



EVERFI

# THE CASE FOR ONGOING CORPORATE COMPLIANCE TRAINING

## BACKGROUND

Compliance training educates employees and staff about how to comply with external laws and internal policies, like company values and codes of conduct. “By most accounts, compliance begins with education” and “effective communication.”<sup>1</sup> Staff, employees, and agents should not only understand the law enough to spot issues in the workplace, but also internalize “the firm’s commitment to compliance and . . . how they are expected to respond.”<sup>2</sup>

However, research has shown, time and time again, that training which merely presents the law or a policy to a learner is ineffective. In fact, it can make noncompliance worse.<sup>3</sup>

Reinforcing important material in successive sessions may be effective. For example, researchers conducted behavioral experiments involving students from Yale, MIT, and Harvard and each institution’s ethics and/or honor code. One group of students didn’t see their policies, another group saw their policies once, and a third group saw the policies at the beginning of the study period and again right before taking a test. The study found that seeing the policy once had no effect on the instances of cheating, whereas students who saw the policies right before taking the test did not cheat.<sup>4</sup> Firms must be thoughtful about not only what is taught, but how and when it is taught and communicated.

Thus, a paradigm for ongoing training emerges. Provided the training material itself is well conceived and presented, ongoing training can help compliance become an integral part of an organization’s culture. Let’s dive deeper into specific compliance arenas to evaluate further how ongoing training is effective.

### Anti-Corruption and Anti-Bribery

Compliance and ethics programs provide a solid groundwork of knowledge and modeled behavior to avoid corruption, but as corruption arises from particular circumstances, a single training can easily be pushed aside by immediate pressures. Ongoing training supports an effective compliance program by continually preparing employees for situations that may encourage corrupt behavior. Furthermore, the federal government and international organizations expect companies to conduct periodic anti-corruption and anti-bribery training.

- **US Department of Justice (DOJ)** - When evaluating a company for compliance under the Foreign Corrupt Practices Act (FCPA), the DOJ will look for signs that the company took “steps to ensure that relevant policies and procedures have been communicated throughout the organization, including through periodic training and certification” for nearly all employees and stakeholders.<sup>5</sup> Enforcement actions brought by the DOJ and the Securities and Exchange Commission explicitly mention training as a solution to prevent and mitigate acts of bribery.<sup>6</sup>
- **US Sentencing Commission (USSC)** - In exchange for reducing a company’s criminal sentence for a variety of crimes (including bribery, antitrust, and money laundering), the USSC incentivizes companies to have an “effective compliance and ethics program.”<sup>7</sup> An “effective” program requires businesses, minimally, to take “reasonable steps to communicate periodically and in a practical manner its standards and procedures, and other aspects of the compliance and ethics program. . . by conducting effective training programs and otherwise disseminating information.”<sup>8</sup>

- **United Nations Office on Drugs and Crime (UNODC), Organisation for Economic Co-operation and Development (OECD)** - The UNODC and OECD develop global anti-corruption and anti-bribery policy, incorporated within many countries' justice systems (including the United States). To combat corruption globally, anti-bribery and anti-corruption "[c]ommunication and training should be provided on a regular basis," and organizations should deliver training "tailored to relevant needs and circumstances" of their constituents and "assessed periodically for effectiveness."<sup>9</sup>

Ongoing training can "play a key role in increasing awareness and obtaining commitment to anticorruption programmes, such as FCPA compliance and similar anti-bribery efforts."<sup>10</sup> Awareness and commitment are critical when combined with a smart "risk-based" approach, enabling employees to better perform due diligence on new partners or third party agents, constantly monitor global activity, and identify and act appropriately upon red flags

## 2 Data Security

Governmental bodies, lawyers, and industry experts either require or recommend companies to keep personal or sensitive data reasonably secure, which should be evident in a company's cybersecurity program, policies, operations and training.

Data security is ever changing, both from a compliance and a technological perspective. The structure of ongoing training parallels the ongoing development of data security risks and initiatives affecting companies, their industries and consumers.

For example, Verizon identified that lost and stolen assets like laptops and documents can lead to data security breaches. As such, Verizon recommends "ongoing training" to ingrain situational awareness and a more concerned attitude when stakeholders handle corporate assets.<sup>11</sup> Like anti-corruption, we see improved awareness as a benefit of ongoing training.

Additionally, the state of New York adopted regulations for covered financial institutions to combat the "ever-growing threat of cyber-attacks."<sup>12</sup> Cybersecurity Requirements for Financial Services mandate "regular cybersecurity awareness training for all personnel that is updated to reflect risks identified" by the company.<sup>13</sup> The New York State Department of Financial Services (DFS), the regulatory agency responsible for the requirements, sought to make the training requirement "more risk-based" by requiring companies to identify risks germane to their operations.<sup>14</sup>

Ongoing training can keep cybersecurity awareness up to date, help stakeholders maintain accountable attitudes, and develop a risk-based approach to data security through threat updates, risk vulnerabilities, and changes in the law.

### 3 Sexual Harassment

Training is a key component of sexual harassment prevention in the workplace, according to experienced practitioners and the Equal Employment Opportunity Commission (EEOC).<sup>1</sup> Empirical evidence shows that training can increase employees and supervisors' knowledge about unacceptable sex-based conduct in the workplace. Awareness of a problem is critical, but training in response and prevention is also necessary to maintain an effective workplace.

According to the EEOC, "[t]raining should be conducted and reinforced on a regular basis for all employees." In addition to awareness, "regularly scheduled events" that reinforce key information, such as laws and real world situations, send the message that the "goal of the training is important." Sex-based harassment is one area, the EEOC maintains, where repetition is a "good thing."

The EEOC and outside researchers point out that mere awareness and repetition of static content is insufficient at sexual harassment prevention, and ongoing training can be (and should be) so much more. "Organizations that engage in more posttraining activities that ensure the transfer of sexual harassment training may be more successful and experience less frequent sexual harassment complaints following training."<sup>16</sup> Posttraining activities include observed supervisor commitment, providing resources for complainants, and "refresher training" that all reinforce sexual harassment training.<sup>17</sup>

In the end, overlapping themes indicate the value of ongoing training.

#### Themes Of Ongoing Training

- Increased awareness
- Reinforcement of content
- Better knowledge
- Clearer understanding of the company's goals

## AN ENDING NOTE ON CULTURE

Ongoing training, particularly good training, confers many benefits. However, to be most effective "all policies, procedures and training must be part of a larger culture that instills compliance as a fundamental value."<sup>18</sup> Research shows this for ethics and anti-corruption programs,<sup>19</sup> sexual harassment,<sup>20</sup> and data security prevention.<sup>21</sup> Compliance programs that incorporate culture can better achieve organizational and regulatory goals compared to more traditional "check-the-box" programs that merely fulfill legal or external obligations without due consideration for employee motivation and learning.

Ultimately, training should be ongoing because culture is ongoing. An organization's culture will evolve based on numerous factors. Ongoing training is one of those factors. Instead of asking when an organization is done with compliance training, the appropriate question to ask is "where is the culture of the organization headed?".<sup>22</sup> Ongoing training can keep an organization's culture moving in the right direction.

# SOURCES

<sup>1</sup> Langevoort, D. (2002). Monitoring the Behavioral Economics of Corporate Compliance with Law. *Columbia Business Law Journal*, 71: 81.

<sup>2</sup> Id.

<sup>3</sup> Kaptein M. (2011). Toward Effective Codes: Testing the Relationship With Unethical Behavior. *Journal of Business Ethics*, 99: 233-51 (as cited in Warren D., Gaspar J. & Laufer, W. (January 2014). Is Formal Ethics Training Merely Cosmetic? A Study of Ethics Training and Ethical Organizational Culture. *Business Ethics Quarterly*, 24: 86 ("recent cross-sectional study of working adults suggests that the more frequently organizations engage in formal communication regarding the corporate codes of conduct, the more unethical behavior is exhibited in organizations.").

<sup>4</sup> Ariely D. (2012). The (Honest) Truth About Dishonesty 34 (as cited by Stucke, M.E. (2014). In Search of Effective Ethics & Compliance Programs. *Iowa Journal of Corporate Law*, 39: 817-18).

<sup>5</sup> US Department of Justice. (2012, November 14). A Resource Guide to the FCPA. Retrieved from <https://www.justice.gov/sites/default/files/criminal-fraud/legacy/2015/01/16/guide.pdf>.

<sup>6</sup> See Kelly, D. (2017, February 8). Investing in FCPA Conduct Training. Retrieved from <http://blog.lawroom.com/corruption/bribery/investing-in-fcpa-conduct-training/> (the SEC decided not to prosecute companies Harris Corporation and Nortek after internal investigations found acts of bribery).

<sup>7</sup> United States Sentencing Guidelines § 8B2.1(a) (2010).

<sup>8</sup> United States Sentencing Guidelines § 8B2.1(b)(4)(A) (2010).

<sup>9</sup> United Nations Office on Drugs and Crime. (September 2013). An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide. Retrieved from [http://www.unodc.org/documents/corruption/Publications/2013/13-84498\\_Ebook.pdf](http://www.unodc.org/documents/corruption/Publications/2013/13-84498_Ebook.pdf); Organisation for Economic Co-operation and Development. (2013). Anti-Corruption Ethics and Compliance Handbook for Business. Retrieved from <http://www.oecd.org/corruption/Anti-CorruptionEthicsComplianceHandbook.pdf>.

<sup>10</sup> United Nations Office on Drugs and Crime. (September 2013). An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide. Retrieved from [http://www.unodc.org/documents/corruption/Publications/2013/13-84498\\_Ebook.pdf](http://www.unodc.org/documents/corruption/Publications/2013/13-84498_Ebook.pdf).

<sup>11</sup> Verizon. (2016). 2016 Data Breach Investigations Report. Retrieved from <http://www.verizonenterprise.com/verizon-insights-lab/dbir/2016/>.

<sup>12</sup> New York State Department of Financial Services. (2016, September 13). Governor Cuomo Announces Proposal of First-In-The-Nation Cybersecurity Regulations to Protect Consumers and Financial Institutions [Press Release]. Retrieved from <http://www.dfs.ny.gov/about/press/pr1609131.htm>.

<sup>13</sup> New York State Department of Financial Services. Cybersecurity Requirements for Financial Services, 2016.

<sup>14</sup> New York State Department of Financial Services. (2016). Assessment of Public Comments for New Part 500 to 23 NYCRR. Retrieved from <http://www.dfs.ny.gov/legal/regulations/proposed/rp500apc.pdf>.

<sup>15</sup> Equal Employment Opportunity Commission. (June 2016). Select Task Force on the Study of Harassment in the Workplace. Retrieved from [https://www.eeoc.gov/eeoc/task\\_force/harassment/report.cfm#\\_Toc453686310](https://www.eeoc.gov/eeoc/task_force/harassment/report.cfm#_Toc453686310).

<sup>16</sup> Perry E.L., Kulik C.T., Bustamante J. & Golom F.D. (2010). The Impact of Reason for Training on the Relationship Between "Best Practices" and Sexual Harassment Training Effectiveness. *Human Resource Development Quarterly*, 21: 200-01.

<sup>17</sup> Id.

<sup>18</sup> Canada Competition Bureau. (September 2010). Bulletin: Corporate Compliance Programs. Retrieved from <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03280.html> (as cited by Stucke, M.E. (2014). In Search of Effective Ethics & Compliance Programs. *Iowa Journal of Corporate Law*, 39: 827).

<sup>19</sup> See Hess, Scott. (2016). ETHICAL INFRASTRUCTURES AND EVIDENCE-BASED CORPORATE COMPLIANCE AND ETHICS PROGRAMS: POLICY IMPLICATIONS FROM THE EMPIRICAL EVIDENCE. *N.Y.U. Journal of Law and Business*, 12: 347-64.

<sup>20</sup> See Equal Employment Opportunity Commission. (June 2016). Select Task Force on the Study of Harassment in the Workplace. Retrieved from [https://www.eeoc.gov/eeoc/task\\_force/harassment/report.cfm#\\_Toc453686310](https://www.eeoc.gov/eeoc/task_force/harassment/report.cfm#_Toc453686310).

<sup>21</sup> See Sharif, E., Furnell, S. & Clarke, N. (2015, December 14-16). Awareness, Behaviour and Culture: The ABC in Cultivating Security Compliance. 2015 10th International Conference for Internet Technology and Secured Transactions (ICITST).

<sup>22</sup> Hess, S. (2016). ETHICAL INFRASTRUCTURES AND EVIDENCE-BASED CORPORATE COMPLIANCE AND ETHICS PROGRAMS: POLICY IMPLICATIONS FROM THE EMPIRICAL EVIDENCE. *N.Y.U. Journal of Law and Business*, 12: 346.

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Douglas Kelly is EverFi's Lead Legal Editor. He generates thought leadership about modern ethics and compliance programs, data security, corporate compliance and culture. The Compliance Program Problem and Solution, Compliance Programs in 2017: Stop Guessing, Start Doing, and Compliance Culture: What It Is, and How to Build It are examples of his work. He also analyzes new case law, legislation, trends and regulations affecting US companies. Before joining EverFi, he litigated federal and state employment cases as a licensed attorney, and wrote about legal trends. He earned his JD from Berkeley Law and BBA from Emory University.