

DUTY OF CARE

by Tim J. Leech, CA, MBA

Monitoring Corporate Conduct - Whose Job Is It?

A recent blue-ribbon commission in the U.S. has recommended that all public companies develop and enforce written codes of corporate conduct.

How important are formal codes of conduct? How many companies that have codes of conduct enforce them? Do some companies actually have programs to monitor employees for compliance with their codes?

Why have a code of conduct?

I'm sure that by now, all of you have read numerous articles on ethics and codes of conduct. It seems to be a fashionable and trendy topic. It strikes me, however, that many of those articles don't cut to the real heart of the matter. Companies should have properly articulated and well communicated codes of conduct for one main reason -- to ensure that corporate standards are clear to all staff. Whether it's the speed limit on the highway, pollution, or a company's policy on gifts and entertainment, the concept is the same. If the rules have been clearly communicated, and the consequences of non-compliance clearly

defined, the game is a fair one.

Unfortunately, many companies are not playing fair. I have often been called to investigate a concern in companies that have no codes of conduct and have not communicated corporate standards to their staff. All too often the end result is that an employee is dismissed for an infraction that had been explicitly or implicitly condoned for years. Many dismissed employees claim that the rules have apparently changed but no one told them. Occasionally public scrutiny, the press, senior management, or the authorities will require someone to be sacrificed. Insider trading, pollution violations, fraudulent reporting, disconnected speedometers, acceptance of gifts, false government filings, unsafe products are all recent examples. Frequently, the dismissed employee is quickly paid off to avoid "a public relations incident". To emphasize the need for clear standards, I often suggest to managers that if they have condoned or ignored practices that later lead to the dismissal of an employee, perhaps they should also assist with

family support if the person's career has been ruined.

How many companies enforce their codes?

In my experience, most companies that have a code of conduct do not fully and impartially enforce their stated standards of individual and corporate conduct.

I have seen firms that are quick to fire a plant worker for a \$200 theft, but retain senior managers who have consistently padded or abused expense accounts. I have seen companies give only warnings to purchasing agents who have awarded work not on the basis of price and quality, but on the basis of the regularity and generosity of vendor's "customer bonding" practices. Senior managers who have polluted the environment, filed false or misleading documents with regulators and banks, or prepared misleading advertisements are often rewarded not punished.

Can a society that widely condones tax evasion maintain and enforce clear standards for expense account reporting? Can companies that regularly break "small laws" expect

staff to know when a "big" law is involved?

I have no simple answer other than it seem to me that we are a society that has embraced materialism and the concept of "situational ethics" in a big way. Materialism, ego, status, greed, and power all seem to be contributing factors. What is clear to me, however, is that businesses that operate using the general standards of society leave themselves open to many unpleasant consequences. To be an ethical company in today's society requires standards above those of society in general. Not an easy task.

Corporate codes of conduct compliance programs

Are there companies in the "real world" that have clear standards, regularly enforce them and also monitor their environment for compliance with their standards? A few, but not many. One of the reasons why so few companies have compliance programs is that programs which monitor corporate and employee behaviour for compliance with high corporate standards require a "clean" house.

"People in glass houses shouldn't throw stones" is too often applicable to corporate situations. A staff member who knows his or her boss has

authorized illegal acts or participated in fraudulent misrepresentations is in an excellent bargaining position should a day of reckoning occur.

Getting started

A frank assessment of your company's ethical status is the first step when considering a compliance program. Next, there must be regular and effective communication of corporate standards of conduct. Enforcement of the stated consequences when breaches are encountered must occur and be impartial. Staff should be asked to regularly acknowledge that they have read, and that they understand, the company's standards of corporate and individual behaviour. Managers and supervisors should be taught that monitoring staff for signs of potential non-compliance, and encouraging frank discussion of problematic situations, are key responsibilities. Corporate standards should also be communicated to vendors, customers and the communities where business is transacted. And last, but certainly not least, all managers should be specifically charged with the responsibility of ensuring that staff are complying with the company's standards. Oversight measures to

ensure that is happening are necessary.

Draconian measures of the caring manager?

By now some of you may be thinking that I have low trust in human nature, or that I believe that all companies should operate much like police states.

Quite the contrary, I have written this article in the belief that there are many honest, ethical, caring and thoughtful executives in the business world who have the authority and the ability to influence staff less ethical, less honest and less moral than themselves. Some staff can be assisted, and will avoid the real or potential consequences of illegal or unethical acts. Those staff who do "cross the line", will at least know that they have, and should be aware of the consequences in the event that they are caught.

Human resource practitioners can play a pivotal role in the ethics' management area by insisting on clear standards and playing a leading role in instituting enforcement and monitoring programs.

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