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State of compliance in 2022

Emphasis on values, communication

An e-Book publication sponsored by TrustArc

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COMPLIANCE WEEK

Compliance Week, published by Wilmington plc, is a business intelligence and information service on corporate governance, risk, and compliance that features a daily e-mail newsletter, a bi-monthly print magazine, industry-leading events, and a variety of interactive features and forums.

Founded in 2002, Compliance Week has become the go-to resource for chief compliance officers and audit executives; Compliance Week now reaches more than 60,000 financial, legal, audit, risk, and compliance practitioners. www.complianceweek.com

TrustArc

TrustArc offers a comprehensive privacy platform with contextual privacy insights and automated phases of privacy program management. Built on a foundation of embedded privacy expertise and integrated frameworks, the platform includes knowledge modules for identifying and prioritizing evolving regulatory requirements, including privacy research and alerts, law comparisons, legal summaries, and operational templates. Operations modules include building data inventories, mapping data flows, and managing individual consent, preferences and privacy rights. TrustArc also offers intelligence modules for managing third-party risk, company privacy risk, applicability of privacy requirements, data transfers, assessments, compliance reporting and compliance verification.

Compliance leadership panel: Current state, future trends

Four senior compliance practitioners share their insights on maintaining an ethical culture, embracing data analytics, determining compliance's role in measuring ESG metrics, and more.

BY KYLE BRASSEUR, COMPLIANCE WEEK

Compliance's evolution over the last 20 years has been far from linear. Programs take different forms for each company, and practitioners often find themselves confronting unique situations based on their business's circumstances and profile.

Consider the following titles for four officials Compliance Week assembled to form a leadership panel at its National Conference in Washington, D.C. as an indication of how varied the role of the compliance officer has become:

» Pilar Caballero, chief compliance officer and chief privacy officer at Ryder
» Catherine Razzano, head of legal compliance at TikTok
» Charles Schwager, chief compliance and ethics officer at Waste Management
» Mary Shirley, head of culture of integrity and compliance education at Fresenius Medical Care

"The one size does not fit all is something I don't think is going to change in the future," said Schwager. "Everyone needs to appreciate what their scope of responsibility is and what their mandate is. It all has to be tailored to the business."

Still, there are many shared struggles compliance officers contend with, including maintaining an ethical culture; embracing data analytics; and determining their role in measuring environmental, social, and governance (ESG) metrics. CW's leadership panelists shared their insights on each of these areas and more as part of a wide-ranging discussion at the May event.

State of compliance

Compliance is still about following the rules, but growing emphasis on values cannot be understated.

"There are the legal provisions, and then there is the 'what should we do?'" said Razzano, noting the current sanctions landscape as an area where sending the right message is being considered with equal importance to meeting the government's requirements. "… The regulatory compliance and the ethics and integrity of what's right are coming together. They have to be served together and not looked at as two separate boxes."

Shirley noted last year's Activision Blizzard scandal as an example of a company's culture receiving heightened scrutiny amid regulatory pressure.

"I think we're going to continue … moving along from rules-based to values-based," she said. "The future is there for us."

Data analysis/reporting

"I went to law school to not do math; I never would have thought how much I am focused on data now," joked Schwager.

Analytics have become a necessary tool for compliance officers in determining potential areas of weakness at their organizations. For Caballero at Ryder, her team has created a platform for data gathering from different sources, including internal audit and workplace safety. Equally important to obtaining the data is masking it to ensure it is protected.

"We're gathering such sensitive information that when you're building this you want to make sure it's secure and

The leadership panel at Compliance Week's National Conference, from left to right: Steve Naughton (moderator), Mary Shirley, Catherine Razzano, Pilar Caballero, and Charles Schwager.

that other people in the organization—or bad people outside the organization who want to hack into your systems—don't have access," she said.

Scope of ESG

"I think ESG highlights the importance of compliance, ethics, and integrity, but it's not the sole thing," said Schwager. "If you look at it, it really is this holistic approach companies are taking to be more purpose-driven."

The panelists generally agreed compliance officers should play a key role in determining ESG strategy at their companies, but input from multiple areas of the business is essential to success. Whether the chief compliance officer should be the one tasked with leading initiatives depends on the people around him or her as much as the organization's structure.

"That's the interesting thing about this role—sometimes you do inherit things because you have these skills that maybe someone else doesn't have or maybe nobody wants to do it," said Caballero.

Importantly, Razzano stressed compliance officers should not feel as if they have taken on the role of chief reputation officer at the company.

"That's why we have tone from the top," she said. "Our leaders should be defining what our culture and reputation wants to be."

Ensuring productivity

"How do you get things done?" moderator Steve Naughton asked the panelists.

Razzano stressed relationships: "Whether they know it or not, they need me and I need them," she said. Caballero discussed the importance of understanding your available resources, and Schwager emphasized the need to align compliance with the goals of the business.

For many organizations, compliance might still feel as if it needs to prove its value. Yet, the programs that have carved out the standing necessary to earn a seat at the table must avoid becoming complacent, said Shirley. The years ahead are sure to produce continuing change for the compliance profession, and as much as practitioners must remain nimble, humility is equally crucial.

"We can't fall into the trap of being overly confident that we have made it unless we have the data to prove we have made it that far," Shirley said. ■

The art and skill of delivering bad news

Executive coach Amii Barnard-Bahn shares her six-step process to help increase receptiveness when communicating bad news and reduce the likelihood of backlash toward the message being delivered.

BY AMII BARNARD-BAHN, CW COLUMNIST

In our compliance roles, we are required to be frequent bearers of bad news. It is key to making good decisions, growing ethical companies, and building honest relationships.

To this point, the results of a study from the American Psychological Association are sobering. The study found bearers of bad news are perceived as unlikable and less competent or wanting the negative event to happen.

No wonder people kill the messenger.

It is critical to learn how to share difficult messages without damaging strategic relationships. So, let's get good at it.

Through interviews I conducted on high-stakes stories from Wall Street to an army base in Afghanistan, and incorporating my own experience, I have codified a six-step process to help increase receptiveness to your message and reduce the likelihood of backlash in your career. Follow these six steps, and you will be much better positioned to achieve your goals.

1 Psychologically prepare your audience

Always brace your audience for bad news. This reduces the risk of damaging relationships and allows the other party to think clearly.

The irony in our industry is we have been talking about psychological safety for years. We understand the importance of it. When delivering bad news, we must think about the psychological safety of both ourselves as the deliverer and those on the receiving end. It is not easy to be on either side.

Start by saying something as simple as "I wish I had better news," which psychologically prepares your audience. It reduces the potential shock and negativity they feel when they hear the information so they trust you are telling the truth. Calibrate expectations by setting context for the bad news: How long will it last? What is the estimated cost? What needs to change?

2 Rehearse confident delivery

When you are delivering bad news, practice your talking points. This will help you project the right balance of confidence, humility, and gravitas.

Be aware of your body language and vocal tone. When time is on your side, record yourself presenting. Do you sound confident, influential, and caring? Or hard-nosed and cold? Or insecure and apologetic (when you had no hand in the matter)?

You want your voice to sound calm, credible, and as if you care about the impact of the news on the organization and its leaders. Practicing has been proven to both enhance your credibility with powerful people and reduce the considerable emotional distress that can accompany your job.

3 Be fully present and focused

We live in a constant state of distraction. If you are unfocused while delivering an important message, you are going to undermine the impact and the result.

If you are thinking, "I can't wait to get this over with and rush to that other meeting," that will come across in a way that is going to shape the result. People will respond to the impression and feeling you are not really there and you don't care.

> The irony in our industry is we have been talking about psychological safety for years. When delivering bad news, we must think about the psychological safety of both ourselves as the deliverer and those on the receiving end. It is not easy to be on either side.

When delivering bad news, the method matters. In person is best, followed by video conference and telephone. Aim for a face-to-face meeting to reduce the likelihood of misunderstandings and escalations. Email is at the bottom of the delivery mode wish list; it robs you of the instant opportunity to clarify and read emotional cues such as tone of voice and body language.

You need to know how your message and the expression of your governance power is being received. Have you shared enough information? What questions does the person have? Did they even read your full message or just the first two sentences before they reacted without time to process? You want to be there as the guide by their side.

4 Convey benevolent, proactive intent

The recipients of negative news are inclined to assign malevolent motives to the person delivering it. Be aware of this bias against you. Help remind them they hired you to do this job by expressing genuine empathy.

If you or your team had a hand in the issue, offer a sincere apology and remediation plan. Tell the truth, even when it hurts. Show people you care. And immediately move to potential solutions.

How can we fix it? How can we get this paid back over time? Communicate the path forward and efforts underway to prevent it from happening again. Compassion emphasizes your good intent as a trusted adviser.

5 Explain without justifying

It is important to avoid anything that sounds like an excuse when delivering bad news.

Share the facts with your audience so they understand what occurred. Done well, you will be seen as sincere and trustworthy, and stakeholders will find your explanation reasonable. This reduces the blame ascribed to you, increases the perception of fairness, and enhances the credibility of your message.

6 Add a sense of urgency

There is often a temptation to reframe bad news as a net positive. For important issues that require organizational attention, you don't want to downplay the risk. Overly reframing a problem as beneficial can undermine the sense of urgency required to respond to crisis effectively.

Harvard Business School Professor John Kotter, a leading authority on organizational change, points to a lack of urgency as the No. 1 reason change efforts fail. It is tempting to downplay the problem. You might tell yourself, either consciously or unconsciously, "I'm going to soften this so that I or someone else doesn't get fired." And the recipients of bad news will be tempted to also downplay it. We are all predisposed to have a psychological compulsion to not want to face something that is hard.

We know this is ethically irresponsible. If you care about the company and you are committed to the company, you must be thinking long term. Do not blow your window of opportunity.

Effectively conveying urgency includes following up. It is critical to keep focus on the solution; this reinforces your prior success steps, like benevolent intent, and makes sure as more people get involved and time passes, the original message and facts do not get altered.

No one is immune to the fear and uncertainty of sharing difficult information. To increase the receptivity to your message and likelihood people are ready to hear and act on it, use these six steps whenever you need to deliver bad news. This will help you handle the situation in ways that work for you and your organization. ■

TrustArc

Embracing Data Privacy:

Start With These 8 Important Questions

Data privacy is complex. Between the ever-changing privacy laws, such as updates to the General Data Protection Regulation (GDPR) or the California Consumer Privacy Act (CCPA) and the introduction of new privacy laws such as the California Protection Rights Act (CPRA), even the most experienced privacy experts agree that staying on top of things can be a challenge.

So it's not surprising that compliance with recent regulations was reported as the number one privacy risk by participants in TrustArc's 2022 Global Privacy Benchmark Survey.

With compliance hitting this survey strong with four of the top nine data privacy risks related to compliance in some way, companies need to start having a stronger stance when it comes to the importance of data privacy. To fully embrace data privacy, companies should ask themselves the following 8 questions:

1 What's the difference between Privacy and Security?

While privacy and security are related, they're not the same. Data privacy deals with what and how data is collected, used, and stored. Data privacy aims for transparency and compliance with the consent provided by the person when the data is collected. Information is often collected through employment applications, background checks, customer purchase forms, and more. New privacy regulations have been introduced to give people more control over their data and how organizations handle it.

Data security is concerned with protecting an organization's assets by preventing unauthorized agents from accessing the stored data, systems, and networks.

Different regulations (especially for specific industries) often mandate how and when data breaches should be handled and reported. It's possible to meet security requirements without considering privacy. However, without adequate security, nothing is private.

2 How do you know which regulations apply to your organization?

While customer data is a major focus, it is not the only type of data that is collected. Organizations also have intellectual property data, financial data, and employee data to securely manage and protect.

Once you have a clear understanding of the data that you are collecting, you need to consider the following:

- *Where is the data? What is stored? How is it used?*
- *What level of risk is associated with each data activity?*
- *What controls and assessments are in place to mitigate risks?*

After your organization establishes what type of data it collects and stores, its important to consider the following:

a. *What states and countries does the organization conduct business in?*
b. *Is the organization in a highly regulated industry such as financial services, healthcare, or manufacturing?*

For Organizations Operating Solely in the U.S.

As of August 2022, there are five states with data privacy regulations: California, Colorado, Connecticut, Virginia, and Utah.

If you are conducting business in those states, or if you have customers in those states, those laws may apply to your organization. Some regulations have minimum thresholds for company revenue or the number of records collected that need to be met to be enforceable.

While complying with five different state privacy laws may sound daunting, they have commonalities across core privacy principles of individual rights, general obligations, and enforcement.

For Organizations Operating Across the World

Organizations operating internationally, there are many regulations you'll need on your company's radar. The most common include EU's General Data Protection Regulation (GDPR) and China's Personal Information Protection Law (PIPL).

According to the United Nations Conference on Trade and Development, 137 out of 194 countries have data privacy laws. This includes neighbors of the U.S., Canada and Mexico as well as many others such as Brazil (LGPD), Egypt (PDPL), and Argentina (PDPA).

The more globalized the organization, the harder it is to keep up with every active data privacy and security regulation. Most organizations find manual processes are too time consuming and use automated software to determine which laws apply to their business.

For Organizations Operating In Certain Industries

Additionally, some industries have stringent regulations in place due to the nature of the data, such as healthcare and HIPAA.

The financial services industry is another highly regulated industry due to collecting social security numbers and other personally identifiable information (PII) necessary to conduct business. Financial services include banks, financial apps, investment, and mortgage services. Insurance and manufacturing are also highly regulated. If your organization operates in any of these industries, it's likely there are additional data privacy requirements that require your attention. If your organization operates in any of these industries, it's likely there are additional data privacy requirements that require your attention.

Lastly, it's important to consider cybersecurity and breach notification regulations. Even if there aren't privacy regulations mandated where you conduct business, security regulations may be in place. Always consult with an attorney to be sure.

3 What are the fines and penalties if an organization doesn't meet privacy law compliance?

As you would expect, the fines and penalties vary greatly depending on the regulation, violation, and number of people impacted. In addition to direct financial costs, businesses must also consider the indirect costs of their reputation taking a hit. 96% of Americans agree that companies should do more to protect consumers' privacy. Furthermore, 1/3 of U.S. consumers will stop doing business with organizations because of their data privacy practices.

What is the cost of losing consumers to companies that respect their privacy? It's hard to define, but it's a cost you must consider.

Various entities enforce U.S. state privacy laws. Currently, the laws express these penalties and fines:

- *California CCPA – Maximum fine of $750 for each violation (every affected consumer or transaction).*
- *Virginia CDPA – There is no private right of action. Up to $7,500 for each violation (every affected consumer or transaction).*
- *Colorado CPA – Up to $2,000 for each violation (every affected consumer or transaction), not exceeding $500,000 for any related series of violations.*
- *Utah UPCA – The attorney general may seek actual damages to the consumer and a penalty of up to $7,500 for each violation. If more than one entity is involved in the violation, the AG will allocate liability to each party based on their respective contribution to the violation.*
- *Connecticut (CTDPA) – There is no private right of action. However, a violation of this act shall constitute an unfair trade practice for the purpose of section 42-110b of the general statutes and shall be enforced by the attorney general.*

GDPR divides fines into two tiers. The first tier is for less severe infringements. Fines can be up to 10 million euros or 2% of the organization's global annual revenue from the previous financial year (whichever is greater). The second tier is for more severe offenses. It can result in fines of up to 20 million euros or 4% of the organization's global annual revenue from the previous financial year (whichever is greater). GDPR also gives the right to data subjects to seek compensation from organizations that cause them material or non-material damage.

4 Why should businesses care about data privacy?

Beyond regulations, fines, and penalties, as an employer you should keep your employees' personal data private. It's likely that your organization has social security numbers, addresses, background checks, and other employee data stored. Who has access to this information? And if it is secure, is it also private?

Furthermore, people worldwide are more aware than ever of companies abusing their personal data. Keeping their data private and using it ethically is vital to retain your customers.

Eight out of ten customers reported that they're willing to abandon a brand if their data is used without their knowledge. Is avoiding privacy worth losing 80% of your customer base? Probably not.

5 What organizational departments manage data privacy programs?

The TrustArc Global Privacy Benchmarks survey findings demonstrate that there is little unanimity regarding where privacy "sits" within an organization. While 36% have IT managing privacy, it also often sits under Operations, Legal, and Finance departments.

Many organizations will tie privacy in with their cybersecurity efforts because those systems need to be in sync, and some areas overlap. Collaboration with legal is also necessary to stay abreast of changing data privacy regulations.

Overall, privacy doesn't belong in one department. Privacy is the responsibility of everyone in the organization. As businesses and consumers rely more on technology, it's critical to embed privacy into every decision across the enterprise.

6 What do organizations need to know about individual rights and data subject access requests (DSAR)?

Individual rights are at the heart of privacy. Rights of the data subject, or consumer rights, are often referred to as individual rights.

A data subject is any individual whose personal data is collected, held, or processed. In essence, these are the rights that protect individual's data and in many instances, put control of data into the individual's hands.

U.S. State privacy laws borrow some of these individual rights as well. The California CCPA, as amended by the CPRA, includes eight individual rights: access, right-to-know, deletion, correction, opt-out/opt-in, data portability, limit use and disclosure, and response deadline.

Your organization needs a plan and process for managing data subject access requests. In almost all instances, time is of the essence, and DSARs require a response within a certain number of days (typically 30-45).

7 How does data privacy impact marketing and sales teams?

Before 2018, detailed tracking through first and third-party cookies enabled marketers to optimize marketing budgets most effectively to increase ROI. Post-2018, GDPR is in effect, and Safari and Firefox automatically block tracking.

As a result, McKinsey estimated that marketers would have to spend around 10-20% more to achieve previous return levels. And Gartner found that 73% of marketers fear privacy concerns will negatively impact their analytics efforts.

Year after year, more data privacy regulations are introduced, and the limitations on data collection increase. Organizations can expect to spend more to get the same marketing and sales results without privacy-intrusive methods. The increased spending is likely to result in a lower ROI.

The focus will shift from using third-party cookies and data to using first-party cookies and quality data willingly provided to organizations by their consumers. There are many ways your organization can collect data with consent and privacy in mind:

- *Company-created communities*
- *Customer lists and databases*
- *Subscriptions to newsletters, blogs, etc.*

- *Webinar and event registrations*
- *Surveys*
- *Focus groups*
- *Written reviews*
- *Customer interviews*

A shift to first-party data will also require organizations to become more creative and personalized when approaching their audience. To increase engagement, organizations should tailor resources and campaigns to individual preferences.

While privacy compliant methods may cost more and take more effort on the front end, the relationships built between your organization and its customers will be stronger and more authentic.

8 What is the best way to enforce data privacy while not impeding future innovation?

While it may seem like data privacy laws are just another complicated set of regulations your organization needs to comply with, many people believe privacy is a fundamental human right.

Complying with data privacy requirements after a product is built is complicated and can slow down project timelines. Privacy by design implements privacy and security controls into a product or service at the outset of the planning process. Although there's no specific set of rules an organization should follow to implement privacy by design, there are a few basics to consider.

The first is data minimization. Instead of automatically collecting data, organizations should consider what data is needed and doesn't need to be collected. When products are designed to collect only the minimum amount of information required, privacy and security risks are reduced.

Product development teams should also perform privacy and security risk assessments at all stages of development. This approach includes a complete inventory of the type and variety of personal information collected, and an end-to-end understanding of data flows for the life cycle of any data.

In person or remote? Best practices for navigating tension of hybrid work model

Two types of employees—remote workers and those in person—could begin to resent each other if their distinct wants and needs are not met, creating a corporate culture clash.

BY AARON NICODEMUS, COMPLIANCE WEEK

How's that hybrid work model panning out in your workplace?

Remote workers enjoy the flexibility. In-person employees love they've got the office to themselves. But there is a risk these two types of employees will begin to resent each other, creating a corporate culture clash, labor and compliance professionals say.

How should firms handle the wants and needs of these two distinct groups of employees? How do you keep them all motivated and productive? What are some common pitfalls to avoid?

A May 2022 survey by employment law firm Littler polled nearly 1,300 in-house lawyers, C-suite executives, and HR professionals about their concerns regarding a hybrid work model. They were asked to check all answers that applied.

Of the respondents, 86 percent said their biggest concern was maintaining company culture and workplace engagement, 53 percent said ensuring hybrid/remote work is applied fairly, and 52 percent said efficiency of communication and meetings that are a mix of remote and in-person staff.

Other concerns included a reduction in mentorship and professional growth opportunities (45 percent); availability for in-person interaction with clients, customers, or third parties (40 percent); and scheduling obstacles with employees on-site on various days (28 percent).

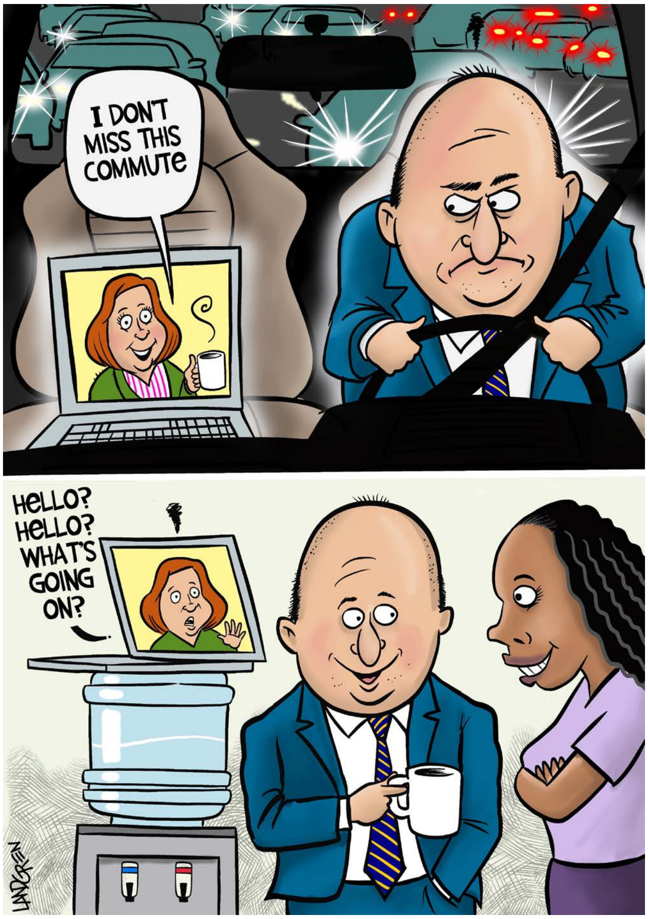
Only 2 percent of those surveyed said they had no concerns about hybrid work.

"What you don't want to do with remote work is create haves and have nots," said Claire Deason, shareholder at Littler.

"You want to implement a hybrid model in a way that doesn't create perceived inequities and resentment," she said. "Everyone has been given some flexibility, and some employees have taken it to an extreme. That can create feelings among groups of employees that some are taking advantage of the system, that they are getting more than they should be entitled to."

> "What you don't want to do with remote work is create haves and have nots."
>
> Claire Deason, Shareholder, Littler

Whether your company plans to require all employees to return to the office, continues to utilize a hybrid model, or



goes fully remote, here are some best practices to keep different groups of workers from resenting others.

Tone at the top

If your company orders everyone back in person by a certain date, start bringing back executives and managers first. Encourage employees to come in a few days a week, and don't be afraid to bribe them with free breakfast, lunches, or snacks.

If your firm wants to continue with hybrid work indefinitely, make the days where people do come to the office meaningful. Ensure enough workers will be present.

Whatever policy your firm adopts, top executives and managers should set an example.

"If you don't see people at the top practicing what they preach, it will build resentment and a sense employees don't need to comply," said Gus Sandstrom, labor and employment partner at labor law firm Blank Rome.

"As with any attempts to influence workplace culture, change has to be top-down," agreed Caroline Donelan, also a Blank Rome partner.

Recognize past accomplishments

Employees who worked in person throughout the pandemic gave their all under difficult circumstances. They literally risked their lives. Now is the time to show them how valued they are.

Many firms might have already increased salaries and offered bonuses to in-person employees. Even still, those workers might be casting an eye toward their colleagues allowed to work from home and saying, "What about me?"

Make sure those employees take their vacation time. Offering them split shifts, more flexible hours, or the ability to work the same number of hours a week in four days instead of five are all ways to give in-person workers some of the schedule flexibility they see their remote counterparts receiving.

Remote workers proved they could be as productive, maybe even more so, during the pandemic. You can reward that accomplishment by offering productive employees the chance to continue working remotely, either in a hybrid model or fully remote.

For both in-person and remote workers, schedule flexibility has become a benefit on par with pay and advancement opportunities. Maybe they can start work at 10 a.m. some days.

"Flexibility is really important to employees," Sandstrom said. "Employers willing to accommodate those requests, within reason, eliminate one of those mental hurdles to coming into work."

A happy employee who feels heard by their employer regarding work-life balance is less likely to look for a new job.

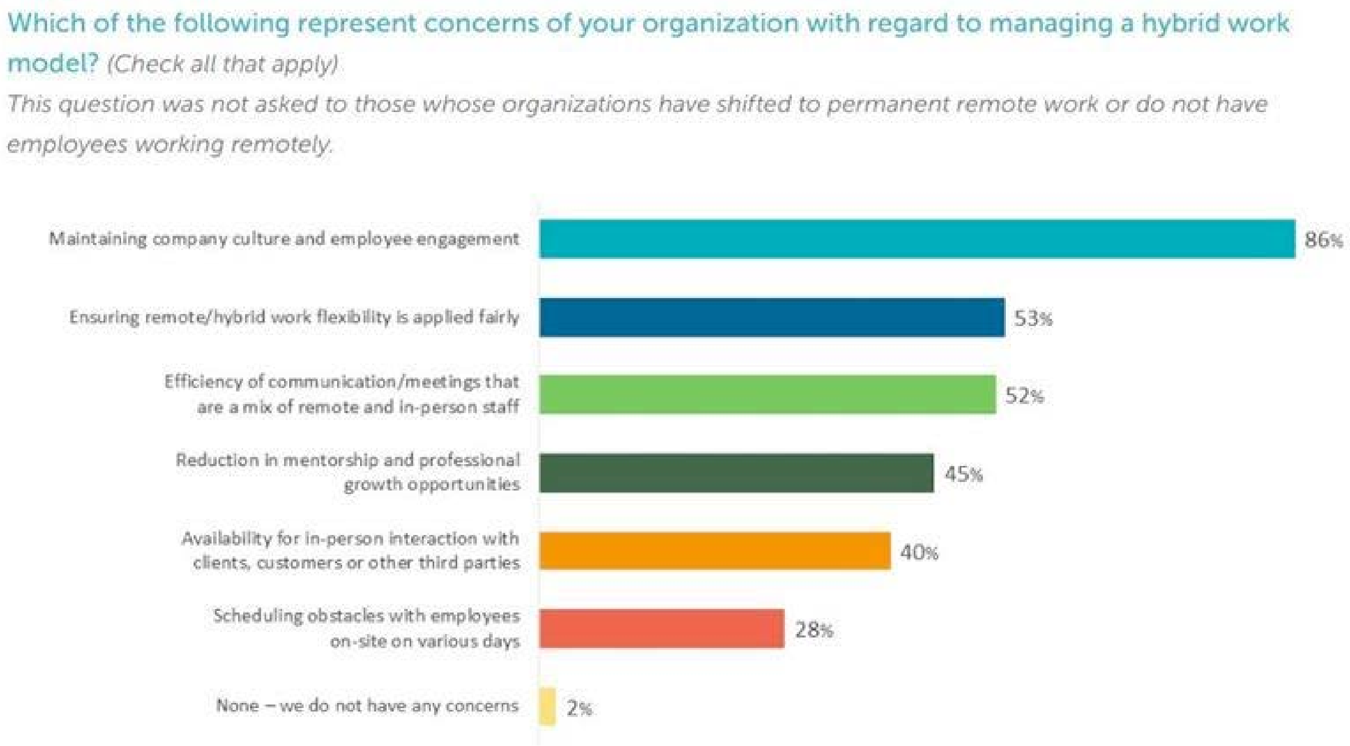
Communication is key

"Even if you offer a 'flexible' workplace, you still need to be clear with your expectations," said Donelan. "If there are certain meetings or events employees are expected to attend in person, they need to know that."

While setting mandatory in-person meetings might be effective in the short term, offering more carrots than sticks is key, at least at first.

"Making people want to come in is as important, maybe more important, than ordering them to come in," Sandstrom said.

Promoting well-being can be one method of encouraging compliance with your new workplace rules. Another is bribes. You'd be shocked how many employees will come to work for



Source: Littler Annual Employer Survey Report

a catered lunch or unlimited free snacks.

No one wants to come into an empty office, at least not regularly. Give employees information about who in their division or team will be back in person on which days.

"Making people want to come in is as important, maybe more important, than ordering them to come in."

Gus Sandstrom, Labor and Employment Partner, Blank Rome

Legal pitfalls?

An employer can set any workplace rules it wants if they are implemented in a neutral, unbiased way, Donelan said.

But policies seen as archaic, unevenly enforced, or rushed can prompt employees to look for a new job, Sandstrom said.

"It's very easy to say everyone needs to be back in, but you need to be aware of all the consequences of that," he said.

When an employee asks for an accommodation, consider it through a variety of lenses. Will making the accommodation hurt productivity? Will it affect the morale of other employees? And is there a legal right at stake?

"There is a possibility of lurking protected and covered leave issues" behind some remote work requests, said Deason. Accommodation rules laid down by the Family and Medical Leave Act, Americans with Disabilities Act, and other laws could present problems for return-to-office mandates. So could health issues that could be worsened by exposure to Covid-19 during an employee's workday or commute.

When the inevitable questions start popping up—why does Jane get to work from home so much when the rest of us are back in the office?—managers should be prepared to answer them with as much information as they are allowed to while protecting employee privacy. "You have to train your managers on how to navigate that," Deason said.

"We ask our employees to remember there are many reasons why an employee might need to stay away from the office," Deason said. "Frankly, outside of HR, it's probably none of anyone's business why an employee might work from home." ■

Mind your language: How small changes in phrasing make big differences

Risk and compliance professionals are tasked with trying to change attitudes and behaviors to achieve their goals. Subtle adjustments of emphasis and wording can have a significant impact on their success.

BY PAUL ECCLESON, FOR INTERNATIONAL COMPLIANCE ASSOCIATION

How we phrase things—the words we choose to include and exclude—can dramatically affect the impact we have on people. As risk and compliance professionals, we are trying to communicate the expectations of laws, rules, and regulations to a community who might not understand or believe in those expectations.

Traditionally, our profession has paid little attention to the words we use to communicate. Insurance policy documents and "terms and conditions" statements are often written in impenetrable legalese and, if we are honest, we never really expect many people to read them. It is common for codes of conduct to be plagiarized from others available on the internet, and many seem to be written to protect the company from legal action rather than to genuinely change people's behaviors.

If the words we use can so powerfully affect the way in which we think and react, how can the risk and compliance community use this to achieve its own goals?

Here's a suggestion: take a page out of marketing's book. A major job of a marketing department is to establish a brand and its values in the minds of consumers and influence their subsequent purchasing choices. One way in which to do this is to establish a core value to consumers and experiment with ways to communicate that most effectively.

Using multiple creative approaches, narrowing those through focus groups, and experimenting with various communication media, the marketing team uses rigorous statistical analysis to judge which campaigns work best and refine the communication on that understanding. As risk and compliance professionals, we need to undertake the same rigorous approach when communication really matters.

As risk and compliance director at DAS Legal Expenses Insurance, I undertook work like this to understand the most effective way to communicate a complex legal insurance product to customers. We found something unexpected. We demonstrated the most understandable format actually scored highest on standard "reading complexity" scores, winning a prestigious marketing "Nudge" award in the process.

Another tip: use what we know from behavioral science. There is a large amount of science that can give us hints on how best to communicate and influence behavior.

Consider reframing a presentation so it is more appealing to your audience, using emotive language when required, and communicating using "people like me" rather than centralized "command and control" instructions. These can all be useful tools when writing a policy, designing compliance training, or writing a presentation for the board.

Risk and compliance professionals need to adopt the same goals as marketers. We are asking our consumers to devote their time and effort to doing the right thing. That those consumers are managers, process designers, and salespeople does not matter. Approaches to changing opinion and behavior have as much relevance to that audience as they do to the general market. We would do well to adopt and apply those techniques to our world. ■

The International Compliance Association is a sister company to Compliance Week. Both organizations are under the umbrella of Wilmington plc.

Q&A

Flex CECO on measururing ethical culture

Andy Powell discusses with Compliance Week the company's approach to ethics and compliance and how he sees the profession evolving.

BY AARON NICODEMUS, COMPLIANCE WEEK

With the arrival of a new chief executive officer at Flex came a directive for Chief Ethics and Compliance Officer Andy Powell: generate a positive, values-based ethical culture to support the company's bottom line.

Powell, who also serves as senior vice president and deputy general counsel, got to work with his team. The result was a data-driven scorecard to make it easier to monitor and improve compliance and ethics.

Flex, a provider of technology, supply chain, and manufacturing solutions to build products that are sold under other brand names, is the biggest company you've never heard of, said Powell. He discussed the impact of the scorecard on monitoring 170,000 employees across 30 countries, the overall role of ethics and compliance at Flex, and how he sees the profession evolving as part of a Q&A with Compliance Week.

Tell us a little about Flex.

Flex is a $26 billion diversified manufacturing and supply chain solutions company that makes everything from vacuum cleaners, coffee machines, and autonomous car modules to diabetes equipment, industrial machinery, and cloud data centers. Although we aren't a household name, we make a diverse set of products you can find in every home and business across the globe. At the end of the day, our goal is to be the most trusted and ethical technology, supply chain, and manufacturing solutions partner in the world.

How is the role of the compliance officer changing?

We've reached an inflection point in the legal and compliance profession. Historically, these departments operated in siloes and were reactive, not proactive. They focused on policy setting, training, and policing. Now, the focus is shifting to encompass a broader scope of responsibilities, and compliance leaders must act more like data scientists, integrating closely with the business to identify data patterns and analyze them to make decisions that improve operations.

Across industries, we're seeing legal and compliance teams becoming increasingly involved in governance, sustainability, diversity, equity, and inclusion. It's safe to say today's compliance officer needs to be adaptive, innovative, and highly aligned with cross-functional teams.

What spurred you to improve how the company monitors and enforces ethics and compliance?

Revathi Advaithi joined Flex as CEO in 2019 and immediately set the tone for our company's vision of the future. As a leader, she is incredibly compassionate and hyper-focused on inclusion, sustainability, and doing the right thing. Revathi and the rest of the leadership team issued our department a directive: We needed to generate a positive, values-based ethical culture that supports Flex's bottom line.

We've always done an excellent job monitoring and enforcing compliance, but that was the genesis for change. The challenge? We have 170,000 employees in 30 countries. And these employees sit at more than 100 sites, which makes it tough for my team to monitor each location. An even greater challenge is the fact ethics can be vague and hard to quantify at times. We needed to figure out how to map our strategy to align with Flex's culture and bottom line—fast.

We quickly realized to succeed, we needed to normalize ethics and compliance at every level of the company. The prioritization of ethics and compliance needed to be embedded into every manager's job, and then we had to use data and advanced technology to help us manage the sheer scale of the project. That's how the Flex integrated scorecard was born.

What is the integrated scorecard you created? How does it drive savings in legal and compliance costs and create better business outcomes for the company?

The scorecard is a data-driven way to make it easier to monitor and improve compliance and ethics. To start, we brought together a cross-functional group of compliance, legal, internal audit, and human resource leaders. Each team brings a level of expertise and data to the table that can help us collectively improve the culture of our organization.

Next, we identified the data points from each department that would help measure and improve compliance and ethics. We landed on cultural surveys, hotline reporting, compliance reports, and a few other sources. We then used APIs and plug-ins to develop a single automated dashboard that pulls this information from HR software, dashboarding systems, hotline platforms, and survey models.

It's important to note we already collected all this information. The system just unifies the data sets and aggregates the information to identify hot spots and problem areas, creating a scorecard for each factory site. After we rolled it out, it enabled us to provide 'scores' to site leadership and empower them to develop action plans that address potential issues before they become a problem for Flex and its employees. In fact, it's the first thing Revathi asks for when she visits each site.

Overall, the data has helped our team identify transgressions, unethical conduct, and compliance lapses across regions and sectors, making Flex a better place to work for our employees. It flags hotspots and, in some instances, we've been able to narrow these challenges to specific production lines in factories. The goal is to catch potential issues before they negatively impact our culture, and it's been incredibly successful. Happier, safer employees are more productive workers, and that's good news for our customers too. By getting ahead of problems, we've also saved significant money by eliminating outside counsel fees, investigative costs, and financial penalties.

ANDY POWELL

Andy Powell is senior vice president and deputy general counsel, chief ethics and compliance officer at Flex. He leads the company's global ethics and compliance, litigation, labor and employment, legal operations, and government relations efforts.

How do you think data, technology, and artificial intelligence should be used in compliance and ethics?

These technologies need to be at the center of everything compliance officers do. With an ever-expanding to-do list and new initiatives to support, these tools are critical for making informed decisions faster. We can collect the information at our disposal and use advanced technology like machine learning, artificial intelligence, and analytics to synthesize the data and identify trends. By eliminating the more time-consuming work and reducing human error, compliance and ethics officers can focus on making the best possible decision for the organization backed by data.

How are environmental, social, and governance (ESG) strategies changing compliance and ethics?

Compliance teams are increasingly being asked to support ESG initiatives, and in many cases, play a key role in an organization's sustainability strategy programs. Stakeholders, including investors, customers, and employees, are taking a closer look at how the brands they support perform against environmental and social issues.

These initiatives are designed to measure and eliminate risks related to climate change, employee safety matters, corruption, and other top-of-mind issues. But it's not just risks inside the four walls of a business; leaders must consider issues outside their organization, such as human rights in the supply chain. With these complex considerations on board, it's becoming essential for compliance leaders to have a seat at the table for all critical business dealings and ESG activities.

When it comes to ethics, ignorance is not an excuse. Careful vetting of partners, employees, and business processes is paramount. ■