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## **Compliance and Ethics for the Small Law Department**

### **Top Ten Tasks**

**Presented by  
ACC's Small Law Departments Committee  
and sponsored by WeComply, Inc.**

## **Panel**

**Ken Grosserode, Director of e-Learning and  
Content Development, WeComply, Inc.**

**Deborah House, Vice President and Deputy  
General Counsel, Association of Corporate  
Counsel**

**Richard W. Westling, General Counsel, Peoples  
Health (Moderator)**

## **Not Just About Sentencing**

- United States Sentencing Guidelines
  - Address criminal conduct
  - Are the foundation for effective compliance and ethics programs that address all misconduct (“Program”).
- 2004 Amendments to the Guidelines set forth specific goals for Programs.
- The Department of Justice, Treasury, the SEC, and other regulatory agencies use Guidelines’ standards.

## **Three Significant Initial Considerations**

1. Governmental regulations and applicable industry practices.
2. Size of company.
3. Prior misconduct.
  - Of company
  - In industry

## **#1 Create An Appropriate Organizational Structure**

- No magic structure.
- Could be centralized or decentralized.
- Senior management has overall responsibility.
- Day-to-day responsibility can be delegated.
- Board must oversee Program.

## **#2 Provide Adequate Resources, Appropriate Authority, and Board Access**

- Consider: size, regulation, transaction complexity, geographic range, industry practices, areas of risk/liability.
- Consider: authority needed to get job done.
- Consider: how interaction with Board will take place.

## **#3 Educate Your Board**

- Board needs to be knowledgeable about and oversee the Program.
- Provide adequate resources for Program, including compliance training in which Board participates.
- Must establish a “tone at the top” that demonstrates corporate commitment to ethical conduct and compliance with the law.
- Require accountability for senior management responsible for Program.

## **#4 Assess Your Legal and Regulatory Risk**

- Goal: take appropriate steps to design, implement, and modify the Program to reduce the risk of misconduct.
  - Consider nature and seriousness of possible misconduct.
  - Likelihood of misconduct.
  - Prior history of misconduct.
- Process: Component of overall risk analysis.

## **#5 Establish Appropriate Standards and Procedures**

- Code of Conduct is essential
- Basic: Conflict of interests, employment standards, political activities, confidential information, gifts & entertainment, government relations, reporting standards.
- Regulatory obligations will drive standards.
- Risk assessment may dictate others.
- Must be Real: Apply equally to the receptionist and CEO.

## **#6 Establish an Effective Training and Communications Program**

- Essential: Code of Conduct, employment standards, regulatory requirements.
- Tailored is best, using risk assessment.
- Forums: On-line, classroom, individual, part of orientation process, written, etc.
- Outside resources.

## **#6 Establish an Effective Training and Communications Program (continued)**

- Reinforce training with emails and postings, but do not use as a substitute for training.
- Include everyone in training, even senior executives.
- Document--when, what, who and how.

## **#7 Establish a Reporting Mechanism (Hotline)**

- Confidential.
- Anonymous.
- Accessible.
- Retaliation prohibited and enforced.
- In-house or third party.

## **#8 Create Carrots and Sticks**

- Standards must be clear.
- Incentives for acceptable compliance related performance.
- Disincentives for unacceptable compliance related performance.
- Misconduct or failure to prevent or detect misconduct should result in discipline.
- Must have appropriate means of measurement.

## **#9 Screen Your Employees**

- Who: senior personnel, “substantial authority personnel,” personnel identified as creating risk.
- When: incoming, periodic, change of responsibilities or duties.
- What: e.g., criminal record, credit, but always within scope of law.

## **#10 Monitor, Audit, Assess & Revise**

- Monitor: trust but verify.
- Audit: self audit, internal audit, third party.
- Assess & reassess.
- Revise: Based on all of the above plus misses and near misses.



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