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Employee Feedback And The Board

"Whistleblower" systems are now mandated—but are yours working?

by Peter W. Lilienthal

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The new corporate reforms mandate strong, effective reporting systems that allow employees to blow the whistle on audit and legal irregularities. Yet many corporations still have internal feedback system that fail to measure up. Unless your employees feel free to report illegal or unethical behavior, easily and anonymously, top managers and directors may be kept in the dark.

In response to the past year's torrent of embarrassing corporate disclosures, stakeholders of all stripes are scrambling to propose fixes in the ways that corporations govern themselves. Lost in the debate over accounting reform, increased oversight and changes in reporting is a fundamental, yet largely neglected issue: *How can boards of directors and executives best assure themselves that they learn of possible problems?*

Indeed, the views of Sherron Watkins, the Enron whistleblower, were reportedly shared by many of her co-workers, yet she alone took the initiative to share her reservations with CEO Ken Lay. Or how about the experience of Cynthia Cooper, the auditor at WorldCom, who discovered the company's fraudulent accounting, but had nowhere to really put it on the record.

In fact, Enron, WorldCom, Arthur Andersen and many of the other fallen high-flyers had responsibly promulgated reams of polices and procedures on the behavioral tolerances and the mechanisms that employees should use if they had a personnel grievance, ethical dilemma or concern. At Enron, for example, the company had a 64-page code of ethics and an espoused belief system that stressed respect, integrity and communications. Attorneys for these companies and their executives will likely argue that they were responsible employers and technically compliant with contemporary practices.

What they cannot so easily claim is that they had established an environment where employees actually felt comfortable asking questions, and expressing concerns. Sadly, many management teams fail to appreciate that it takes more than executive pieties to have "open doors" that employees will confidently use. Rather, the key to employees identifying and reporting problems is a foundation of *trust*. Unless employees trust that they need not worry about "blowing the whistle" or waving red flags, any reporting-oriented system will be unreliable.

Most ethics and compliance programs have serious shortcomings. Management gives short shrift to employee buy-in, or making the program user friendly.

The development of employee trust has two important dimensions. First, employees must trust that there is a benefit in potentially putting their careers on the line to come forward with concerns about possible violations of corporate policy. Unfortunately, the stories of whistleblowers being fired or sent to the corporate equivalent of Siberia are legion. Even Attorney General John Ashcroft has waffled on assurances that there would be no retaliation against FBI agent Colleen Rowley.

Second, employees must trust that management or the board will respond responsibly and respectfully to the issues they have the courage to bring forward. Here, too, the Enron debacle is a case in point. Watkins' trust in Kenneth Lay was met by a limited investigation by the company's law firm, confiscation of her computer, and a demand by at least one senior executive that she be terminated for her insubordination.

Many, if not most, well-intended corporate ethics and compliance programs have serious shortcomings. The reason is that management gives short

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shrift to assuring that employees "buy in" and that the program is "employee friendly." In a poll of 2,795 public and private sector employees conducted by Walker Information, 29 percent of the employees said they knew or suspected "ethical violations." However, two thirds of that group did not report what they knew or saw, mainly because of insufficient facts, lack of confidence in a response, or the absence of confidential reporting.

Many compliance programs are reactive and "top-down" driven. Few companies seek employee input in design of their compliance and reporting systems.

One of the biggest shortcomings of many compliance programs is that they are reactive. They come about because a board, legal counsel or regulator directs that a program be put in place. The objective is to get it done, rather than to make sure that it works. As a result, implementation tends to be "top down" driven and often the company turns to consultants who have no long-term stake in the quality or effectiveness of what they recommend.

Who was responsible for developing Enron's reporting policies and procedures? Very likely it was the same "experts" who have sold their cookie-cutter program to scores of other organizations. As for the hapless employees, I doubt that anyone bothered to ask for their input regarding the program design. It is startling how few companies seek employee input when it comes to the design of compliance and reporting systems.

The good news is that there are a variety of proven ways to improve the likelihood that employees will feel committed and empowered to identify their concerns about workplace issues.

The first step is making certain that management acknowledges the difficulty in developing and sustaining trust. Why should someone blow the whistle, question decisions or raise concerns about a manager or co-worker's actions? Anyone who believes that they will because management declares from on high that such is the proper behavior is flat-out deluding themselves.

Part of the challenge is cultural. Most of us have been conditioned from birth not to speak-up or speak-back. It is a challenge to modify decades of "do what you're told and don't talk back" thinking. Another is the aforementioned treatment of employees who have come forward believing that their employer truly had an "open-door" policy. They then discover that the invitation proved to be a "revolving door" for the person who used it. It can be very lonely and unrewarding being a whistleblower. The lure of personal satisfaction and a pat on the back are scant motivation to make skeptics into converts.

For good reasons, employees tend to be suspicious, if not downright cynical, about corporate commitments to ethical and compliant behavior. In the Walker study, 45 percent of the employees suggested there was pressure to cut corners on ethical or compliance issues.

In addition, employees often see a double-standard in the enforcement of such policies and procedures. One example is the performance review pressure that was exerted on employees at Enron to book their travel through Ken Lay's sister's travel agency. Although there was no formal policy to use that specific agency, many employees who did not were marked down on their periodic personnel reviews. As ethical larcenies go, this may seem to be small potatoes. However, in the overall scheme of things, such roughness around the edges rather than rottenness at the core spoils the best-intentioned efforts.

The way to produce employee "buy in" is to polish the roughness around the edges. Regrettably, few companies get it right. Typically, the word starts filtering down from on high that yet another new "program of the month" is in the works. Meetings are held, memos and brochures are circulated, posters are pinned on the walls, and people are sent off for training. Annual statements are signed and filed away in personnel files and maybe even a "hotline" is made available.

This may well be deadly serious business for the company's management, but what about the employee? How are their lives going to be changed for

the better by all this, and why should they embrace the new corporate order?

The following approaches can significantly increase the likelihood that your corporation will hear about emerging questions, concerns and issues.

☐ *Involve employees in the planning and evaluation process.* As with any major corporate initiative, the likelihood of success is greatly increased if employees are involved at the outset. Whatever is ultimately rolled-out should not be simply "for" them, but equally "from" them. The way to do that is to include a variety of front line and middle management employees in the planning process. Exemplary techniques include the creation of "bottom-up" task forces.

Companies should continue to monitor and refine what is put in place by using periodic focus groups conducted by an unbiased facilitator. Companies can also include questions in their employee attitude surveys that are designed to gauge both the ethical climate and perceived commitment of the company.

Many companies are surprised to find they have created a maze of conflicting and confusing employee communications systems.

☐ *Make it as easy and comfortable as possible to share controversial information.* This process should start with an evaluation of how easy to use and risk free any existing reporting systems are from an employee perspective. Are they available around the clock and accessible from any location? Do employees have a variety of mechanisms for communicating with management (including telephones, faxes, hearing impaired and e-mail)? What non-English language options are provided? Are existing reporting systems intended only for U.S. based employees, or are they also available to international employees?

Consider an inventory of all of the information sharing mechanisms that your company has in place and to benchmark how each is being used? Many companies are surprised to discover that they have inadvertently created a maze of conflicting and

confusing employee communication systems. Over a number of years, reporting policies and procedures may have been set by human resources, benefits, legal, audit, environmental affairs, compliance, security, an ombudsman's office, and for good measure, an ethics department.

In many cases, employees are simply unaware of the options that exist. Alternatively, they have little or no knowledge of how and when a specific reporting channel is to be used. When possible, reporting mechanisms should be centralized. There should be one primary place to go regardless of the employee's concern.
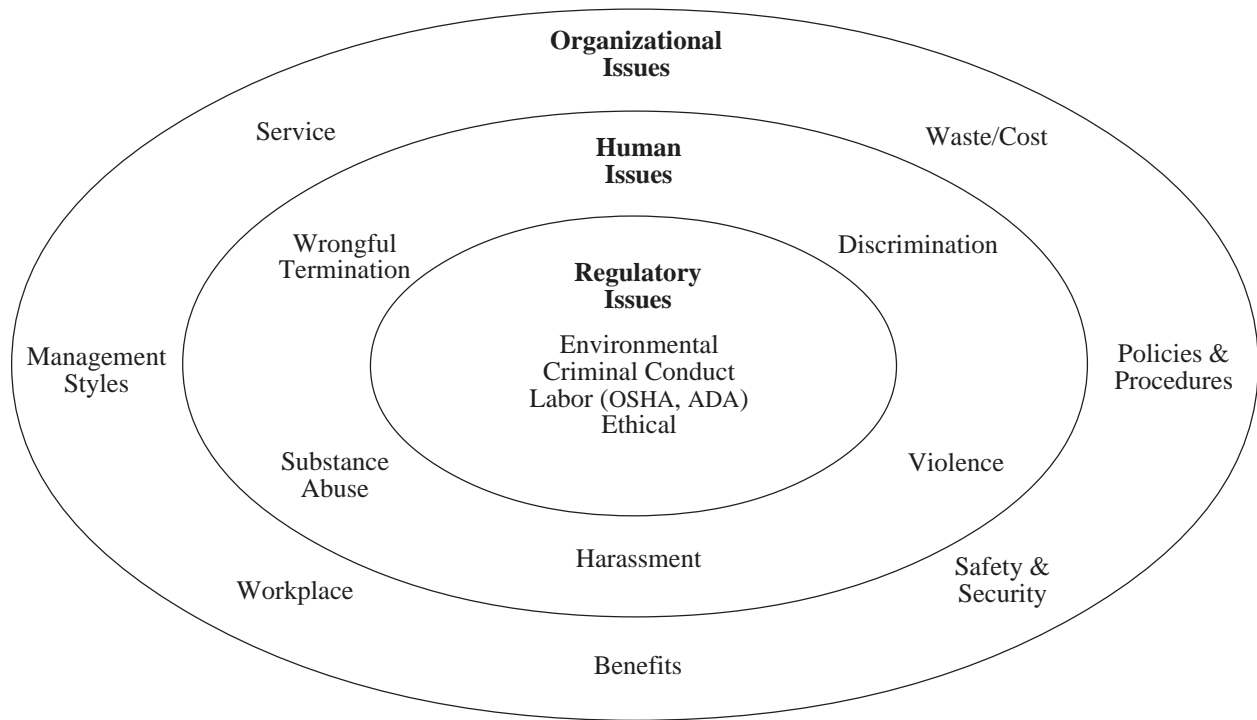
If you ask employees about the credibility of the system, you hear fears of management using caller ID, voice recognition and e-mail tracing to identify troublemakers.

It is only common sense to minimize the risk that an employee must take in raising concerns. The best way to do that is to offer a communication channel that is demonstrably confidential and anonymous. Many companies delude themselves into thinking that employees believe internally operated systems can accomplish that objective. If one asks employees about the credibility of the system, one hears fears of management using caller ID, voice recognition and e-mail tracing to identify outspoken employees.

The most effective way to build employee confidence in sharing controversial opinions is to outsource the message conduit. Not only is an outsourced "hotline" or independent ombudsman the best way to address this challenge, but a growing body of case law suggests that a third-party mechanism provides maximum protection in the courtroom. Other than the typically modest cost, there is nothing that argues against an external resource.

Do employees prefer to share their questions, concerns and ideas with a live person or via a machine? Interestingly, there seems to be no research data on this subject. When asked, employees tend to have a slight preference for an automated

Hitting The Compliance Bull's-eye
Be Willing To Innovate

Organizational Issues

Service

Waste/Cost

Human Issues

Wrongful Termination

Discrimination

Regulatory Issues

Environmental
Criminal Conduct
Labor (OSHA, ADA)
Ethical

Management Styles

Policies & Procedures

Substance Abuse

Violence

Harassment

Safety & Security

Workplace

Benefits

system, but this is not always the case. Perhaps the optimum solution is to offer both. Technology today is such that an employee can easily be given a choice and the system will direct their call to man or machine—whichever makes them most comfortable.

☐ *Be willing to innovate.* Most ethics and compliance programs place the burden of deciding what to report on the employee. Not only is this bad policy, but it worsens the "buy in" challenge. In most corporations, ethics and compliance programs are created to address "Human" and "Regulatory" issues (see diagram above).

Those may well be the company's priorities, but as described earlier, they are not necessarily the employee's priorities. Most employee concerns relate to "Organizational" issues. Arguably, the best way to win the hearts and minds of employees is to ease the perception that feedback about one issue is wel-

comed over another. The way to do that is to encourage free expression about absolutely *any* subject.

A number of very positive things happen when communication channels are opened to include the entire universe of topics. First, it signals that the company values its employees' candid opinions. No longer is the message, "This is what management wants to hear, and nothing more," but rather, "Your feedback is important to us and we want to make it as easy and comfortable as possible to share with us what's on your mind."

Second, the employee no longer needs to decide what to report or whether a particular concern meets specific ethical or compliance-related criteria. Third, the volume of feedback increases significantly. By way of comparison, feedback systems that are strictly limited to compliance and code of conduct related issues typically reach an employee use rate of less than two percent. In contrast, "open issue" feedback

systems usage ranges between five percent and 15 percent. Along with the increase in volume comes many "inner ring" issues that would not be raised in a more tightly boxed approach.

Use internal publications, intranets and employee forums to show examples of the information management is receiving and how it has responded.

☐ *Provide constant feedback and rejuvenation.* If your feedback program is out of sight, it tends to get out of mind. Because of the nature of the problems dealt with in ethics and compliance programs, it is difficult to gauge successes. Not many companies are enthusiastic about internal newsletters or publications that boast, "Employee Tip Helps Finger Crooked Accountant," or "Sexual Harassment Complaint Ends In Termination of Senior Manager."

Still, management needs to ask itself on a continuous basis what is being done to remind employees about the company's communication channels and to let them know that they are actually being used by their colleagues.

An added benefit of having an unlimited, unfiltered feedback system is that it becomes easier to share usage data with employees. One of the best practices is to use internal publications, intranets and employee forums to share examples of what management is receiving and how it has responded to specific questions, concerns and ideas.

It is also important to sustain excitement and interest in a reporting or feedback program. To do so requires effort and creativity. Successful techniques include periodic distribution of reinforcement devices such as magnets, stickers and wallet cards, and booths at employee fairs.

☐ *Maintain an exit interview program.* Employees who decide to voluntarily leave the company can be a very valuable source of information about what is (and is not) working. Not only do exit interviews help get at those insights, but they can help protect against future litigation. Gerald R. Maatman, Jr., global labor law practice head for the firm of Baker & MacKenzie, recommends that the exit interview process include questions about any unethical behavior and workplace issues. It is important to make certain that an employee is not leaving because of an unresolved or unreported workplace issue.

It may be worth spending some time determining whether the exit interviews should be conducted by a company employee or by an outsourced firm that has expertise in doing so. The challenge again is to make the process as easy and comfortable as possible for the employee, and whether that can be achieved in a face-to-face meeting with a human resources representative is uncertain. Most employees are understandably reluctant to burn their bridges on the way out the door by being critical about supervisors or co-workers.

Ultimately, the most important key to success with an ethics and compliance program is whether employees view it as credible and functional, and whether they believe it genuinely empowers them to "speak up." The suggestions above will help assure that if and when there are problems, management and the board of directors will hear about them. That is true accountability. ∎

There is not a fiercer hell than the failure in a great object.
— *John Keats*