

Compliance Training and Education: Make It More than an Annual Requirement

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Compliance training refers to the process of educating employees on laws, regulations and company policies that apply to their day-to-day job responsibilities. An effective compliance program must ensure their workforce members understand what it takes for them to meet their compliance-related responsibilities. This is stressed by regulatory agencies.

- The United States Sentencing Commission's Guidelines state that an organization must "take reasonable steps to communicate periodically and in a practical manner its standards and procedures, and other aspects of the compliance and ethics program, ... by conducting effective training programs and otherwise disseminating information."¹
- The Department of Justice's 2023 Evaluation of Corporate Compliance Programs advises prosecutors that "Another hallmark of a well-designed compliance program is appropriately tailored training and communications."²
- The Office of Inspector General's (OIG's) updated General Compliance Program Guidance states "providing appropriate education and training is a vital component of an effective compliance program."³

It is an accepted best practice for organizations to begin compliance education as part of new employee orientation to present the organization's compliance program, written organizational guidance beginning with the Code of Conduct and key policies, as well as laws applicable to their organization. However, this training is not a one-time effort, it must be followed by mandatory compliance training. Often this training is presented annually without additional educational opportunities throughout the year.

Everyone's participation in these training programs needs to be evidenced and documented. One of the most important methods to determine effectiveness of compliance education programs is to have quizzes or tests on the material to verify employee understanding and

retention of the key lesson points. There should be standards as to the acceptable rate of correct answers for the employee to be considered as passing the course. Retaining records of successful completion of the training for each member of the workforce serves as further evidence of satisfying this compliance element. That being stated, tests administered at time of training do not necessarily answer the question as to whether workforce members retain knowledge and understanding weeks and months later.

The reality is that annual compliance training may not fully ensure that workforce members retain understanding of the training or whether they are applying the lessons in their daily work habits. Moreover, online multiple-choice questions are not always the most effective mechanism to evidence learning, especially if there is no explanation as to why each of the multiple-choice responses is incorrect or correct.

The challenge is to establish a proper balance for training with meeting job responsibilities. Workforce members, especially direct patient care workers, cannot afford to spend extended time away from their work to complete training and training certainly should not be completed on their own time.

It is increasingly common for health-care organizations to use a learning management system (LMS) to satisfy training requirements. These programs can vary significantly in quality of delivery and content. Depending upon the sophistication of the organization and its resources, the content of the LMS Compliance Modules can be customized, making it potentially more engaging to the student than simply reading or listening to a slide presentation. "Test your knowledge" questions can also be embedded in the LMS modules. Tracking the completion of modules and correct responses to the questions is easy with an online LMS. Additionally, workforce members can split up the modules

so that the training does not take too much time out of an individual workday. Workers not based in an office or a healthcare entity, such as home health providers, visiting nurses, etc., are prime candidates for training via an LMS.

The question remains as to whether training via LMS is sufficient. It may meet the government's expectations on the surface, but the question remains as to the training's adequacy for explaining any unique aspects of the organization and whether workforce members truly learn the lessons and can then apply them to their duties and responsibilities, along with the big question of retaining understanding of the lesson. In addition, an LMS may not necessarily give employees an opportunity to ask questions or seek clarification of issues. Both the OIG and DOJ expect that the Compliance Officer would be available to answer questions and clarify points.

Both the OIG and DOJ recognize the need for supplemental compliance training for those working in compliance high-risk areas such as when there are changes in government regulation or guidance, issuance of new policies, or when compliance issue arise warranting, especially those that may implicate laws and regulations, reinforcement in lessons. In these instances, training needs to be particularly tailored to the issue or incident.

Consider going beyond meeting the government's expectations. Determine what will help workforce members retain the training's important points. This may also mean identifying how members of the organization's workforce learn. Some of this is generational:

- Baby boomers (born 1946-1964) tend to learn better in a classroom setting.
- Gen Xers (1965-1980) prefer a mix of traditional and nontraditional learning environments incorporating more technology in the training.
- Gen Y (AKA millennials, born between 1981 and 2000) prefer a collaborative

learning environment with hands-on learning using, for example, games and social networks.

- Gen Zs (2001-2020) are even more comfortable with technology and value flexible learning environments such as mix of online and personal training.^{4,5}

Language is another consideration. Is English the primary language for members of the workforce? Does the training material need to be translated? Are there members of the workforce who are sight or hearing impaired or have other special needs that must be accounted for under the Americans with Disabilities Act?

Of course, a training program cannot account for every nuance of the workforce population; however, providing a variety of learning opportunities ensures that every member of the workforce has an opportunity to learn.

The OIG's latest guidance advises Compliance Officers to establish an annual compliance training plan. For example,

- Develop FAQs on the entity's electronic communication site. Update the site regularly with new FAQs.
- Hang posters with compliance-related facts in employee common areas.
- Include a standing compliance item on the agenda of regularly scheduled meetings.
- Write a column in the entity's newsletter.
- Post video clips on the organization's intranet.
- Occasionally drop in on an informal huddle.
- Walk the floors.

One might not see compliance staff "walking the floors" and interacting with employees as training, but it is another way to address issues and answer employee questions and concerns. In short, it is a means to impart "kernels of wisdom" while chatting and, in reality, that is what education is about.

Of course, in the current environment in which Compliance Officers are often

remote, "walking the floors" may not be practical. Compliance Officers are therefore challenged to find other ways to provide education beyond the routine slide or video presentation or using the LMS.

There has been considerable discussion about the use of compliance "liaisons" or "champions" at remote locations. Regardless of whether this concept has been fully operationalized in an organization, it is difficult to implement an effective training program, and hence an effective compliance program, without partnering with others in the organization. Most likely partners include HR, clinical directors, social workers, and other middle managers or administrative personnel. Using a train-the-trainer approach, the Compliance Officer can create the training and then teach others to train the local workforce.

MAKING COMPLIANCE EDUCATION MORE THAN A REQUIREMENT

Experts agree that making learning fun is one of the most effective means to provide training. Consider creating compliance "challenges" such as crossword puzzles that can be completed individually or as a team. Email the puzzle to each member of the workforce or leave hard copies for them to pick up. Focus on the entity's compliance program. For example:

- "Our Compliance Officer's name is ..."
- "If we bill for care that was not provided, we may be committing ..."
- "If we routinely waive patient co-pays without a specific reason and advertise that we do this, we are violating the ... Statute."
- "Our Code of Conduct begins with a cover letter from ..."

Creating the puzzle structure is tricky, but there are many online programs available for this purpose.

Word searches containing key compliance-related terms are also popular and fun. The search may not provide a definition or explanation of the terms, but

simply recognizing them is important. Again, the word search can be emailed, or hard copies can be made available, but consider creating a large poster-sized word search and leaving it in a conspicuous area. Members of the workforce can circle a word they see as they pass by.

Consider hosting a breakfast, lunch, or dinner during which a topic can be discussed. If the Compliance Officer is remote and cannot travel to the facility, attend the event virtually. Partner with someone at the facility. Create a scenario based on current compliance events – an OIG/DOJ release, or an incident that may have occurred at the facility. Get the employees to share their views ... “what would you do.”

Contribute to your organization’s newsletter. Even if it is not possible to contribute to every edition, aim to contribute quarterly. Again, pull from compliance headlines and make it “real” to the readers: “Don’t let this happen to you/us.” Provide suggestions on how to avoid compliance pitfalls.

Do not let compliance issues fester. If there is a compliance failure or concern, alert everyone immediately. Do not wait until the next annual training session or even an upcoming meeting. Send an alert to all staff – use their emails if available. Some organizations have an internal social network that can be used to send alerts. Post hard copies of alerts or notices in places workforce members will see them, such as near time clocks or in break rooms. Take the notices down after a week or so to ensure that the information does not get “stale.”

TRAINING EFFECTIVENESS

The OIG and DOJ are both interested in assessing whether compliance training is effective. This refers to the impact of the training on employee knowledge, skills, and performance and comes down to how well training supports learning and positively impacts workplace behavior. The

challenge is finding means to accurately measure and evaluate training effectiveness. This is why online programs with embedded “test your knowledge” questions are so attractive even though the questions may only superficially demonstrate understanding of the material. Therefore, identify other ways to assess training effectiveness. For example, include a feedback form as part of the completion of the online training. Use yes/no questions such as:

- The training was too long.
- The training was too short.
- I had a hard time completing the training.
- I gained a better understanding of the Code of Conduct
- I know who to contact if I have a compliance question.
- I know I can contact the compliance hotline if I have questions.

Another sound way to determine if the compliance training lessons are retained is to conduct compliance knowledge surveys weeks and months after annual training to gain insight as to how well the workforce remembers key compliance lesson points. Completion of the survey in and of itself may be telling as to how the workforce feels about the training program. A substantial number of the workforce completing the survey can evidence confidently that the results represent the workforce at large. Completion of the feedback form and/or the survey in and of themselves may be telling as to how the workforce feels about the training program. Results can provide the Compliance Officer with important insights and understanding about the training and whether changes are needed.

CONCLUSION

Creating an effective compliance training plan is challenging work. Offering a range of educational opportunities may be the most effective way to ensure employee understanding of what is expected of them in performing their duties in compliance with applicable laws and regulations, as well as the organization’s Code of Conduct

and policies. Relying upon once-a-year training will not guarantee acceptance and understanding of these expectations and could be counter-productive. Providing multiple and varied educational opportunities that are relatable will have a much bigger impact. The Compliance Officer's ability to impart their knowledge about compliance, the laws, and the program while inspiring others to take the compliance "plunge," will set the groundwork for an effective compliance program that is embraced by all.

Endnotes

1. United Sentencing Guidelines, § 8B2.1 - EFFECTIVE COMPLIANCE AND ETHICS PROGRAM, 2023, <https://www.ussc.gov/guidelines/2023-guidelines-manual/annotated-2023-chapter-8#8b21>.
2. United States Department of Justice, Criminal Division, Evaluation of Corporate Compliance Programs (Updated March 2023), <https://www.justice.gov/criminal/criminal-fraud/page/file/937501/dl>.
3. United States Department of Health and Human Services, Office of Inspector General, "General Compliance Program Guidance," 2023, <https://oig.hhs.gov/documents/compliance-guidance/1135/HHS-OIG-GCPG-2023.pdf#page=10>.
4. Purdue Global, Generational Differences in the Workplace [Infographic], <https://www.purdueglobal.edu/education-partnerships/generational-workforce-differences-infographic/>.
5. Governors State University, Chicago, Teaching Across Generations, https://www.govst.edu/ctl/teaching-pedagogical-resources/teaching_across_generations/#:~:text=Some%20examples%20of%20generational%20learning,traditional%2C%20lecture%2Dbased%20methods.

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