

Business Ethics: Be Prepared to Catch the Car Before You Begin the Chase

Compliance and Ethics



Shortly after my career change from senior corporate counsel to compliance and ethics officer, I became thoroughly convinced of one simple truth: Corporate compliance and ethics performance is primarily dependent on an organization's ethical culture strength. Compliance and ethics program elements like policies, procedures, codes of conduct, internal controls, training programs, 24/7 helplines all "enable" compliant and ethical behavior, but they do little to drive it. If the contrary were true, we would have eradicated the scourge of systemic corporate corruption decades ago.

My sentiments regarding the importance of a strong ethical culture are shared by the Ethics and Compliance Initiative (ECI) – an organization that is the product of a strategic alliance of the Ethics and Compliance Officers' Association and the Ethics Resource Center. Since 1994, the ECI has conducted a longitudinal, cross-sectional study of workplace conduct from the employee's perspective. In their 2018 Global Business Ethics Survey, they reported that "[t]he single biggest influence on employee conduct is culture." They back this observation up by observing:

Compared to employees in strong cultures, employees in weak cultures are:

- **Three times** more likely to say they **experienced pressure to compromise standards.**
- **Three times** more likely to say they **observed misconduct.**
- **41 percent** less likely to **report observed misconduct.**
- **27 percent** more likely to say they **experienced retaliation** after reporting misconduct.

(Emphasis original)

While serving as chief compliance officer, I proposed to deploy ethical culture strength surveys to

several of my past employers, but to no avail. Try as I might, I failed to convince senior management at these companies that the data could be used as a valuable tool to reduce compliance risks and boost financial performance.

This changed a couple of years after I arrived at Bausch & Lomb. Our CEO at the time was Brent Saunders, who had served as a chief compliance officer for a pharmaceutical company. Saunders embraced our compliance office's proposal that we deploy the Compliance and Ethics Leadership Counsel's (CELC) Cultural Diagnostic survey and he succeeded in winning the support of the executive management team.

As soon as we got permission to do so, we deployed the CELC survey globally to randomly selected employees. The resulting reports comprised a treasure trove of data. It told us how our company was performing relative to relevant benchmarks and also provided more granular performance data by geography, business unit, and employee rank. It showed us where we were strong and where there was room for improvement.

After digesting these data, like the proverbial dog who catches the car, we had to answer a question to which we had given too little thought: "Now what?"

Aside from sharing these data with our executive leadership team and our board, what, if any recommendations should we make to improve our company's ethical culture strength? This is not a trivial question for a large multinational corporation with operations spanning the globe and thousands of employees. It also raises other questions we had not considered in sufficient depth prior to commissioning the survey:

- What are the key factors within company leadership's control that have the potential to drive improvement in ethical culture strength? Do these factors vary in effectiveness by region or country?
- Should company leaders be held accountable for the ethical culture strength of employees or segments of the organization that they are responsible for? If so, how? Should accountability be extended to line managers or limited to senior executives?
- What leadership techniques are most effective in driving and sustaining a strong ethical culture?

These are exceedingly difficult questions to answer, and we lacked authoritative data to present to company leaders in support of any proposed changes to the status quo. Nevertheless, since we had "caught the car" we were compelled to provide the best advice we could. Ultimately, we decided to take a two-pronged approach.

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First, before presenting the data, we would help our senior executives and the board understand how vital a strong ethical culture is to the company's performance. Specifically, we made the following assertions on a PowerPoint slide entitled "Why a Strong Ethical Culture Matters":

- Dramatically reduced misconduct levels;
- Increased likelihood of reporting;
- Reduction in retaliation against those who do report;

- Receive more qualified job applications for open positions;
- Experience a lower level of turnover;
- Experience reductions in healthcare costs;
- Enjoy higher levels of customer satisfaction and customer loyalty;
- Foster greater innovation, creativity and risk taking; and
- Benefit from higher productivity and profitability.

We were also prepared, if asked, to produce data backing these claims up.

Second, we recommended that the executive leadership team take the following actions to improve our performance in areas in which the survey showed we were not as strong as we'd like to be:

- Integrate compliance and ethics messages/discussions into standing staff meetings.
- Make ethics and compliance issues an agenda item in every meeting.
- Put the ethics and compliance issues discussion at the top of the agenda.
- Use it to drive home expectations of high ethical performance, identify and resolve team performance issues and discuss developments in the company's compliance and ethics program like:
    - Adoption of the AdvaMed Code;
    - Staff-specific ethics and compliance issues; and
    - Opportunities for improvements.

This advice was grounded in actions I saw top management successfully employ at two other companies I worked for to build and sustain a strong safety culture. Despite the modest investment required to follow our recommendations, I don't recall anyone on the senior management team engaging in these activities or making any change at all in how they led the organization.

Over the following 15 months, we conducted the survey several more times on a quarterly basis globally with separate segments of randomly selected employees of sufficient size to give us a 95 percent confidence rate in the data. At first, our performance improved and observed misconduct rates dropped significantly. But then, over the subsequent quarters, our performance began to wane and observed misconduct rates rose again.

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Looking back at this experience, I think we missed an opportunity to put in place the necessary incentives to improve our chances of success. Neither the CEO nor anyone else on the executive management team was held accountable for ethical culture strength performance. Absent that accountability, company executives were not motivated to examine the data or their leadership style or take any affirmative steps to improve performance. As a consequence, they carried on as they always had in the past focusing instead on performance metrics they were held accountable for.

In making this observation, I don't mean to suggest in any way that there were "ethical issues" with the company's management team at the time. To the contrary, the senior managers I served with at Bausch & Lomb were incredibly talented, and hardworking, ethical executives who uniformly supported the work of the compliance department and ethical business practices. Nevertheless, prior to initiating such a survey in the future, I would begin by building a consensus among senior

managers and the board on the following propositions:

- Ethical culture strength is vital to the company's commercial success and long-term value creation;
- The survey tool will be relied upon to measure our ethical culture strength and findings will be validated by periodic live focus group meetings;
- Company leaders, including but not limited to top management, will be held accountable for ethical culture strength in the segments of the company they are responsible for. Should they fail to meet expectations, they may be required to engage in professional development activities to improve their performance. If they fail to meet expectations after that, they will be reassigned or terminated.
- The board of directors will monitor the company's ethical culture strength on a regular basis and ensure corrective actions are taken in every circumstance in which performance targets are not met.

Achieving this consensus will be much easier said than done and will be dependent on the persuasiveness of the supporting data, as well as the character and priorities of company directors and the CEO. But, absent such a commitment up front, ethical culture strength survey data provides little to no return on investment. The moral of this story is: Be prepared to catch the car before you begin the chase.

Jim Nortz



Founder & President

Axiom Compliance & Ethics Solutions, LLC