YOUR CULTURE OF COMPLIANCE

HOW TO ASSESS, LEVEL UP, AND LEVERAGE YOUR CULTURE OF COMPLIANCE

Every compliance officer worth his or her salt knows that a culture of compliance is vital to success in today's business climate. Understanding the forces driving that need, however, and how to nurture a culture of compliance so that it can support stronger business performance — that's more complicated. In this paper, let's try to unpack and uncomplicate those issues. First, to achieve a strong culture of compliance, and to make the corporate compliance function a vital part of your business, compliance officers need an ability to identify the "baselines" culture within your organization. The data to answer that question does exist, but not necessarily where one might expect.

By Matt Kelly, writer of the Radical Compliance Blog and observer of the corporate compliance and GRC scene.
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Then compliance officers need the right tools and relationships to elevate that culture of compliance: to elevate it into a vital part of the whole enterprise, where employees, compliance officers, and management teams all work together to identify compliance and business risks; and then address them promptly so the company can keep advancing on its objectives. So — how does a compliance leader achieve those things?

Why Is This Necessary?

First, compliance officers should study and appreciate the forces driving the demand for a stronger culture of compliance; only with that keen understanding can compliance officers then articulate (to the board, operating units, business partners, and other constituencies) the business case for investing in such a culture.

Some of those forces clearly come from regulators demanding a better culture of compliance. This means your organization has no choice but to implement at least some sort of compliance program, because regulators are ordering you to do so.

For example, the U.S. Justice Department recently announced new policies to prosecute corporate misconduct more vigorously.

If a company under criminal investigation wants to achieve a more favorable settlement, it will need to demonstrate a culture of compliance.

In practice, that will mean written policies for voluntary self-disclosure of trouble, full cooperation with any ensuing investigation, and improving the compliance program to fix the flaws that allowed the misconduct to happen. The Justice Department will also want to see policies such as clawback clauses so that companies can take back compensation paid to executives who made that money thanks to fraudulent actions. Moreover, companies won't just need to have such policies; they'll need to exercise them, too. Senior leadership will need to make that commitment clear and visible.

Beyond those regulatory reasons, however, companies also have numerous "natural" reasons for embracing a culture of compliance. Today's business environment is incredibly complicated, with long supply chains and numerous third parties providing mission-critical services to the typical large company. All manner of external risks, from pandemics to cybersecurity attacks to fraud or harassment, could strike suddenly and derail your operations.

A culture of compliance helps with those risks, too. It encourages your workforce to bring any concern to light, so that management can address the issue and govern the whole enterprise well. That's the central message that compliance officers should use to make the business case for a culture of compliance: **such a culture helps us be more responsive to risks against the business, compliance or otherwise.**

How to Assess Corporate Culture

"Corporate culture" is the set of employee practices, behaviors, and beliefs that shape how employees feel about their organization and how they go about their jobs every day. No single metric exists to quantify or describe corporate culture. Rather, if compliance officers want to assess the state of it, you need to compile something more akin to a mosaic, based on numerous individual points of data.

> Foremost, you will need more data about internal reports coming through your hotline channels. Internal reports are the raw material compliance programs use to understand and improve your culture. The more reports you have, and the more you know about each one, the better.

In the ideal world, a compliance officer would want to categorize your internal reports across several variables, including:

⚠️ **BY ISSUE:** such as corruption, antitrust violations, privacy lapses, harassment, and so forth;

📍 **BY LOCATION:** how many reports from each geographic market or business division;

👥 **BY EMPLOYEE LEVEL:** how many reports relate to coworkers, immediate supervisors, senior executives, or third-party partners;

🕐 **BY TIME:** are reports of a certain type rising or falling over time?

Compliance officers also want to pay special attention to reports of retaliation. Even though retaliation complaints are typically a small portion of total reports, retaliation is an especially alarming sign that your culture of compliance isn't working as well as you'd want.

You also need to sift through data that typically exists outside the compliance function. For example, consult with the HR team to study trends in employee turnover or recurring themes in exit interviews. Look for trends in diversity and inclusion among your workforce; a spike in claims of harassment and in departure of diverse employees is a much stronger indicator of trouble than either spike alone.

Don't forget completely external sources of information, either. Online chatboards such as Glassdoor.com or TeamBlind.com allow employees to vent anonymously about their employers — and while those comments might be bracing to read or even be inaccurate, they still offer a window into the corporate culture that compliance officers might not otherwise see.

Compliance officers need to keep two other points in mind here. First, gathering this data could be difficult. If the information exists outside the compliance function, then you'll need to foster good relationships with other functions such as human resources and IT so that they'll help you gather that data in one place for analysis.

Second, working with manual processes or silos of information likely won't give you the reporting and insights you want. You'll need to think about how to develop that data analytics capability, either with better technology or expertise borrowed from elsewhere in your enterprise.

The Issues You Want to Identify

Throughout all your analysis of data, compliance officers should strive to find the root causes of dysfunction within your corporate culture. That's not just common sense; the Justice Department, in its guidelines for evaluating corporate compliance programs, expressly says that companies should engage in analytics to identify the root cause of compliance violations. Only then can you begin to improve the culture.

In practice, that means compliance officers are trying to answer several questions.

Do we have any weak or problematic policies that need strengthening? For example, if you find repeated instances of employees violating a specific policy or circumventing a specific procedure, it may be that your policy is unclear or the procedure too complicated. So you may need to engage with operations leaders to see whether a simpler policy or procedure could work better, while achieving the compliance outcome you want.

Do we have weaknesses in enforcement or discipline? Reports of retaliation are one red flag suggestive of this problem; so is higher employee turnover or feedback from employee sentiment surveys that "nothing gets better even when I do speak up." Then you know that you might need stronger policies and more forceful commitment from management to hold wrongdoers accountable.

Are there bottlenecks in the investigation and case management process? Examine case closure times, interactions with reporters, and other metrics for the efficiency of your own compliance function, because they too can be a root cause of weak corporate culture. If your program is under-resourced, that can lead employees to believe that management isn't sincere about rooting out ethics and compliance issues. It may be that the fastest way to improve a culture of compliance is to address glitches or inconsistencies in investigation, case management, and disciplinary decisions.

Do we have weaknesses in training and communication? For example, compare how many calls to the hotline are reporting specific violations, versus those asking for guidance or clarity on company policy. Cross-reference that data with training completion records or employee feedback surveys. If you have ineffective training or communication from management, you'll need to rethink your strategy for using those parts of the compliance program to connect with employees.

We could keep going with more root-cause questions. At the most basic level, however, compliance officers want data to help them answer three questions:

Do employees know what they're supposed to do?

Are employees in fact doing those things?

Do employees feel "heard" and trust management to work with them when they raise a problem?

Then you can begin the work (sometimes painstaking!) of adjusting policies, procedures, controls, and messages from management so that employees will embrace the culture of compliance you want.

Conclusion

We can conclude by returning to the point made at the start of this paper: a culture of compliance is important because it assures that employees, compliance officers, and management teams all work together to resolve risks and problems promptly, so the company can keep advancing on its objectives.

Ultimately, then, a strong culture of compliance boosts efficiency and business performance. It helps the organization to prevent ethical or compliance violations, or at least demonstrates to all stakeholders — including regulators and their high expectations for corporate conduct — that when violations do arise, the company wants to take them seriously. A culture of compliance demonstrates that the organization's ethical priorities align with its stakeholders.

Having such alignment doesn't mean the road ahead will be easy. It does mean everyone trusts that they all want to go in the same direction, and that's an indispensable ingredient for success in today's world.

About the Author

Matt Kelly is editor and CEO of RadicalCompliance.com, a blog and newsletter that follows corporate governance, risk and compliance issues at large organizations; it includes the Compliance Jobs Report, a weekly update on compliance professionals moving around the industry. He also speaks on compliance, governance, and risk topics frequently.

Kelly was named as 'Rising Star of Corporate Governance' by Millstein Center for Corporate Governance in the inaugural class of 2008 and named to Ethisphere's 'Most Influential in Business Ethics' list in 2011 (no. 91) and 2013 (no. 77). In 2018 he won a Reader's Choice award from JD Supra as one of the Top 10 authors on corporate compliance.

Kelly previously was editor of Compliance Week, a newsletter on corporate compliance, from 2006 through 2015.

The boss, Matt Kelly (at right)

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