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Maintaining an Ethical and Compliant Workplace

What You Don't Know Can Hurt You
October 14, 2013—8:00-10:00 AM

Following this session, you will be able to:

- Discuss business ethics and standards of conduct
- Identify how to prepare and implement an effective corporate compliance program
- Recognize how to respond appropriately to governmental investigations and inquiries
- Discuss employee conduct in social network and email
- Explain how to promote a respectful workplace free from harassment
- Identify anti-discrimination strategies to protect your company

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Maintaining an Ethical and Compliant Workplace

What You Don't Know Can Hurt You

What is a Corporate Compliance Program?

- Internal program operated by a company to detect and prevent criminal conduct, maintain ethical standards and encourage compliance with the law
- An effective program should be both documented and pervasive inside the company
- Process, not a goal
 - The compliance program should be a living program that is continuously revised to adapt to new information and changes in the company

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The Need for a Corporate Compliance Program

- Risk from increased governmental audits and investigations
 - Federal, State and Local
 - Types of Issues:
 - false statements
 - larceny
 - bribery/gratuity/kickback
 - false claims
 - program and procurement fraud
 - bid rigging
 - prevailing wage compliance
 - percentage completion certifications
 - conflicts of interest
 - As a subject or a witness

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The Need for a Corporate Compliance Program (cont'd)

- Reduces litigation risks
 - Reduces exposure of company and its executives to disputes and litigation
 - Better trained employees
 - Identifies "bad actors"
- Reduces reputational risks
- Improves bottom line
 - Streamlines business operations
 - One study found that for each \$1.00 spent on compliance-related efforts \$1.37 was reduced in legal liability
 - Reduces risk of loss

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The Need for a Corporate Compliance Program (cont'd)

- Companies can be held liable for the criminal acts of their employees and agents
 - An effective program consistent with the Federal Sentencing Guidelines can help a company avoid prosecution, advocate for a non-prosecution or deferred prosecution agreement, or mitigate the penalty imposed
 - Evidence that the board of directors has met the "duty of care" standard
 - The duty of care is satisfied in part by a showing that "adequate information flows to the board"

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Effective Compliance Program

- Establishes standards and procedures to prevent and detect criminal conduct
- Assigns program responsibility and ensures reasonable oversight by company executives
- Excludes individuals engaged in unethical activities from positions of authority
- Creates a training program and establishes a mechanism for disseminating program standards

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Effective Compliance Program (cont'd)

- Provides for monitoring, auditing and evaluation of the program
- Provides a mechanism for confidential reporting
- Promotes and enforces the program through incentives and disciplinary measures
- Responds appropriately to criminal conduct that is detected and conforms to prevent similar further conduct

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Basic Elements of the Compliance Program

- Formal Code of Conduct
- Compliance Office and Officer
- Telephone Hotline for Employees

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The Formal Code of Conduct

- Should encourage an environment of continuous improvement
- Should not merely satisfy the letter of the law
 - Not window dressing
- Highest standards of integrity and fairness
- Ensures that employees follow and understand the Code
- Cannot address every situation that may arise

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Standards of Conduct

- Prohibit employees from offering or accepting money, gifts, gratuities or entertainment of public officials
- Avoid unlawful arrangements or understandings that affect pricing practices
- Ensure purchases are made on the basis of price, quality, service and ability to meet the company's needs

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Standards of Conduct (cont'd)

- Reject kickbacks, rebates, and other services that may be intended to influence the actions of an employee or the company
- Obtain approval before incurring client entertainment costs from private clients
 - Costs must be reasonable
- Ensure accuracy of entries in records, log books, etc.

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Standards of Conduct (cont'd)

- Secondary employment should not affect job performance and should not be engaged with competitors or business partners
- Outside activities, including memberships, should be evaluated and scrutinized
- Political activities should be in compliance with laws and not create the appearance of influence or impropriety
- Employees should disclose potential conflicts
 - Financial interests that may influence business judgment
 - Personal interests that may be adverse to the company

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Standards of Conduct (cont'd)

- Disciplinary action
 - Theft, fraud, forgery, etc.
 - Reporting to work under influence of drugs or alcohol
 - Working for competitor or releasing confidential information
 - Insubordination
 - Falsification of any records, applications, etc.
 - Misconduct on or off the job
 - Violation of the company's policies

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Standards of Conduct (cont'd)

- Reporting requirements
 - Reporting information of suspected code violations to a supervisor, manager or company officer
 - Company should prohibit retaliation
- Procedures for responding to search warrants, investigations, or other governmental inquiries
- Prohibit the obstruction of an investigation
- Guidelines for communications with the media
- Guidelines for protecting confidential information
- Implementation of a document retention policy

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Standards of Conduct (cont'd)

- Guidelines for social networking and company email and computer use
- Harassment and discrimination policies
- Guidelines for use of company confidential and proprietary information
- Guidelines for security precautions
- Ensure compliance with privacy concerns

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Standards of Conduct (cont'd)

- Establish responsibilities for reporting accidents and safety concerns
- Ensure compliance with company safety plans, protocols, equipment usage and all health and safety laws
- Ensure strict compliance with all equal employment opportunity laws
- Strictly prohibit unlawful harassment
- Provide mechanism for reporting discrimination and prohibit retaliation

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The Compliance Officer

- Administers the Compliance Program
- Ensures that all employees are aware of and understand the Compliance Program
- Should report to the President and the Board of Directors

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The Compliance Officer

- Specific duties include:
 - Designates supervisory employees
 - Ensures employees receive and acknowledge in writing that they understand the Compliance Program
 - Develops and facilitates regular and periodic training programs
 - Investigates reports of suspected violations
 - Recommends disciplinary actions
 - Establishes and maintains systems and internal controls to implement the Compliance Program
 - Regularly audits the Compliance Program

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The Hotline

- Provides an avenue for employees to report potential violations of the code
- Must be anonymous
- Compliance officer must investigate
- Calls, investigations and findings should be included in the Compliance Program reports

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How to Prepare the Compliance Program

- Person with intimate knowledge of the company and its operations
 - Understand the structure of the Company, its clients, vendors, employees, etc.
- Program should consider the size of the company, industry practices, risks attendant to the company's business and any wrongful or criminal conduct that has previously occurred
- Prepare outline of all potential risks and apply the standards of conduct to cover those risks

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Appendix: Hypotheticals

- Many of the company's business deals are made during lunch meetings. Can the company invite a City project manager to a lunch meeting?
- One of your co-workers approaches you and tells you that he previously worked for one of the company's competitors and has notes from that company's previous bids and is willing to share them with you. How do you respond?
- An employee of a subcontractor often used by the company offers free use of his ski house to a company employee that does not have final authority over a decision to award a contract to the subcontractor. Can the employee accept the use of the ski house?

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Appendix: Hypotheticals (cont'd)

- On a cost plus job, the company and the owner agree to the value of a change order based in part on the cost of wire. After the change order is issued, the company learns that it can obtain the wire for significantly less cost. Must the company disclose the new pricing to the owner?
- The current project manager for the city on a company project would be an ideal candidate for a position now open at the company. Can he apply? Can this person represent the company before the city?

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Appendix: Hypotheticals (cont'd)

- A company employee approaches you and tells you that he sits on the board of a non-profit organization and knows that the organization will soon be seeking bids for a large electrical project. He is willing to share his insight into what criteria the organization will look for when determining who should be awarded the project. How do you respond?
- Out of the blue, you get a call from reception saying there are agents from the Federal Bureau of Investigation at the door. What do you do?

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Appendix: Hypotheticals (cont'd)

- You are aware that federal authorities are investigating whether there are any billing improprieties in a federal contract that you worked on. You learn that they want to interview your billing coordinator about the project. You believe that the billing coordinator does not understand the full picture of how the bills were done for that project and why certain items were billed in particular ways. Should you call a meeting with the people most knowledgeable about the bills for the project so that everyone can get on the same page?
- A company is bidding on a public project in which one of the company's employees wrote on his Facebook page that he believed the project was a misuse of taxpayer money. Does the company have the right to require that the employee remove the internet posting?

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Appendix: Hypotheticals (cont'd)

- Darren (Company President) has been made aware of a disconcerting video that was recently posted to an internet blog by Allen, Vice President of Sales. The video, which is publically available, clearly shows Allen extremely intoxicated and drinking heavily at a bar. Among other things, Allen gives the camera "the finger" and states "the Company is run by a bunch of cheap, low-paying bastards! My salespeople make next to nothing!"
- The company learns inadvertently that one of its senior employees has been sending harassing emails to a younger employee of the company. The younger employee has not notified the company and job performance does not appear to be affected. What actions, if any, should the company take?

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