

The Legal Intelligencer

THE OLDEST LAW JOURNAL IN THE UNITED STATES 1843-2014

PHILADELPHIA, MONDAY, DECEMBER 1, 2014

VOL 250 • NO. 106

An **ALM** Publication

GCs Find Rolling Out Global Compliance Programs Tricky

BY GINA PASSARELLA

Of the Legal Staff

General counsel of companies undergoing international expansion are finding implementation of global ethics and compliance programs presents an array of challenges that law firms and compliance consulting firms can't always solve.

Corporations are looking for ways to overcome the different legal and cultural norms faced across multiple jurisdictions, and many say there just are no shortcuts to successfully implementing company-wide policies.

"One of the things that faces us the most, and I wouldn't say there's a great number of third parties that are offering good services, but, how do we train our employees outside of the U.S. in our compliance programs in a way that is culturally relevant?" FMC Corp. General Counsel Andrea Utecht asked.

As corporations try to comply with the Foreign Corrupt Practices Act, the U.K. Bribery Act, China's anti-bribery laws and the cadre of laws popping up across the globe, developing a program that translates equally to each distinct culture is difficult.

And then general counsel run into the issues of European nations having much different views from the United States on privacy issues and information-sharing. France, for example, disfavors mandatory hotlines for employees to call—a concept dating back to the country's experience in World War II. Some countries require compliance plans be reviewed before implementation. Countries in Asia may culturally expect cash gifts on certain holidays while that is unheard of in the United



KRAEUTLER



HAYES

States. And then there are the vendors a company uses and how their employees need to be trained.

"Clients are finding that it's not straightforward to provide ethics training in non-U.S. countries," Morgan, Lewis & Bockius litigation partner Eric Kraeutler said. "I think corporations are much more focused on this issue and it's clear that most corporations have moved beyond simply having policies in place and are now really thinking about how to push those policies out not just to employees but also to their distributors and companies that they do business with."

Vendors are one area where Kraeutler has seen the biggest change. He said clients are no longer focusing just on their internal operations, but on how to ensure their vendors are acting appropriately as well.

"There are few shortcuts and it really does require attention to the specific geography, the specific complement of employees and the specifics of the business," Kraeutler said.

Often the most successful way to implement these programs, he said, is to have members of the business itself who are from that jurisdiction giving the training to both ensure cultural translation as well as enforce that these

policies are priorities of the business team, not just the legal team.

"The difficulty of implementing global compliance programs are as old as these programs themselves," said Matt Pachman, vice chairman of the board of the Ethics & Compliance Officer Association. "The good thing is that, while there are not only cultural but legal differences, at least on the legal side those are starting to fall away a little bit."

Pachman said the United States used to be out in front of the world on anti-corruption and anti-bribery issues, but now more and more countries are enforcing such laws. Pachman, who was speaking from his role on the board of the ECOA and not from his capacity as chief ethics and compliance officer at FTI Consulting in Washington, D.C., said the jurisdictional differences certainly haven't gone away, but they are ameliorating.

"It's frustrating. It is," Pachman said. "It does require some degree of patience and some degree of creative thought."

Pachman said talking to other GCs in similar industries about best practices can be the best bet. Not everyone can or should have the dedicated resources and scale of a compliance program that, for example, a defense company may need. But there are aspects that can be scaled down, Pachman said.

Compliance is about balancing risks and rewards. Resources need to be spent where the risk for violating a compliance policy is the highest. The same risk-balancing goes for determining how in-depth a company wants to get in training its vendors, he said.

LOST IN TRANSLATION

For Larry Hayes, general counsel of QVC, finding a service provider that

can provide detailed enough training that is also at a high enough level that can apply to all jurisdictions is a difficult task. QVC operates in countries such as the United Kingdom, Italy and Germany and the language barrier is always an issue.

“I think you will find the quality of translation sometimes is not as good as you might think,” Hayes said.

Fortunately for QVC, he said, the company has general counsel in a number of its large markets and they are tasked with reviewing the translations to make sure they are appropriate. Hayes said it is surprising how many changes they make, not in substance but in style, to make sure the presentations are coming off in the right way. Hayes said a service provider just doesn’t give that touch.

Utecht said one of the service providers she has recently worked with made similar suggestions about changing some of the vignettes and pictures used in their training materials to better relate to the culture in question.

Pachman said a global-compliance training program that has an American football theme is not going to translate to other cultures. And even if they get the references, the employees may be offended that their culture wasn’t reflected in the training.

Hayes described ethics abroad as much more principle-based with policies that read more like aspirational statements, as compared to the United States where policies are very detailed on do’s and don’ts.

When training abroad, Hayes said, “You have to slug through it.” He said employees in foreign countries often want to know why the rules exist and how they would be disciplined if the rules were broken.

The other training comes closer to home. Hayes said his bigger challenge is making sure management has the right expectations about how complex implementing a

global compliance program can be. It just takes more time, he said.

Mary T. Fox, chief compliance counsel and group general counsel of AmerisourceBergen, said she has purchased training modules from consulting providers on certain topics, such as antitrust. AmerisourceBergen employees will give the training based on the program designed by the vendor.

As for dealing with the ethics training of AmerisourceBergen’s third-party vendors, Fox said she is in the process of retaining a vendor to help with that endeavor. Vendors such as Regulatory DataCorp, Grant Thornton and LexisNexis provide software that serves as a screening platform to check whether vendors have been in trouble before, Fox said.

AmerisourceBergen is also a member of a number of industry groups, such as the Society of Corporate Compliance and Ethics and a chief compliance officer group among Fortune 100 companies, which has a steering committee in Philadelphia.

Some of the top compliance issues companies are facing include anti-bribery, antitrust, information security and import/export controls, Fox said.

DO LAW FIRMS HAVE A ROLE?

While law firms may help with the legalities of implementing compliance programs across jurisdictions, they aren’t involved in the actual implementation.

Fox, who is in the process of rolling out an international compliance program, said the rules keep changing and she relies on local counsel to keep her up-to-date on new laws. Hayes said he “cherry-picks” law firms for various expertise rather than using them as a project manager.

Fox said international law firms are “prohibitively expensive” and she has found consulting firms are more focused on the details and are cheaper.

“Law firms do provide tremendous advice on compliance and what the law requires and indeed also sometimes what your policy should include,” Pachman said. “Where law firms sometimes have a greater difficulty is in operationalizing.”

As a former litigator, Pachman said that when he went in-house he had to change his mindset from thinking about the goals to how he could turn them into a program. A lawyer may suggest a form be filled out each time a certain event happens, but Pachman said in-house counsel have to think about the cost to the company and the impact on the psyche of the employee filling out the form.

Pachman said there is an opportunity out there for law firms, but he said in-house compliance professionals and consulting firms seem to be better at doing things from a knowledge and economic standpoint that, for a number of reasons, are not in a law firm’s wheelhouse.

“Whether they can team with people that do things at a lower rate is another issue,” Pachman said of law firms.

Kraeutler said his firm seeks to be a “trusted counselor” and part of that means being flexible and partnering with a client in a number of ways. That often means working with consultants and other outside people.

“Sometimes clients really need us involved every day, but a lot of times they need a more cost-effective solution,” Kraeutler said.

Gina Passarella can be contacted at 215-557-2494 or at gpassarella@alm.com. Follow her on Twitter @ [GPassarellaTLLI](#). •

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