able to launch the civic targeted training that is very appealing and relevant to our employees. We’ve gotten excellent feedback from them, and we’ve been able to accomplish our business goal.”

“From a standpoint of engagement, with the good feedback that we’ve received, it encourages us that the message is being delivered appropriately. Our employees have been very pleased that it is clearly specifically branded to Flint Group. They see our products, they see our individuals in the trainings. And it’s been a great impactful experience at all levels.”



## **RISK MITIGATION**

Skillsoft eLearning solutions help companies address key compliance risk areas via video, course materials and tests for ethics, legal compliance, workplace health and safety, transportation, environmental safety, higher education and government training.

## **CONTENT DESIGN**

Skillsoft has won many awards for its instructional and content design. Designed for the adult learner, our multi-modal courses specifically address the three established adult learning styles: auditory, visual and kinesthetic. Leveraging the latest brain science research, our content utilizes a data driven mix of instructional design approaches that foster the linkage between emotion and cognition to strengthen learning and retention. All courses have clear, tangible learning objectives, which are met through an engaging presentation of information, practice opportunities, and evaluation. The net effect is that our solution “assures learning.” Our instructional design staff continually refines its Adult Learning Model, using learner and training administrator comments, focus groups and regulatory guidance.

## **CONSISTENCY OF MESSAGE**

Regardless of job level or language, our training is best-in-class. With support from our subject matter experts, we deliver content that is relevant, up-to-date and effective. Skillsoft partners with nationally and globally recognized law firms and industry leaders to serve as our subject matter experts in the development and maintenance of our compliance content.

The collaboration between our partners and our award-winning instructional designers means that the content built not only addresses pressing compliance topics, but also provides a practical approach to training.

## **SERVICE LEVEL**

Skillsoft has created an organization that is able to offer a significantly broader range of learning solutions, increased service levels and a greater value to your organization than ever before. With 24x7 global, multi-lingual support you can be sure that we are there when you need us.

## **ACCESS TO THE INTELLIGENT LEARNING PLATFORM, PERCIPPIO**

Skillsoft offers an enhanced learning management system, called Percipio Compliance, that combines leading content and a modern user experience. Percipio Compliance provides the robust functionality necessary to help organizations meet complex regulatory needs.

Percipio Compliance helps organizations manage, track and report compliance training across all formats (e.g. online, classroom, on-the-job and other offline training events). The platform allows organizations to easily monitor and adjust their compliance training program in real time to align with changing regulations, evolving risks and emerging best practices. Flexible training assignment options, customizable dashboards and enhanced reporting capabilities provide the advanced administrative functionality required to manage intricate regulatory requirements while also able to demonstrate compliance with a complete and auditable training history.

And with access to one of the largest selections of Legal and Workplace Safety & Health training courses through Skillsoft Compliance Solutions, Percipio Compliance offers a seamless learning experience by uniting compliance with leadership, business, IT and digital skills content. Leveraging Skillsoft's comprehensive suite of training solutions, Percipio Compliance allows your organization to meet regulatory requirements, mitigate risk and promote a culture of compliance while supporting broader learning objectives.

## **A COMPLETE LEARNING PACKAGE FROM ONE OF THE LARGEST ELEARNING PROVIDERS IN THE WORLD**

Skillsoft's learning library provides the building blocks of effective learning programs. You can choose from these components to build a rich set of effective, interactive curricula.

Skillsoft has the most extensive eLearning catalog in the industry, covering not only compliance products, but many topics including business and leadership skills, digital skills, IT skills and certifications and government-specific knowledge. In partnership with the industry's foremost publishers, vendors, analyst firms and business thought leaders, we provide on-demand, instant access to the complete text of thousands of best-in-class online books, book summaries, audiobooks, research reports and best practices, ensuring the best possible learning experience.



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## ABOUT SKILLSOFT

Skillsoft is the global leader in corporate learning, delivering beautiful technology and engaging content that drives business impact for modern enterprises. Skillsoft comprises three award-winning solutions that support learning, performance and success: Skillsoft learning content, the Percipio intelligent learning platform and the SumTotal suite for Human Capital Management.

Skillsoft provides the most comprehensive selection of cloud-based corporate learning content, including courses, videos, books and other resources on Business and Management Skills, Leadership Development, Digital Transformation, IT Skills and Certification Training, Productivity and Collaboration Tools and Compliance. Percipio's intuitive design engages modern learners and its consumer-led experience accelerates learning. The SumTotal suite features four key components built on a unified platform: Learning Management, Talent Management, Talent Acquisition and Workforce Management.

Skillsoft is trusted by thousands of the world's leading organizations, including 65 percent of the Fortune 500. Learn more at [www.skillsoft.com](https://www.skillsoft.com)





# SEC's Clayton digs into the basics of company culture

SEC Chairman Jay Clayton used a recent speaking engagement to champion the need to establish a firm-wide culture of compliance.

**Joe Mont** has more.

A challenge for any compliance officer is meeting the ever-increasing expectation for shaping a company's culture.

Speaking to an audience at the New York Federal Reserve this week, Jay Clayton, chairman of the Securities and Exchange Commission, shared his thoughts on that imperative.

"Culture is not an option," he warned, referencing a recent discussion paper authored by the U.K.'s Financial Conduct Authority.

"Every organization has a culture and, in some cases, the firm's culture is in fact a collection of

many sub-cultures," Clayton elaborated. "While the leaders of our financial institutions often are tasked with driving positive changes in culture, they must recognize they are not writing on a blank slate or, for that matter, a single slate."

To effectively manage the business of your organization on a day-to-day basis and over the long term, "management needs to know what the culture of the organization is today, including the key drivers of that culture," Clayton said. For example, a new strategic initiative is much more likely to be successful if it is designed and implemented in a

manner that is consistent with, and leverages, the firm's culture.

"Over time, whatever the cultural goals for your organization may be, the chances of achieving them go up dramatically if you understand where your culture stands relative to those goals," he added. "In driving organizational culture, it is difficult, if not impossible, to get from A to B unless you have a clear sense of what A is."

Clayton put a regulatory and enforcement spin on culture.

His example: a significant conduct problem occurs at a financial institution and the firm's culture comes under regulatory scrutiny.

"Let's take as given that both the firm's management and the regulator want the firm to have 'good' culture, one, for example, that is consistent with long term shareholder, employee, customer, and societal interests as well as law and regulation," he said. "In other words, we're all trying to row the same boat in the same direction. However, if there is a disconnect between what management thinks the firm's culture is today and what the regulator thinks the firm's culture is today, agreeing on measures to enhance the culture will be very difficult."

"If the regulator is convinced a firm has a cultural problem and the firm continues to fight that conclusion, tension is likely to be high and progress—which involves fostering mutual regulator-firm respect and trust—will be slow and costly all around," he said.

Clayton went on to define culture as a "collection of countless internal and external actions."

"Culture is collective," he said. "While there is great importance in setting a positive 'tone at the top,' an organization's culture is, in large part, defined by the countless daily actions of its people. Culture is not just what is said by management to the workforce, but what is done, [and by] what actions are taken, day in and day out, throughout the organization, with colleagues, customers, suppliers, and regulators."

There are many familiar methods for communicating, monitoring, and reinforcing cultural objectives, Clayton said. These include compliance programs, policies and procedures, training, and personnel decisions.

"All of these methods are important and, in large financial organizations, essential," he said. "I also

believe these methods are enhanced by, and in fact, to be effective over the long term, require, a clear, candid, easily understandable articulation of the organization's core mission."

Clayton told the audience that there are many reasons why having a clear mission is beneficial to culture and improving culture.

"It fills in the gaps," he said. "Organizations with the most comprehensive compliance programs and policies and procedures will inevitably encounter circumstances not contemplated by their policies and procedures. In those situations, what drives how people will act? The law and regulations? What if those also do not contemplate the situation?"

"More significantly, what if the law permits a range of actions with some that, while legal, can cause significant harm. In these circumstances, those on the frontlines, those making decisions, need a touchstone."

When bad behavior occurs at a firm, key questions a firm should ask include whether the conduct represented a clear breach of the firm's controls and

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culture as well as whether the firm's remediation efforts, in addition to any controls enhancements, sent an appropriate and lasting cultural message, Clayton said.

"Do the controls now make it clear that lying is unacceptable and that communications around mark-ups will be monitored. And, were the offending parties dismissed or otherwise meaningfully sanctioned," he said. "The actions we choose in these types of scenarios say a great deal about who we are—and what our culture is." ■

# Thwarting & responding to harassment must involve both HR and compliance

An expert panel at CW 2018 shared best practices for addressing employee behavior, properly responding when allegations of sexual harassment arise, and communicating with senior leaders and the board the importance of preemptive action. **Jaclyn Jaeger** has more.

**T**he storm of sexual harassment allegations that have dominated headlines over the past year have brought to light the extensive risks companies face when a culture of respect and transparency is not fostered.

During a keynote panel at the Compliance Week 2018 conference in Washington, D.C., EEOC Commissioner Chai Feldblum and other experts shared best practices on how to address expectations concerning employee behavior, how to properly respond when allegations of sexual harassment arise, and how to communicate with senior leaders and the board on the importance of preemptive action.

One key theme was how important it is for compliance and human resources to work together in this area. In response to the #MeToo movement in late 2017, human resources came under a lot of fire for not doing enough, with many victims of sexual harassment asking one key question: Where was human resources?

"As a profession, we've been taking a good, hard look at ourselves and asking, 'What more could we be doing?'" said Elizabeth Owens Bille, general counsel for the Society for Human Resource Management (SHRM). At the same time, however, "HR can't do it alone," she added.

Creating a culture that is hostile to sexual harassment is an area where compliance can lend its expertise and work collaboratively with HR. One thing companies have been reviewing in the #MeToo era is their reporting mechanisms, asking questions

like, "Do we have enough? Are the reporting mechanisms feeding into the appropriate people? What is happening after a complaint is filed?" Bille said. Compliance and HR should work together to ensure that reporting mechanisms and processes that flow from reporting are in sync, she said.

Compliance and HR can also work together in assessing these risks. Compliance houses the code of conduct, whereas HR fields incoming allegations, for example. "The right hand needs to know what the left hand is doing," said Stephen Pearlman, a partner in the labor and employment law department and co-head of the whistleblowing and retaliation group at law firm Proskauer.

Moreover, compliance and HR can collaborate in conducting internal investigations. "In an investigation, you need to have a rapid response system. You need to have a liaison who is appointed to the complainant. You need to show the complainant that you really do care about them, and you need to mean it," Pearlman said. While HR can play the role of appointing a liaison, tracking the complaint, and facilitating interviews, compliance should keep a database that shows the number of complaints and the amount of the settlements paid out on these complaints, he said.

Another aspect of sexual harassment prevention concerns corporate governance. "I've seen a significant uptick and interest from boards of directors with respect to sexual harassment risks," Pearlman said. In this respect, compliance can play a

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Elizabeth Owens Bille, General Counsel, Society for Human Resource Management

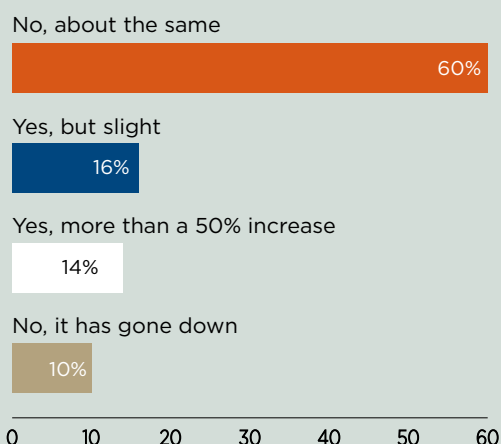
role by working with the board to facilitate risk assessments. “Getting the board involved has a trickle-down effect,” he said.

### Best practices

Citing the EEOC’s “Study of Harassment in the Workplace” report,” Commissioner Feldblum provided the following three key elements for preventing sexual harassment in the workplace:

**Change workplace culture.** Leaders must do three key things: “One, they actually have to believe that harassment is wrong. Two, they have to articulate that; do not underestimate the power of words, and they have to articulate it in a way that workers feel that leaders are being authentic,” Feldblum said. “Workers have to believe leaders are authentic.”

### In your company, have you seen an increase in sexual harassment complaints since 2017?



Source: Compliance Week poll during “Decreasing Harassment in the Workplace” discussion at CW18

**Hold people accountable to the values they have articulated.** Three distinct groups of people need to be held accountable, Feldblum said. The first group is those who have been found—after a fair and thorough investigation—to have engaged in harassment. Those who have engaged in harassment must be subject to “timely and proportionate discipline,” Feldblum stressed. “You don’t want employees to think that any act of misconduct they report could result in a firing. Many people don’t want their co-workers to be fired, they just want the misconduct to stop. But a slap on the wrist for egregious conduct sends the wrong message.”

The second accountable group are those who respond to complaints of harassment, including managers, supervisors, and HR personnel. These folks should be explicitly told by leadership that, “If you get a complaint, we don’t want you to dismiss it or trivialize it or blame the victim. We want you to say to the person, ‘Thank you for coming forward. If what you say is happening is wrong, we’re going to stop it, and here is what’s going to happen next.’ Managers and supervisors who don’t do that have to be held accountable,” he said.

The third group that should be held accountable, Feldblum noted, is anybody who has engaged in retaliation for someone who reported harassment or corroborated in harassment. “You’ve got to create a positive feedback loop, in which people are thanked, people are protected from retaliation,” she said. “The only way to do that is to hold accountable those who have engaged in retaliation.”

Have the right policies, procedures, and training. Policies should be simple, easy to understand, and not filled with legalese. “Employees don’t need to know the law,” Feldblum said. “They need to know what is not acceptable.”

Concluded Feldblum: “It’s really important to focus on stopping unwelcome conduct before it turns into illegal conduct. The EEOC will not be at your door if you have really nipped the unwelcome conduct in the bud.” ■

# Keeping your harassment policies fresh and inspiring

In any industry, having policies and procedures that address sexual harassment is a good start, but more telling will be how the code is enforced in the weeks and months to come. **Jaclyn Jaeger** has more.

People shouldn't have to be told to treat others with dignity and respect. A generic anti-harassment policy on its own is little more than an acting script, rehearsed words put to paper.

Those who habitually sexually harass, bully, and/or assault aren't going to suddenly stop that behavior just because an anti-harassment policy has been rolled out, and employees won't be emboldened to report concerns internally if senior leadership has questionable morals and the culture is toxic to its core.

Amid widespread (and still developing) allegations of sexual harassment that have rocked Hollywood, with lessons applicable to every company, it's easy in hindsight to know what to do: apologize and then promote a zero-tolerance approach to sexual harassment.

We already saw a headline-grabbing example of this in 2014, when American Apparel ousted its founder and CEO Dov Charney after years of alleged misconduct came to a head. Around that time, the company released a new code of conduct, expanding upon its prohibitions on sexual harassment.

Four years later, systemic changes being made in the fashion, entertainment, and media industries. In January, for example, global media company Condé Nast International—whose high-profile magazines include *Vogue*, *GQ*, *Glamour*, and *Vanity Fair*—debuted its new code of conduct addressing sexual harassment and the treatment of models.

The code provides examples of unacceptable conduct, including “sexual advances or propositions; any type of sexual activity or contact; or any suggestion, direct or implied, that submission to or rejection of sexual advances will affect an individual's ability to perform services for the shoot or any other Condé Nast project.” It is not made clear in the code whether employees have an anonymous outlet to report concerns, which could serve as a deterrent.

But, commendably, several other organizations in the entertainment industry have rolled out new policies that give individuals the option of independent reporting channels. These organizations include the Producers Guild of America; Sundance Film Festival; the Directors Guild of America; the Writers Guild of America West; and SAG-AFTRA (the Screen Actors Guild American Federation of Television and Radio Artists).

Having policies and procedures that address sexual harassment is a good start—but that's all it is. More telling will be the actions behind each code of conduct:

- » What personal involvement do senior executives have in fostering a culture of respect?
- » Do employees have the option to report concerns anonymously and/or outside the company?
- » Are investigations conducted following an incident or complaint of sexual harassment, or are they swept under the rug?
- » How are anti-harassment policies and procedures monitored and enforced?
- » What are the consequences for those found to be irrefutably guilty of sexual misconduct—and how and under what circumstances does a company draw that line?

Firms have a lot to learn from the mistakes of Hollywood on how to better support victims and work to eradicate harassment in the workplace—while also taking care that the accused equally receive fair treatment and due process.

Change certainly won't happen overnight, and not all cases will be black and white, but you can be sure that this is just the start of many aftershocks in what promises to be a seismic shift in a public discussion about sexual misconduct in the workplace. ■



# How board members can prepare for #MeToo moment

The PwC 2017 Annual Corporate Directors Survey highlights some key risks and opportunities for how boards might survive their own Weinstein moment, should one ever arise. **Bill Coffin** has more.

In 2017, dozens of women accused Hollywood mogul Harvey Weinstein of gross severe sexual misconduct, which kicked off a wave of similar allegations against dozens of high-profile individuals in various industries. It became part of the #MeToo movement, and one of the defining moments of 2017. On Oct. 24, 2017, the Boardlist, together with Qualtrics, released a survey of some 400 board members to gauge their views on gender diversity and sexual misconduct. And the survey revealed that 77% of the directors surveyed had not discussed accusations of sexually inappropriate behavior and/or sexism in the workplace on their respective boards. More importantly, 88% of them had not implemented a plan of action to deal with such an accusation at the board level.

The points arose in context yet again when PwC released its 2017 Annual Corporate Directors Survey, which canvassed 866 directors from a selection of companies spanning a dozen different industries, and most of which (75%) had annual revenues north of \$1 billion. Men respondents outnumbered women, 84% to just 16%, underscoring how gender diversity issues have become a board priority too big to ignore.

The PwC survey further points out that director discontent is at an all-time high, with almost half of directors believing that one or more of their fellow board directors should be replaced, and with one-fifth of them saying that two or more of them should be replaced. At the same time, the survey points out that while female directors tend to be more socially aware, there is still a significant gender skew among directors themselves, with only 35% of male directors seeing gender diversity as an important issue, versus 68% of female directors. Add to this a final point: 68% of directors said their board made changes in 2017 as a result of their board/committee as-

essment process, compared to just 49% in 2016.

Taken together, it adds up to what seems to be an unusually fragile situation for directors, especially if a Weinstein-level allegation lands among them. Paul DeNicola (managing director, PwC Governance Insights Center and co-author of the PwC 2017 *Annual Corporate Directors Survey*) agrees, but notes that this is all perhaps part of a larger issue.

"The discussion, or lack of it, in boardrooms on sexual harassment is part of a larger discussion that boards need to have to talk about corporate culture," DeNicola said in an interview with Compliance Week. "When it comes to the culture of an organization, it's very easy to take the position that 'it's something I just know. I have a gut feeling that things are okay.' Culture is qualitative. That's a fallacy."

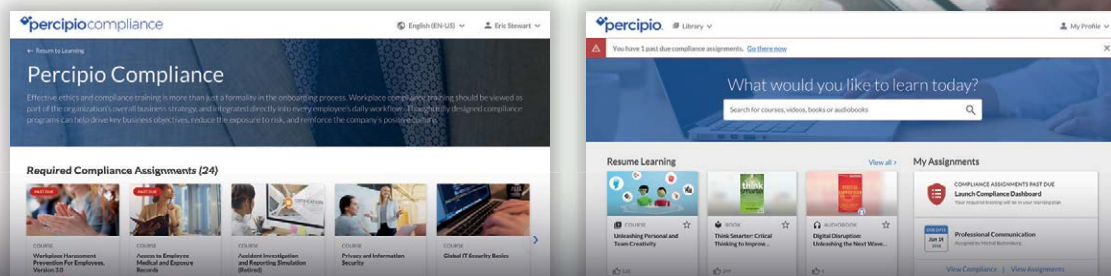
DeNicola says that there are qualitative metrics companies can use to gauge the state of an organization's culture: employee engagement surveys, employee turnover statistics, attrition rates of high performers, 360-degree feedback, C-suite exit interviews, whistleblower complaints, social media posts, and traditional press coverage.

In addition, DeNicola says, boards need to spend more time interacting with employee groups beyond the C-suite to get a true sense of an organization's culture and where there might be an environment to give rise to a sexual misconduct allegation.

But boards also need to take their own self-assessments more seriously, DeNicola says, with institutional investors and directors themselves less willing than ever to tolerate an underperforming peer. "Self-assessments are not just a compliance exercise," DeNicola says. "You need the board leadership to get behind them and drive them, and you need to take action on those results. You can't just do it once a year and then stick it in the bottom drawer." ■

# Integrate a Culture of Compliance

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