Incentives to Promote Compliance – *Misconception*

"*Your reward is you get to keep your job if you don’t violate the Code.*"

This is very likely not going to be enough to meet the standards

- Promoting and incentivizing compliance beyond disciplinary measures and checklist behavior has a more lasting impact and is the expected benchmark
Common Objections to “Incentives”

“**You should not be rewarded for doing your job**”

- We do this all the time in other ways (e.g. sales commissions, promotions, bonuses, etc.)
- We want to reward people for compliance and ethics leadership

“**It is impossible to evaluate virtue**”

- What is measured is leadership on the job, not virtue
- Evaluating leadership is a common and important practice in most organizations

Common Objections to “Incentives”

“**It is too subjective...**”

- Almost all evaluations have a subjective element
- Other subjective things that are measured:
  - Leadership
  - Innovation
  - Embracing change
  - Encouraging teamwork
  - Communicating effectively
  - Developing subordinates
  - Taking accountability for professional growth
Common Objections to “Incentives”

“Creates risk in litigation”
- Regardless of a good or bad evaluation, if a person is a problem, that will likely surface elsewhere
- Evaluation process is important to more effectively monitor behaviors and manage risk

“Safety and health concerns…”
- What happens if we reward people for having no reports of injuries?
- Answer is design and controls for good reward systems

Common Objections to “Incentives”

“This is a Human Resources function, not Compliance…”

“We can’t include everything other functional groups think are important on evaluation forms”
- Old misconceptions about compliance and ethics – That it is just paper and legal
  ✓ Compliance and ethics is all about human resources!
- Establish a close and meaningful relationship with Human Resources; important partnership
Why use Incentives

- Government Standards
- Other Standards and Guidelines
- Practical Reasons
  ✓ Incentives work and drive behavior!

Government Standards - *Example*

**U.S. Sentencing Guidelines (USSG)**

“USSG § 8B2.1(b) (6) - The organization’s compliance and ethics program shall be promoted and enforced consistently throughout the organization through (A) appropriate incentives to perform in accordance with the compliance and ethics program; . . .”
Government Standards - Example

European Commission - “Compliance Matters”

“Backup measures taken by companies….to the adopted compliance strategy might include:

…

Putting in place positive incentives for employees to consider this objective with utmost seriousness. Compliance duties could for instance be part of job descriptions. A particularly vigilant attitude in that respect may also form part of the staff evaluation criteria.”


Government Standards - Example

Competition Bureau Canada

“Providing appropriate incentives…for performing in accordance with the compliance program can play an important role in fostering a culture of compliance. Incentives can work as effective tools for a business that wishes to promote compliance by employing concrete actions.”

**Government Standards - Example**

**Competition Commission of Singapore**

“What are the hallmarks of an effective compliance programme?

An effective compliance programme should contain the following elements:

- **Active implementation**

  *A compliance programme goes further than a written or verbal commitment to comply with the law. It should be actively implemented and promoted…*

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**Competition Commission of Singapore, “Conducting a Compliance Programme”; Updated, 4 May 2015**

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**Government Standards - Example**

**Recent U.S. DOJ/SEC Commentary**

“*Beyond financial incentives, some companies have highlighted compliance within their organizations by recognizing compliance professionals and internal audit staff.*”

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Why use Incentives – Other Standards

Organisation for Economic Co-operation and Development (OECD) - Good Practice Guidance

“9. Appropriate measures to encourage and provide positive support for the observance of ethics and compliance programmes or measures against foreign bribery, at all levels of the company;”

NOTE: 38 countries have endorsed the OECD Good Practice Guidance

World Bank Group Integrity Compliance Guidelines

“8.1 Incentives: Promote the Program throughout by adopting appropriate incentives to encourage and provide positive support for the observance of the Program at all levels…”

Why use Incentives – Other Standards

Defense Industry Initiative (DII) on Business Ethics and Conduct (Questionnaire Item 15)

“Is implementation of the code’s provisions one of the standards by which all levels of supervision are expected to be measured in their performance?”

Australian Standard AS 3806-2006

“6.1.2(c). Recommendations in reviews should include: Recognition of exemplary compliance behaviour by teams, work units and individuals.”
Practical Reasons for Incentives

“People in organizations tend to act in response to being recognized and rewarded…”

- Peter Drucker

- If individuals with questionable ethics are rewarded and/or promoted, the negative impact it has on the culture will likely lead to similar behavior throughout the organization.

- If leadership in ethics and compliance is celebrated and recognized (e.g., promotions, awards, etc.), it will serve as a role model throughout the organization for success.

The “How To” of Incentives

- Personnel Evaluations
- Input on Promotions
- Input on Company Incentive Systems
- Rewards/Recognition Programs
- What about Whistleblowers?
Personnel Evaluations

Include compliance/ethics standards in evaluations

What are you measuring?
  o Leadership in compliance and ethics; efforts to promote the Code and ethical business practices

Different approaches
  o Tick & Flick
  o High-level Coverage
  o Detailed

Can set specific management objectives and goals

Personnel Evaluations – *Tick & Flick*

_Committed to the Code of Conduct_

  ___Yes
  ___No
**Personnel Evaluations – High-Level Coverage**

*Integrity/Ethics; Compliance:* Acts with integrity in all business situations; attends compliance training; encourages and recognizes ethical behavior.

___Exceeds/Meets      ___Needs Improvement/Not Rated

___Fails to Meet

**Personnel Evaluations – Detailed**

*Integrity Leadership:* Encourages and rewards ethical conduct. Conducts business according to our Code of Conduct. Inspires subordinates to do the right thing.

**Expectations:**

___ Uses the Code of Conduct and encourages subordinates to do the same.

___ Actively takes steps to implement the compliance program and the Code of Conduct.

___ Is willing to challenge questionable conduct or proposals.
Personnel Evaluations – Detailed (Cont.)

___ Attends appropriate compliance training, and makes sure subordinates get appropriate training and know the rules that apply for their jobs.

___ Takes steps to extend the messages from compliance training into the workplace.

___ Has an active management style, knows what his/her subordinates are doing, and coaches them on meeting objectives while acting with integrity.

___ Promotes safe and environmentally sound work practices.

___ Evaluates subordinates on their commitment to the Code of Conduct.

___ Shows commitment to workplace diversity.

___ Includes compliance issues in business plans.

___ Places the health and safety of our customers above any sales or production objectives.

A manager’s overall performance rating for the year is not permitted to exceed the rating achieved for this competency. A rating of “Did Not Achieve” in this category must be addressed in a developmental plan.
Personnel Evaluations – *Follow-up*

- Monitor the process – Audit and Evaluate
  - *Meaningful engagement; not just “check the box”*
  - *Everyone can’t be “above average”*

- Assure processes are in place to address negative evaluations to include follow-up

- Partner/Work closely with Human Resources

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Input on Promotions – *Ethics & Compliance*

- Ethics & Compliance Program Office plays an important role in the process for key positions

- As an example, addresses standards from U.S. Sentencing Guideline framework related to Incentives and Personnel Screening

- Promotions can send a strong message of what really matters in your company

- You may hit a nerve with this one! Be prepared to address resistance
  - *Management may not always be open to including the Compliance Officer in decisions regarding promotions*
Input on Promotions – Example Standard

USSG § 8B2.1(b)(3) – Substantial Authority Personnel:

“(3) the organization shall use reasonable efforts not to include within substantial authority personnel of the organization individuals whom the organization knew, or should have known through the exercise of due diligence, has engaged in illegal activities or other conduct inconsistent with effective compliance and ethics programs.”

Input on Promotions – Example Standard

USSG § 8B2.1(b)(3) Commentary:

4. Application of Subsection (b)(3) -

“(B) Implementation.— …[T]he organization shall hire and promote to ensure that all individuals within high-level and substantial authority personnel of the organization will perform their assigned duties in a manner consistent with the exercise of due diligence and promotion of an organizational culture that encourages ethical conduct and a commitment to compliance with the law…”
**Input on Promotions - Considerations**

- Establish minimum standards on employee evaluations for promotion eligibility

- Require input from Ethics & Compliance Program Office on key promotions
  - Company example of high-level promotion, then being fired – No one knew of pending investigation
  - Check with Ethics & Compliance Program Office first!

- Include compliance and ethics performance as an explicit factor in determining promotions

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**Input on Company Incentive Systems**

- People tend to perform better when rewarded
  - That’s why we use incentives – they work!

- People will take the most direct path to the reward

- The stronger the incentive the more it affects behavior

- Out of line incentives can drive out of line conduct
  - Misaligned incentive systems can encourage unethical conduct

- Strong incentives need strong controls
Input on Company Incentive Systems

What is the message of your company incentive/reward system?

- Sears Brake Repair Case
  - To increase revenue, Sears offered financial incentives to its auto service centers tied to the number of brake repairs completed
  - Following launch of the incentive program, the number of customer brake repairs increased substantially in an alleged pattern of fraud; no controls in place to monitor the incentive program
  - Resulted in severe financial and reputational damage

- Ethics & Compliance input on business incentives is essential to help ensure adequate controls are in place

Input on Company Incentive Systems

- Compliance and ethics standards should be considered when developing incentive plans
- Where is the Chief Ethics & Compliance Officer (CECO) when incentive plans are developed?
- A fully empowered CECO needs to be at the table
- With any push-back, the CECO should be ready to communicate the risks, business impact, and value of effective controls and monitoring
  - Is there really any downside to including compliance and ethics standards in incentive and reward systems?
Rewards/Recognition Programs

• Companies typically have reward and recognition programs in place
  o *Culture can be impacted by who gets rewarded and who does not*

• Can include “*compliance and ethics*” as a factor in existing company programs
  o *Recognize compliance and ethical leadership*

• Establish focused and independent compliance and ethics rewards and recognition programs

Rewards/Recognition Programs

Types of Recognition – Many possibilities

  o *Simple “Thanks”*
  o *Money*
  o *Publicity*
  o *Perks*

Nelson, *1001 Ways to Reward Employees* (Workman Pub; 2005)
Rewards/Recognition Programs

Recognition Letters - One of the easiest and least expensive forms of reward for contributions to the compliance and ethics program is a recognition letter from a senior executive, such as the CEO or the compliance officer.

From 501 Ideas for Your Compliance and Ethics Program (SCCE; 2008)

Rewards/Recognition Programs

Spot Awards - Give employees immediate, on the spot, tangible rewards for doing something positive, like offering a solution to a problem that meets business needs but also enhances ethics and compliance.

From 501 Ideas for Your Compliance and Ethics Program (SCCE; 2008)
Incentives – *Real-World Examples*

**Day-to-Day Recognition**

- Former Estee Lauder CEO Leonard Lauder reportedly spent little time with execs on store visits preferring to meet with floor staff and acknowledging their contributions personally.

- Jimmy Collins, former president of Chick-fil-A, a large, fast-food restaurant chain based in Atlanta, Georgia, made an effort to write personal notes of thanks to employees.

- At Mary Kay, Inc., everyone who joins the company meets with founder Mary Kay Ash during their first month of employment.

*Source: Nelson, 1001 Ways to Reward Employees (Workman Pub; 2005); 1501 Ways to Reward Employees (Workman Pub; 2012)*

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**Informal Intangible Recognition**

Engaging employees in key decisions/activities; seeking input, acknowledging their value, showing support.

- “Jeff Bezos, CEO of Amazon.com, often stocks shelves along with workers to hear their problems first-hand and show support.”

- “At Xerox, one customer service center empowered employees to make decisions about work schedules; the company reported higher morale, better customer service, and a 30% reduction in absenteeism.”

*Source: Nelson, 1001 Ways to Reward Employees (Workman Pub; 2005)*
Incentives – Real-World Examples

Tangible Recognition

Refers to recognition in the form of tangible items such as awards, certificates, perks, nominal gifts, cash awards, etc.

- Avis Rent A Car has several recognition programs, such as the Destination Excellence Award, given to employees who reflect Avis’s values in dealing with customers and who have made a significant impact on the business.

- “There is only one reserved parking spot at Iteris, Inc., manufacturer of robots in Anaheim, California, and that is given to the person selected as Associate of the Month.”

*Source: Nelson, 1001 Ways to Reward Employees (Workman Pub; 2005)*

Incentives – Real-World Examples

Group Recognition

Acknowledging and recognizing groups and teams in the organization in the form of team awards, events, food, etc.

- “At Advanced Micro Devices in Sunnyvale, California, photos of work teams often appear in company publications”

- At Delta Airlines, employees fill out Team Recognition Cards to give to teams that they feel have gone “above and beyond.” Cards are entered in a drawing for a prize of $500, that is donated to a charity of the team’s choice

*Source: Nelson, 1001 Ways to Reward Employees (Workman Pub; 2005)*
What about Whistleblowers?

- Should we reward whistleblowers - $$$$?
- Bear Stearns – *Cash for reporting co-workers*
  
  o “*We want people at Bear Stearns to cry wolf. If the doubt is justified, the reporter will be handsomely rewarded.*”

- Impact of Dodd-Frank
- Impact on employee morale, trust?
- Cultural considerations?
- Recognize reporting that identifies issues, improves systems, processes, etc.

Sample Incentive Resources

- Bob Nelson, *1001 Ways to Reward Employees*, (Workman Pub; 2005); *1501 Ways to Reward Employees*, (Workman Pub; 2012)
- Joseph Murphy, *Using Incentives in Your Compliance & Ethics Program* (SCCE; 2011)
- Murphy, *501 Ideas For Your Compliance and Ethics Program* 66-70 (SCCE; 2008)
- Murphy & Vigale, *The Role of Incentives in Compliance Programs,*” 18 *ethikos* 8 (May/June 2005)
Questions?