

## DOJ Compliance Guidance Regarding Compliance Culture

### Key Points:

**Compliance culture repeatedly used in the DOJ Guidance**  
**“How often and how does the company measure its culture of compliance?”**

**By Richard Kusserow | October 8, 2020**

The [Department of Justice \(DOJ\) Evaluation of Corporate Compliance Programs Guidance \(DOJ Guidance\)](#) calls for prosecutors to review the “company’s *culture of compliance*” and give consideration to whether the company has “...[surveyed employees to gauge the compliance culture...](#)” It also instructs them to evaluate, “whether the company has established policies and procedures that incorporate the *culture of compliance* into its day-to-day operations.” The DOJ guidance states that “the effectiveness of a compliance program requires a high-level commitment by company leadership to implement a *culture of compliance* from the middle and the top.” Prosecutors should also “examine ‘the comprehensiveness of the compliance program’ ensuring that there is not only a clear message that misconduct is not tolerated, but also policies and procedures...that ensure the compliance program is well-integrated into the company’s operations and workforce.” The DOJ emphasizes that “it is important for a company to create and foster a *culture of ethics and compliance* with the law at all levels of the company.” In making determinations about the *compliance culture*, the DOJ Guidance tells prosecutors to ask the following questions:

- *How often and how does the company measure its culture of compliance?*
- *Does the company seek input from all levels of employees to determine whether they perceive senior and middle management’s commitment to compliance?*
- *What steps has the company taken in response to its measurement of the compliance culture?*

[Survey instruments must be both reliable and valid](#) for results to be credible to those responding to, and reviewing, the results. Therefore, reliability and validity must be examined and reported, or references cited, for each assessment instrument used to measure study outcomes. The goal is to obtain a representative sample to be certain that the people who respond to the survey represent the thinking of the entire population, as if you had a 100% response rate.

### **Factors Determining Credible Culture Survey Results**

**Validity.** For outcome measures from a survey, validity refers to the *accuracy* of measurement and how well the assessment tool actually measures the underlying outcome of interest. This depends on asking questions that truly measure what is supposed to be measured.

**Reliability.** This refers to whether an assessment instrument gives *consistent* or *dependable* results. Reliability is a part of the assessment of validity. For *internal consistency*, two to three questions or items are created that measure the same concept, and the difference among the answers is calculated. That is, the correlation among the answers is measured. For reliability, the same questions phrased in exactly the same way are posed to participants.

**Content.** This involves asking the right question, which relies upon those who created the instrument (national experts would confer greater validity than in-house staff) and other steps to support that the instrument has the appropriate content.

**Likert Scale.** This is the most widely used approach to scaling responses in surveys. Unlike dichotomous (yes-no) questions used in compliance knowledge surveys, respondents specify their level of agreement or disagreement to a question or statement, thus capturing the intensity of their feelings for a given item. As such, using this type of survey applies when trying to gauge attitudes and perceptions of employees regarding the compliance program.

**Confidentiality.** A key assumption of any successful employee survey is that everyone will complete it and provide honest answers to all questions; however, this is dependent upon them knowing they can share feedback in a confidential way that prevents leaders or stakeholders from tying that feedback directly to their name. Many employees worry when completing surveys that managers will see their answers and potentially use it against them. If an organization can't guarantee that their answers will be confidential, then it can't count on the employees' open and honest participation.

**Pilot Testing.** Culture surveys need to be tested for the quality of the data obtained from the questions, as well as to test the viability of the survey as a whole. Failing to do this means you really don't know whether the questions being asked are being interpreted as intended by the respondents. This includes scale wording, instructions, question sequence, appropriateness and meaning of sections, etc. Without doing this the evidence of the instrument's reliability become questionable, as would the validity of the survey.

**Confidence Level.** Confidence level tells you how confident or certain you can be that your data is representative of the entire population with the higher the level, the better. The goal is to have a 90% confidence level, meaning a 90% certainty that the results reflect the opinions of the entire population.

**Benchmarking.** When you set benchmarks, you're essentially setting a baseline or standard that you can use to find where you need to improve, set goals, and measure your performance over time. Surveys are a great way to benchmark performance metrics. The results of a survey can be used as a baseline against future surveys that can be benchmarked. Internal benchmarking can be accomplished by comparing current performance metrics to past numbers. This helps provide context to the data collected. However, internal benchmarking only gives you part of the picture,

as it would be far more useful to know how the results compare against similar organizations in the same sector through external benchmarking. This involves comparing the data collected against the data from other organizations in the same sector, using the same survey.

**Cost Effectiveness.** Employing survey methods to collect data regarding compliance culture is an excellent way to gather lots of information from many people. This is the best method to use when one hopes to gain a representative picture of the attitudes and perceptions of employees. The cost of a medium-scale survey is approximately \$5,000-7,000. This normally would not include 'deep-dive' data analysis and interpretation of results for individual questions, panels or overall scoring with suggested actions for making improvements.

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