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Extending the reach of your program: Compliance and ethics liaisons

» Compliance and ethics liaisons have helped many organizations extend the reach of their C&E programs – both geographically and deeper into the business.

» Compliance and ethics liaisons help localize C&E programs.

» To create an effective compliance and ethics liaison network, the liaisons must have adequate time, resources, independence, and the authority necessary to fulfill their liaison responsibilities.

» Ideally, compliance and ethics liaisons will have readily-available access to both the head of the relevant business unit and the CECO.

» Compliance and ethics liaisons should be given accountability for their performance of C&E responsibilities.

Embedding compliance and ethics (C&E) programs "in the business" has always been one of the bigger challenges facing C&E programs and C&E professionals. Although the Compliance profession has long debated the appropriate positioning of the chief ethics and compliance officer (CECO), regardless of to whom the CECO reports, the position is typically a corporate function, housed at headquarters. It is a perennial challenge to make compliance an everyday part of the business, in part in light of the central positioning of the function and the fact that the function is typically very leanly staffed.


Walker

Some organizations have had success in extending the reach of their C&E programs through the use of C&E liaisons (CELs). CELs can also help localize C&E programs and can provide useful input to the C&E office regarding how the program is working "on the ground." A survey by the Corporate Executive Board in late 2012 found that 54% of responding companies use CELs, so this is an increasingly common practice.[1] However, for many of those organizations that have created CEL positions, there continues to be room for learning what works best in this area. And many organizations are still considering whether to implement a CEL network, and, if so, how to structure it.

In attempting to create or enhance a CEL network, it is important to ensure that CEL responsibilities are adequately articulated; that CELs have adequate time, resources and accountability to perform their CEL responsibilities; and that the CEL structure has the appropriate level of support from senior leadership, in particular of those functions that CELs are part of. As part of the ongoing conversation regarding important characteristics of CEL networks and how best to structure them, what follows is an exploration of various aspects, including: (1) common organizational structures; (2) who typically serves as CELs; (3) the amount of time CELs typically spend on C&E duties; (4) common CEL responsibilities; and (5) CEL training.

Organizational structure

Depending on the size and diversity of the particular organization, CEL networks may be organized by business unit, by geography, or by business unit and geography. CEL networks are often structured along the same lines as other functions at an organization, such as the Legal and HR functions. This is logical both because it can help align CEL networks with company structure and culture, and because CELs are often drafted from these other functions.

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With respect to geographical organization, CELs may be appointed for each country of operation or for geographic regions (e.g., Asia, Middle East/Africa, Western Europe, Eastern Europe), typically corresponding to the way in which the organization is geographically organized for business purposes. Because one of the primary purposes of a CEL network is to create "local" representation for the C&E program, CELs are typically physically located in the region or country that they serve.

Who serves as CELs?

Because C&E is often a very leanly-staffed function, CELs are often also members of other compliance-related functions, such as Legal, HR, Internal Audit, or Finance. Such positions are natural candidates for CELs, because their existing job responsibilities typically include CEL-type duties, such as training, audits, and conducting investigations. However, some organizations appoint CELs from operations. When organizations appoint CELs from operations or the business, they tend to be high-potential employees who are appointed as CELs for a fixed (e.g., two-year) term in order to allow the individual to "rotate" through a C&E position. This can be a helpful way to create greater C&E traction in the business more generally.

Several considerations are important to determining who at an organization should serve as CELs. First, CELs obviously need to have an adequate amount of time and resources to satisfy their CEL responsibilities. If members of the business simply would not have the ability to spend time focusing on CEL responsibilities, it likely makes sense to look elsewhere to fill these positions. Second, CELs need an appropriate level of independence and authority to be able to perform their job responsibilities. For example, if CELs will be responsible for conducting investigations, they need to have access to documents and witnesses without intervention, and to make determinations free of any inappropriate influences. The same requirements hold for conducting C&E audits and assessments.

Another important factor in determining the identity of CELs is the position of the potential CEL within the business unit that he/she will serve. Just as the appropriate positioning of the CECO is critically important to the ability of that position to function effectively, a CEL needs to be positioned appropriately in order to be effective. Ideally, the CEL will have readily-available access to both the head of the business unit that he/she serves and to the CECO.

Full- or part-time

CELs typically serve in their C&E roles on a part-time basis. In a benchmarking survey of a dozen organizations with CEL networks (conducted by Kaplan & Walker LLP last year), the majority of participating organizations reported that part-time CELs spend between 15% and 20% of their time on CEL responsibilities, although some organizations reported that part-time CELs spend as much as 60% of their time on compliance. In addition, depending on the size and level of complexity of the particular business, some organizations have some full-time CELs, instead of or in addition to part-time CELs.

In the Kaplan & Walker benchmarking study, one of the factors that respondents denoted as most challenging in implementing an effective CEL network is ensuring that CELs have the time necessary to perform their CEL responsibilities. Obviously, the amount of time required of CELs will vary with their responsibilities, but, because this is often a "second job" for CELs, it is critically important that organizations proactively ensure that CELs have the time necessary to satisfy their CEL responsibilities.

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C&E influence

For most organizations, CELs report directly to their functions (e.g., Legal, HR) or the business, with a dotted-line reporting relationship to the C&E office. For some organizations, this means that the C&E office has no input into a CEL's performance evaluation. Because CEL responsibilities are often a second job, when the CEL's responsibilities do not configure in a CEL's performance evaluations, there is an obvious negative impact on effectiveness. Many organizations have long experienced this same phenomenon when using non-C&E functions to perform C&E investigations. When C&E is not able to provide feedback regarding the performance of investigations, it can result in the investigations' not being given priority in time or quality.

However, at some organizations, the CECO or the enterprise-wide C&E committee does provide input into the CELs' performance evaluations, and at other organizations, the local C&E officer (as opposed to the enterprise-wide CECO) or local C&E committee provides input. At one organization that participated in Kaplan & Walker's benchmarking survey, the local C&E committees (of which the CELs are the members) have a dotted line to the enterprise-wide C&E Committee, and are required to produce the minutes of their meetings to that committee, but the CELs do not have any individual reporting obligations to the C&E Office. However it is achieved, it is important to create some level of accountability for CELs with respect to their performance of C&E responsibilities.

Duties and responsibilities

To help ensure effectiveness, CELs should be provided with clearly articulated, documented responsibilities for their C&E roles. Based on the benchmarking survey referenced above, CEL responsibilities typically include some or all of the following:

1. Assisting in and contributing to the risk assessment process;
2. Advising on the creation and distribution of the code of conduct, company policies, training, and communications;
3. Providing training and communications to employees;
4. Tracking employee C&E training and certifications;
5. Serving as a resource to address business conduct questions within their area of responsibility;
6. Determining conflicts of interest and/or gifts and entertainment pre-approval or waiver decisions;
7. Receiving allegations of violations of the code of conduct and other allegations of non-compliance;
8. Escalating allegations to the enterprise C&E office as appropriate;
9. Conducting and/or overseeing C&E investigations, including tracking completion;
10. Determining or advising on disciplinary decisions when violations are determined to have occurred; and
11. Reviewing the effectiveness of the C&E program within their area of responsibility and suggesting modifications and improvements to the program.

With respect to tasks such as assisting in and contributing to the risk assessment process, CELs obviously need to be guided in their contributions. C&E offices should prepare and provide explicit instructions to CELs to ensure effective contributions to such projects. Some organizations have created websites that contain a variety of resources for use by CELs, such as sample communications, guidelines on conducting investigations, FAQs regarding company policies, etc.

Training and practice sharing

Many organizations train CELs upon initial appointment. Training may be conducted via teleconference, videoconference, or face to face. Some organizations host annual CEL training conferences, where CELs gather in person for a day or up to several days to learn and share practices. In addition, some organizations host periodic (e.g., quarterly) video or teleconferences for CEL training, practice sharing, and question and answer sessions. At some organizations, a member of the C&E department makes periodic visits to the CELs to assist them in their responsibilities and provide them with ongoing training. Some organizations also encourage CELs to become active in the C&E community and attend C&E conferences. And, as noted above, many organizations also provide CELs with materials that guide them in their roles.

Conclusion

CELs can serve an important role in extending the reach of a C&E program to an organization's different geographies and businesses. The C&E profession continues to advance our understanding of how to structure a CEL network effectively, but if CELs are provided with clear and detailed responsibilities as well as the resources, authority, and independence required to conduct their duties effectively, CELs can add a tremendous amount of value to C&E programs. ✳

1. Abbott Martin: "Four Traits of Leading Compliance and Ethics Programs." March 5, 2013. *CEB Blogs*. Available at http://bitly.com/four-traits

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