



# SIX LESSONS THAT REDEFINE FOCUSED COMPLIANCE TRAINING

Are your biggest risks sitting on the back burner?

## INTRODUCTION

Compliance training professionals often wrestle with how to cover a multitude of risks with finite budgets and limited seat time. But, all risks are not created equal and focusing on lesser priorities diverts attention and resources away from the biggest risks.

Data has revealed one category of risk is reported more often than all others combined. Charges and fines related to this category remain at all-time highs, calling into question the current approach to training on these issues. Left on the back burner, these risks could undermine a compliance program and expose an organization to legal or reputational damage.

The following six lessons will help you assess the focus of your compliance training program and formulate a strategy to tackle your biggest training risks.

# LESSON I

## FOCUS ON THE BIGGEST RISKS

Planning for 2014 is likely pressing on your mind, or it will be in a short time. You will be faced with answering a key perennial question—how should your organization allocate its compliance training budget and what topics should you focus on?

Opinions about which risks are most pressing are often shaped by surveys on litigation, enforcement trends, major scandals, new legislation, and existing compliance requirements. Add in stories told by vendors about what you must be doing, and the picture can get fuzzy.

The problem is that in the heat of a media frenzy or uptick in enforcement, it's easy to lose sight of some of the most prevalent and pressing compliance risks facing organizations today—HR and workplace respect issues.

These are risks that are common across all your employees and when left unaddressed can destroy your culture and brand reputation. Don't believe it? Take a page out of the Paula Dean cookbook – [her very public racist comments and slurs](#) have caused some real damage to her own brand and the Food Network's image. The Food Network just publicly announced that it will not renew Paula Deen's contract when it expires at the end of the month. And one of her largest sponsors, [Smithfield Foods](#), is also calling it quits with Paula Deen.

### Most Pressing Compliance Risks Are HR Related

NAVEX Global's proprietary database of hotline

reports is the largest in the world, providing the best visibility into reported misconduct in thousands of organizations across all industries and companies of all sizes. For the last five years running, by a staggering margin, the most often reported misconduct falls in the category of Human Resources, Diversity and Workplace Respect—this category includes five key areas of risk:

The frequency with which reporters cited HR issues was:

**4X** the rate of business integrity issues like bribery, fraud, or corruption,

**10X** the rate of environmental, health, or safety issues,

**10X** the rate of misuse or misappropriation of assets, and

**20X** the rate of accounting, auditing or financial reporting issues.

1. Discrimination
2. Harassment
3. Retaliation
4. Diversity
5. Wage and Hour

So how do the numbers stack up? HR tops the list and HR issues are raised more often than all other categories combined.<sup>[1]</sup>

Here is how the numbers break down:

- 69%** Human Resources, Diversity and Workplace Respect
- 17%** Business Integrity, Bribery, Corruption, Fraud
- 7%** Environment, Health and Safety
- 6%** Misuse, and Misappropriation of Corporate Assets
- 3%** Accounting, Auditing, & Financial

### Making Sense of the Numbers

When it comes to HR issues, there's a lot that employees have to say. And the reality is that employees are more likely to experience harassment,

## FOCUS ON THE BIGGEST RISKS

discrimination, or a wage and hour violation, than they are to be involved in a bribery and corruption scandal. It makes sense that the frequency of reported concerns would be higher for HR issues. The problem is that many organizations discount the importance of a holistic and comprehensive approach to compliance training by leaving HR training out of the compliance mix.

HR issues are not always small, insignificant matters that can be addressed quickly, or can be swept under the rug. When insufficient attention is paid to these issues, when training is not effective, policies and practices are allowed to continue despite questionable legal positioning, the compliance hit to an organization can be enormous.

A couple major indicators suggest that a focus on HR Issues is vital to a strong corporate compliance program.

- EEOC Charge claims remain at record highs, with retaliation claims topping the charts.<sup>[2]</sup>
  - » Retaliation appeared in 38.1% of all charges, followed by allegations of race (33.7%) and sex (30.5%) discrimination.
  - » Workplace harassment filings represented 24% of all charges filed with the EEOC.
- The EEOC's continued focus on systemic discrimination puts increased pressure on organizations to make sure that their policies and procedures are legal.

**Nearly 25% of companies in the US and UK reported discrimination as the litigation area that saw the greatest increase in the past 12 months; they expect claims to grow.**

- In 2012, 52% of companies cited being hit with Labor and Employment class actions, compared to 26% consumer, 14% securities, 10% mass tort, and 9% antitrust/competition.<sup>[3]</sup>
- Wage and Hour class actions are the most common employment law class action and average settlements are around \$4.8 million.<sup>[4]</sup>

### An Integrated Approach to Compliance Training

As the compliance function continues to evolve, organizations will be pressed to incorporate a broader array of organizational risks under the compliance umbrella. Closer alignment with HR or possibly greater oversight over the most substantial HR risks is likely to be part of the compliance department of the future.

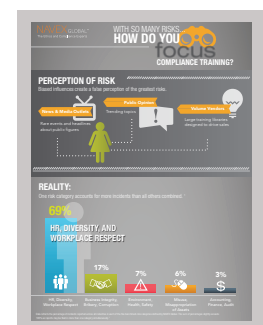
And like other pressing compliance risks, on-line training can help mitigate risks associated with harassment, discrimination, and wage and hour.

Incorporating full-length training (that complies with state laws on training and that is rigorous enough to help develop legal defenses at the state and federal level) should be augmented with short bursts of learning that periodically

remind employees about your organization's expectations. Developing a curriculum map (like the example in the graphic on this page) will help you spread the training throughout the year, and ensure proper coverage of HR issues.

## RESOURCES

- [1] [Benchmark Report - NAVEX Global 2013 Hotline Benchmark Report Download](#)
- [2] [Link - 2012 EEOC Discrimination Statistics Download](#)
- [3] [Survey - Fubright and Jaworski 2012 Litigation Trends Survey Download](#)
- [4] [Report - NERA Trends in Wage and Hour Settlements: 2012 Update \(March 12, 2013\)](#)



[DOWNLOAD INFOGRAPHIC HERE](#)



## LESSON II

# 4 STEPS TO A MORE EFFECTIVE TRAINING PROGRAM

Compliance training is one of your organization's largest compliance investments in terms of both time and money. Training programs can be expensive to build or purchase, and the reality is that seat time is precious and expensive. With tight budgets and limited training time allocated to compliance, it's important to make sure you're making the most of your investment.

Compliance training impacts every one of your employees and high-quality training can help build a more [ethical and compliant culture and drive business success](#)—so it's vital to make the right investment.

HR and compliance professionals are scrutinizing training curriculums and trying to make them more effective and efficient. Large libraries of outdated courseware that aren't engaging or updated are no longer acceptable; they don't change behavior and often go unused.

So how do you make the most of your investment? What should you consider when evaluating your options? The following tips will help you do just that.

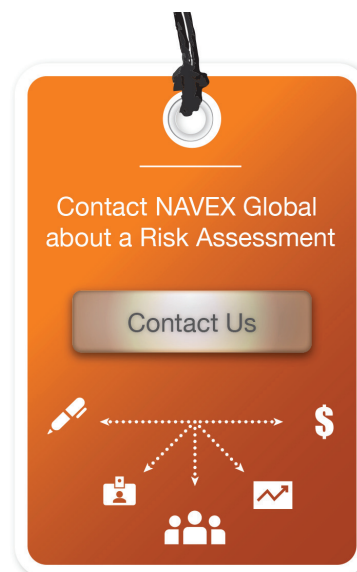
## Step 1: Assess the Current State of your Training Program

It's not uncommon for an organization's leaders to have a fuzzy picture about the current state of training in their workplace. Divided ownership and segmented budgets often help drive this phenomenon. But getting a clear picture of what you are doing, and what is working, is critical if you want to make your program better.

The first step in this process is to gather critical information such as:

- Your organization's greatest risks (legal, cultural and reputational); if you are not sure, conduct a [risk assessment](#) to find out
- Map out current training efforts, including audience, method and frequency
- Ask employees whether the training is engaging and effective
- Assess the age of your current training courses
- Evaluate the cost of delivering training in its current format; include seat time and travel time/ expenses, as well as internal costs to develop and maintain
- What other training pressures are placed on learners

Whether you are focusing on HR risks, or you have responsibility for broader compliance training, gathering this information will help you properly assess the current state.



## 4 STEPS TO A MORE EFFECTIVE TRAINING PROGRAM

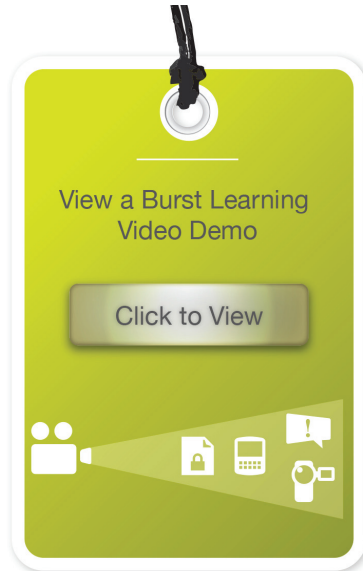
### Step 2: Explore New Trends and Approaches

There is a flurry of activity in the training world right now that has resulted in a variety of trending training approaches—everything from gamification to mobile enabled courses. Some of these tools and strategies can enhance your training program. But just because something is hot now, does not guarantee that it is effective or a good investment. You still need to be critical about the trends you incorporate and whether they will work in your culture and in the context of your program.

Even if a trending method or tool works in your environment, use it wisely. Too much of a good thing can backfire. Just because it works for some purposes does not mean that it will be an engaging or useful learning experience for other purposes. One example of this is mobile learning.

Some of the hottest trends right now include the following:

- Shorter courses that really get to the point and cover “need to know” information for your audience.
- A [laser focus on key risk areas](#), rather than massive libraries of courses that are outdated
- An expectation of true engagement and entertainment
- Continuous learning, including short [bursts](#), to ensure the message stays top of mind.
- Mobile enabled training
- [Social/collaborative learning](#) such as blogs, video-casting,

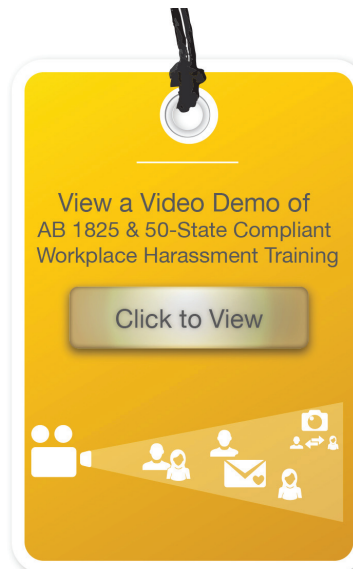


### Step 3: Focus on the Topics that Matter Most

You could train on everything, every topic and every risk area... but that’s not effective or practical. No organization has the bandwidth to consume that much training. Rather, the key is to focus on the topics that matter most and make sure that what you are delivering and how it is being delivered is as good as it can be. Maintaining a strong focus can help you really add value and create impact for your organization.

So when you are considering where to make an investment, [focus on the topics](#) that:

- Drive the greatest risk
- Can change behavior and impact the culture
- Are critical to your organization’s culture and values
- Are vital for protecting your organization’s reputation
- Help establish key legal defenses



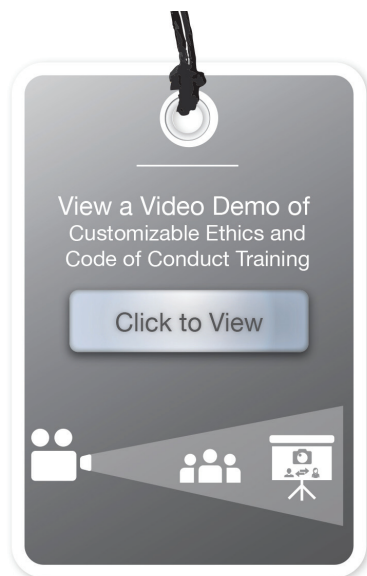
What topics do NAVEX Global clients seek out and focus on; it aligns with general industry practice. The top 12 topic areas include the following:

1. Ethics and code of conduct
2. Harassment (all forms, not just sexual harassment)
3. Bribery & corruption
4. Data privacy
5. Technology use and security
6. Reporting and retaliation
7. Wage and hour
8. Discrimination
9. Antitrust & competition law

## 4 STEPS TO A MORE EFFECTIVE TRAINING PROGRAM

10. Conflicts of interest
11. Insider trading
12. Protecting Confidential information

These are the topic areas that impact the largest number of employees and that should reflect your organization's commitment to high-quality training. For some industries, especially highly-regulated ones, this list will include several additional topics, as the volume of expected or mandated topics is more extensive.



- What format is most effective for my employees?
- How much learning can employees realistically consume?
- How much seat time is available for training?
- Are there time periods where training will be best received based on demands on the business (for example, busy periods)?
- How often should I train to build valuable legal defenses?
- How can I maximize my budget spend without sacrificing key goals?
- Do I need to create special training for certain audiences or people in key roles?

The curriculum map document you create can ultimately take many different forms; it can be a simple overview or a detailed spreadsheet that provides extensive detail about your training program. The right form, depth, and content will depend on the complexity of your program, the nature of your organization and its risks, and your goals.

## Step 4: Chart Your Course – Curriculum Mapping 101

Once you know what you want to cover, you need to figure out how and when you will do it. Commonly called curriculum mapping, this process will help you establish the cadence and methodology for deploying continuous compliance learning. A well designed map will help ensure proper coverage of your organization's key risk areas, help avoid learner fatigue, and give you a big picture assessment of methodology and deployment strategies.

If you want to learn more about this process and how to build a curriculum map, [click here](#). In this webinar, my colleague, Mary Bennett, and I walk you through the basics and cover considerations and training methods.

Some of the very high-level questions you must ask about your organization to make this process successful include:

- What are my key training goals?
- What key risks am I trying to manage?
- What support do I have for my initiative; is training mandatory or optional?





## LESSON III

# NEW FORMS OF OLD SCHOOL MISCONDUCT

### Strategies for Managing New Forms of Old-School Misconduct

Social media has altered everything about the way we work, interact, and stay connected. Just think back 10, even 5 years ago. Things were different—really different.

Today, more than 75% of all employees have at least one social media account, according to a survey recently released by the Ethics Resource Center called [National Business Ethics Survey of Social Networkers: New Risks and Opportunities at Work](#).

And that means it's not just the youngest generation that is using social media. In fact, 72% of all social networkers are over the age of 30. Below are employee social network usage rates by age group:

**81%** of employees age 30-44

**85%** of employees age 18-29

**67%** of employees 45-63

In light of these statistics, it's not surprising that employers are wrestling with employee issues that seem to be a product of this information age revolution. It's also not surprising that when it comes to conduct employees continue to push the boundaries of what is appropriate and what is not.

### What is the Scope of the Problem?

Social networking is here to stay. And the reality is that for many employers, managing social media risk is a bigger problem than anticipated. According to the ERC survey:

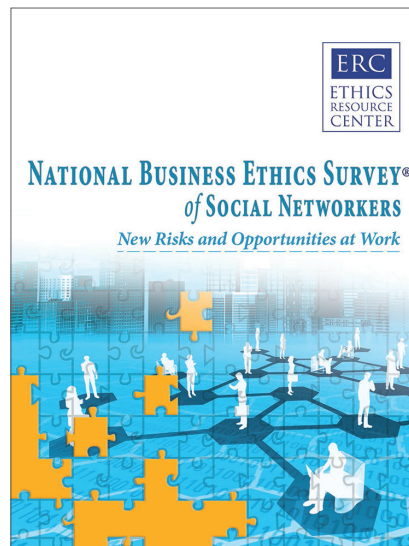
**72%** of social networkers spend time each workday on social networking sites.

**28%** of social networkers spend more than 1 hour per day on networks.

Most of the time employees spend on social networks is for personal reasons.

### What Does Social Media Misconduct Look Like Today?

We don't know how often and what percent of employees are engaging in online misconduct, but we do know that employees are spotting many different forms of online misconduct. Below is an excerpt from the appendix of the NBES Survey of Social Networkers detailing the observation rates of various types of social networking misconduct:



## STRATEGIES FOR MANAGING NEW FORMS OF OLD-SCHOOL MISCONDUCT

### APPENDIX B: Observation Rate of Social Networking-Related Misconduct: NBES-SN

	NBES-SN OVERALL	NON-WORK (NSNS) AND MODERATE (MSNS) WORK-DAY USERS	ACTIVE WORK-DAY USERS (ASNS)
Social Networking Interfering with Work Duties	29%	28%	37%
Sharing TMI (Too Much Information)	28%	27%	36%
Degradations About Company	13%	12%	17%
Degradations About Peers	10%	9%	16%
Posting Improper Political Statements	11%	10%	14%
Cyber-smearing (Defamation of a Person or Entity)	7%	6%	13%
Posting Improper Religious Statements	7%	6%	13%
Cyber-bullying (Hostile Communication Directed at or about an Individual)	5%	4%	12%
Posting Inappropriate Photos of Coworkers	8%	7%	12%
Breach of Employee Privacy	6%	5%	10%
Sexual Harassment	3%	3%	8%
Improper Profiling of Applicants or Customers	3%	3%	8%
Misuse of Company's Confidential Information	3%	2%	6%
Breach of Customer Privacy	4%	4%	6%

Note: For definitions of ASN, MSN and NSN, see "Key Terms" on page 13.

If you can imagine it, your employees have probably done it, said it, or messed with it online. And a quick search of the internet and popular networking sites will reveal a [whole host of misconduct](#) that you may not have even contemplated. Examples include:

- The manager who harassed an employee after learning that the employee had "liked" a social networking group called [Two Dads](#).
- The manager who [accidentally sent out a picture](#) of himself naked (waist down) to about 20 employees. He was quickly terminated.
- The manager who accessed confidential customer data, and then [sexted a customer](#). He too was fired of course.
- The barista who was fired after [blogging about difficult customers](#).
- The group of [Australian miners who were fired](#) after they posted a video of them doing the Harlem Shake.

- The many and varied employees who mistreat and abuse products like food or packages, and then post the videos online.
- Or the [politician](#), who just can't stop sending raunchy photos and text messages, even though it's devastating his public image, reputation and campaign.

### Managing the New Reality

The challenges presented by social media are not entirely new; rather technology has merely provided employees and managers with a new vehicle for engaging in old school misconduct such as sexual harassment and discrimination. What has changed dramatically is the speed at which misconduct impacts others, and the scope of the harm that can occur.

Employers need to be more proactive and more vigilant than ever before if they want to mitigate risks



## STRATEGIES FOR MANAGING NEW FORMS OF OLD-SCHOOL MISCONDUCT

associated with social media use. Below you will find four suggestions for managing social media risk in your organization:

- **Be Informed:** The law and technology are not always in sync; the law often lags far behind. Practices that may be okay today may become big risks tomorrow if you don't stay on top of changes in the law. And because social media is a global activity, it's often important to be informed about [international laws](#). A short sampling of U.S. laws and regulations that employers should be aware of include:
  - » Federal Trade Commission (FTC) rules and regulations
  - » Copyright, trademark, and intellectual property protections
  - » Health Insurance Portability and Accountability Act (HIPAA)
  - » Gramm-Leach-Bliley
  - » SEC Regulations relating to insider trading
  - » Anti-discrimination laws such as Title VII
  - » Anti-harassment laws such as Title VII
  - » The National Labor Relations Act
  - » Whistleblower laws
  - » The Stored Communications Act
  - » The Computer Fraud Abuse Act
  - » The Electronic Communications Privacy Act
- **Be Realistic:** Social media is here to stay. Employees no longer need your network or your equipment to access social networking sites while at work. They simply use their own devices. When you think about establishing and enforcing rules, be realistic about what is allowed, and enforceable.
- **Be Prepared:** Start with a really solid social media policy that reflects your organization's culture, and is properly communicated (via

- Only 43% of employees think their organizations have a social media policy
- While 73% of employers say they have a social policy in place.

training) and enforced. An effective policy and training will actually help curb misconduct—as confirmed by the ERC survey noted above. For some tips on how to develop a policy, check out the [NAVEX Global Social Media Toolkit](#). In addition, develop a social media crisis response plan—so when you have to deal with something big, you can respond properly and quickly.

- **Be Trusting:** Most people are well intentioned—they actually want to protect and improve their organizations. Employers need to let go a bit, and trust that the social networking community (which includes their employees) will impose some guardrails and help keep people in check, just like coworkers do in a more traditional workplace. If you want to seize the opportunities presented by social media, train employees about how to use it properly and productively to help your organization.
- Harassment and discrimination remain pressing risks – not because policies and training are ineffective in addressing these issues, but rather because many employers fail to adopt policies and adequately implement or communicate training.

So if you are thinking, “good we already have a policy” – you should carefully evaluate how effective it is. An enormous gap may be undermining your efforts.

This 30-point gap suggests a big problem. And the problem is that a policy really isn't much good if it's not communicated to employees in a way that is memorable.

One thing is certain. Employees will make mistakes online. In some cases they will simply embarrass themselves, but some may cause damage to your reputation. The key is to not sit back and do nothing. Establishing clear policies and educating employees are proven methods for increasing sensitivity and awareness, curbing behavior, and ultimately reducing the likelihood of misconduct.



## LESSON IV

# BUILDING A LEGAL DEFENSE

### Avoiding Four Fatal Mistakes

Using training to build a legal defense is a topic that receives significant coverage. It's also a topic that is often not well understood. Unfortunately, mistakes happen and they can be costly.

A complex web of federal and state laws and agency guidance impose EEO, and compliance and ethics training requirements on employers of all sizes. Some are mandatory, and some are basically mandatory. But what's the difference and does it matter?

- **Mandated training:** Training is actually mandated by law.
- **Business Essential Training:** When laws and regulations require employers to demonstrate that they have acted in good faith to establish a legal defense.

Most training obligations in the employment law arena fall under the second category. (To see a summary of the key legal defenses [click here](#)).

The reality is, however, that either way, an organization is Mandatory Training Lawsexposed if they fail to train employees or if they take a check-the-box approach to training. Because, let's face it, at some point every employer will be faced with lawsuit where having a defense will make all the difference. In *Bains v. ARCO Prods. Co.*, employees were originally awarded \$1 million in compensatory damages and \$5 million in punitive

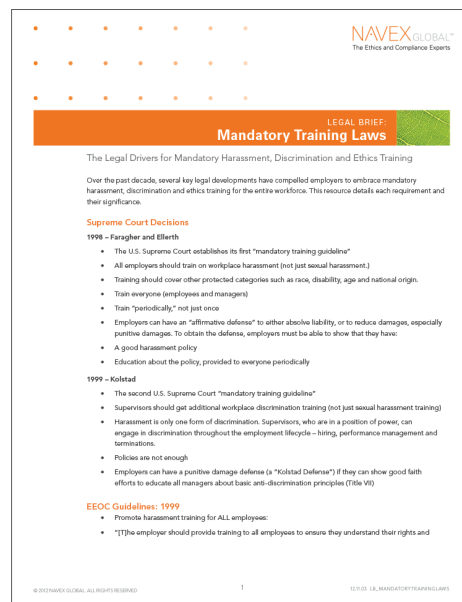
damages for failing to train on harassment. See 405 F.3d 764 (9<sup>th</sup> Cir., 2005). Similarly, in *Swinton v. Potomac Corporation*, an employee was awarded a punitive damage award of \$1 million because the employer did not provide managers with training. See 270 F.3d 794 (9<sup>th</sup> Cir., 2001).

### An Unexpected Twist—You Failed to Train Me!

Typically, employees groan and moan when told they need to take a compliance course or attend a training session. But here's a training twist that relatively new. An employee (or in this case a mayor) actually claims that he engaged in harassment because he wasn't trained.

San Diego Mayor Filner is accused of sexual harassment ([eight women say he sexually harassed them](#)). In August of 2013 the mayor's lawyer made the outlandish [claim that it's the city's fault](#) that he harassed these women... because the city did not provide the mayor with harassment training. As a result, the lawyer claims, the city and not the Mayor should be liable for damages that flow from his sexually offensive behavior.

So now, you not only need to provide training to build a legal defense against a plaintiff, you may need it to protect yourself from an employee or manager facing personal liability.



## BUILDING A LEGAL DEFENSE

## Defense Fundamentals

While legal standards may vary (and they do!) building a compliance-based defense boils down to some common techniques and strategies. Courts and juries are looking to reward organizations that make a real, good-faith effort to comply with the laws and get their employees to do the same. Good faith is not a one-time push exercise – it's really a push, interact, pull, and push again exercise.

Some of the most commonly accepted techniques include:

1. Have robust, organization-specific policies
2. Ensure that policies are distributed (to everyone in your organization) on a regular basis and employees attest to them
3. Provide robust and periodic training that is topic specific
4. Have a reporting mechanism that really works
5. Consistently and fairly enforce the rules
6. Be vigilant against retaliation
7. Regularly monitor, audit, and improve your program

Giving it a good effort, is not enough. These obligations are ongoing and evolving. Missing one of these steps can be catastrophic for your organization.

## Learn From The Mistakes of Others

Many employers have tried to build a defense relying on a "good enough is enough" mentality. Unfortunately, their efforts are not well rewarded by juries or judges. And mistakes can lead to jury verdicts in the millions of dollars.

So what are some of the most common mistakes? I highlight 4 key ones below.

**Mistake 1: Assuming That A Policy Alone is Enough**

When it comes to policies, the game has changed. Employers cannot rely on a policy grabbed from the internet. The policy needs to be customized to fit their organization and it must be current. An [outdated policy from 1938](#) just won't cut it. And once you have a solid policy, you have to actually tell people about it.

It seems so simple, but employers do miss this important step. In *Miller v. Kenworth of Dothan* (11<sup>th</sup> Cir., 2002), the employer paid out \$25,000 for "malice and reckless indifference" because of ineffective employment policies and because they failed to tell their managers about the policies. In *Griffin v. City of Opa-Locka, et al.* (11<sup>th</sup> Cir., 2001), the result was even worse for the employer. A jury awarded \$ 1.5 million plus \$ 500,000 of additional damages to a former employee because the city had no policy and no training.

**Mistake 2: Assuming That All Training Is Created Equal**

Training is another area where missteps can cause huge problems. Employers sometimes think that it doesn't matter what the training is like; they just need to check-the-box. But don't make this mistake—don't assume that all training is created equal. It's not. Training that helps you check-the-box will not curry favor with juries or judges, or enforcement agencies, or help you build a legal defense.

One employer learned this lesson the hard way. In [EEOC v. Management Hospitality of Racine, Inc. d/b/a International House of Pancakes, et al., No. 10-3247 \(7<sup>th</sup> Cir. Jan. 9, 2012\)](#), the court let stand a jury verdict of \$ 5,000 in compensatory damages, and \$ 100,000 in punitive damages in part because the employer used canned, generic videotaped harassment training. The court made clear that poor quality training does not qualify for a good-faith defense under federal law.

## BUILDING A LEGAL DEFENSE

When vetting training options, ensure that the content and how it is being delivered is contemporary and interactive, and legally vetted. And ensure that managers receive specialized training that teaches them about their unique responsibilities.

### Mistake 3: Assuming that Silence Is Golden

Many organizations still fear employee reports, assuming that chatter about inappropriate behavior is a bad thing. The reality couldn't be further from the truth. Employers should encourage employees to speak up, and should have a formal and well-communicated process for doing so. It's much easier and more efficient to handle an issue when it is small and manageable. And the [stats tell us](#), that even if you aren't hearing about harassment (or for that matter other employment law issues) nearly 30% of your employees have experienced it.

Set up a complaint process, and allow employees to come directly to HR or corporate with their concerns. Don't be afraid to encourage employees to use [your ethics or help line](#). Today, most of the calls coming into employer ethics lines are [HR related calls](#). In fact, [69% of helpline calls](#) are related to HR, diversity, and workplace respect issues. And make sure that Managers have a true open door policy, and they know how to properly handle an employee complaint.

If your process breaks down and isn't effective, you'll have a hard time establishing a defense under federal and state law. A Texas jury (Waffle House, Inc. v. Williams, 314 S.W.3d 1 (Tex. App., 2007)) awarded an employee \$ 400,000 in past compensatory damages, \$ 25,000 in future compensatory damages, and \$ 3,460,000 in punitive damages (eventually lowered to \$ 425K by judge per law) after she was sexually harassed by her manager. A key fact that led to this verdict, despite the employee's repeated reports, management failed to handle her complaints

properly. And because her complaints weren't processed properly, her issues never made it to corporate headquarters.

### Mistake 4: Assuming That You Only Have to Train 1 Time

Training is a large budget item. It's not just the cost of the program, but also the seat time costs that add up. Assuming that it's okay to deliver training one time, however, is a monumental mistake. Employees and managers need periodic reminders about your policies, procedures, and how to make complaints.

Periodic training for managers has been the law in California since AB1825 was adopted. It has also long been the position of the EEOC that Employers should provide employees and managers with periodic training. See EEOC Enforcement Guidance: Vicarious Liability for Unlawful Harassment By Supervisors, No. 915.002, June 18, 1999). And in *Romano v. U-Haul International*, punitive damages were available because the employer did not have "an active mechanism for renewing employees' awareness of the policies through... specific education programs." 233 F.3d 655 (1<sup>st</sup> Cir. 2000).

In fact periodic training is becoming the norm rather than the exception in the broader compliance space. See 2004 Federal Sentencing Guideline, Section 8B2.1(b)(4)(A). [Morgan Stanley](#) was rewarded with a non-prosecution agreement, in part because of its robust compliance program which included regular electronic and other training.

Establishing a smart cadence to your training is vital to building a successful defense. Today you have many options, which include [full-length courses](#), short 5-7 minute [bursts](#), and [communication and awareness](#) programs that keep issues top of mind. Plan your efforts out carefully ([example curriculum map](#)) and make the most of the training time you have.







## LESSON V

# TRAINING MIDDLE MANAGERS

## Why Tone from the Middle Matters

### The Importance of Middle Managers to Your Compliance Program

When it comes to managing risk and building a culture of ethics and compliance every employee plays a part. Senior leaders establish the priority, tone, and vision for an ethical culture. Rank and file employees give life to the vision when they consistently choosing to embody the standards. But, this vision cannot be realized without the critical role and influence of the supervisors who sit between these two layers.

Middle managers are the vital link, the connective tissue between the tone set by your senior leaders and your non-supervisory employees who implement core values on a routine basis. If the link is dysfunctional or non-existent attitudes and behaviors will not reflect a culture of ethics and compliance.

Supervisory employees are on the ground implementing strategy, advancing the goals of the organization, and most importantly having day-to-day interactions with your employees. As a result, direct supervisors

have the greatest influence on the adoption and implementation of values communicated by leaders of the organization. Managers shape employee perceptions about the importance of respect, ethics, and a commitment to doing what is right.

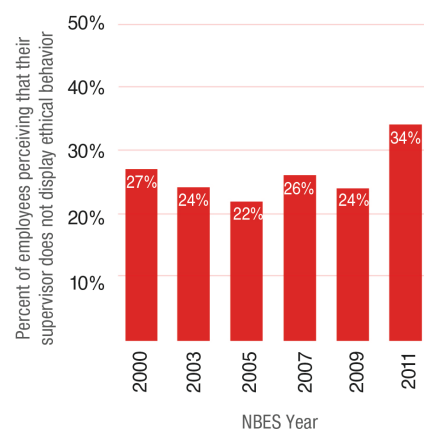
### Managers May Not Be As Highly Regarded As You Assume

It is not uncommon for senior leaders and employees to have very different perspectives about the culture of ethics in their organization. Senior leaders often see employees on their best behavior and tend to have a rosier perspective of corporate culture. Non-supervisory employees see the world unfiltered

through the day-to-day interactions with their colleagues and their manager. When employees witness their managers behaving unethically it can be particularly damaging to their attitude toward ethics and compliance and their resultant level of conduct.

[The 2011 National Business Ethics Survey](#) indicated a rising trend in the number of employees who perceive their supervisors as unethical (Chart 1).

**MORE EMPLOYEES HAVE NEGATIVE VIEW OF SUPERVISORS' ETHICS**



It is an alarming trend considering employees who view their manager as unethical tend to view their organization as unethical and are also less likely

## TRAINING MIDDLE MANAGERS

to demonstrate ethical behavior like sticking up for others or reporting observed misconduct. On the other hand, companies with strong ethics and compliance programs are characterized by less pressure on employees to compromise standards, lower rates of observed misconduct, a greater employee willingness to report misconduct and less retaliation (Chart 2).

In a parallel trend to the rising rates of unethical conduct by middle managers, a survey conducted in the UK (ILM survey [Added Values: The Importance of Ethical Leadership](#)) found that they are increasingly having their personal and organizational values put to the test. The next chart shows *an astonishingly high number of managers reported that they had been asked to do something unethical or even illegal* (Chart 3).

In order for middle managers to be allies for the cause of creating a culture of respect and compliance, they must have the knowledge, skills, values and attitudes that leadership wants to see reflected in all employees.

### Equipping Your Middle Managers

Manager misconduct is not always the product of intentional wrongdoing.

In many cases, misconduct is the result of managers acting without necessary information or knowledge about what is expected or appropriate.

You must arm your managers with the knowledge and skills that can really help them support your organization's overall ethics and compliance goals. Consider these steps:

### 1. Lead From the Top

Ethical lapses and legal missteps have a disastrous impact on culture, and employee engagement. When managers respond improperly to allegations of misconduct, allow misconduct to continue, or they themselves engage in the misconduct the [consequences for your culture can be severe](#).

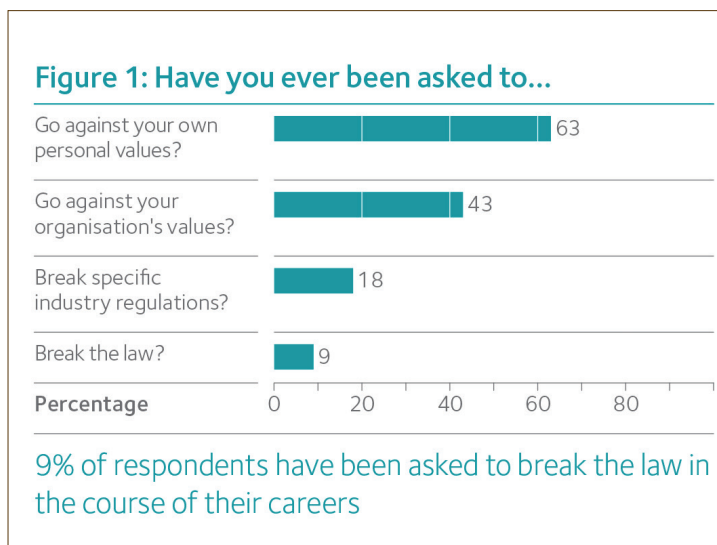
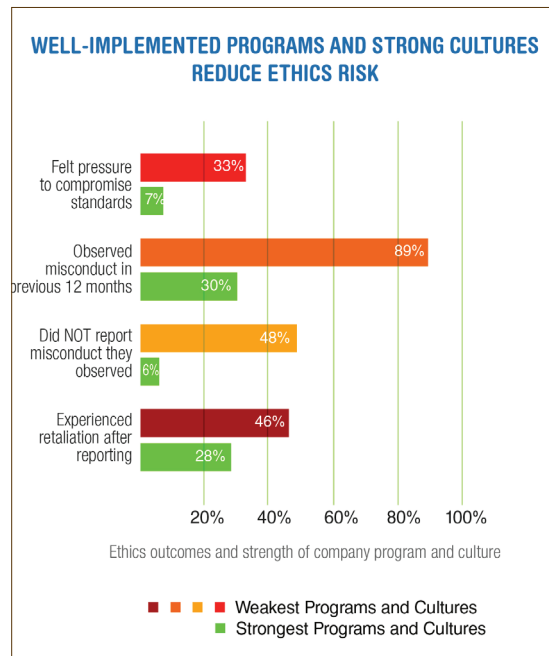
When [engagement levels decrease](#), employee productivity, retention, and your bottom-line often follow suit.

Don't assume that managers know what is expected of them. The reality is they may not

fully understand their responsibilities. This is particularly true if they have been trained using outdated programs or check-the-box eLearning solutions.

Just like other major initiatives, the message of ethical behavior must come from and be fully supported by senior leaders. Leadership must send the message about what behavior is unacceptable, how

managers are expected to respond, the prohibition on retaliation, and that everyone will be held accountable. Communicating in writing or even speaking to employees is simply not enough. Senior





## BUILDING A LEGAL DEFENSE

leaders must not only talk about expectations, they must take appropriate actions to enforce them.

Share the message in multiple formats, throughout the year. Some practical examples of the things that have been successful for many organizations include:

- Add a senior leader or CEO introduction to all eLearning programs.
- Ensure that senior leaders attend manager meetings and talk about expectations.
- Provide managers with written communications from senior leaders.
- Ensure that senior leaders attend or take all required training sessions programs.

### 2. Provide Middle Managers with Context

Context is always important when aligning managers and employees around organizational values and expectations. We all want to know WHY something matters, and what role we as individuals play in the big picture.

When it comes to compliance it can be easy to gloss over or forget to communicate individual roles in the big picture. When context is not provided, employees and managers may be less likely to get on board. So no matter how you are communicating with your managers about ethics and compliance, always make sure that you include information about:

- The impact of the middle manager on their employees
- That employees see their direct manager as a role model for the culture and values

- The importance of the middle manager on employee engagement
- Why compliance is good for business and how it protects the bottom line and their own budget

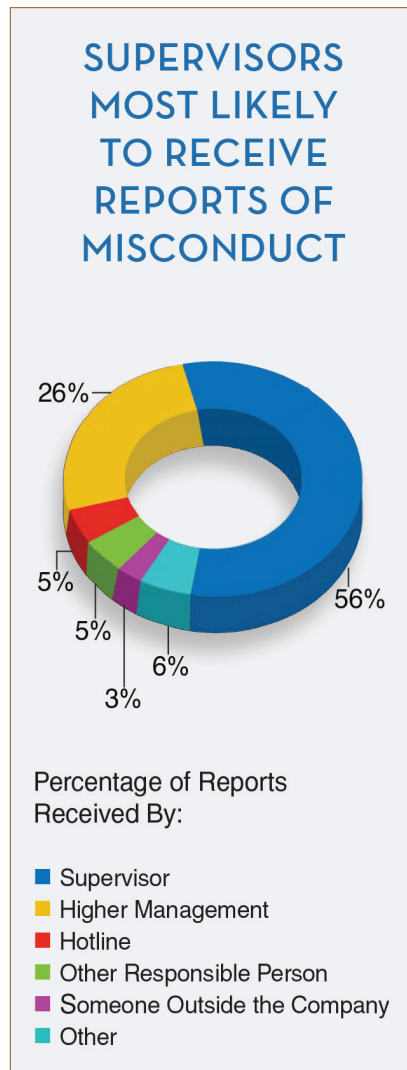
### 3. Focus on Complaint Management & Retaliation Prevention

No matter how hard you try, you will never be able to stop all misconduct from occurring. Employees and managers will make insensitive comments, have lapses in judgment, and your organization will periodically make a poor hiring decision that brings in a problem employee.

That's why you have a process for making complaints, right?

But many organizations make the mistake of stopping after they have implemented the process. They assume that managers will handle complaints properly. This is an assumption that often comes at a great cost to the organization.

When it comes to raising concerns, employees by astonishing numbers go to their manager or a manager one level up? The Ethics Resource Center (ERC) has been assessing this trend for years as part of its [National Business Ethics Survey](#). In the most recent survey released in 2012, ERC found that when employees made a report this is where they took their issue:



Managers make several common mistakes when it comes to employee complaints, and these mistakes can create real liability for your organization.

- They downplay the complaint ("It's not that bad" or "Is it really that big a deal?")
- They say they will deal with it but don't

## BUILDING A LEGAL DEFENSE

- They tell the complaining employee to deal with it on his or her own
- They tell the complaining employee that the conduct does not violate policy (without doing an investigation)
- They treat the complaining employee negatively after he or she raises a complaint (classic retaliation)
- They don't really listen to the complaining employee
- They receive the complaint but then forget to tell HR about it

These mistakes are much more common than you think. Whether intentional or not, they undermine your complaint process and your culture. And the consequences for poor complaint management are clear. Retaliation claims are the number one charge type received by the Equal Employment Opportunity Commission (EEOC) and have been for the last 5 years. Even if many allegations are baseless, the reality is that handling the situation poorly can increase the liability.

Address this manager skill gap by providing your managers with training on how to handle employee complaints and how to avoid claims of retaliation. Make sure that each course you deploy includes instruction for complaint handling and retaliation prevention. Consider [a course](#) that specifically addresses the topics of [whistleblowing, reporting and retaliation](#).

### 4. Use Realistic, Scenario-Based Training

Training will be much more effective if it involves engaging and relevant scenarios. For the 10-12 key ethics and compliance risks (including employment law risk areas) it's important to select training methods and solutions that will actually drive the right behavior.

Training should present realistic scenarios, where managers actually see real people struggling with relatable challenges. The information they review and tips they obtain from the training should be easily translatable into their own workplace.

This is where check-the-box training does very little for your managers. Simply watching a video or listening to someone talk about an issue does not educate effectively, change behavior, or give managers the tools they need to make a difference.

So when you are looking for tools that will really help educate your middle managers consider the following critical questions:

- Is the training really scenario based or are merely a series of questions that include characters with names?
- Does the training cover current trends and contemporary challenges?
- Are the scenarios realistic and relatable or are learners looking at cartoons and evaluating simplistic or outlandish fact patterns?
- Is the learning passive (like watching a video) or active (the learner must answer questions, get involved, and think about the right thing to do)?
- Are the interactive questions assessing learning in the right areas (like how to spot misconduct, how to prevent misconduct, and how to talk to employees about expectations) or are they being quizzed on irrelevant information such as facts or dates, like the legal definition of Title VII and the year it was passed?

Careful attention to training middle managers about their role in preserving an ethical and compliant workplace will help ensure that all of your employees not only hear the message, but see it in action and believe in its importance.

To learn about Online Training courses offered by NAVEX Global, [visit our course library](#).



## LESSON VI

# MONITORING CORPORATE CULTURE

### Ensure that Training Drives Desired Behaviors and Great Results.

For years organizations have used training to successfully build legal defenses and better position their organizations against litigation and enforcement actions. Increasingly though, training is intended to serve a dual purpose which includes driving positive cultural and behavioral changes in addition to establishing legal defenses.

It's no wonder that this dual focus has become more important to organizations.

Training is the single largest compliance budget category, and is one of the most visible program investments. (See CEB: Increasing the Impact of Your Training Investment). In a 2013 Corporate Executive Board Survey on compliance training effectiveness, respondents cited "improving the design, delivery, and impact of compliance and ethics training" as their highest priority (76% of respondents).

Accomplishing both facets of this dual focus require employers to be more vigilant with the training courses they select, how they are deployed and post-training reinforcement. So, how do you know if your training is driving behavioral and cultural change? And, what can you do to make your training program more effective?

### Start With A Solid Foundation: Know Your Organization's True Culture

Culture, very simply put, is the way that things get done in your organization. Culture is impervious to policies and procedures—it does not matter how strong these words are on paper if senior leaders

don't set a consistent tone from the top, and middle managers don't reflect that tone day-in and day-out. If values and policies are not perceived as important to leadership, and enforced accordingly, you will have limited ability to shape the culture and it will take on a life of its own.

Many organizations have a spoken culture that differs widely from their "real" culture. The disparity is often the result of a disconnect between the formal, verbal communications about values by senior leaders and the realities seen by employees on a day-to-day basis. If middle managers are not completely committed to living and enforcing the values and policies it erodes the credibility of your efforts to establish a culture of ethics and compliance. Corporate culture is indeed the makeup of your organization as a whole, but

your managers have the responsibility of ensuring that each and every employee's conduct aligns with the tone from the top and the words printed in your core values and policies.

Culture surveys are great start; find out what your employees think about critical compliance issues and training effectiveness. If you can, conduct employee focus groups and live feedback

If you want to measure effectiveness of training (and see if it really is changing employee perceptions and behaviors) you need to be open to discovering your organization's "real" culture and establishing a baseline that you can measure your progress against.

## MONITORING CORPORATE CULTURE

sessions; these sessions are likely to result in more honest responses, especially when conducted by someone outside your organization.

### Establish Metrics and Monitor Your Culture

You will also need to determine the metrics you will use to measure success of your training efforts. The criteria you use will of course depend on the types of data your organization collects. Organizations that have embraced technology will have many more options as they consider their success metrics.

Some of the metrics you may consider using to assess effectiveness include:

- Acceptance of training (training completion numbers)
- Number and frequency of training repetition events
- Analysis of [hotline](#) and [case management](#) data
  - » Change in observed misconduct rates
  - » Change in reporting rates
  - » Change in substantiated claim rates

Changes in attitudes and culture metrics (via culture surveys and/or employee focus groups)

Post-training surveys/quizzes designed to check knowledge and assess effectiveness

Once you have selected your metrics, begin to monitor on a regular basis. Watch for changes and trends over time. Set goals and develop action plans against your results so that over time you are able to adapt and modify training events, methodology and content to develop a stronger and more effective program.



1

### Make Training Mandatory and Track Completion

You cannot expect to drive behavior and culture change if employees aren't expected to participate in training or if your culture does not see it as a critical part of business success. Ensure that senior leaders support your training initiatives. Communicate that support to every employee in your organization.

Middle managers must also see training as an important part of protecting the business and driving performance. If they don't, your culture will not gain measurable lift from a great training investment. Make sure middle managers understand the value of training—help them understand that companies that build cultures of integrity and compliance outperform those that do not. Need proof? Check out this resource:

[CEB's Turning Ethics into Outcomes \(2011\)](#)

Some additional tips to consider:

- Make training mandatory—training programs that offer optional courses will not see the desired participation or behavioral change.
- Ensure that everyone (at all levels of the organization) actually participates and completes the training.
- Provide managers with specialized training that focuses on their unique responsibilities.
- Get feedback from managers and business leaders about whether they think the training is effective.

2

### Make the Message Continuous

To be effective, training cannot be a one-time event. Knowledge retention declines over time, and memories of annual compliance training fade rather quickly. Both adult learning theory and marketing research confirm the effectiveness of repetition—the more we are exposed to a message the higher the rate of adoption. Here are a few examples of

## MONITORING CORPORATE CULTURE

repetition you may be familiar with:



Some simple ways to keep the message continuous include:

- Planning post-training refresher events and follow-up sessions.
- Utilizing burst learning to reinforce key messages in a format that different from other training experiences.
- Providing managers with written and video-based video resources they can utilize in regular meetings.
- Utilizing social media tools to communicate with and reach employees (and other stakeholders) with ethics and compliance messages.

More and more organizations are leveraging [Burst learning](#) to address the need to keep the message fresh.

Burst Learning is designed to address single topic areas, using engaging video scenarios and interactive exercises, all in 5-8 minutes of time. These mobile-ready learning modules can be accessed anywhere, anytime and can be deployed through content delivery networks or your organization's LMS.



### 3 Listen To Your Employees

If you want to know how effective your training is at driving cultural change, ask your employees. Find out whether the training actually helped them make better decisions, whether the information was relevant to their job, or if they have used what they learned. If it's not particularly helpful, it will not change behavior or attitudes and has no power to change culture.

Carefully crafted surveys and employee focus groups can be incredibly helpful. Some items you may want to ask your employees include:

- Was the training relevant to your job?
- Did you find the training engaging and enjoyable?
- Were the lessons clear and understandable?
- Has the training helped you make better decisions?





## MONITORING CORPORATE CULTURE

- Has the training improved your opinion about our commitment to ethics and compliance?
- Would you make a report if you witnessed misconduct? What types of misconduct?
- Do you fear retaliation if you make a report?
- Are you able to apply what you learned in training on the job?



### Get Employees Involved in Teaching Others

One of the most powerful ways to improve training effectiveness is to get employees involved in teaching others. When employees are encouraged to apply the lessons they have learned by teaching others they focus and apply learning in ways that improve retention.

In the CEB survey referenced earlier, employees who received compliance and ethics training that had a strong application value, saw the lowest observed rate of misconduct, had the highest reporting rate, and had the greatest retention of key lessons—by astonishingly high margins.

If it works in your culture, empower employees and managers to take the lessons learned in training and apply them in the workplace. Compliance advocates or champions can help teach other employees and field questions. Employees can help develop policies, and they can help develop training materials that will be relevant, powerful, and authentic to your culture.