

Human Resource Management and the Compliance Office

11 Tips for a More Productive Relationship

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Both the Compliance Office and Human Resource Management (HRM) play critical roles in any organization's compliance program, and every compliance officer encounters the blurring of the lines between the two functions frequently. By stepping back, one can see just how much overlapping exists. Both are called upon to deal with compliance with numerous laws and regulations to avoid fines and other penalties by government intervention or civil tort actions. Both get involved in potential violations requiring investigation, remediation, and possible disclosure to government enforcement agencies.

The compliance officer focuses much attention on the anti-kickback statute, Starks laws, False Claims Act, and other fraud laws that require policy guidance and training of employees, managers, and executives. The enforcement agencies of most concern tend to be the U.S. Department of Health and Human Services (HHS) Office of Inspector General (OIG), Department of Justice (DOJ), and state Medicaid Fraud Control Units.

By contrast the laws that most often occupy HRM interest include Unlawful Harassment; Age and other Discrimination in Employment Act; Americans with Disabilities Act; Family and Medical Leave Act; Fair Labor Standards Act;¹ Uniform Services Employment/Reemployment Rights Act; Employee Retirement Security Act's governing compensation and benefit plans; and Patient Protection and Affordable Care Act for employer-sponsored health benefits, among others. The government agencies that oversee these areas are the U.S. Department of Labor, Equal Employment Opportunity Commission (EEOC), and a variety of state agencies. Violations can result in serious penalties and liability. The following offers examples of key points of intersection between compliance and HRM.

INTERSECTIONS OF COMPLIANCE AND HRM

Employee Handbook and Code of Conduct

These documents frequently become an area of conflict between HRM and the compliance officer. The handbook falls within the responsibility of HRM and the code of conduct within the responsibility of the compliance officer. They are foundation documents that provide general guidance for employees on understanding the organization, as well as their duties and responsibilities under basic legal and regulatory requirements. Any conflicts between these documents in guidance may create grounds for potential liabilities.

Compliance Policies and Procedures

Both HRM and the Compliance Office have responsibility for compliance policies within their areas of responsibility. Jillian Bower, CHC,² is a health care compliance consultant that specialized in development implementation of compliance-related policies. She notes that failure to coordinate policy development may result in serious consequences and liabilities, as there are often overlaps between HRM and the compliance program that may provide conflicting guidance. Many policies must be written to comply with a variety of governing laws and regulations. Furthermore, the policy documents also must not conflict with either the code of conduct or employee manual.

Compliance Education and Training

Compliance education and training is a major responsibility of both HRM and the compliance officer, who must convey to the workforce regulatory and legal requirements that are everchanging with the subject matter often overlapping. Creating a code of conduct, employee manual, and policies and procedures governing workplace behavior is not enough. Once established, they must be effectively communicated

throughout the organization, primarily through training programs.

This begins with new employee orientation where HRM explains the rules of the workplace and the compliance officer explains the role and operation of the compliance program. Both should be addressing compliance with governing laws and regulations. The OIG also calls for specialized compliance training for those involved in high-risk areas, such as claims processing. Ashley Felder, SHRM-CP, a compliance consultant and trainer specializing in HRM compliance, notes there are mandates that fall on HRM to provide general and specialized compliance training. She cites as an example the fact that organizations cannot mount an affirmative defense for unlawful harassment without having zero tolerance policies and procedures in place, and that everyone receives detailed training on those policies.

Ongoing Monitoring and Auditing

Steve Forman, CPA, has been a compliance officer and health care consultant for 30 years, dealing with compliance monitoring and auditing. He sees that it is necessary for all programs and operations to avoid reputational risks and liabilities for failure to comply with rules and regulations, including the Compliance Office and HRM. Many are still unclear about the difference between monitoring and auditing. Monitoring means that the compliance officer and HRM director, as program managers, need to keep track of their own areas of responsibility to ensure their respective programs are kept up-to-date with changing rules that are translated into written guidance for all covered persons and that they are following them. Ongoing auditing is a periodic independent review by an outside party that verifies the monitoring is being done and that the result is effective. The compliance officers may be involved in auditing the HRM function but cannot do so for their own areas of responsibility. That normally is done by outside experts.

In any case, this is another important area requiring coordination and cooperation between HRM and the compliance officer.

Credentialing and Screening

Alena Treen, who supervises sanction screening for the Compliance Resource Center, makes the point that those being engaged by the organization become a major responsibility of both HRM and the compliance officer. For the Centers for Medicare & Medicaid Services (CMS), it is a condition of participation to ensure all those hired are properly qualified and licensed, with this responsibility falling on HRM. However, the compliance officer is charged with ensuring that everyone being engaged is screened through the OIG's List of Excluded Individuals and Entities (LEIE), as well as applicable state Medicaid sanction databases, among other government databases that may include the General Services Administration (GSA) Excluded Parties List System (EPLS), Drug Enforcement Administration (DEA), and Food and Drug Administration (FDA). Failure to carry out this obligation promptly and efficiently can result in serious liabilities and penalties by government and private tort actions. Coordinating these efforts is very important to avoid having enforcement problems emerge.

Compliance Communication

Compliance communication is a major responsibility for HRM and the compliance officer. Both functions must keep executive leadership aware of potential compliance risks and what needs to be done to remediate them. A major part of this responsibility is having communication with employees and staff as to problems, concerns, and emerging issues through a hotline. Carrie Kusserow, CHC/CHPC/CCEP, is a consultant with 10 years' experience operating a national hotline service and maintained data on calls for over 1,000 organizations. Her data indicates that although the operation and

management of the hotline generally falls within the province of the compliance officer, 75 percent of the calls reported through this channel are personnel-related matters within the scope of responsibility of HRM. Among the remainder it is common to have a single complaint with several different allegations that fall within HRM and compliance.

The confusion of roles leads frequently to problems in the manner by which the information is handled. What this means is that both functions need to work closely together to ensure information received is handled appropriately. For example, when information is provided that relates to HRM, that department should be promptly notified, and when HRM receives information that falls within the responsibility of the compliance officer, it should be handled the same way.

Compliance Investigation and Resolution

Both HRM and the Compliance Office bear responsibilities for investigating compliance violations. The compliance officer is responsible for ensuring the resolution of all issues that are raised through its reporting channels and for resolution of compliance issues that are raised through traditional communication channels. Many issues raised through the Compliance Office channels are matters that HRM should resolve, requiring coordination and cooperation to be successful. An interesting point is that most compliance investigations will fall under HRM. Felder notes there are over 100,000 discrimination and unlawful harassment cases raised annually to the EEOC and state agencies.

Disciplinary Procedures

Disciplinary procedures is another area where close coordination between HRM and compliance is critical. Tom Herrmann, JD, retired from the OIG, points out that there are compliance guidance documents that the compliance officer can use to

ensure disciplinary procedures are in place to ensure that everyone is treated equally without regard to station within the organization. Yet, the expert on taking disciplinary action is HRM, who will be the one ensuring proper actions are taken in a timely manner.

With so many areas where HRM and compliance overlap that could result in conflict and confusion, the issue is what should be done to avoid negative consequences.

11 TIPS FOR A MORE EFFICIENT RELATIONSHIP

- Create operating protocols in the form of policy documents for cooperation and division of responsibilities that sets the respective duties and responsibilities of the two functions, and how they are to be handled, that address all of the areas noted above.
- Develop a common form, format, and process for developing and managing policies to ensure ease of understanding and absence of conflicts in guidance.
- Clarify responsibilities of who will be responsible for sanction screening, credentialing, and background checking of employees and medical staff, including how it is documented and maintained.
- Define in written policies the respective areas of responsibility for information received suggesting potential violations

of laws, regulations, code/handbook, or policies.

- Jointly maintain an up-to-date document management system that tracks policy development, reviews, updates, revisions, and rescissions.
- The compliance officer and director of HRM should frequently meet, at least once a month, to discuss particular cases, coordinate efforts, and resolve issues.
- HRM should be included as a member of the Executive or Management Compliance Committee.
- Establish ground rules (policies/procedures) for investigating complaints, allegations, and other information that involve both functions.
- HRM and compliance should jointly develop employee orientation and training programs that address their respective areas of responsibilities.
- Ongoing monitoring and auditing workplans should be coordinated.
- Work together to come up with standards that will ensure consistent and fair discipline for those found in violation of the rules, as well as the means to track implementation.

Endnotes:

1. www.goco.io/blog/warning-ready-2016-flsa-changes
2. Vice President, Strategic Management, compliance.com/team-members/jillian-bower