

MINIMIZING EXPOSURE THROUGH EFFECTIVE COMPLIANCE

LEAD BY EXAMPLE

Great compliance programs start at the top of the organization. Senior executives need to be committed to compliance and need to set excellent examples. Senior executives need to emphasize the importance of compliance to all employees and create a culture of compliance.

A CLEAR CODE OF CONDUCT

An organization's code needs to articulate the standards all employees must meet when doing business. A Code of Conduct should clearly set forth the law and explain the mission, values and principles of the company. It should not just be a piece of paper handed out to employees when they join the company. The code should provide specific guidance to employees on subjects such as dealing with customers, competitors and government officials.

WHISTLEBLOWING

Organizations need a strong whistleblowing/internal reporting program that (a) allows employees (and agents) to make reports without fear of retaliation, (b) includes provisions for anonymity/confidentiality, and (c) is well-publicized. We recommend having hotlines to encourage employees to report potential violations without fear of retaliation. It is important that employees are aware of the hotline and feel comfortable using it.

TRAIN EMPLOYEES

An important aspect of an effective compliance program is the training of an organization's personnel on substantive compliance issues, as well as on the organization's internal procedures and controls. Without effective training, the best compliance program on paper will not be effectively employed throughout an organization. It is important that all levels of a company should be trained, including the senior executives.

CREATE A COMPLIANCE DAY/WEEK/MONTH

Most companies with an effective compliance program will dedicate a time every year to reflect on the importance of compliance. Whether it is a day or a month, it is important to have a yearly reminder about compliance and the importance of compliance to the company. Be sure to have senior executives actively participate in these events and send messages to employees about the importance of compliance.

DEVELOP A STRONG COMPLIANCE ORGANIZATION

Senior management needs to empower the senior compliance officer to have the tools necessary to implement a successful program. The compliance department needs experienced people with adequate resources overseeing the company's compliance program.

FLOW DOWN COMPLIANCE EFFORTS TO SUBSIDIARIES AND JVS

It is not good enough for a parent company to have a strong compliance program. U.S. regulators expect a parent company to ensure that its affiliated companies also have strong compliance programs.

PUNISH CULPABLE EMPLOYEES

If there is a problem, companies need to punish responsible employees. The U.S. government will no longer tolerate companies continuing to employ culpable employees.

AUDIT

Companies need a strong audit program to have an effective compliance program. An organization needs to take reasonable steps to ensure that the compliance program is being followed and to detect criminal conduct. An important part of the audit is reviewing emails of key individuals for any problematic conduct.

TRAIN YOUR AGENTS, VENDORS, AND THIRD PARTIES

Companies are equally liable for the actions of their agents, vendors and third parties. State of the art compliance programs not only require third parties to sign certifications of compliance, but they train and monitor key agents to ensure compliance.

CONTINUE TO IMPROVE

Compliance programs should not be static. Compliance programs should continue to evolve in their scope and implementation. No compliance program is perfect and no compliance program can detect all illegal conduct. Thus, it is important for an organization to improve continuously its program.

IDENTIFY GREATEST WEAKNESS

Analyze your business model to identify the area where you have the greatest vulnerability. If you are doing business in high risk countries, or have a model that includes the use of third parties or agents, or you are paying commissions, or dealing with government agents, you need to tailor your compliance program to address the specific circumstances.

DON'T FEEL SAFE JUST BECAUSE YOU ARE NOT IN THE UNITED STATES

We have many cases where neither the company nor the executive set foot in the United States and are still held liable for U.S. crimes. If you are doing business in the United States, or even if you are not but your business impacts U.S. business (even indirectly), the Justice Department has jurisdiction.

For more information, please contact:



MATTHEW JACOBS

Partner
San Francisco
+1.415.979.6990
+1.510.326.1333 (Mobile)
mjacobs@velaw.com



CRAIG P. SEEBALD

Partner
Washington
+1.202.639.6585
+1.202.879.8995 (Mobile)
cseebald@velaw.com