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Setting the Tone from the Top: Getting Executive Buy-In

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There are many factors that go along with having a successful compliance program. Achieving executive buy-in is an integral part of building and maintaining a culture of compliance in any firm. Setting a tone at the top creates a clear vision and path for the firm and its employees to follow.

When organizational leaders value ethical behavior and integrity, employees are much more likely to adopt a similar work ethic. In this article, we will discuss why senior management buy-in is important in establishing a culture of compliance and why the tone from the top is paramount in developing a solid compliant culture. We will also provide guidance on how to establish support for the compliance program from the C-Suite.

Why is it important to have senior management buy-in?

Garnering senior management buy-in to support compliance in the firm can feel like a daunting exercise. In most firms, the leaders in charge truly want to err on the side of compliance because, in the end, their clients depend on it and the regulators expect it. The Securities and Exchange Commission Division of Examinations ("EXAMS") has made it clear that one of their main areas of concern is a lack of leadership pertaining to the creation and continued development of an appropriate and effective compliance program. The role of the CEO is much more than just being the face of the organization. The CEO is the figurehead to which all employees look for guidance and attempt to emulate their behavior. When the management structure of an organization takes an active role in developing a culture of compliance, the entire atmosphere around the organization can change. Employees working in an environment where upper management promotes a sense of eagerness rather than trepidation is the first step for any firm to have a healthy culture of compliance.

For a compliance officer new to the role, it can be intimidating to enforce policies and procedures and command respect from firm personnel, so senior management support is imperative. Even for a seasoned Chief Compliance Officer, navigating the executive mindset to demonstrate the importance of compliance can be challenging.

What is a culture of compliance?

Former SEC Chair Lori Richards, who often spoke about the culture of compliance, puts it this way:

> *"Simply put, it means instilling in every employee an obligation to do what's right. This culture will underpin all that the firm does and must be part of the essential ethos of the firm, so that when employees make decisions, large and small, and regardless of who's in the room when they make them, and whether or not lawyers or regulators or clients or anyone else is looking, they are guided by a culture that reinforces doing what's right.*
>
> *Importantly, a firm's Culture of Compliance exists outside the compliance department — it exists throughout the firm."*[1]

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1. https://www.sec.gov/news/speech/2007/spch101807lar.htm?inf_contact_key=4fa84fce6e8d1e21e57b4b1e70689990680f8914173f9191b1c0223e68310bb1#foot5

How do you establish tone from the top?

So, how do you go about getting the senior executives to support a culture of compliance? In an article published in 2007[2], former SEC Chair Christopher Cox referenced some best practices in establishing an ethical culture. He stated:

> *"Without a doubt, the best practice of all in any company is to set the right tone at the top. Over and over again, commissioners and staff at the SEC observe that the tone at the top is a major factor in determining the effectiveness of internal controls to prevent fraud, in treating customers, employees, investors and other stakeholder fairly, and in contributing to the long-term success of the organization. Leadership by example, good communication, and ongoing ethics education and training are all vital."*

Senior management buy-in is commonly referred to as the "tone from the top." This element is crucial in establishing a true culture of compliance. To be successful in compliance efforts, it is vitally important that the CEO and senior leaders exhibit behavior conveying that non-compliance with policies and procedures, applicable regulations, ethics, and the firm's undivided loyalty to clients will not be tolerated. Here are some best practices that firms should consider when demonstrating their "tone at the top":

1. Senior executives should ensure that compliance has a "seat at the table" for all conversations related to the firm and its business practices, including standing committees. Providing valuable input and guidance during strategy discussions helps position the firm for success. Peter Driscoll, former Director, OCIE (recently renamed the Division of Examinations or EXAMS), stated the following during the SEC's 2020 Compliance Outreach program:

   > *"Through our examination observations and discussions, we notice CCO access and interaction with senior management, prominence in the firm, and when they are valued by senior management. We notice demonstrable actions, not just words, supporting the CCO and compliance."[3]*

2. All levels of firm management should encourage employees to act legally and ethically as well as in accordance with their fiduciary obligation. Consistent messaging from leaders reminding employees of the firm's expectations toward doing what's right can instill a solid culture of compliance.

3. Management should be involved in the notification of and resolution of violations of firm policies.

4. Senior management should attend and participate in required training for employees, alongside the employees. This will demonstrate to those in attendance the importance of compliance.

2. "Doing the Right Thing; Christopher Cox, Chairman of the SEC, sets the tone in a Q and A on ethics" Speaker Magazine, September 2007; https://www.nsaspeaker-magazine.org/nsaspeaker/200709?folio=3&pg=20#pg20.
3. Speech by SEC Staff: The Role of the CCO-Empowered, Senior and With Authority by Peter Driscoll, Director, Office of Compliance Inspections and Examinations. https://www.sec.gov/news/speech/driscoll-role-cco-2020-11-19#_ftn7

Steps for Establishing a Strong Culture of Compliance

1. *Communication*
   The importance of communication in the workplace cannot be overstated. Establishing an effective line of communication from the top can boost teamwork and lead to a healthy work environment. Holding weekly staff meetings and engaging in informal conversations with employees at all levels helps to communicate and promote companies' values and ethics. This also demonstrates a commitment from the top.

2. *Have a written code of conduct and ethics*
   Establishing a written code of conduct and ethics is instrumental to setting the tone from the top. Providing employees with a clear set of guidelines that are communicated by senior management and followed by all allows employees to know what is expected of them on a daily basis. It allows for the development of a safe work environment for all employees.

3. *Encouragement to report wrongdoing*
   How can companies motivate their employees to feel comfortable speaking up when they notice wrong behaviors in the workplace? Establishing a whistleblower program that provides a safe, anonymous outlet for employees to report issues regarding unethical or inappropriate behavior in the workplace is essential. When a manager shows a genuine appreciation for employees speaking up, it creates a system of confidence and trust throughout that organization.

4. *Rewarding employees for strong moral behavior*
   Company executives should reward individuals who show integrity and support the values set by the company. Employees are then able to recognize that they are being acknowledged by those around them for the good behavior that they display.

5. *Training*
   Ongoing training reminds employees at all levels of their obligations to the firm, its clients, and to each of its employees. Developing a training program that includes elements of ethical behavior and fiduciary responsibility puts the culture of compliance at the forefront of the conversation. Invite management to not only participate but to contribute as keynote speakers. This will go a long way to instilling a top-down approach to compliance.

Conclusion

It is becoming increasingly challenging for businesses operating in the world today. For any organization to succeed, it requires effort from employees at every level to operate on the same strategy, vision, and values. Establishing and maintaining a strong tone from the top is always the first, and one of the most important, steps to creating a culture of compliance that will stand the test of time and allow employees to be a part of an organization whose values align with their own. Leading by example is key to helping ensure adherence to ethical behavior. ■