

# Forging an ethical corporate culture: Bring compliance and legal to the table

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Every company seeks to create an ethical corporate culture, or at least knows that it should. Achieving that is easier said than done. Central to the challenge is ensuring that the legal and compliance teams not only communicate well with each other, but work closely together. Creating that alignment, and making it work in practical terms, not only helps prevent ethical breaches, but if and when they occur, ensures that they are properly and enduringly corrected and are non-recurring.

Maximizing the combined expertise of both the compliance and legal teams results in a wide series of benefits for organizations. Although they each may have a different focus, their goals are the same: to empower and equip a company with the right tools to foster an ethical corporate culture and implement a program that protects it from future risks.

## Tone from the top

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An ethical corporate culture starts with the right tone from the top. A company's leadership must continually show its employees that it operates and behaves according to the highest ethical standards. When ethical leadership is demonstrated on a daily basis, it filters down to the rest of the organization and creates a culture of openness, integrity, and honesty.

Functionally, however, ethical modeling by leadership is not enough. CEOs and senior management just don't have enough visibility into every corner of the organization to prevent an ethical breach. Mechanisms for ethical conduct need to be put in place that are uniform, comprehensive, consistent, and cognizant of the evolving rules and regulations.

## Active coordination between legal and compliance teams

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Achieving that functional performance means giving both the legal and compliance teams a seat at the same table. Although their roles are different, their work should be closely coordinated. To maximize the expertise and insights of both teams, a company must first understand their respective approaches to identifying potential problems and solving them.

The primary role of a legal team is to provide counsel that ensures the organization is compliant with the law and, in addition, has a broader role in advising on corporate strategy and

governance. The compliance team's role is to ensure that the company, its officers, and its employees comply with all regulatory and ethical requirements along with all other internal policies and procedures. Both teams are focused on managing and limiting risk in both broad and very specific terms to help create a compliant and ethical corporate culture.

There's always the potential for the two teams to be at odds. Take, for example, what can be different approaches to an employee termination for misconduct. The legal team, concerned about a wrongful termination suit, in many cases advises against disclosing the incident, even internally. The compliance team, on the other hand, wants to inform employees that the company has taken the appropriate actions to address the problem and may also want to make an example of it for the company as a whole. Merging, to the extent practicable, the perspectives and concerns helps create a more ethical culture while also minimizing the threat of a legal action. The optimal way to do so is to ensure that the legal and compliance teams are talking to each other. After talking through a problem, the two can usually come to a resolution.

The Dodd-Frank Act already has a model for this that requires certain financial institutions to establish stand-alone risk committees to meet the evolving disclosure, oversight, and consumer protection obligations. In accordance with Dodd-Frank, a risk committee is "responsible for the oversight of the enterprise-wide risk management practices," and it must "include at least one risk management expert having experience in identifying, assessing, and managing risk exposures." Such stipulations are also put in place to guide a company's leadership in assessing risk associated with its business strategy.

The company, in concert with the support and involvement from top management, can more easily and effectively focus on the practices that will deliver the best results with limited regulatory and legal exposure, all while avoiding reputational damage:

1. **Implement consistent standards.** A clear set of disciplinary standards must be applied every time employee misconduct occurs, and these standards need to be applied without preferential treatment, regardless of the seniority or the position a person holds. Although the level of a disciplinary action should match the severity of the infraction, all noncompliant behavior must be dealt with immediately, using consistent compliance infrastructure and remediation procedures.
2. **Foster an open and honest corporate culture.** A termination for misconduct should be handled in a transparent manner to inform employees that an action has been taken to address a problem. That is not to say that the terminated employee should face public humiliation for his or her actions, rather, that the matter must not be swept under the rug. Instead, it should be used as a "learning moment" that allows internal stakeholders to maintain faith in the company as a whole.
3. **Public disclosure.** It's become a fact of corporate life for executive disciplinary actions to become public. Proactive and controlled disclosure is advised, as long as it does not interfere with an ongoing investigation by the authorities. A timely public disclosure also

takes away the ability of a terminated party to control the narrative and irreversibly damage a firm's reputation. When a company is transparent about these lapses, it sends a message that unethical behavior has no place in the organization and that appropriate steps are being taken to rectify the situation.

In an ever-changing, global regulatory landscape, companies rely on their legal and compliance teams to make the best recommendations and take the right steps to protect the organization and its reputation. Forging the two into a seamlessly aligned, highly functioning team optimizes legal and regulatory protections and ensures the fostering of an ethical corporate culture.

## Takeaways

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- Ethical culture starts from the right tone from the top.
- There must be active coordination between legal and compliance teams.
- A company must understand the legal and compliance teams' respective approaches to problem-solving.
- To achieve functional performance, companies must give both the legal and compliance teams a seat at the table.
- Forging the two into a seamlessly aligned, highly functioning team optimizes legal and regulatory protections.

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