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Developing a Code of Conduct:
A Step-By-Step Guide

INTRODUCTION

Most companies strive to operate in an ethical manner and espouse a commitment to values such as honesty, integrity and trust. A code of conduct, also commonly referred to as a code of ethics, is a written set of principles that typically works in conjunction with an organization's mission statement to clearly identify expectations regarding appropriate behavior. In effect, the code serves as a type of ethical roadmap for employees, management, vendors and stakeholders to follow.

While the first known codes of conduct date back far as the 1940s, their widespread implementation has been a fairly recent development. In the 1980s, large corporations such as General Electric and General Dynamics viewed the development of codes of conduct as a form of ethical self-regulation. In 1991, the U.S. Sentencing Commission put forth the Fair Sentencing Guidelines for Organizations (FSGO), which stipulated code education as a means of reinforcing ethical behavior.

In 2002, the Sarbanes-Oxley Act made codes of conduct a virtual necessity form a legal standpoint. SOX mandated the development of a code for top executives and board members in all publicly traded U.S. companies. Organizations that do not have a code in place must now provide a plausible explanation as to its absence. In 2004, the FSGO guidelines were revised to stipulate that companies must take appropriate steps to foster an ethical cultural as well remain in legal compliance.

As scrutiny of corporate conduct continues to intensify, the demand for code development and implementation now comes from sources both inside and outside the organization. Employees, vendors, customers, prospective business partners and investors want to be certain the company they work for or do business with conducts itself in the most ethical manner possible. All of these developments over the past quarter century have made codes of conduct more than just a sound business practice; they're a virtual necessity.

There is a common misconception that codes of conduct only apply to Fortune 500 companies, and that small to medium-size organizations have no need for them. According to Michael Connor, editor and publisher of Business Ethics magazine, no company is too small to have a code of conduct. In addition to setting the appropriate ethical tone for the organization, Connor points out that in today's business climate, any company that does not have a comprehensive code in place faces a greater exposure to risk from a legal and regulatory standpoint if an ethics violation occurs.

EXAMINING A CODE'S IMPACT ON ORGANIZATIONAL CULTURE

While the possible legal ramifications of not having a code of conduct in place are clear, perhaps a more important reason to develop and implement one is the positive impact it can have on an organization's culture. A study conducted by LRN, a global provider of governance, ethics and compliance management applications and services, illustrates the pervasiveness of codes as well as the cultural benefits of having an established code of conduct in place. According to the study, 79 percent of the employees surveyed said that their company currently has a code of conduct. Other key findings of the survey include:

- Eighty-three percent of the employees who said that their company has a code in place also stated they believe that company management actively promotes an ethical culture
- Seventy-three percent said the code makes the company a better place to work
- Eighty-two percent regularly apply the code in the course of their daily activities
- Sixty-two percent said the code has altered their behavior at work for the better

A code of conduct can offer a number of important cultural benefits for any organization including:

- Helping the organization achieve its long-term ethics goals
- Raising the “ethical bar” for the entire organization
- Fostering an ethical decision-making process at all levels of the organization
- Providing a solid framework for addressing ethical violations
- Creating a healthy dialogue regarding potential ethical issues the organization may face

While the benefits of a carefully considered and well-crafted code of conduct are undeniable, some companies may choose to go without one, perhaps because they think the process of developing a code is overly burdensome or is beyond their level of expertise. The following information is designed to provide a step-by-step process for creating an effective, easy-to-understand code for organizations of any size.

HOW TO STRUCTURE YOUR CODE OF CONDUCT

While the specific content of a code of conduct will vary depending on factors such as the nature of the organization and the type industry in which it conducts business, there are several basic elements that should be part of any code:

- Engaging title – avoid generic-sounding titles which can make the code sound overly formal, much like a legal document. Good examples include Pricewaterhouse Cooper's *The Way We Do Business and the World Bank Group's Living Our Values.*
- Introductory letter from the CEO or leader detailing the purpose of the code and its importance in the creation an ethical culture that benefits employees and stakeholders
- Table of Contents
- Prologue/preamble-expands upon the purposes and benefits outlined in the introductory letter
- The organization's mission statement and/or statement of key values
- Definition of the code's scope – to whom it applies, when it applies and how it applies
- Listing of code provisions-these are the substantive issues that impact the organization
- Examples of appropriate behavior as it relates to each code provision
- A framework providing employees with guidance for making decisions and taking appropriate actions when faced with an ethical dilemma
- Listing of resources for seeking assistance with grievances such as the ethics and compliance officer, anonymous reporting hotline and ethics and compliance website
- References to disciplinary actions or other ramifications for code violations

CREATING THE CODE: SIX-STEP PROCESS

Creating an effective code of conduct is a systematic process that should incorporate input from all areas of the organization. For many companies, a workable approach is to create a code development committee or task force consisting of a cross-section of employees and stakeholders. It is also essential that the code address areas that are specific to the organization and how it conducts business.

Step One: Gathering Information

The initial step in developing a code of conduct is for the code development committee to compile ideas as to what the code should include. A good starting point is to examine the values listed in the corporate mission statement and make them a focal point of a brainstorming session. Examining sample codes by industry or topic can also provide valuable insight regarding framework and structure.

According to management consultant Marianne Jennings, professor at Arizona State University's W.P. Carey School of Business and author of The Seven Signs of Ethical Collapse, an excellent way to establish the code's foundation is to consider the question, "What are the things you would never do at this company to get a client, to keep a client, or to make sure you met your numbers for the quarter?"

Other important questions to consider include:
- What laws and regulations impact our business and require strict compliance?
- What types of ethical dilemmas have we faced in the past, and what types could we face in the future?
- Are there any ethical "gray areas" that we need to address?

The code development committee should consider topics that specifically pertain to the business. Depending on the nature of the business, these can include:
- Conflicts of interest
- Personal and professional integrity
- Harassment
- Fraud
- Customer relations
- Vendor relations
- Use of company property
- Expense reimbursement
- Discrimination
- Confidentiality

It is also important to solicit input from employees to get a true sense of ethical dilemmas they face on a daily basis. This can be accomplished through an anonymous survey asking employees to list any situations they encountered in the past year that made them feel uncomfortable or possibly made them believe they were asked to compromise their integrity. Establishing focus groups can also be an effective information-gathering tool for larger organizations.

The key topics identified during the information-gathering process will then serve as the specific code provisions. One approach for categorizing these provisions is to assign a level of potential risk to each and then rank them accordingly. For example, if confidentiality breaches are a major concern and pose the highest threat level to your organization, make this the first code provision in your document.

The end result of the information-gathering process should be the creation of an outline that serves as the foundation for the development of the code.

Step Two: Crafting the Draft

Once the basic content and structure of the code has been determined, the next step is to develop a draft. Many companies make the mistake of choosing an attorney or other legal expert to create the document. This often results in a code that is filled with "legalese" that may be difficult to understand for most employees, thus defeating the purpose of its creation. A truly effective code of conduct is a positive, values-based document that serves as a guideline for appropriate behavior instead of merely a list of rules and regulations that must be obeyed at all costs.

For companies with 20 or fewer employees, Connor of Business Ethics suggests having a member of the organization develop the draft. Larger companies may benefit from going outside the organization and enlisting the services of an ethics or human resources consultant possessing expertise in the code drafting process. Regardless of who drafts the code, it is important to use clear, concise language that is free of legal jargon.

A code of conduct may be viewed by some as a threatening document that is designed to intimidate rather than promote an ethical culture that benefits the organizational as a whole. Consequently, it is important to keep the language positive and convey these benefits rather than dwelling on the negative implications. For instance, instead of stating that a particular activity is unethical or illegal, it can be pointed out how not engaging in the activity results in a business advantage for the organization, its employees and stakeholders.

Using a consistent format for developing the specific code provisions can be extremely helpful when crafting the document. A sample format can include:

- Identification of the provision or topic, such as conflicts of interest, use of company property, discrimination, etc.
- Definition of the core principle
- Intent of the provision
- Guidelines employees should follow for making a decision when faced with a dilemma
- Example of a typical scenario and how to resolve the matter in accordance with the code

Step Three: Reviewing the Draft

Upon completion of the initial code draft, it should undergo a comprehensive review process to ensure it complies with the parameters developed in the initial step. The code development task force should conduct the review and perform any necessary edits. “Test drive” the code by submitting it to a targeted group of employees and stakeholders who are not otherwise involved in the code development process and incorporate their feedback as appropriate.

The completed document should then be submitted to top management for input. According to the Society of Human Resource Management, even if company leadership is not directly involved in the creative process, its participation in the review process serves to reinforce the organization's commitment to its development and implementation.

If legal counsel is not included in the review process, the document should be presented to an attorney to ensure legal compliance. As stated, the attorney should not be given actual drafting responsibilities for the document but instead serve in an advisory capacity only.

Step Four: Formally Adopting the Code

The code of conduct should be formally adopted by the appropriate parties, which typically involves presenting it before the organization's board of directors for approval. Adoption legitimizes the code and expresses the organization's sincere commitment to instilling an ethical culture. In smaller companies, ownership or top management should bear the responsibility of adopting or approving the completed code.

Step Five: Introducing the Code

Another common error many organizations make is failing to properly introduce the code to its members. Like any important corporate initiative, a wide-scale introduction of a code of conduct is essential for its successful implementation. As a commitment to ethical behavior starts at the top of the organization and trickles down through its various levels, leadership is responsible for unveiling the code and providing educational resources to execute it effectively.

Ideally, the company's CEO or other top executive should unveil the code at a company-wide kickoff meeting or similar gathering. In addition, all members of the organization should receive a written copy 7 of the code, and the document should be a staple of the new employee orientation package. Other effective educational resources for supplementing code rollout include newsletter articles, emails to all employees and stakeholders, and the use of strategically placed posters throughout the facility.

Code training is also important for ensuring employees understand the code and how it should be implemented on a daily basis. Training methods can involve presenting employees with potential scenarios and ethical dilemmas and instructing them to resolve these situations based on the language found in the code. The use of relevant case studies also serves as an effective training tool. E-learning courseware can be an extremely valuable component of the educational process by providing employees with convenient online access to code training materials.

Additionally, training should include a certification process to verify that each employee has attained an acceptable knowledge and understanding of the code and its application in the work environment. Having the employees re-certify on an annual basis helps to reinforce the content of the code as well as its importance to the long-term success of the company. The goal should be to achieve a 100-percent certification level throughout the organization.

Step Six: Enforcing the Code

A code of conduct is no more valuable than the paper it is written on unless there is a mechanism in place to enforce it effectively. For many organizations, code enforcement falls under the domain of the ethics/compliance officer. This individual is charged with the responsibility of developing and monitoring processes in areas such as reporting and investigating possible code violations as well as meting out appropriate disciplinary action. In smaller organizations, the ethics/compliance officer may be the company's human resources representative or a member of the management team.

An essential component of code enforcement is the deployment of an anonymous hotline to facilitate the process of reporting acts of misconduct. Reporters should be afforded protection through the incorporation of a comprehensive non-retaliation policy.

The ethics/compliance officer is also charged with periodically reviewing the code to assess whether modifications or additions are in order. As with code training, code assessment ideally should occur on an annual basis or whenever significant operational or organizational changes take place. Officers can also solicit feedback from employees, managers and stakeholders as a means of assessing the "ethical temperature" of the organization as it relates to the code of conduct.

Times to consider reviewing or updating a code of conduct include:

- Changes in external operating environment, such as the introduction of legislation that impacts the business
- Periods of expansion or relocation
- Periods when outsourcing is used or when high staff turnover occurs
- Occurrence of an unexpected crisis or other event that is not adequately addressed in the existing code
- Realization that employees are having difficulty understanding or using the current code

CHECKLIST FOR DEVELOPING A CODE OF CONDUCT

The following checklist can be used during the process of developing and establish a comprehensive, user-friendly code of conduct that will be embraced by employees and stakeholders and help an organization realize its short- and long-term behavioral goals:

- Are the code's provisions in line with the goals of the organization's overall ethics program?
- Does the code use clear, concise language that can be easily understood by employees at all levels of the organization?
- Does the code adequately address all areas that impact the organization, particular those areas that offer the highest potential for risk?
- Is top leadership on board with the code development process, and has it been consulted as the process unfolds?
- Has input been sought from employees and stakeholders during the information gathering process?
- Has the code draft undergone an extensive review and editing process to ensure it adequately addresses the specific needs of the organization?
- Does the code include a decision tree or similar mechanism to guide employees when faced with an ethical dilemma?
- Does the code include relevant examples, case studies, or real-world scenarios that employees typically face on a daily basis?
- Does the code include access to resources such as a reporting hotline or website where individuals can go to obtain additional help or information?
- Has the code been reviewed by legal counsel?
- Has the board of directors signed off on the code?
- Has an effective method been chosen to unveil the code to the entire organization and its stakeholders?
- Are appropriate training methods being used, both during the code implementation phase as well as on an ongoing basis?
- Does every employee and stakeholder have easy access to the code?
- Is there a specific individual assigned to ensure code enforcement and to review it periodically for possible revisions?

CONCLUSION

While developing a code of conduct and taking appropriate steps to ensure proper implementation and enforcement requires time and effort, the process will provide numerous long-term benefits for your organization. From a legal standpoint, a code helps to ensure compliance with the Federal Sentencing Guidelines, Sarbanes-Oxley and other regulations, which can help the organization to avoid costly fines and other punitive measures.

A well-written, user-friendly code can result in the development of a corporate culture built on a foundation of integrity and trust by providing an effective link between the company's mission statement and values and its behavioral policies and procedures. In essence, a code of conduct shines a spotlight on organizational values and illustrates why they are important to the success of the organization.

From a marketing and public relations standpoint, a code demonstrates to customers, prospects, and the general public that your organization is serious about conducting all its activities in an ethical manner, making the company one that others look forward to doing business with.

Finally, a code of conduct provides a consistent framework that employees can apply to every action they take during the course of a workday. Whenever employees have doubts about whether an action is ethical, they have a readily accessible reference guide to help them make the right decision for themselves and the organization as a whole.

REFERENCES

http://www.ethics.org/files/u5/LRNImpactofCodesofConduct.pdf

http://www.shrm.org/about/documents/chapter-coe.pdf

http://www.insideindianabusiness.com/contributors.asp?id=1841

http://www.corpgov.deloitte.com/binary/com.epicentric.contentmanagement.servlet.

ContentDeliveryServl et/USEng/Documents/Board%20Governance/Ethics%20and%2

Compliance/932__SuggestedGuidelinesW ritingCodeEthicsConduct0805.pdf

http://www.ethics.org/resource/erc-creating-workable-company-code-ethics

http://www.independentsector.org/code_checklist

http://www.inc.com/guides/how-to-write-a-code-of-ethics.html