CREATING A WORKABLE COMPANY CODE OF ETHICS

A Practical Guide to Identifying and Developing Organizational Standards

ETHICS RESOURCE CENTER

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Ethics Resource Center

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PREFACE

We can either take the lead and clean our own house or we can sit around and wait for the day when legislation will be written to solve the problem for us. I know which of these options I prefer. Over-regulation inhibits progress. Self-regulation is less onerous, more sensitive and inspires public confidence in a way laws do not.

> Walter A. Haas, Jr.
> Honorary Chairman of the Board, Levi Strauss & Company
> *Remarks to the Conference Board*, May 24, 1988

Present times have certainly revealed the truth of Chairman Haas' words! While still fairly loose in its construct, public regulation is upon us. Sadly, the actions of a few in corporate America have created a climate necessitating a critical look at the standards our companies have set in place. Managers must make a commitment to instilling the highest standards of business conduct in their employees. A well-crafted code of ethics can be the keystone of this effort.

This book, which serves as a toolkit, is meant for executives, managers and code development teams organized to develop a code of ethics. Future publications will address the means by which you can implement, revise or assess your code. Although this document may not answer all your questions, it should answer many, perhaps even some that you had not considered before.

The outline for code development that is presented here is based upon research conducted by the Ethics Resource Center, both academic and action-oriented in nature. We are pleased to acknowledge the many companies who have actively involved the ERC as they developed or assessed their codes. We have learned much from our collaborative efforts. We hope that some of their practical wisdom is reflected in the pages that follow.

On behalf of the Ethics Resource Center writing team, I wish you well in your code development endeavor!

Pat Harned, Ph.D.
Managing Director for Programs
Ethics Resource Center

May 2003

1. INTRODUCTION

What keeps me awake at night is the concern that somewhere out there in my company, an employee faces an ethical dilemma and doesn't know what to do or where to go to get help. As an executive I can now be personally liable for the outcome of his/her decision.

> Ken Frazier
> Senior Vice-President and General Counsel
> Merck & Co., Inc.

■ The Climate Today

The Sarbanes-Oxley Act of 2002, Securities and Exchange Regulations, revisions to the Federal Sentencing Guidelines, New York Stock Exchange and NASDAQ recommendations … in recent months, we have begun to see external public standards for internal company regulation. In business today, ethics is not only a recommended part of management, it's rapidly becoming a requirement. This increased regulation is driving organizations without codes of ethics to create them and organizations with codes in place to revitalize their existing documents.

But the emphasis on codes of conduct is not really new. Over the past 35 to 40 years, codes of ethics have become increasingly important as guides to desired conduct within organizations. This is largely due to a changing view of business and an increase in government regulation meant to curb perceived abuses.

As this manual goes to press in 2003, three out of every four employees indicate that their companies have written standards of conduct. [1] Many of these codes predate legislation such as Sarbanes-Oxley. Why the proliferation of codes? First and foremost, it's in the best interest of the organization, because of public policy. [2] Additionally, in order to minimize the occurrence of crises of confidence, businesses have embraced the idea that the values of the organization and the values of individual employees need to be congruent. Codes serve as valuable communication pieces that facilitate discussion in the workplace about expectations and standards.

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[1] Ethics Resource Center. (2003). *National Business Ethics Survey.* Washington, DC: Ethics Resource Center.

[2] The Federal Sentencing Guidelines for Organizations (FSGO) identify key requirements for effective ethics programs. In cases where organizations are found guilty of violating federal criminal law, the FSGO allows for penalty reductions for compliance with its ethics program requirements or penalty increases for non-compliance with these requirements.

While it has to be the nature of business, whether in a corporation, government or other entity, to embrace change, there is also a tendency to embed systems and to change them again only when there is pressure to do so. Despite an ever-progressing climate of innovation, business leaders do not always think to produce or to revise company ethics systems. However, research indicates that where ethics programs are in place, employees react to change and transition more easily.[3] In an age where pressures to commit misconduct are prevalent, implications for wrongdoing are substantial, and employees are likely to face constant shifts, a code is an essential proactive tool for an organization.

◼   Need For a Code

Every organization, regardless of size, focus, or status, should have a code of conduct in place.[4] This is for a variety of reasons:

- **Communication**

  A code will capture the values your organization wishes to foster in leaders and employees and will help ensure an understanding of those values at all levels. The Code serves to help define desired behavior.

- **Compliance**

  Recent legislation (i.e. the Sarbanes-Oxley Act of 2002) requires individuals serving on Boards and organizational leaders to implement codes.

- **Risk Mitigation**

  Organizations with codes of ethics, and who follow other defined steps in the U.S. Sentencing Commission's Federal Sentencing Guidelines, can reduce the financial risks associated with government fines for ethical misconduct by demonstrating they have made a "good faith effort" to prevent illegal acts.

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[3] Ethics Resource Center. (2003). *National Business Ethics Survey.* Washington, DC: Ethics Resource Center.
[4] One problem many individuals face is how to make the case for a code of ethics to senior leadership or to increase ethical awareness in general. The Ethics Resource Center has prepared a professional PowerPoint presentation that you can easily customize for your organization, which will help you make the case with your organizational leaders. The downloadable version of the PowerPoint presentation is available for a nominal license fee in the products section of the ERC website. The license permits unlimited use of the PowerPoint within your own organization as long as it is not used for commercial purposes.

- **Benchmarking**

    Written codes of conduct or ethics can become benchmarks against which individual and organizational performance can be measured.

Additional benefits are covered in the next chapter, "What is a Code of Ethics and What is its Role?"

■ Return on Investment (ROI)

The ROI for a code of conduct is a primary concern for most organizations, especially in a time when budgets are limited. Many executives ask, "If we invest our time and resources in the development of a code, what will we see as a result? Fewer reported incidents of misconduct? Happier employees? More business?"

For the most part, the organizational ethics field has not yet conducted sufficient research to substantiate a positive ROI for a code of conduct. However, anecdotal evidence has been present for years. For example, even twenty years ago, leaders indicated:

> *Crisis planning did not see us through this tragedy nearly as much as the sound business management philosophy that is embodied in our Credo. It was the Credo that prompted the decisions that enabled us to make the right early decisions that eventually led to the comeback phase.*
>
> (Foster, "The Johnson & Johnson Credo and the Tylenol Crisis" in New Jersey Bell Journal, Spring 1983)

Furthermore, organizational assessments conducted by the ERC evidence that employees are more likely to recognize ethical conduct in their supervisors and peers if right behavior is defined in a code. When making a decision, it is more likely that an employee will choose the best option if guidance is given to them in a document that truly reflects the standards of organizational leadership. If you are able to establish a relevant code and make it important, your employees will be more likely to express loyalty, work better, and make good decisions.

2. WHAT IS A CODE OF ETHICS AND WHAT IS ITS ROLE?

■ History

Some scholars trace Codes of Ethics as far back to Thomas Percival's code of medical ethics in the early 19th century[5]. Today codes exist in a variety of fields: professions, associations, schools and universities, nonprofits, and for-profit businesses, large and small.

Whereas in 1964 only 40% of the largest American corporations had codes of ethics or similar policy statements of company philosophy, by 1987 that figure had grown to 85%. In another study in 1987, 97% of 4,000 upper-level executives surveyed believed that companies should establish codes of ethics and hold employees accountable to those codes.

Codes have become more commonplace because they serve numerous purposes. Not only do they address issues and articulate recommended behaviors, they offer proactive ways of making employees aware of corporate values. In so doing, codes create an organization's ethos—a common set of beliefs for guiding employee behavior. In the words of one executive:

Key Ethics Program Components

1. **Ethical leadership**

2. **Vision statement**

3. **Values statement**

4. **Code of ethics**

5. **Designated ethics official**

6. **Ethics taskforce or committee**

7. **Ethics communication strategy**

8. **Ethics training**

9. **Ethics help line**

10. **Response system – investigations, rewards and sanctions**

11. **Comprehensive system to monitor and track ethics data**

12. **Periodic evaluation of ethics efforts and data**

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[5] Baker, R. (2003). *Codes of Ethics: Some History.* Retrieved April 15, 2003, from Illinois Institute of Technology, Center for Study of Ethics in the Professions web site: http://www.iit.edu/departments/csep/perspective/persp_v19_fall99_2.html

> *At the time when (our former chairman) first set out to write a code and estab-*
> *lish the ethics committee, I honestly have to say that I did not see the point of*
> *it…. But now I feel that this has been very important to us, that codification of*
> *rules means something, and that we have a strong process in place which helps*
> *ensure conduct at this company.*

<div align="center">

Donald Melville
Chairman & CEO, The Norton Company

</div>

The benefits of codes are not unique to one particular style of code. There is no "right" form. They are as varied as the organizations that choose to use them. Codes range from large, comprehensive sets of requirements to simple aspirational codes that identify and capture the values an organization feels are reflective of the way they interact with others. The type of code you choose to create should be consistent with your goals (see **Chapter 4: Decisions You Need to Make**).

Codes have changed over the years. With the introduction of Federal Sentencing Guidelines for Organizations in the 1980s, codes that may have been expressed solely as credos were modified to incorporate specific standards for compliance. As companies have developed more complex ethics programs, codes have been enhanced too—many companies, especially as they've moved from compliance to values-based programs, have developed codes that emphasize higher principles and standards while still addressing compliance issues. Finally, in an age of global companies with codes that must apply to employees all over the world, codes are beginning to again be nuanced.

■ Uses for a Code

A code of ethics is an important part of a broader ethics program that can make a difference in your organization. When partnered with other program elements, your code can become the cornerstone to the creation of an ethical culture in your workplace. Your code can:

- Provide key language to help leadership set the tone from the top;

- Identify ideals that illustrate your organization's vision;

- State the standards of your organization succinctly;

- Guide the scope of ethics officials' responsibilities;

- Enable ethics to be a part of everyday conversation;

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[6] Nash, L. (1988). "The Norton Company's Ethics Program," in *Company Ethics: A Prime Business Asset*. Presentation to the Business Roundtable.

- Encourage reporting of miscon-
  duct;

- Ensure the confidentiality of the
  reporting process;

- Identify the indicators of success
  for your ethics program.

An effective code will clarify gray areas
and provide guidance in making deci-
sions, from the simplest of questions to
the most complex ethical dilemma.

A code of ethics serves as a central guide
to support day-to-day decision making at
work. It clarifies the cornerstones of your
organization – its mission, values and
principles – helping your managers,
employees and stakeholders understand
how these cornerstones translate into
everyday decisions, behaviors and
actions. While some may believe codes
are designed to limit one's actions, the
best codes are actually structured to
liberate and empower people to make
more effective decisions with greater
confidence.

An effective code has many uses, but
two critical ones stand out. A code
should (1) clarify organizational values
and expectations and (2) provide direc-
tion for employees when they face ethical dilemmas calling for action.

> ### *Codes are Designed to . . .*
>
> 1. **Raise ethical expectations (aspirational provisions)**
>
> 2. **Legitimize dialogue about ethical issues (communication provisions)**
>
> 3. **Encourage ethical decision-making (judgment provisions)**
>
> 4. **Prevent misconduct and provide a basis for enforcement (accountability and enforcement provisions)**
>
> ### *And Potential Benefits are…*
>
> - **Legal protection for the company**
> - **Increased company pride and loyalty**
> - **Increased consumer/public goodwill**
> - **Improved loss prevention**
> - **Reduced bribery and kickbacks**
> - **Improved product quality**
> - **Increased productivity**

A code also serves as a key reference tool. Use it to locate key documents, support services and
other resources related to ethics and values within your organization.

At best, a code "reflects the covenant that your organization has made to uphold its most important
values, dealing with such matters as its commitment to employees and volunteers, its standards for
doing business and its relationship with the community."[7] A code should be a public statement to
investors, customers, vendors and other stakeholder groups. A code of ethics offers an invaluable
opportunity for a responsible organization to further its positive public identity. This can lead to a

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[7] Driscoll, Dawn-Marie and W. Michael Hoffman, Ethics Matters: How to Implement Values-Driven
Management, 2000, p. 77.

more supportive environment and an increased level of public confidence and trust among important stakeholders.[8]

Furthermore, going through the process of developing or revising a code will help your organization to:

- Minimize your risk;

- Encourage leaders, employees, and other stakeholders to seek advice;

- Build trust internally and externally;

- Increase awareness of key ethical issues;

- Stimulate and legitimize discussion about complex issues;

- Build consensus around critical dilemmas;

- Foster the reporting of misconduct and related concerns; and

- Clarify resources for seeking advice.

Together these benefits can make a profound and positive impact on the culture of your organization. They combine to provide a persuasive rationale for moving forward and creating a code, or modernizing a code that may be outdated.

For all that a code is, it is *not* meant to stand-alone. It cannot address all your ethics needs, nor can it answer every ethical question or issue that may arise. Rather, view your code as one key element in a broader effort to make ethics a priority - a critical bridge between your core values/principles and the more detailed policies and procedures for helping your employees and stakeholders put your ethical principals into practice.

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[8] The Clarkson Centre for Business Ethics. (1999). *Principles of Stakeholder Management,* p. 12.

■ Shaping Corporate Identity

Definition of a corporate identity is an important consideration not only for the marketplace, but also for the workplace. The values and priorities expressed in codes can be helpful tools in shaping organizational identity around ethical ideals—for this reason, spend time thinking about your code as a critical element in helping employees think about the climate in which they work. The bureaucratization and anonymity that characterize many large organizations can have an alienating effect on employees. If they regard themselves as merely cogs in a machine, employees may be difficult to inspire or motivate. The degree to which an employee can identify his or her own values and interests with those of the company is a factor which, some managers and scholars have suggested, contributes to job satisfaction, loyalty, and productivity. Corporate values statements can be a means of personalizing a company and can help employees feel like they are co-partners with management in ensuring the success of the company.

It would be a mistake to assume that code-related posters and brochures proclaiming a company's values and beliefs are sufficient by themselves to affect employee conduct or attitudes or to determine the culture of the firm. But these documents do provide a starting place to talk about beliefs. Today many highly diversified corporations, whose operating companies already have regulatory codes of conduct, have added credos to their codes as statements of corporate philosophy, beliefs, and values. Such statements of corporate philosophy (often embodied in credos) may represent the oldest and simplest form of a code of ethics.

Credos lend themselves to reproduction as posters, as inside covers for company publications, or as flyers and inserts to accompany products, thus offering numerous vehicles for highlighting corporate philosophy and shaping corporate identity; credos are a means of creating or reinforcing a corporate culture and identity. Credos embedded within codes may help to shape corporate identity by answering important questions, such as: What is your company's management philosophy? What are the values that govern the conduct of its business? How would a new employee learn about them? A new customer? See **Chapter 7: The Code Document Itself** for more information.

3. OVERVIEW OF THE PROCESS

Decisions You Need to Make

Aspirational	←→	Compliant
Tailored	←→	Best Practices
Committee	←→	Leadership
One Code for All	←→	Separate Codes
Self-Directed	←→	Third Party

Know the Standards For Your Standards

- Sarbanes-Oxley Act of 2002

- Securities & Exchange Commission (SEC) Recommendations

- United States Sentencing Commission's Sentencing Guidelines for Organizations

- New York Stock Exchange Recommendations

- NASDAQ Recommendations

- U.S. Department of Commerce's Model Business Principles

- Delaware Chancery Court Decision Regarding Board Responsibility (In re Caremark)

- National Labor Relations Board Decision 302 NLRB no. 161

How Are Codes Developed?

1. Planning the Work Effort

2. Collecting Data

3. Writing the Draft Code

4. Specifying Reporting and Enforcement Mechanisms

5. Having the Code Reviewed

6. Obtaining Board Approval

7. Communication and Education Strategies

8. Revising and Updating the Code

Code Content

Code Content	Body of the Code
Memorable Title	Credos
Leadership Letter	Statement of Values — Core Values
Table of Contents	Code Provisions
Introduction-Prologue	Information and Resources

What Now?

- ► Communication
- ► Training
- ► Updating

4. DECISIONS YOU NEED TO MAKE

Before you begin writing a code of conduct, there are several decisions you need to make which will affect the focus, tone and purpose of your document:

- Will the code be aspirational or compliant?

- Will it be tailored to your organization or will it be based on the best practices of other organizations?

- Will this be a code developed by committee, developed with input from a broad cross section of employees, or will it be a leadership-driven initiative?

- Who does the code apply to?

- How will you distribute the code? Will you ask each employee to sign acknowledgement of receipt of the code?

- Will you write the code internally or have a third party help with the code and its implementation?

Each decision point will be discussed in more detail below.

■ Aspirational or Compliant

Do you plan for your code to be values centered or focused on the rules you consider to be important?

In the field of organizational ethics, there has been an enduring debate about whether compliance-based approaches are preferable and more effective. Your position on this issue will have a significant impact on your ethics program and, as a result, should be considered when you are creating your code. It is helpful to keep in mind that compliance and values need not be mutually exclusive; your company may choose to take a position somewhere in the middle of the spectrum, thus allowing you to incorporate the essential and relevant benefits of both compliance and values-based initiatives.

To some extent, the terms your committee uses to talk about your goals for the code may uncover some assumptions in this area. **Codes of conduct** are often spoken of as being rules- centered. Frequently they take the form of a list of behavioral requirements, the violation of which could result in disciplinary action. Some codes of conduct provide case examples, related to the regulations addressed. For example, a code of conduct might prohibit employees from soliciting or accepting

gratuities from customers or it might specify that an action is required of all employees rather than prohibited.

Codes of ethics, by contrast, are sometimes referred to as being values-centered. They offer a set of ethical ideals, such as integrity, trustworthiness and responsibility, which companies want employees to adopt in their work practices. Rather than addressing specific situations, these codes tend to be proactive in nature, focusing on setting a tone and speaking broadly. Prior to writing the code, there is usually an effort to identify organizational values or ideals that will be featured in the code. Typically, values such as honesty, respect and loyalty find their way into aspirational codes.

While we draw a level of distinction between codes of ethics and codes of conduct here, common practice finds the two terms used interchangeably. Frequently, companies will adopt "hybrid" codes, consisting of a set of values, and aspirational credo or vision statement, as well as a set of regulations that result in employee compliance.

> ### Code of Ethics or Code of Conduct?
>
> **A <u>code of ethics</u> often conveys organizational values, a commitment to standards, and communicates a set of ideals.**
>
> **A <u>code of conduct</u> can refer to a listing of required behaviors, the violation of which would result in disciplinary action.**
>
> *HOWEVER*
>
> **In practice, the terms are often used interchangeably.**

While recent regulations (Sarbanes-Oxley, Federal Sentencing Guidelines, etc.) strongly emphasize the need for a code, they do not indicate the type of code that an organization should have. In large measure, this is because lawmakers recognize the importance of a code of ethics that both reflects the priorities and values of an organization and is tailored to meet the needs of each organization's culture. Design the code that will best suit the priorities of your leadership and the needs of your employees.

■   Tailored or Best Practices?

"Best practice" is a buzz-word in many industries. It refers to the process of benchmarking with other similar organizations (or competitors), determining the most effective methods in place in those organizations, and adopting something similar in one's own context. When it comes to ethics, best practices are a frequent method for creating a company code.

At the same time, each organization is unique. Many organizational leaders recognize that a document meant to guide employee behaviors should be specific to the culture of the organization. While the tailored codes they design may be similar to many other company codes, these leaders undertake a process of learning about the needs of their cultures, the values of their organizations, and the specific ethical issues they need to address before they design their codes.

If you choose to use best practices as the means of creating your own code, you need to carefully match any code language you choose to borrow from a best practice with the actual situation in your organization; just because a code provision resonates in another organization does not mean it will work in yours. It is critical, if you model your code after another best practice, that you labor to make the introductory message of your document your own. Invest in communication from leadership that lets employees know that *your* company considers this effort to be vital. Regardless of the shape it takes and where your code comes from, the code must be prized in your particular organization.[9]

■ Committee or Leadership Initiative?

Some codes may be authored by and flow down from the top leadership of the organization. This approach can bring with it great advantages and the potential for significant problems. Both the benefits and potential concerns should be considered.

When the impetus to develop a code comes from the highest levels of leadership, it is usually an indication that people in the organization are going to pay attention to it. It can inspire a deep belief in the values of the organization. When the top leader champions the code, it often sends a message to employees that it is important and should be taken seriously.

At the same time, however, it is important that the general population of employees accept and believe in the code. When codes are perceived as being "forced down employees' throats," questions arise like "Whose values are these, anyway?!" and "Why do you have the right to tell me what to do?" To as great an extent as possible, it is important for a code to reflect the values of the entire organizational community, while also reflecting the priorities of company leadership.

In all types of organizations, we suggest the code be written by a committee rather than solely authored by top leadership. The code committee may be composed of individuals representing various segments or functions within the organization, including a mix of management and non-management. In union-represented organizations, labor representative and union officials should also be invited to participate.

Committee efforts bring challenges of their own. Committees may have a more difficult time of getting the buy-in from senior leadership; this is a significant consideration because without this important endorsement, the code will not receive the attention it needs. An additional concern is that work done in committee can be time and labor intensive. As the committee process is extended (as it inevitably is), important shortcuts of really knowing the needs of your organization can become devastating to the effort. When that occurs, it becomes all too easy for a committee to bypass the process of learning what the general population of employees considers to be important. Despite these challenges, if committees are effectively implemented, the value gained in the final product is worth the time investment.

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[9] Many sample codes are available on the ERC website.

■ To Whom Will the Code Apply?

The Sarbanes-Oxley Act of 2002 now requires that codes apply specifically to Chief Executive Officers, Chief Financial Officers, and Boards of Directors. Even further, recent regulations by the Securities and Exchange Commission now make it necessary to publicly state the means by which a code can be obtained, how often it's revised, and any time your company waives of the code . For this reason, it is becoming increasingly important that your company determine *who* you want to address in your code document, and how broadly you want to distribute it.

There are many ways you can address the various parties who need to be subject to your code provisions. Some companies are developing separate codes for CEOs, CFOs, and Boards. (See **Chapter 8 "Unique Codes"**.) The majority of companies, however, are instead choosing to expand the language of their primary code document to include these special interests.

Even after you've addressed those groups, there are still others to consider. Will your code apply to subcontractors to you organization? Shareholders? Subsidiaries? Vendors? Volunteers?

■ How Will You Distribute the Code? Will You Ask Employees to Sign Acknowledgement or Agreement with its Principles?

What is your plan for distributing the code and ensuring employees have received it? It is important that, to the greatest extent possible, you distribute the code to every employee within your organization. Many companies have found creative ways to distribute their codes, such as web hosting of the code, printed booklets, and wallet-sized cards stating company values. Regardless of the means of distribution, many companies ask recipients of the code to sign acknowledgement of its receipt, at the very least.

Consult legal counsel about the need for your organization to have employees sign an acknowledgement of receipt of the code or even agreement with the provisions within it. While signing endorsement of, or agreement with, the code does not legally insulate your company from liability for employees' wrongdoings, it does challenge employees to consider the consistency of company values with their own. Before you go to great lengths to ask your employees to certify that they agree with your code, we recommend that you become informed of the legal liabilities and ramifications of such certification and that your executive and legal leadership agree that this is an important element to your process.

■   Self-Directed or Third Party Implemented?

Are you going to write and implement the code on your own or do you need help?

In today's climate, there is no shortage of organizations that can help you develop your code of conduct. For the most part, consultants will help you learn about the needs of your organization, and they will facilitate the identification of values as well as the drafting of your code itself. Some consultants have banks of codes from best practices to offer examples to your company leadership. Others will put benchmark measures in place, so you can measure the effectiveness of your code effort.

Third party assistance can play a vital role, both in proffering objective advice and in mediating sensitive disagreements. Consultant costs, however, may be an issue for your organization. It is important to remember that consulting organizations can often tailor their practices to the financial needs of your organization. If you cannot afford third-party assistance for the entire code development process, consider contracting help for a code review once you are finished. Even more strategically, bring in experts to conduct an intake process in your organization—identifying the values and issues that are most important in your corporate culture. This information may be sufficient to allow your organization to continue on its own.

Should You Acquire 3ʳᵈ Party Assistance?

Hiring a consultant might benefit your code development process if:

- **It is necessary to ensure confidentiality to your employees in the intake process;**

- **You aim to have a collaborative process with a third-party mediator or guide;**

- **Your organizational leadership or code development task force have competing values;**

- **You desire sound baseline data for future use in measuring progress;**

- **Your organization desires a code that is tailored to your culture/ environment, but also draw upon the best practices of other organizations.**

5. BEFORE YOU START, KNOW THE STANDARDS FOR YOUR STANDARDS

In the present climate, it is imperative that you familiarize yourself with the legal requirements and public policy recommendations that apply to your organization. There are several standards, court rulings and legislative acts about which you should be aware regardless of the type of organization for which you wish to create a workable code.

They include the:

- Sarbanes-Oxley Act of 2002

- Securities & Exchange Commission (SEC) Regulations

- United States Sentencing Commission's Sentencing Guidelines for Organizations

- New York Stock Exchange Recommendations

- NASDAQ Recommendations

- U.S. Department of Commerce's Model Business Principles

- Delaware Chancery Court Decision Regarding Board Responsibility (*In re Caremark*)

- National Labor Relations Board Decision 302 NLRB no. 161

These resource items do not affect all organizations equally.

For example, the Sarbanes-Oxley Act of 2002 applies only to publicly traded companies at this time. However, even individuals developing codes for privately held corporations, small businesses and other forms of organizations should be aware of the Act because legislators and regulators have begun to discuss whether or not the rules should apply to all entities.

The Delaware Chancery Court Decision refers only to responsibilities of members of the Board of Directors of an organization but it applies to publicly held, privately held and not-for-profit forms of organization.

The National Labor Relations Board Decision applies to organizations that have unionized workforces.

Detail about these regulations can be found in **Appendix A – Useful Information About Standards and Legislation.**

We recommend reading the Appendix in its entirety to determine whether or not provisions of one of the standards or regulations apply to your organization. If you are in doubt about applicability, we suggest you consult with inside or external legal counsel who can assess your individual situation and provide guidance.

What Applies to Whom?

Publicly Traded Companies:

- **Sarbanes-Oxley**
- **SEC Regulations**
- **NYSE Recommendations**
- **NASDAQ Recommendations**
- **Federal Sentencing Guidelines**
- ***In re Caremark* (Board members only)**
- **302 NLRB no. 161 (if unionized)**

Privately Held Companies

- **Federal Sentencing Guidelines**
- ***In re Caremark* (Board members only)**
- **302 NLRB no. 161 (if unionized)**

Non-Profit Organizations

- **Federal Sentencing Guidelines**
- ***In re Caremark* (Board members only)**

15 Steps to Code Development

1. Get leadership buy-in

2. Create a code development taskforce

3. Decide on goals and meaning of success

4. Conduct interviews

5. Gather and conduct focus groups

6. Distribute a survey

7. Identify values

8. Draft your code of ethics

9. Decide on enforcement and reporting mechanisms

10. Submit code to leadership for review

11. Have the code reviewed by legal counsel

12. Field test the code and make final revisions

13. Obtain Board approval of final draft

14. Decide on a communications and education strategy

15. Revise and update regularly

6. HOW ARE CODES DEVELOPED?

If you want to tailor your document to your organization and are willing to invest time gathering baseline data (for future use in evaluating your code's effectiveness), the process of writing your code requires fifteen steps. There are other models possible, but the steps outlined here will guide you through a comprehensive effort with measurable outcomes.

These steps can be loosely divided into overarching phases:

- Planning the Work Effort (Steps 1-3)

- Collecting Data (Steps 4-6)

- Writing the Draft Code (Steps 7 –8)

- Specifying Reporting and Enforcement Mechanisms (Step 9)

- Having the Code Reviewed (Steps 10-12)

- Obtaining Board Approval (Step 13)

- Choosing Communication and Education Strategies (Step 14)

- Scheduling Code Updates and Revisions (Step 15)

Step 15 is included because there is a tendency to create codes and then forget they are living documents that should reflect the changing culture of the organization. The organization is not static; it is dynamic and changing. So, too, should the code change to fit cultural shifts and to stay abreast of regulatory and societal changes.

■ Planning the Work Effort

Just like any other initiative, the extent to which your code will be successful is dependent upon the amount of planning that precedes the effort. Planning provides the "roadmap" to follow throughout the process.

▶ Step 1: Get Leadership Buy-In

The support and commitment of leaders is necessary for success when developing a code of ethics. In most cases the leaders at the highest level begin the process of establishing an ethics program. Leadership commitment affects such critical areas as: resource allocation, the buy-in of others and communications to the rest of the company that the process is happening. As a result, it is important to gain leadership approval early in the process and to make this commitment clear to everyone in your organization. If possible, release a statement from leadership to employees, announcing the code development process, and the priority that will be given to the finished product. For assistance in communicating the launch of your ethics initiative, contact the ERC.

▶ Step 2: Create a Code Development Task Force

Create a taskforce or committee and assign them responsibility for the code development. Give careful thought to selecting appropriate taskforce members. Make sure that these members are committed and have the time to devote to the entire project. In choosing team members, it is often good practice to select people who represent the diversity of your organization and the views of key employees, volunteers and other groups. Consider, too, the possibility of including representatives of organized labor.

Defining Your Goals

Before you begin, consider the following questions.

Is the purpose of your code to:

- **Inspire employees?**
- **Spell out prohibited conduct?**
- **Provide guidelines for decision-making?**
- **Capture the spirit or ethos of the company?**
- **Define and protect company culture?**

Do you aim to focus on:

- **Management philosophy?**
- **Company policy?**
- **Individual conduct?**

Do you want the input of:

- **Top leadership?**
- **Management?**
- **Employees?**

Do you want your code to reflect:

- **The best practices of your industry?**
- **The uniqueness of your organization and its history/ values?**

▶ *Step 3: Decide on Goals and Meaning of Success*

The first task of your code development committee should be to decide on the goals and articulate the meaning of success for your ethics program. As suggested earlier, a code is typically not effective as a stand-alone document. The benefits of a code result from its strategic use as a part of your broader ethics initiatives. Develop your code based on a specific set of goals that extend beyond the code itself. The content of the code, including the examples presented, should enable employees to use the code when addressing their own ethics concerns and should further the broader ethics goals of your organization. For guidance in goal setting, see the box to the left.

■ Collecting Data

Your code needs to be meaningful to your company population, if the values and standards you identify are to become a priority in your culture. A code is meaningful to employees when it reflects their needs, issues and values. Invest time in learning about your company, so you can draft a code that will address the unique aspects of your organization.

▶ *Step 4: Conduct Leadership Interviews*

Interview senior leaders to determine what they consider to be the ethical issues of your organization, and what they expect from the code. This step will not only clarify your priorities, it will boost leadership buy-in. Include the CEO, CFO, audit committee and members of the Board of Directors in the process! See **Appendix B – Sample Data Collection Questions Sets** for sample questions to use when interviewing leaders.

▶ *Step 5: Gather Focus Groups*

The code development taskforce should gather information from stakeholders (leadership, employees, volunteers, etc.) on key ethics concerns. Remember that confidentiality will be a concern — take steps to ensure that this is always protected. Employees should *never* be asked to participate in focus groups led by leadership who have a direct effect on their employment status. The goal is to create an opportunity for employees to voice their ideas about the culture of the organization and the values that guide it. Leaders should not necessarily assume that they already know which issues are important to employees. Information gathering through interviews, focus groups and informal discussions can be important ways to surface key issues and can set the stage for an ongoing dialogue about ethics. See **Appendix B – Sample Data Collection Questions Sets** for sample questions to use during Focus Groups.

See **Appendix B** for more on conducting interviews and focus groups.

► *Step 6: Distribute a Survey*

While focus groups will provide important anecdotal information and can be useful in identifying potential issues meriting further investigation, the opinions expressed by a representative few cannot be generalized to the entire employee population. For this reason, it is important to distribute a survey to confirm the findings offered in focus groups. (See **Appendix B** for more information on how to conduct a survey.) In addition, the information gathering process sends the message that your organization believes ethics issues are important and that the views of staff and other stakeholders are valuable. Analyze the information that you have collected from employees and volunteers. What are the key ethics issues and concerns within your organization? What is the organizational culture? What are the risks inherent in the type of work and industry in which you operate? What suggestions do your employees have for creating a more useful code if you already have one? Collect examples and use this information to help develop an outline and content for your code.

Helpful Hint:
Keep Leadership Informed!

• **Report your findings to leadership so that they understand how employees and other key stakeholders view the current environment.**

• **Limit your comments to items raised by multiple sources and do not indicate where or from whom specific comments or insights were obtained.**

• **Outline what the next steps will be and create a working timeline and budget.**

• **Restate the benefits of having a code and ethics program.**

► *Step 7: Identify Values*

Next, utilizing the data gathered in the intake process (Steps 5 and 6), identify and define a set of values that represent the ethical ideals of your organization. This process is most effective when done collaboratively. Focus group data will likely provide you with some ideas of the values that are most prevalent in your company, but it is always helpful to host a facilitated discussion to choose three to six principles that will be expressed as the priority for your organization. This discussion is best held with a third-party facilitator.

Another option is to make use of a website that allows employees in your company to have input into the values of your code.[10] Regardless of the means by which you select your values, it's also important to draft a definition for each; employees need to know how you view these values, just as they need to know what ideals you consider to be important. See **Appendix C – Definition of Values** for terms typically found in codes.

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[10] One such resource is available at the Ethics Resource Center—all members of a company or community can log into a secured site, and identify the values they think are most appropriate for their organization. Results are aggregated and given to leadership.

■ Writing the Draft Code

Once you have identified the issues your employees face in the workplace and the values you want to be central, the next step is to draft the body of the text for your code document.

▶ *Step 8: Draft Your Code of Ethics*

Depending upon the type of code you select, your code will need to encompass discussion of your company mission, vision, and values (philosophy), as well as specific discussion of the regulations you want your employees to observe. In an effort to help employees recognize ethical dilemmas when they occur, some companies include specific examples or illustrations of ethical issues that occur within their workplace. Detail of the code document is provided in the next chapter.

Code Sections

- **Statement of philosophy**
- **Credo/Values**
- **Observance of laws and regulations**
- **Definitions**
- **Monitoring and enforcement**
- **Illustrations**
- **Resources and hotline information**

■ Specifying Reporting and Enforcement Mechanisms

Regardless of the type of code you've opted to develop (values-based or compliance-based) it is imperative that you give employees sufficient information, so they understand what will happen if they violate the provisions of the code. You must also include detail of the process by which employees can report misconduct they observe, or merely get more information if they have questions.

▶ *Step 9: Decide on Appropriate Enforcement and Reporting Mechanisms*

Especially if you are emphasizing a set of regulations in your code, you need to include discussion of the mechanisms by which your company will monitor compliance with the code's provisions and investigate violations of the code. You should also offer examples of disciplinary measures that might be taken, depending upon the severity of the violation. If your code is viewed as "aspirational" rather than "compliance-oriented," references to enforcement mechanisms may not be appropriate.

Both types of codes, however, should provide employees with a means to seek guidance in matters of ethics, or to surface concerns about misconduct without fear of retaliation. If employees want to

ask a question, seek advice in a matter involving ethics, or report an allegation of misconduct, your code should be one of the first documents they consult to learn about the process your company has put in place to offer assistance. Research indicates that many employees hesitate to report observed misconduct because they fear retaliation, so go to great lengths to ensure confidentiality and company support.

Many U.S. companies have implemented mechanisms to ensure that employees can confidentially and anonymously surface allegations of misconduct. One of the more common mechanisms is an ethics hotline, which is typically a designated "800" number. There are also procedures for anonymous submission of written questions or reports of misconduct. Many larger organizations also have an ethics office or ombuds office. Regardless of the size of your organization, you need to decide on the appropriate enforcement and reporting mechanisms before the code drafting is complete. Be sure the process for asking questions or reporting observed misconduct is clearly and comprehensively outlined in the code document. Add an assurance of confidentiality that your company can live by. Additional procedures can be outlined in the code itself and be reinforced through the communications and education strategies you will use to implement the code and your ethics program.

■   Having the Code Reviewed

Your code is likely designed to be, in part, an effort to prioritize ethical behavior in your company, as well as a step to minimize risk. At this stage, having the code reviewed by various parties will go a long way in helping you reach those goals. Be sure the code you've written complies with the law. Also, take measures to "test" the code as a representation of your company's population.

> ### ▶ *Step 10: Submit the Code to Leadership for Review*

Helpful Hint

Especially since Sarbanes-Oxley requires that your code apply to leadership, allow your company's CEO, CFO, audit committee and Board of Directors to review and comment on your draft!

Ensure the support of leadership by presenting them with an initial draft of the ethics code for review and comment. This step allows leaders to maintain a participative role in the code development process, even if they have not been actively involved in the day-to-day drafting of the code. Such participation tends to reinforce leadership commitment to the overall code initiative.

As a final component of Step 10, be sure to revise the code in light of concerns and considerations brought forth by your organizational leadership. Appropriate comments and suggestions should be included in your revised draft of the code. The inclusion of these comments and suggestions should not only strengthen your code, but also build ownership of the code amongst those who provided feedback.

▶ *Step 11: Have the Code Reviewed by Your Legal Counsel*

Once you have a document that you are comfortable with, take it to your legal counsel for review. Make revisions and adjustments as needed.

▶ *Step 12: Field Test the Code and Make Final Revisions*

Take the revised code "out into the field" for any final suggestions and revisions. Distribute it to a sampling of managers and employees for review and comment. As a part of the field test, many organizations make use of the company intranet to post the draft code for employee review. Because there are always details that are missed in the early drafts, it is valuable to have "staff in the front lines" offer their input as to the ability of the code to meet company needs. Provide a form for reviewers to offer comments, section by section, in the code. After field testing, make any final revisions deemed necessary.

CAUTION: The field test is intended to point out areas of the code that are unclear or with which employees may have significant disagreement. Changes made to the code at this point (after leadership and legal review) should be more cosmetic than substantive. If it appears you will be making significant change in either language or content, you should repeat the leadership and legal counsel review steps. You would be ill advised to issue a code based on field test results without these vital check points. While it would seem simpler to have the field test before leadership and legal counsel review, the order of review should be with the field test last, after leadership and counsel have had the opportunity for comment and have approved taking the code in front of a larger audience.

■ Obtaining Board Approval

Seek to gain support for you code from the highest levels of your organization. Communication of acceptance from the Board will reinforce the importance of the document to the rest of the employee population.

▶ *Step 13: Obtain Board Approval of the Final Draft*

The Sarbanes-Oxley Act of 2002 requires that codes address Boards of Directors. Therefore, it is not only important that your Board see your code, they need to know it applies to *them*. In order to comply with Sarbanes-Oxley, some companies are creating separate codes of conduct that apply

only to their Boards. If you have an interest in pursuing this option, consult **Chapter 8: Unique Codes**.

Many more companies, however, are choosing to add language to their overall codes that addresses the roles and responsibilities of the Board. Doing so requires that the Board approves of and complies with the existing code, and that the document itself articulates the fact that the Board is also subject to the parameters of its provisions.

Regardless of the means by which the Board complies with the new law, have your code formally approved by your Board of Directors before you publish and disseminate it. It is also helpful to include a letter of introduction by the Board of Directors in the code document itself.

■   Communication and Education Strategies

The introduction of your code is an important event—envelop your code in a comprehensive communications effort. Be sure that you reach as many employees and stakeholders as possible to make them aware of the presence of your code. Your code can't be a catalyst for change if people don't know about it!

▶ Step 14: Decide on a Communications and Education Strategy

Your code will not become a vital part of your organizational culture unless you make it known to your employees. Announce the creation of your code, and remind employees regularly of its existence. Design a comprehensive communications and education plan to increase code and program effectiveness. This should be integrated into the existing communications and education strategies.

During this portion of the process, carefully outline ways to:

- Announce the code to employees

- Make stakeholders aware of the adoption of your code

- Distribute your code broadly

- Integrate references to your code and specific values in existing policies and communications vehicles

- Develop strategies for ensuring leadership mention the code and its values in future communications to employees and stakeholders.

Communications can take many forms including, but not limited to, ethics training, newsletter articles, posters, e-mails and formal and informal discussions of ethics. We encourage the use of multiple methods. See **Appendix D—Communicating Ethical Change** for more information on communications.

Roll Out the Code with a Special Event

We recommend that the code be launched at an event involving the organization's leadership and other important contributors to the code. The event should convey the reasons for the development of the code and its importance in the organization's success. Consistent with the message in the code, the event should emphasize that the distribution of the code is <u>not</u> an end in itself but a first step in an ongoing process. Annual or semi-annual company meetings are excellent opportunities for your company to revisit your new code.

Ideas for Announcing Your Code

- **Host a special gathering of employees, recognize outstanding ethical behavior, and ask employees to sign the code together.**

- **Call special staff meetings, and pass out copies of the code to each employee.**

- **Provide a wallet-sized copy of company values to each employee with hotline information on the back.**

- **Send a special e-mail announcement from the CEO or Board announcing the code.**

■ Revising and Updating the Code

Once your code is finished, identify a time when it will be revisited and updated. Be sure that you don't conclude the present development process without leaving sufficient information behind for the next code committee.

▶ *Step 15: Revise and Update Regularly*

Codes of ethics should not be viewed as static documents. While they seek to capture timeless ethical principles, the guidelines, examples and related information they contain should be revisited in light of changes that may occur in an organization's environment. New issues may arise that were overlooked in previous versions. In addition, periodic revision of the code can send a symbolic message that ethics is an area which requires ongoing attention. An organization that does not routinely revisit its code may unintentionally send the opposite message.

Additionally, it is important that your company thoroughly read the recommendations of the Securities and Exchange Commission (for publicly traded organizations)—there are new requirements that updates to the code should be publicly shared at least on your organization's website. For more information, see **Appendix A – Useful Information About Standards and Legislation**.

■   A Final Note

Throughout the process, document your committee's decisions, process steps, and any outcomes. Many companies fail to keep good records, so when the revision process becomes necessary, they must "reinvent the wheel." To help you with the rollout of your code development and to guide your documentation, we've included a process checklist in **Appendix E – Code of Ethics Development Process Checklist.**

7. THE CODE DOCUMENT ITSELF

■ Code Format

Everything about your code — its tone, style, organization and presentation — will impact the success of its integration and the extent of its use. Craft your code so that employees and stakeholders will readily understand it and view it as a useful reference tool.

Because codes are read by people with varying levels of responsibility and in a wide range of functional areas, the code should be broadly written, using plain, everyday language.

There are different ways to structure an effective code. Some are very brief and provide little more than the core values or principles of an organization. Others are extremely detailed and lengthy, offering every rule of conduct an organization can think of. Either way, be willing to invest in a professional, user-friendly product. Allow plenty of white space, reader-friendly fonts, and even pictures and graphics. Your document should be inviting and easy to read … if you want it to be read, that is.

Guidelines for Writing an Ethics Code

- **Write as simply and clearly as possible. Avoid legal jargon and empty generalizations.**

- **Include real-life issues and situations.**

- **In all its forms, make it user-friendly because a code will ultimately fail if it goes unused.**

Codes Take Many Forms!

Part or all of your code language can be provided to employees in a multitude of ways. Your goal should be to make the values of your organization prevalent throughout your company. Additionally, if you want people to call your hotline, you've got to make the phone number known!

Make use of:

- **Wallet cards**
- **Calendars**
- **Screen savers**
- **Posters**
- **Spiral-bound books**
- **Printed books**
- **Hotline numbers on rolodex cards**

■   Content of the Code Document

We recommend that your code of ethics be a reasonable length, not so lengthy and legalistic that it won't get read. Your document should include the following elements:

- Memorable title

- Leadership letter

- Table of contents

- Introduction-prologue

- Credo

- Core values

- Code provisions-substantive matters

- Information and resources

Each of these elements is detailed in turn.

▶ *Memorable Title*

The title should communicate the content clearly, while being memorable enough to grab the attention of its readers. Be creative. Use the title of your code to inspire ethical behavior. We suggest that you put some thought into what you will call your document and the message it conveys. Move beyond generic titles such as *Code of Business Practices*, *Code of Ethics*, *Code of Values*, or *Compliance Code*.

We recommend developing a thematic title for your code. You can try to link your title in some way to your organization to make it more personal. Some examples include SHRM's *Code of Ethical and Professional Standards in Human Resource Management*, PriceWaterhouse Cooper's *The Way We Do Business,* Best Western International's *Values for Excellence,* and the World Bank Group's *Living Our Values.*

▶ *Leadership Letter*

The leadership letter provides a frame for the document and demonstrates your organization's commitment at its highest levels toward the creation of an ethical work climate. It should explain how a code can be used by employees, volunteers, and stakeholders and should outline the reasons for its focus. Address how the code came to be and the process behind its development. Mirror

the input and questions from your employees regarding your organization's values and the direction of the code.

Some typical content areas for the leadership letter may include:

- Why does your organization need a code? Why now?

- What is the ethical/legal context in which your organization operates?

- What are some of the challenges that your employees face, and how can this code of ethics be a helpful document for everyone at all levels?

- What are the major trends facing your organization and/or the profession that will impact and affect the code and its implementation?

- What kind of example might this code set for others?

You don't need to address all of the items above – just those that are most critical to your leadership and your culture. Ideally, the leadership letter should be brief and to the point. The introduction will provide another opportunity to address some of the above issues. Like the code's title, this is your leadership's chance to inspire.

▶ Table of Contents

We strongly recommend including a table of contents at the beginning of the code. It may sound simple and even obvious, but many codes overlook this step. Codes often have a tendency to become cumbersome, making it difficult for users to find the provisions they seek. A table of contents can give employees and volunteers a quick overview of key code provisions and resources, thereby making the document as a whole more accessible and readable.

▶ Introduction-Prologue

An introduction can be used to expand upon some issues not fully addressed in the leadership letter. Ideally it should provide an expanded explanation for the code and its purpose. You may want to answer the following key questions by way of formulating your introduction:

1. Why is this code important? Will it be enforced? Is it mandatory? Does it apply to everyone?

2. What is the purpose of the code?

   - Be clear about the purpose and objectives that the code is intended to accomplish.

- Is the purpose of the code to inspire employees, volunteers and others to exhort them to high principles of conduct? (aspirational document)

- Is its purpose more regulatory in nature? Will it spell out prohibited conduct? Affirmative duties? (regulatory document)

- Is it meant to provide guidelines for decision-making in areas of managerial/officer discretion?

- Is the code's purpose to capture the spirit or ethos of the organization? Does it attempt to define and protect its culture?

3. What is the scope of the code?

- *Jurisdiction:* To whom does this code apply? What does it address? If your code is designed to address Boards and executives in compliance with Sarbanes-Oxley, be sure to specifically mention these parties.

- *Definition:* What do you mean by "code"? Are you referring to a set of standards for specific behaviors, or a set of values you want people to embrace? What activities are to be included in the code?

- *Measurement and Verification:* How will employee performance in these areas be measured with respect to the code, and how will the accuracy of their performance be verified?

- *Accountability and Reporting:* To whom will employees and the organization as a whole be accountable for its performance with respect to the code? How will you make information about the code public?

■ The Body of the Code

Well-drafted, enforceable "hybrid" codes (both values-based and compliance-based) frequently consist of five parts:

1. A credo – a statement of corporate philosophy and/or values;

2. Guidelines for decision making when faced with ethical dilemmas;

3. Code provisions — specific rules that prohibit certain actions and require others;

4. Definitions, rationales and illustrations; and

5. Resources and hotline information

These five elements of the code serve distinct, though sometimes overlapping, purposes. They are essentially complementary.

▶ *Credos and/or Values*

Sometimes, a preface links the code to its rules through a statement of philosophy, or credo: "We believe that …."

The content of these credos and philosophical statements varies considerably, but many of the finest address the responsibilities of the company to its various constituencies or stakeholders. They acknowledge the company's duties to its customers, shareholders, employees, and suppliers. They recognize obligations to the government, to the society at large, and to the communities where the firm does business.

If you choose not to include a credo, it is still essential that your organization identify and express its values. Those values need to be featured prominently in the code – not simply as a list. The code should detail what those values mean and reinforce their importance in the context of the organization and the work it does. In essence, employees and stakeholders need clear definitions of organizational values to better understand and apply them. When possible, tie the values to individual code provisions. For example, if diversity is one of your organization's key values, it could be tied to a provision outlining the anti-harassment policy.

▶ *Guidelines for Decision Making*

Corporate ethics officers often express concern that their employees struggle to recognize ethical dilemmas when they arise in the workplace. For this reason, we recommend that your code offer some guidance to employees, so they will have a sense of the priorities you'd like them to consider when they face a tough situation.

Your code should include:

- Your company's definition of an ethical dilemma (or the types of situations where you want employees to turn to the code for guidance);

- Examples of ethical decisions that employees make every day; and

- Guidelines for making a decision when employees face an ethical dilemma.

We often recommend that employees follow a decision-making process of:

1) Identifying the real problem at hand in the situation;

2) Considering what the law and/or company policies have to say about the right response;

3) Thinking about the core values that guide the company's operations, if the law and policies are unclear; and

4) Talking to a supervisor or calling the hotline for advice, if the best option is not clear and they need help.

▶ *Code Provisions*

Code provisions are the specific standards of behavior and performance expectations that your organization chooses to highlight and address in your code. Code provisions can be brief or comprehensive depending on the objective. They address a wide variety of issues, ranging from legal and regulatory concerns to relations with the organization's stakeholders and the application of the organization's values. Importantly, code provisions tell employees which behaviors are not acceptable in your organization.

The choice of topics to be included in your code will be influenced by three factors: 1) the code's purpose and objectives; 2) your organization's overall purpose and objectives; and 3) the questions or concerns expressed by your intended users – your employees and stakeholders. In deciding which topics to address, you might ask:

- What are the principal laws and regulations applicable to our organization?

- What has gone wrong in the past?

- What else could go wrong?

- What guidance do we need to offer our employees?

- Where are there gray areas? What do we need to clarify or confirm?

We recommend an easy, clear structure to maximize the code's readability and usability. Consider writing your code provisions so that they outline the core principles (basic truths, concepts, or motivating forces) that address appropriate conduct for your organization, followed by what you are trying to accomplish (intent). Guidelines for appropriate behavior, rules, and examples would then follow. **(See Appendix F – Writing Code Provisions.)** Most organizations choose to highlight five to seven key areas or code provisions in their codes.

▶ *Definitions*

Offer a glossary of terms, to minimize employee interpretation of the code. Be sure to define:

- Each core value (see **Appendix C—Definitions of Values**);

- What your company means by Code of Conduct;

- Various provisions in the code (see **Appendix F—Writing Code Provisions**); and

- Other "terms of art" that may not be meaningful to employees outside of the circle of your code writing committee.

Highlight the availability of a hotline for employees, should they have any questions or confusion about any term in your code document.

▶ *Information and Resources*

This section is critical. It will direct people to other resources (internal to the organization and external) should they have a question, need to seek further clarification or want to report a violation of the code provisions. It should include specific statements such as how to access the organization's ethics office (or person responsible for ethical issues) in addition to providing details on your enforcement policy and mechanisms. Be sure you clearly highlight:

- The telephone number of your reporting hotline;

- Confidentiality policies, and mechanisms in place to ensure confidentiality of reporters;

- What protocol employees can expect if they call the hotline to ask a question or report misconduct; and

- How violations of misconduct will be handled (enforcement mechanisms).

Ready reference lists, toll-free telephone numbers, e-mail, web sites, and the like would typically be included.

8. Unique Codes

Just as every organization is unique, so too are the codes that different organizations need to develop. There are distinct variations in both the process and the outcome of code development for different kinds of companies.

At the same time, recent legislation (particularly Sarbanes-Oxley) has raised question of the need to develop separate codes for particular members of an organization (such as the Board of Directors, Chief Executive and Financial Officers, etc.). In this section, we will consider both the process and outcome in developing unique codes—for special interests at the organizational level (small/large organizations, nonprofits and associations), and also in drafting a code for particular members of your company (Boards of Directors and executives).

■ Small Organizations

Research indicates that smaller organizations (consisting of less than 500 employees) are less likely to have key elements of ethics programs in place than larger ones, and they are therefore less likely to have formal codes of conduct. Nevertheless, the need for a code is no less significant.[11]

In small business enterprises (SBEs), drafting, editing and implementing a code may be the responsibility of one person who carries out the entire process as a small part of his or her regular job tasks. Also, in SBEs, the business owner or leader is usually a highly visible figure whose conduct is observed by a large portion, if not most, of the employees. If that is the case, these leaders enjoy a stronger perception by employees that they are either committed to ethical behavior, or not. When a code is requested in a smaller organization, leaders tend to have a heavy hand in the process.

It should be expected that the code of ethics for the small organization will closely follow the owner's or principal leader's personal code of ethics. In these cases, the leader will probably tell the code author what he or she wants to see in the code. Writing the code and implementing it will become the responsibility of one or two people supervised by senior leadership.

This influence by leadership is not necessarily a bad thing—codes in small organizations can and should tell the story of the leadership and history of the company. Where leadership sets the tone for ethics and encourages the development of an ethics program, research indicates that employees

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[11] The ERC's National Business Ethics Survey in 2003 indicated that 41% of employees in smaller organizations say ethics training is provided, as compared with 67% in larger organizations. Similarly, 77% of employees in larger organizations say that mechanisms to report misconduct anonymously are available, versus 47% in smaller organizations.

feel less pressure to commit misconduct, are more likely to report incidents they see in the workplace, and are generally more positive about the importance of ethics in making decisions.[12]

Nevertheless, employees are more hesitant to raise their ethics concerns in smaller organizations, and for that reason it is essential that the code development process create ample opportunity for employee input into the code. If it is likely to be difficult to balance employee input with the wishes of leadership, we recommend that small organizations seek third party assistance with their code development process.

Additionally, small organizations, if they are not publicly traded, are not subject to Sarbanes-Oxley legislation, thus it may be tempting to overlook many of the elements that typically make up a code document. This would be a mistake. Employees in transitioning organizations (undergoing mergers, acquisitions or restructurings) observe misconduct and feel pressure to commit misconduct themselves at rates that are nearly double those in more stable organizations.[13] Almost half of all employees do not report misconduct they observe.

Small organizations, by nature, are more likely to experience change and transition, and therefore, their employees are also more likely to feel pressured to commit misconduct. They are also more likely to see misconduct—a comprehensive code of conduct can go a long way in helping employees identify the right thing to do. Be sure you consider providing all elements of the code, even if you are not required by law to do so.

■ Large Organizations

Larger organizations, by contrast, are often challenged by the audience for their codes. Additionally, they are sometimes spread across a number of countries, have leadership that is removed from the Code Development Committee, and must address a significant number of organizational functions, each with a variety of ethical issues that are unique to themselves. In authoring a code of conduct, the challenge is to:

- Create one document that serves the needs of multiple audiences;

- Identify the most frequently encountered ethical dilemmas and decide what values should be considered in order to resolve the dilemma;

- Limit the number of values in your code to a memorable set;

- Write a code that senior leadership will embrace, while still being relevant to lower levels of management in the organization;

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[12] Ethics Resource Center, National Business Ethics Survey, 2003.

[13] Ibid.

- Ensure buy-in from employees;

- Gather information from employees while respecting their confidentiality; and

- Resolve dramatically different values within your organization.

Many large organizations are striving to develop codes of conduct that not only address all employees across business units, but business units across countries and cultures. Development of such a code is dependent upon an intake process that takes into account (and allows opportunity for employees to voice) needs, differences, and challenges that exist throughout the company as a whole. It is imperative that the Code Committee be able to demonstrate that it went to great lengths to consider the unique nature of employees of all perspectives (or as many vantage points as possible).

It is also advisable that Code Committees in large organizations spend extensive time planning communications from leadership about the code. Research indicates that talking about ethics by leaders and supervisors impacts employee perceptions of pressure, attitudes about their workplaces as ethical environments, and their overall positive feeling about their environment.[14] Leadership reviewing the code should include corporate headquarters executives, business unit heads, and even plant or operation heads, especially if located overseas.

Additionally, be sure to attend to the potential for:

- Representation of overseas operations on the code development committee;

- Different means of distribution for codes overseas;

- An overarching code for the entire company, with sub-codes (or different values expressed) in business units (especially overseas);

- The need to print the code in different languages;

- The need for an 800 number, or multiple hotlines across the company;

- U.S. based laws, and the extent to which they are enforced overseas (and vice versa);

- The Foreign Corrupt Practices Act as a critical element of your code provisions.

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[14] Ethics Resource Center, National Business Ethics Survey, 2003.

◾ Codes for Nonprofits

While codes of conduct are perhaps most frequently associated with for-profit companies, they are by no means limited to such organizations in their usefulness. In fact, as speculation in the public square leans toward the conclusion that the next Enron will take place in a nonprofit organization,[15] the need for these organizations to adopt codes only grows.

Given the nature of their work and their shelter from many regulations, nonprofit codes tend to be more aspirational than compliant. But as they are more likely to be shorter and emphasizing values, it is important that codes for nonprofits not omit mechanisms for reporting misconduct, ramifications for inappropriate behavior, and available resources for more information.

Many nonprofit organizations do not have an ethics function that is formally established in their offices. Utilize the intake process and the code development effort to examine the need for one. Do employees have a confidential means to report their concerns? Are there parties (especially external to the organization) who can offer ethics advice if there is no confidentiality in reporting internally?

The code development committee for the nonprofit organization should spend additional time considering:

- The need for employees to sign agreement with the aspirations of the code (especially if values are closely linked to the organization's mission);

- Mechanisms for reporting misconduct confidentially;

- Distributing the code to donors and other stakeholders; and

- Regulations and practices established for the for-profit organization that still apply to the nonprofit.

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[15] Online Web Session with Neil Irwin, "The Post 200: Art of Accounting," Tuesday, April 29, 2003; 2 p.m. (EST)

■   Codes for Associations

Codes are also relevant and useful for associations. While often nonprofits, association codes tend to be a bit different from most because their members are likely to be professionals that abide by codes in place within their employing organizations. This, however, does not eliminate the need for a code in the association.

Association codes not only address the conduct of members within the context of their volunteer work, but also as individuals representing a profession in their own workplaces. Again, the information gathering process becomes extremely important to the code—not only is it important to understand the needs and values of a diverse membership, but it is also critical to ascertain the extent to which members already have codes in their home organizations.

It is important for Code Committees of an association to consider:

- The need to conduct focus groups at conferences, or other gatherings where a broad range of perspectives can be reached most efficiently;

- A survey of all members, to glean as much information possible;

- Survey questions that focus not only the use of a code within the organization, but also within members' workplaces;

- The recipients of the code—including members, stakeholders and donors; and

- Communication of the existence of the code, and enforcement of its provisions among members.

Associations also enjoy the ability to use their code as an important tool in explaining their profession to the broader public. The adoption of a code not only offers insight into the activities of the membership, but the standards by which they operate. For this reason, aim high in setting standards and defining values, and utilize the resources of members' organizations in communicating the existence of the code to stakeholders and the public.

■   Codes for Boards

The NYSE Recommendations, Sarbanes-Oxley Act of 2002, and the SEC Regulations in 2003 brought significant attention to Boards of Directors, and raised question about their role in the ethics function of the organization. Suddenly the independence of members from the organization and the need for codes of conduct to address Board members became a part of the discourse about organizational ethics. As mentioned previously, given requirements in Sarbanes-Oxley for codes to address Boards, most organizations have chosen to broaden the language of their existing codes to include the Board. However, given their unique perspective and function, it is both possible and reasonable to develop a separate document for this group.

Traditionally, boards have been governed solely by a set of by-laws, or operational/procedural practices. In some cases the by-laws may have been supplemented by a document describing roles, responsibilities, perhaps even underscoring certain legal obligations or issues. A code of conduct for a board should be different from by-laws or a statement of roles and responsibilities. Board codes should outline a set of fundamental principles, whether or not they are the basis for certain operational or legal requirements and prohibitions. Code provisions for a board should address:

- Why the by-laws direct their behavior in certain ways;

- Why the laws require or prohibit certain actions;

- What is to be done when the by-laws and legal strictures are ambiguous or subject to interpretation.

The code should also serve as the primary vehicle for articulating how the core values of the organization relate to the responsibilities of the Board. Typical responsibilities of Boards are:

- Representing the interests of the investors/shareholders to the organization;

- Directing the leadership regarding mission, vision and values;

- Directing the leadership regarding strategy and strategic goals;

- Overseeing the financial well-being of the organization;

- Overseeing the operational effectiveness of the organization;

- Selecting and overseeing the chief executive;

- Serving as a court of appeals to senior management;

- Self-assessment of the board and its members regarding its effectiveness; and

- Creating the structures and systems to ensure the above.

We recommend that the development of a Board code follow the same process as any other code, with a few notable exceptions:

- Create a list of the guiding values and principles most important for the organization as a whole, but behavioral standards to illustrate the application of those values to the roles and responsibilities of the board specifically;

- Review the existing board by-laws and policies for guidance and direction of how those values and standards are typically applied; and

- Create the systems and processes to ensure that the code is communicated to Board members, accompanied by training and discussion about its use.

Finally, be sure that the values you place in a Board code are consistent with the values of your organization. If you do not have existing values as parameters, consider the following as particularly relevant to the roles and responsibilities of the Board:

- Accountability

- Courage

- Excellence

- Fairness

- Honesty

- Honor

- Independence

- Integrity

- Leadership

- Quality

- Responsibility

- Respect

- Social responsibility/Community

- Sustainable development (a recent addition to many lists)

- Trust

■   Codes for Executives

Sarbanes-Oxley legislation also ushered Chief Financial Officers into the picture of code development, specifically requiring that codes of conduct be developed to address their activities within the organization.[16]   Given recent scandals and mandates that CEOs certify their accounting statements (also in Sarbanes-Oxley), discussion has similarly turned toward the issue of developing codes for CEOs and other senior executives too.

Similar to the response regarding Board codes, many companies are creating language in their codes to specifically mention senior executives. Leadership sets the tone for the organization when it comes to ethics, and employees look to their leaders to tell them how important the code is to their performance. For that reason, we recommend that the CEO and CFO be held accountable by the same code as the rest of the employees population, with special emphasis directed toward leadership of the organization.

Experts in the field have begun to interpret the language of Sarbanes-Oxley to mean that codes should set forth standards to deter wrongdoing. We would suggest that in addition to such provisions, codes also address what executives *should* be doing. For example, address:

- Integrity as a guiding principle for all business decisions;

- Honesty and transparency in reporting information to stakeholders, the public and regulating organizations;

- Avoidance of conflicts of interest;

- Compliance with the law, public policy and internal organizational regulations;

- Accountability to the organization as a whole.

Finally, emphasize the need for the CEO and CFO to integrate the language of the code into their daily conversations and communications as much as possible. Be sure your communications strategy specifically outlines the means by which executives will acknowledge the provisions that apply to them, and how they intend to uphold the principles of the code.

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[16] Note that the Sarbanes-Oxley Act of 2002 applies specifically to publicly-traded companies. For more information about the law, see Appendix A.

9. AFTER IT'S WRITTEN, WHAT NEXT?

Developing a code of ethics, while a significant task in and of itself, is really the start of the overall process for meeting the requirements for the effective communication of organizational ethics standards. A code cannot stand alone. Too often this is not understood and well-crafted codes end up having limited impact because of three failings:

- The failure to ensure that the content of the code is effectively communicated to its intended audiences;

- The failure to train employees on both the code's content and a process for working through ethical challenges not directly addressed by the code (including those situations where elements of the code appear to be mutually exclusive);

- The failure to keep the code alive – to adapt its language and focus to meet the changing needs of the organization.

Before your code committee declares the project concluded, outline the beginning of subsequent phases to enculturate your new standards into the company.

■ Communication Strategy

Intentionally announce the presence of the code … often! The communication strategy should have at least these four objectives:

- Ensure that every employee receives a copy of, or has ready access to, the code;

- Ensure that every employee understands his/her personal responsibility to abide by the provisions and standards laid out in the code;

- Ensure that the organization's commitment to the code is unambiguous and clear to every employee; and

- Ensure that employees are exposed to abundant examples of the code's utility, and how common questions about its intent and application have been resolved.

■   Training Strategy

Help employees understand the code and its usefulness. The training strategy should ensure that all employees have the opportunity to:

*   Review the code's provisions with a focus on how those provisions apply to the individual's specific job responsibilities;

*   Learn what specific behaviors and decision making processes the organization wants him/her to apply when confronting ethics challenges;

*   Raise questions about ambiguities or uncertainties resulting from the code's specific language and examples;

*   Practice applying the standards communicated by the code to "typical" ethics challenges faced by employees; and

*   Learn what the organization wants employees to do when:

    ‣   Facing ethical uncertainties;

    ‣   Observing ethical misconduct; or

    ‣   Perceiving pressures being applied (to one's self or others) to commit ethical misconduct.

Ultimately, this training effort should do more than communicate a code's content. It should result in employees having an increased level of confidence and comfort when making business decisions that address ethical challenges. Specifically, an employee should feel:

*   Confidence that the selected course of action is consistent with the organization's ethical standards and that it will be supported by the organization;

*   Comfort that the selected course of action is consistent with the organization's core values as well as those of the decision maker, and that the decision will generally be recognized as ethical.

■ Updating Strategy

A code that is not current is not relevant. Every organization needs a process for ensuring that the code and its supporting communications and training strategies continue to reflect the organization's ethical priorities. Codes need to evolve because issues and the organization's standards for dealing with them evolve.

New issues emerge—the use of e-mail, Internet access and access to "adult" web sites were not addressed in the typical code 10-12 years ago. Now nearly every contemporary code addresses these issues.

Existing issues change in their priority—for example, sexual harassment has been addressed in codes longer than the issue has been a central matter of corporate focus. But today's codes feature more information and description of what constitutes sexual harassment, the responsibilities of those witnessing it and references very detailed policies.

Today, organizations are addressing Sarbanes-Oxley, SEC and NYSE requirements for their codes and making the changes needed to ensure code currency with these new demands. Determine the next steps for your company. We suggest that you establish an ethics committee (either as an extension of your code committee or as a new group of representatives) to tend to the development of a program and infrastructure that will reinforce your code.

Help is on its Way

The ERC is developing a companion to this book, *Implementing Your Company Code*, to address these critical issues of code implementation, training and currency. Information about the document will be available at our website, www.ethics.org.

10. CONCLUSION

> *The greatness of ethics is that, once you are known as using them, you are strengthened. But when you are known as not using them, it becomes dangerous to act as if you did.*

International Management
February, 1983

Do codes make a difference? They can, under certain conditions:

- To succeed, a corporate ethics program requires, above all else, the leadership and commitment of senior management. Similarly, managers at every level of the company must demonstrate their own commitment and set a good example for the employees they supervise.

- The company must provide employees with clear standards of conduct. They company's code, perhaps in conjunction with more detailed corporate policies and procedures, should provide standards that address the ethics issues that employees might reasonably encounter in their jobs. The code should tell employees when and where to seek additional guidance.

- The structure of the code should reflect the code's purpose. However, even a code intended to be regulatory in nature will need to leave some scope for individual discretionary decision-making. Rules that try to cover every eventuality can make a code too cumbersome and can foster a "regulation mentality," whereby everything not expressly forbidden is considered to be permissible.

- To ensure that employees remain aware of the company's standards on an ongoing basis, the company should develop a broad, continuing program of communication and education. Even more importantly, the day-to-day informal signals that management sends employees must be consistent with the high ethical principles set down in the company's written standards. Managers must avoid inconsistency between what they say and what they do, and must not apply stricter standards to their subordinates than they apply to themselves. Double standards engender cynicism and undermine compliance with written policy.

- Management must demonstrate its commitment to the highest ethical standards through proper incentives and reward systems. Managers can undermine the company's ethical standards by wittingly or unwittingly rewarding unethical conduct that contributes, at least in the short run, to the company's bottom line. The company wants to succeed, of course, but managers should stress that this reasonable end does not justify improper means.

- The company should provide clearly identified, open lines of communication for obtaining advice and reporting suspected violations, as well as establish other effective monitoring activities.

- Management needs to ensure consistent enforcement of the company's standards. Employees should harbor no doubt that unethical acts, even when committed ostensibly, "for the good of the company," will not go unpunished. However, to ensure fairness, the company should provide due process for employees accused of violations.

- Finally, management should recognize that an effective ethics program is an ongoing process. The standards require continuous reinforcement. The job is never done.

In order to allay the current public concerns about the state of business ethics, managers must make a commitment to instill the highest standards of business conduct in their employees. A well-crafted code of ethics can by a keystone of this effort. Through a concerted and sustained effort, a company can transform its code of ethics into a genuine management tool. Working with other companies and trade associations, your company might establish a higher level of ethics in the marketplace, perhaps recapture some of the autonomy lost in the past to government regulation, and, most importantly, strengthen the public's trust and confidence in your own company and in our private enterprise system.

We wish you well with your code development process!

APPENDICES

APPENDIX A: USEFUL INFORMATION ABOUT STANDARDS AND LEGISLATION

There are several pieces of legislation, public policies, and court decisions that have, in the past few years, begun to place parameters around the purpose, focus and uses of codes. Before you begin your code development process, it is important to know the laws and regulations that apply to your organization.

The following section offers summary information about some of the more prominent laws and regulations. Please note: the following is summary information, as interpreted by the Ethics Resource Center, and does not constitute a legal opinion. Where these standards apply to you, we suggest that you read these documents in their original form, and consult your organizational legal counsel as you develop your code to comply.

Standards and legislation summarized include:

- U.S. Department of Commerce's Model Business Principles

- Delaware Chancery Court decision regarding board responsibility (*In re Caremark*)

- National Labor Relations Board Decision 302 NLRB No. 161

- United States Sentencing Commission's Sentencing Guidelines for Organizations

- Sarbanes-Oxley Act of 2002

■ U.S. Department of Commerce's Model Business Principles

Applicable to any organization— the standards here are listed as a suggestion to all organizations.

The following Statement of Model Business Principles was issued by the U.S. Department of Commerce during the administration of President William J. Clinton and viewed as voluntary guidelines for U.S. businesses. Text of the statement is provided to offer guidance—it is not a legal standard to which companies must adhere.

Recognizing the positive role of U.S. business in upholding and promoting adherence to universal standards of human rights, the Administration encourages all businesses to adopt and implement voluntary codes of conduct for doing business around the world that cover at least the following areas:

1. Fair employment practices, including avoidance of child and forced labor and avoidance of discrimination based on race, gender, national origin or religious beliefs; and respect for the right of association and the right to organize and bargain collectively.

2. Responsible environmental protection and environmental practices.

3. Compliance with U.S. and local laws promoting good business practices, including laws prohibiting illicit payments and ensuring fair competition.

4. Maintenance, through leadership at all levels, of a corporate culture that respects free expression consistent with legitimate business concerns, and does not condone political coercion in the workplace; that encourages good corporate citizenship and makes a positive contribution to the communities in which the company operates; and where ethical conduct is recognized, valued and exemplified by all employees.

In adopting voluntary codes of conduct that reflect these principles, U.S. companies should serve as models, encouraging similar behavior by their partners, suppliers and subcontractors.

Adoption of codes of conduct reflecting these principles is voluntary. Companies are encouraged to develop their own codes of conduct appropriate to their particular circumstances. Many companies already apply statements or codes that incorporate these principles. Companies should find appropriate means to inform their shareholders and the public of actions undertaken in connection with these principles. Nothing in the principles is intended to require a company to act in violation of a host country of U.S. law. This statement of principles is not intended for legislation.

■   Delaware Chancery Court Decision Regarding Board Responsibility (In re Caremark)

On September 25, 1996, the Delaware Chancery Court issued a decision in *In Re Caremark International, Inc. Derivative Litigation*, No. 13670, 1996 WL 549894. Organizations large and small, for-profit corporations and nonprofit associations, took notice.

Applicable to Board members of all organizations.

The *Caremark* decision holds the Boards of Directors responsible for unethical or illegal actions of the organization or its employees. Since a 1963 decision in Delaware, Directors were not considered responsible for business judgments of staff members, even if they turned out to be unethical or illegal, so long as there had been no reason for suspicion. Under Caremark Directors are responsible for comprehensively monitoring compliance.

Like the Federal Sentencing Guidelines, *Caremark* lays out criteria for compliance and reporting structures, which absolve the organization of responsibility for individuals' actions. They include:

- Codes of conduct;

- Training;

- Creation of an ethics or compliance office;

- Internal review processes;

- Regular program assessments, hotlines, etc.

■ National Labor Relations Board Decision 302 NLRB No. 161

National Labor Relations Board
Decision 302 NLRB no. 161
May 17, 1991
Case 9 – CA – 15654 – 1

American Electric Power Company and its Subsidiary Ohio Power Company *and* Local Union No. 981, International Brotherhood of Electrical Workers, AFL-CIO-CLC

This decision reaffirmed the position of the National Labor Relations Board that an employer unilaterally issuing a Corporate Code of Conduct or revising a Corporate Code of Conduct in a represented environment must first give all Unions notice and an opportunity to bargain on provisions of the proposed or revised Code. Failure to make such notification was deemed a violation of Section 8 of the National Labor Relations Act (an unlawful labor practice).

In rendering their judgment, NLRB Chairman Stephens and Members Cracaft, Devaney and Oviatt cited 283 NLRB 234 from 1987 [Newspaper Guild Local 10 v. NLRB, 636 F. 2d 550 (1980)] in which a newspaper was obligated to bargain with the Union before issuing its General Office Rules and Code of Ethics. In 283 NLRB 234, the Board ruled that Codes of Conduct governing employees with constituent penalties for their breach constitute "terms and conditions of employment" unless the employer can demonstrate that the subject matter covered by the Code of Conduct goes to the protection of the core purpose of the enterprise. The "core purpose" argument is limited by narrow tailoring in terms of substance that requires that: (1) the rule meets only the employer's legitimate and necessary objectives, and (2) the rule be appropriately limited in its applicability to affected employees to accomplish the necessarily limited objectives.

■   United States Sentencing Commission's Sentencing Guidelines for Organizations

On November 1, 1991, revised Federal Sentencing Guidelines for organizations went into effect. Their goal is to "provide just punishment, adequate deterrence and incentives for organizations to maintain internal mechanisms for preventing, detecting and reporting criminal conduct." Simply stated, the guidelines reward organizations which make a good faith effort to prevent unethical activity by lowering their potential fines if, despite their best efforts, unethical or illegal acts are committed by the organization.

> **Applicable to all organizations.**
> **The guidelines are meant to reduce risk, and lessen penalties in the event of a finding of criminal conduct. Compliance is voluntary.**

The minimum requirements of the Federal Sentencing Guidelines include:

1. Implementing compliance standards and procedures that are reasonably capable of reducing criminal conduct;

2. Specifically designating a high-level sponsor to oversee the program;

3. Exercising due care not to delegate significant authority to a person known to have criminal tendencies;

4. Communicating the policies and procedures to all members and employees;

5. Monitoring and auditing systems and putting into place a safe, publicized reporting mechanism for members and employees;

6. Consistently enforcing the standards through appropriate disciplinary actions; and

7. Taking steps to prevent any similar occurrences in the future, including modifying your program.

NOTE: The Federal Sentencing Guidelines for Organizations are currently under review. The US Sentencing Commission organized a special Advisory Group to make recommendations for changes—this group, in turn, sought input from the broader public in 2002. Revisions to the guidelines are expected to be issued publicly in 2003.

■ Sarbanes-Oxley Act of 2002

The Sarbanes-Oxley Act of 2002 was signed into law by President George W. Bush on July 30, 2002.

▶ *Implications for Public Company Officers and Directors*

1. CFO and CEO certifications of annual and quarterly reports will now be required (Section 302), based on the provision that to the best of their knowledge:

   • Both have reviewed the report;

   • The report contains no untrue material and does not omit information that would make any statements misleading;

   • The financial statements and other financial information is true to the operations and financial conditions of the company;

   • The company has been responsible for establishing and maintaining internal controls;

   • They have designed internal controls to ensure that material information is provided to all related officers;

   • They have evaluated the effectiveness of their internal controls within 90 days prior to the report and have presented conclusions of the evaluation;

   • They report (to auditors and/or auditor committees) any deficiencies and/or material weaknesses in the controls as well as any fraud involving management or employees who play a significant role in the internal controls;

   • They report any changes in their internal controls (including any corrective actions taken in response to weaknesses or fraud) or other factors affecting their internal controls subsequent to the date of their evaluation;

   • Pursuant to Section 906, officers must provide a written statement signed by the CEO and CFO that certifies that the periodic report containing the financial statements:

> ‣ Complies with requirements of Section 12(a) and 15(d) of the Securities Exchange Act of 1934

> ‣ Presents fair information as to the financial condition and results of operations of the Company (Rule issued in August 2002).

- Penalties for certifying a fraudulent or misleading report are a fine of up to one million dollars and/or imprisonment for up to ten years, or both. Penalties for willful violations carry a fine of up to five million dollars and/or imprisonment of up to 20 years, or both.

2. Companies must file a report on internal controls with annual reports, containing:

- Acknowledgment of management's responsibility for establishing and maintaining an adequate internal control structure and procedures for financial reporting;

- Assessment at the end of the fiscal year regarding the system;

- Attestation by the company's public accounting firm regarding the management assessment as part of an audit engagement;

- Description of the scope of the assessment, findings, and evaluation of controls.

3. The Sarbanes-Oxley Act makes it unlawful (with limited exceptions) for a company to extend credit to its directors and executive officers.

- Existing loans are grandfathered provided they are not modified or reviewed. (Effective immediately.)

4. Executive officers and directors will be prohibited from trading company securities during any period when a majority of plan participants are prohibited from trading company securities (Blackout Period).

- Any changes in beneficial ownership of execs, directors and shareholders (10% or greater ownership) must be reported to the SEC within 2 business days of the change;

- These changes will be filed electronically beginning July 30, 2003 and posted on the company website. Similar reports will have to be filed within 10 days after an individual becomes an officer, director or beneficial owner.

5. Public companies must disclose whether they have adopted a code of ethics for its CFO.

   • If not, the reason(s) must be disclosed;

   • Change or waiver of the code must be disclosed immediately under cover of Form 8-K.

6. It will be unlawful for any representative of the company to attempt to influence any auditor engaged in a review of the company's financial statements.

7. Corporate officers are subject to new penalties.

   • If a company restates its financial statements due to material noncompliance (as a result of misconduct), any compensation given to the CEO or CFO (as well as any realized profits from the sale of securities) during the 12 months following the filing of the noncompliant document must be returned to the company;

   • Any person who knowingly interferes with or attempts to influence a federal investigation could face fines and up to 20 years imprisonment;

   • In connection with investigations of possible securities violations, the SEC is authorized to temporarily freeze extraordinary payments to directors, officers, partners, controlling persons and agents of employees;

   • In any cease and desist proceeding, persons in violation of SEC rules regarding the sale of securities may be barred by the SEC from serving as a director or officer of a public company.

► *Implications for Audit Committees*

1. The Act mandates that all public companies must have an audit committee. If one is not appointed then the board is deemed to be functioning as the audit committee. The audit committee must be :

   • Responsible for appointing, compensating and overseeing auditors, including resolving disagreements between managers and auditors;

   • Responsible for establishing complaint procedures (receiving and addressing) concerning internal control or auditing matters;

   • Responsible for engaging independent counsel or advisors as necessary; and

- Independent.

Additionally, the audit committee:

- Must not receive fees from company for consulting or advisory services; and

- May not be affiliated with company or subsidiaries in any capacity other than as a director.

2. Companies must disclose whether or not at least one member of the audit committee is considered a financial expert. This disclosure must take into account:

- Educational and professional background;

- Knowledge of generally accepted accounting principles and financial statements;

- Experience in preparing and auditing financial statements for comparable companies;

- Experience with internal accounting controls; and

- Understanding of audit committee functions.

Additionally, independent auditors:

- Must report all critical accounting policies and practices used in the financial statements to the audit committee.

- Must also provide any other material written communications furnished to management. (Effective upon registration of accounting firms.)

▶ *Implications for Independent Auditors*

1. The Act establishes that the Public Company Oversight Board:

- Must have five financially literate members (two current or former CPS's and three non-CPA's);

- Must have members who have been appointed by the SEC and have no current connection with any public accounting firm;

- Is funded through fees collected from public companies; and that

- Fees are assessed on a percentage of each company's market capitalization to total market capitalization for all public companies.

- Board duties are:

  ‣ To establish or adopt standards related to the preparation of audit reports;

  ‣ Conduct inspections of registered accounting firms;

  ‣ Conduct investigations and disciplinary proceedings.

  ‣ Request and compel testimony of public accounting firms and issuers;

  ‣ Authority (under SEC review) to impose sanctions on accounting firms that are not in compliance.

2. All public accounting firms that audit public companies must register with the Board.

- Extends to foreign accounting firms;

- Could require registration of foreign accounting firms that audit a subsidiary of public companies;

- Firms that audit over 100 public companies will be subject to annual quality reviews by the Board;

- All other firms will be reviewed by the Board on a triennial basis. (Firms to be registered 180 days after the SEC determines the Board is suitably organized.)

3. Prohibited services for a public accounting firm when auditing a public company are:

- Bookkeeping;

- Financial information systems design and implementation;

- Appraisal or valuation services, fairness opinions or contribution-in-kind reports;

- Actuarial services;

- Internal audit outsourcing services;

- Management functions or human resources;

- Broker or dealer, investment advisor or investment banking services; and

- Legal services and expert services unrelated to the audit.

Other non-audit services may be provided pending approval by the company audit committee under the following conditions:

- All non-audit work must be disclosed in the periodic reports;

- A registered public accounting firm may not audit a public company if they have performed audit services for that company for the past five years;

- Effective upon registration of accounting firms.

▶ *Implications for Lawyers*

The Act requires the SEC to issue new rules setting forth minimum standards of professional conduct for attorneys appearing and practicing before the SEC in any way in the representation of issuers.

- Attorneys must report evidence of a material violation of securities law or breach of fiduciary duty by the company or any agent to the chief legal counsel or CEO of the company;

- If the chief legal counsel or CEO does not appropriately respond to the evidence then the lawyer must report it to the audit committee, or to another committee of the board of directors.

▶ *Implications for Security Analysts*

The Act requires that rules be adopted to address conflicts of interest that can arise when securities analysts recommend equity securities in research reports and public appearances. Specifically, the Act:

- Restricts the pre-publication clearance or approval of research reports by persons employed by the broker or dealer who are engaged in investment banking activities, or persons not directly responsible for investment research, other than legal or compliance staff;

- Limits the supervision and compensatory evaluation of securities analysts to officials employed by the broker or dealer who are not engaged in investment banking activities;

- Requires that a broker or dealer and persons employed by a broker or dealer who are involved with investment banking activities may not retaliate against or threaten to retaliate against any securities analyst employed by that broker or dealer or its affiliates as a result of an unfavorable research report that may adversely affect the investment banking relationship of the broker or dealer with the issuer that is the subject of the research report;

▸ If a person is harmed as a result of a violation of this provision, he or she will have to file with the Department of Labor within 90 days and may bring suit to the Federal District Court if DOL fails to act after 180 days;

▸ He or she will be entitled to reinstatement, back pay with interest and compensation for special damages;

▸ A person who knowingly and willingly retaliates is subject to fines and/or imprisonment for up to 10 years.

• Defines periods during which brokers and dealers who have anticipated, or are to partici- pate, in a public offering of securities as underwriters or dealers should not publish or otherwise distribute research reports relating to such securities or to the issuer of such securities; and

• Establishes safeguards to assure that securities analysts are separated by appropriate informational partitions within the firm from the review, pressure or oversight of those whose involvement in investment banking activities might potentially bias their judgment or supervision.

▶ *Implications for the SEC*

1. At least every three years the SEC must review disclosures and financial statements made by each public company.

   • Public company filings will be reviewed more frequently based on the following triggers:

      ▸ Material restatements;

      ▸ Significant volatility to other companies;

      ▸ Large market capitalization;

      ▸ Operations that significantly affect any material sector of the economy;

      ▸ Emerging companies with disparities in price to earnings ratios. (Effective immediately.)

2. The SEC must require disclosure in quarterly and annual reports of material relationships with parties that may have a material current or future effect on financial condition and results of operation.

   • Pro forma financial information in the reports may not contain any untrue statement of a material fact or omit such an item and must be reconciled to financial condition and results of operations prepared in accordance with generally accepted accounting principles.

■ Other Standards and Recommendations To Review

We also recommend that you take the following into account before you draft your code:

- New York Stock Exchange recommendations

- NASDAQ recommendations

- SEC regulations

- ISO standards

- OCEG standards (in development)

- DII regulations (specific to the defense industry)

APPENDIX B:
SAMPLE DATA COLLECTION QUESTION SETS

The most effective way to develop a code that will address the specific needs and culture of your organization is to conduct an intake process, allowing employees to identify the issues they face and their need for a code. We have found that three methods are particularly effective:

- Individual interviews with senior leadership;

- Focus groups with employees across levels and functions; and a

- Survey of employees to confirm/disprove findings from the interviews and focus groups.

In this section, each of these efforts is detailed. Outlines and sample question sets are also provided. We caution, however, that the questions asked should be tailored to meet your organizational needs. Ask yourself, "What do we want to know?" through each step of the process. Draft your questions (or revise ours) to match your answer.

■ Interview Question Set

Given the nature of their roles, and the time available to offer input into the code development process, we suggest that you conduct individual interviews with senior leadership in the organization. Aim for a 45 minute session with the leaders in key positions:

- Chief Executive Officer

- Chief Operating Officer

- Chief Business Officer

- Board members

- Audit committee members (if appropriate)

- Chief Legal/Compliance Officer

- Chief Human Resource Officer

The following is a guide for the interview session.

▶ *Step 1: Introduce yourself and explain what you are trying to accomplish.*

- Share your name and position (if you were not acquainted with the interviewee previously).

- Provide an overview of your goals for the interview, which should include:

  ▸ Obtaining input for code of ethics development;

  ▸ Getting a sense of the organizational culture;

  ▸ Learning what purpose they want the code to serve within the organization;

  ▸ Discovering if there is anything that should not be addressed in the code;

  ▸ Determining what they consider important to included in the code; and

  ▸ Identifying the roles and responsibilities of the interviewee in the code development process.

- Explain that the information you obtain during the interview will be aggregated with information provided by others and that you will strike to maintain confidentiality regarding the source of information.

▶ *Step 2: Ask what ethical dilemmas the interviewee believes managers and employees of the organization face.*

- Identify situations that may challenge any values you identify, e.g., in one company, the executive responsible for ethics oversight was also responsible for meeting sales goals—ethical standards were therefore more relaxed in the sales organization than in any other department.

▶ *Step 3: Ask what written standards of behavior the organization has now, if not already known.*

- Determine whether or not **guidance** in written form exists.

- Ask a follow-up question to see if the written standards are perceived as reflecting reality.

▶ *Step 4: Ask the interviewee how he or she feels the organization has changed over the past few years.*

- Establish leadership's view of the **culture.**

- What changes have taken place?

- Have cultural changes resulted in new pressures to commit misconduct or problems with ethical implications, e.g., increased number of dishonest acts, increased pressure to take shortcuts, decreased fiscal awareness, etc.?

▶ *Step 5: Determine how much decision-making responsibility is driven down to the front-line employee level.*

- Identify the **means by which decisions are made**.

  ▸ What kinds of decisions do front-line employees make?

  ▸ What kinds of decisions do managers make?

  ▸ What kinds of decisions are reserved for top management?

  ▸ How does an employee seek decision-making assistance when his or her supervisor is not available?

  ▸ Do decision-makers have the appropriate level of responsibility, authority, experience and training to make the required decisions?

  ▸ What happens to employees who make incorrect decisions?

▶ *Step 6: Determine what the interviewee believes the organization's core values to be.*

- Focus on the **values** leadership feel are important. [When leadership sees values they feel are important in the code, they are more likely to support it.]

- Ask questions such as:

  ‣ What would you say are the company's core values?

  ‣ Are there differences between written values and values that you have deduced from behavior at the company?

  ‣ To what extent do the values drive decision-making?

  ‣ How are the values communicated to the employee population?

▶ *Step 7: Determine what role the interviewee believes emotions play when it comes to values in the organization?*

- Determine whether or not there is a charged atmosphere surrounding **values.**

- Ask questions such as:

  ‣ How supportive do you think employees will be of a code?

  ‣ Do you expect pushback from employees if the company introduces organizational values?

  ‣ How would you characterize the degree to which the employees experience negative emotions on the job (i.e. fear, anger, etc.)?

  ‣ How do employees handle these emotions?

  ‣ What are the sources of these emotions?

  ‣ What type of misconduct does this generate?

▶ *Step 8: Determine what training the organization provides.*

- Information about training is also information about communications. It indicates the degree of emphasis placed on **values** issues and may indicate that improving communication and training may be necessary for any code to work.

- Ask questions such as:

  ‣ What types of training does the company provide?

  ‣ What types of training are available to executives and managers?

  ‣ Does the company provide leadership training?

  ‣ What is the level of interest in training?

  ‣ Overall, how effective is your training?

  ‣ How would employees rate training quality?

  ‣ How does the company determine who gets to attend training?

▶ *Step 9: Close the interview.*

- Thank the interviewee for participating.

- Ask the interviewee if he or she has any questions.

■   Information to Be Gathered from Focus Groups

Focus groups are designed to help you get a sense of the needs and perspectives of a particular portion of the population. During the information-gathering stage of your code development process, you will find focus groups with employees to be a valuable tool in pinpointing the ethical issues occurring in your organization.

We present these questions with the caveat that they should be used only by experienced interviewers and focus group leaders. Organizations that have access to individuals with such experience are encouraged to use them. Due to the potentially sensitive nature of ethics discussions, we do not suggest that persons without such experience conduct the interviews or focus groups.

Those who lead interviews and focus groups typically ask very similar sets of questions. The main difference between these approaches is that in an interview, one usually only talks to one person at a time, whereas a focus group leader typically talks with groups ranging from eight to twelve people. Both interviews and focus group discussions are excellent for exploring issues in-depth. They allow for more detailed explanations of answers not possible in surveys. Focus groups may be particularly useful in: surfacing issues that should be covered in a code; getting examples of problematic situations; exploring appropriate language and concepts; developing communications and enforcement approaches and so forth.

Conducting focus groups can also provide benefits such as:

- Ensuring that your organization's code includes issues of importance and relevance to employees, volunteers, and other key stakeholders;

- Developing broader awareness among employees and volunteers of your organization's ethics initiative and code in particular;

- Allowing those drafting the code to use language and ideas that will resonate with individuals who are internal and external to your organization.

Be aware that there are many factors that may affect the quality of the information you collect and its usefulness. These include: whom you talk to, for how long, what questions you ask, how you analyze the information received and how you communicate the results.

Be sure that you:

- Gather groups of 8-12 people;

- Separate groups based on employee level;

- Take every measure possible to ensure employee confidentiality;

- Provide information before the group, to explain the purpose of the session;

- Take good notes during the session (but mask the identity of the individuals who offer information);

- Develop a schedule for the focus group – know in advance how much time you want to allot to each area of questioning; and

- Allow the group to offer direction to you—be willing to follow the flow of the conversation to learn more about the issues participants raise.

The following will guide your group session.

▶   *Step 1: Introductions*

- Provide your name and role.

- Ask participants to share their first name, general function, and tenure with the organization.

- Explain the purpose of the focus group.

- Explain the measures you will take to maintain the confidentiality of the group. Ask the group to do their part by not discussing their responses, or the responses of others outside of the focus group session.

- Explain that you will not use their names and that all responses will be aggregated together.

▶   *Step 2: Ask the following questions:*

A. Culture

‣   How do you describe the company to outsiders?

‣   Why do employees come to this company? Why do they leave?

‣   How has the company changed in the past 5 years?

B. Leadership

‣   Are your leaders ethical?

‣   How would you describe the values of senior management in your company?

C. Decision-Making

‣ What types of decisions do you make at your levels?

‣ Do decision-makers have the appropriate level of responsibility, authority, experience and training to make the required decisions?

‣ How does the company resolve dilemmas?

‣ What happens to employees who make incorrect decisions?

D. Employees

‣ What constitutes success for an ethics initiative from the employees' point of view?

‣ What are the barriers to success?

‣ What pressures do employees feel to compromise their standards or the organization's values?

E. Emotions

‣ Have the level of negative emotions increased or decreased in the last 5 years?

‣ If negative emotions have increased, what are the causes?

‣ How do you deal with negative emotions?

‣ What types of misconduct have you observed?

‣ Do you sometimes have to "do more with less?"

F. Measures

‣ How are you measured on the work you do?

G. Training

‣ How would employees rate training quality?

‣ How does the company determine who gets to attend training?

‣ Have you ever received training on a topic that is related to ethics?

H. Risks

‣   What troubles you most about this company?

‣   What are the greatest threats or risks from external sources?

‣   What are the greatest threats or risks form internal sources?

I.   Current perceptions of ethics in your organization

‣   What does "ethics" mean to you in your work with our organization?

‣   What values and principles matter most in this organization and in the work we do?

‣   How successful is the organization in putting its values and principles into practice? Where could it stand to improve, do a better job?

‣   To what extent is leadership here committed to high standards of behavior? What else could they do in addition to their current efforts?

J.   Key ethical issues at work and how people typically deal with them

‣   What are the main ethical issues (e.g. pressures, conflicts, etc.) that employees /volunteers here face in their work? How do you typically deal with these?

‣   Can people here discuss ethics issues and concerns openly?

‣   Where would you go for guidance if you had questions or concerns about ethics? Is information/advice on ethics useful, easy to access?

K. Suggestions for code development

‣   What are the standards of behavior, issues and concerns that you would like to see addressed in a written document?

‣   What else would make a code of ethics more useful/relevant to people in this organization?

‣   What level of enforcement would be realistic and effective?

‣   Are there other issues/topics we haven't covered here that are relevant to this discussion?

N. Conclusion

▸   Do you have any questions of us?

▶ *Step 3: Next Steps*

Explain the next steps for the code development committee. Invite participants to talk with you individually after the session, if they have any additional information to share, or concerns to raise.

■   Developing and Distributing a Survey

You cannot and should not assume that the information you hear in focus groups represents the entire population of employees. Develop a survey based on the information you learn—surveys are meant to confirm or disprove the information you hear in the focus groups.

Before you distribute a survey, be sure that:

- You'll be surveying a portion of employees in such a way that you can make generalizations about the entire population (a random, stratified sample);

- You field test the survey, to be sure participants can answer the questions you are asking;

- Employees can be assured of confidentiality in honestly answering your questions;

- If you survey online, paper versions of the survey are available;

- If you survey on paper, you have an extra supply of surveys (should employees need an extra);

- Disgruntled employees cannot sabotage the process (by submitting multiple surveys, etc.);

- You have a means to collect, clean and analyze the data (best if collected by a neutral third part, to ensure confidentiality);

- Employees know why you are surveying, and what you will do with the data after the process is complete.

In most cases, it is best that surveys asking sensitive information (such as the standards of the organization, observed misconduct, etc.) be conducted by a third party. This enables you to assure confidentiality, and to be certain that survey results will be valid.

▶ *Areas for survey questions[1]*

- Extent to which company is perceived as being ethical in its conduct;

- Perceptions of leadership;

- Extent to which particular values are displayed in the organization;

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[1] The Ethics Resource Center regularly surveys employees about ethics issues and organizational concerns. A national dataset is available through our organization by which companies can benchmark their own results. For more information, contact our offices.

- Pressure to commit misconduct;

- Observed misconduct;

- Extent to which employees have reported observed misconduct;

- Satisfaction with results;

- Awareness of any measures in place to assist employees (i.e. training programs, hotline);

- Helpfulness of measures;

- Extent to which a code of conduct is needed;

- Extent to which specific code provisions are needed;

- Overall satisfaction with the company; and

- Other issues employees want to raise (open-ended question).

▶ *Sample Survey Questions*

- How often do you face ethical dilemmas in your work?

- To what extent does [organization] uphold [value] as a practice in our work?

- In the past year, how often have you observed misconduct?

- Did you report the misconduct you observed? If so, why? How satisfied were you with the outcome of your report?

- To what extent do you believe a code of conduct is needed in our organization?

- How often do you expect that you would refer to a code, if it were developed?

- Which of the following issues should be addressed in a code?

- Overall, how satisfied are you with [organization]?

APPENDIX C: DEFINITIONS OF VALUES

Acceptance	Favorable reception or belief in something
Accomplishment	Doing or finishing something successfully
Accountability	Obligation or willingness to accept responsibility
Adaptability	The ability to modify behavior to fit changing situations
Adventurousness	Inclination to undertake new and daring enterprises
Allegiance	Loyalty or the obligation of loyalty
Altruism	Unselfish concern for the welfare of others
Ambition	An eager or strong desire to achieve something
Appreciation	Recognizing the quality, value or significance of people and things
Aspiration	A strong or persistent desire for high achievement
Assiduousness	Unceasing; persistent; diligent
Authenticity	The quality or condition of being trustworthy or genuine
Autonomy	The condition or quality of being independent
Benevolence	An inclination to perform kind, charitable acts

Camaraderie   Goodwill and lighthearted rapport between or among friends

Caring   Feeling and exhibiting concern and empathy for others

Changeability   The ability to modify or adapt to differing circumstances

Charity   Generosity toward others or toward humanity

Cheerfulness   The quality of being cheerful and dispelling gloom

Citizenship   Exercising the duties rights, and privileges of being a citizen

Clear thinking   Acting intelligently without mental confusion

Collaboration   To work cooperatively especially in a joint intellectual effort

Commitment   Being bound emotionally or intellectually to a course of action or to another person or persons

Community   Sharing, participation, and fellowship with others

Compassion   Deep awareness of the suffering of others coupled with the wish to relieve it

Competence   The state or quality of being adequately or well qualified

Competitive   To strive to do something better than someone else

Composure   Maintaining a tranquil or calm state of mind

Concern   Regard for or interest in someone or something

Conscientiousness   The trait of being painstaking and careful

Consideration   Process of employing continuous, careful thought and examination

Consistency   Reliability or uniformity of successive results or events

Constancy	Steadfastness in purpose
Cooperation	The willing association and interaction of a group of people to accomplish a goal
Courage	The state or quality of mind or spirit that enables one to face danger, fear, or vicissitudes with confidence and resolution
Courtesy	Civility; consideration for others
Credibility	The quality or power to elicit belief
Decency	Conformity to prevailing standards of propriety or modesty
Dedication	Selfless devotion of energy or time
Democracy	The principles of social equality and respect for the individual within a community
Dependability	The trait of being reliable
Determination	Firmness of will, strength, purpose or character
Diversity	A point of respect in which things differ; variety
Easygoing	Relaxed or informal in attitude or standards
Education	Obtaining or developing knowledge or skill through a learning process
Efficiency	The quality of producing an effect or result with a reasonable degree of effort to energy expended
Empathy	Identification with and understanding of another's situation, feelings, and motives
Encouragement	The act of incitement to action or to practice

Equality	The right of different groups of people to receive the same treatment
Equity	The state, quality, or ideal of being just, impartial, and fair
Ethics	The way people behave based on how their beliefs about what is right and wrong influence behavior
Excellence	State of possessing good qualities in an eminent degree
Fairness	Consistent with rules, logic, or ethics
Faith	Confident belief in the truth, value, or trustworthiness of a person, idea, or thing
Faithfulness	Adhering firmly and devotedly to someone or something that elicits or demands one's fidelity
Fidelity	Faithfulness; loyalty or devotion
Flexibility	Responsive to change
Forgiveness	The willingness to stop blaming or being angry with someone
Fortitude	The strength or firmness of mind that enables a person to face danger, pain or despondency with stoic resolve
Friendship	A relationship between people based on mutual esteem and goodwill
Generosity	Liberality in giving or willingness to give
Gentleness	The quality of being mild and docile
Genuine	Not spurious or counterfeit
Giving	Voluntarily transferring knowledge or property without receiving value in return

Goodness	Morally right, or admirable because of kind, thoughtful, or honest behavior
Goodwill	A friendly attitude in which you wish that good things happen to people
Gratitude	A feeling of thankfulness and appreciation
Hardworking	Industrious and tireless
Helpfulness	The property of providing useful assistance or friendliness evidence by a kindly and helpful disposition
Honesty	Fairness and straightforwardness of conduct
Honor	Principled uprightness of character; personal integrity
Hope	The feeling that something desired can be had or will happen
Humility	Feeling that you have no special importance that makes you better than others
Industriousness	The characteristic of regularly working hard
Ingenuity	Inventive skill or imagination
Initiative	Ability to begin or to follow through energetically with a plan or task
Integrity	Strict adherence to moral values and principles
Joy	Intense or exultant happiness
Justice	Conformity to moral rightness in action or attitude
Kindness	The quality or state of being beneficent
Law-abiding	Abiding by the encoded rules of society

Liberty	The right and power to act, believe, or express oneself in a manner of one's own choosing
Love	A feeling of intense desire and attraction toward a person or idea
Loyalty	A feeling or attitude of devotion, attachment and affection
Mercy	Forgiveness shown toward someone whom you have the power to punish
Moderation	Having neither too little or too much of anything
Morals	Individual beliefs about what is right and wrong
Obedience	Compliance with that which is required; subjection to rightful restraint or control
Opportunity	Favorable or advantageous circumstance or combination of circumstances
Optimism	A bright, hopeful view and expectation of the best possible outcome
Patience	The ability to accept delay, suffering, or annoyance without complaint or anger
Peace	Freedom from war or violence
Perseverance	Steady persistence in adhering to a course of action, a belief, or a purpose
Promise-keeping	Keeping your word that you will certainly do something
Prudence	Doing something right because it is the right thing to do
Punctuality	Adherence to the exact time of a commitment or event
Purity	Moral goodness
Reason	The ability to think and make good judgments

Recognition	An acceptance of truth or validity
Reconciliation	Enabling two people or groups to adjust the way they think about divergent ideas or positions so they can accept both
Reliability	Consistent performance upon which you can depend or trust
Repentance	Remorse or contrition for past conduct
Resilience	The ability to rebound quickly from misfortune or change
Resourcefulness	The ability to act effectively or imaginatively, especially in difficult situations
Respect	Polite attitude shown toward someone or something that you consider important
Responsibility	That for which someone is responsible or answerable
Righteousness	The state of being morally upright; without guilt or sin
Sacrifice	To give up something for something else considered more important
Self-control	Control of personal emotions, desires, or actions by one's own will
Self-discipline	Making yourself do things when you should, even if you do not want to do them
Sensitivity	Awareness of the needs and emotions of others
Serenity	Calmness of mind and evenness of temper
Sharing	To allow others to participate in, use, enjoy, or experience jointly or in turns
Sincerity	Genuine, honest, and freedom from duplicity

Sobriety   Habitual freedom from inordinate passion or overheated imagination; calmness; coolness; seriousness

Stamina   The physical or mental strength to do something for a long time

Stewardship   The careful conducting, supervising, or managing of something

Supportive   Furnishing support or assistance

Thoughtfulness   The tendency to anticipate needs or wishes

Tolerance   Recognizing and respecting the beliefs or practices of others

Tranquility   A state of calm and peacefulness

Trustworthiness   The trait of deserving confidence

Understanding   Knowing how something works or a positive, truthful relationship between people

Values   Core beliefs that guide and motivate attitudes and actions

Virtue   Doing something right because it is the good thing to do

Wisdom   The ability to make good judgments based on what you have learned from your experience

Work   Perform as intended or desired

APPENDIX D: COMMUNICATING ETHICAL COMMITMENT

Communications about ethics take more forms than simply creating and disseminating a code of ethics as you'll see here. You can use the ERC's Model Of Organizational Change to be more effective in communicating individual and/or organizational commitment to stated values and to the use of those values as a basis for decision-making.

■ ERC's Model Of Organizational Change

There is a natural hierarchy of events that seems necessary if planned change is to occur in an organization. All of the following steps must occur. The steps of this pattern are presented below in what empirically has been shown to be the approximate chronological order. Following each descriptive statement is a comment on how each of the steps in the model can be used to get the word out about commitment to organizational ethics to employees, suppliers, customers and other stakeholders. Also shown is a suggestion of some of the issues raised by each step.

▶ Formal Statements Of Philosophy

These are the organization's official communications of its position on the issue, such as total quality management, ethics, employee empowerment or customer satisfaction. Ethics statements take any number of forms. Typically they describe the organization's commitment to values such as social responsibility, excellence, the importance of customers and/or employees or key principles such as truthfulness, fairness, promise keeping, compassion and courage. While formal statements are necessary, the typical pattern of "Print, Post and Pray" (print up the formal statement, post it to the office wall and pray for something to happen) does little to bring change about. When only this step is completed, both awareness of the stated position and skepticism/cynicism about it increase.

Difficulty can arise when the organization's position contradicts the values held by key stakeholders. For example the Cracker Barrel restaurant chain's expression of family (Christian) values required clarification when that position was perceived by some members of the media to disallow gay and lesbian employees.

Other problems can arise when there is widespread agreement within the organization on the stated values, but there is disagreement about what behaviors are congruent with those values. For example all parties might agree that unfairness is an appropriate guiding principle, but there can be disagreement regarding whether a particular decision is or is not fair. For example, in the case of layoffs, employees can cite the decision to downsize as evidence that the organization is lying or insincere about its commitment to fairness since many employees perceive layoffs are as being inherently unfair.

▶ *Education And Training*

Education and training are the primary communications vehicles used by many organizations to get the word out to employees about ethics. They allow for information about the formal position or philosophy to be shared and associated skills to be developed. But training does not cause change. Rather, it facilitates change caused by the remaining steps.

Training, when not supported by the remaining steps, becomes a flea dip (when one treats a cat or dog for fleas, but does nothing to remove the fleas from the environment, ensuring that the treatment will have no long term effect). To be optimally effective training has to occur in a modified organizational environment.

Education and training are popular means of getting the word out on ethics, especially since their use is strongly reinforced by federal sentencing guidelines.

Formal training not only communicates expectations, it also can help employees develop the skills and behavioral responses they will need if they are to apply what they have learned back on the job.

The concern is that poorly conceived and/or executed training can reinforce two misleading preconceptions. First is the belief that I am already an ethical person and the organization cannot and should not presume to tell me what is right or wrong. That concern reflects a misunderstanding of effective ethics training, which seeks to inform participants about specific ethics policies and procedures and provide tools and guidelines for applying those policies and procedures to their business decisions. It is not the purpose of ethics training to teach adults how to tell right from wrong. More often ethics training is about how to choose between competing "rights."

The second misconception is that ethical considerations are the exception to the rule. Ineffective ethics training can leave the impression that most issues do not have an ethical component and therefore one need only be concerned with ethics when a milestone decision is being made. In fact, the reverse is true. There is an ethical component to all but the most routine decisions. Decision makers should regularly ask the question, is this decision consistent with applicable personal and organizational values and ethics?

▶ *Formal (Organizational) Systems*

It is formal systems like organizational structure, policy and procedure, job design, methods, goal and objective setting, data management, and quality control that determine what people do day-in and day-out. When systems support change, it happens. When systems are not updated to support desired change, it doesn't happen easily. It is especially policy and procedure which drive the bureaucratic middle-management levels of organizations. Failure to change these systems means that those people driven by conformance to systems will actively resist change.

The most common formal ethics system is the formulation and dissemination of various *ethics policies*.

▶ *Informal (Leadership) Systems*

Informal systems (leadership behavior and operational norms) are different from formal organizational systems. Just as important as formal systems, they are not codified and are therefore more difficult to communicate or implement with any degree of consistency.

Informal systems answer a number of fundamental questions. How are people really treated? What are the consequences of various choices? What does my immediate supervisors really expect/require? How should I act to be successful or safe? The answers to these questions tell about what the organization truly values. If the informal systems support the stated philosophy, that philosophy is reinforced. If the informal systems contradict or ignore the philosophy then most people feel safe disregarding it too. Informal norms and leadership behavior shape employee behavior more effectively than stated philosophy, training or formal systems and structures.

Leadership behaviors communicate organizational expectations when they are congruent with the stated philosophy and with the understood norms or informal rules for success within the organization. Leaders communicate individual requirements. Norms, the way things are understood to really work, do likewise.

When all three messages (stated philosophy, leader expectations and the unspoken rules) agree, the message is powerful.

▶ *Senior Management Agenda*

Do people believe that senior management really cares about the stated position? Are they truly committed to the ethical position suggested by their rhetoric? These are the questions that seek to identify top management's real agenda.

People want to know that agenda because they believe that success in what matters to the people at the top counts more than success in what nobody in senior management cares about. If the message is ambiguous, people will presume that senior management has a hidden agenda and will speculate about it throughout the organization's grapevine.

Ultimately senior management communicates their real agenda two ways: the decisions they make and the questions they ask.

The ethical component of key decisions is not always apparent. It has to be spelled out, made explicit. Senior management has an obligation to make the values and principles they apply to their own decisions evident to each interested stakeholder.

In addition, senior management can communicate their interest in how their employees apply these same ethical principles by asking employees to describe the ethical issues and resolutions in decisions they are presenting for senior level approval.

This model suggests that getting the word out is a complex and ongoing responsibility if ethical commitment is to be part of "business as usual." All of the steps have a communications component and all are necessary for enduring change to occur.

Appendix E: Code of Ethics Development Process Checklist

Attach related documents to this form to create a comprehensive code development file.

	Milestones and Key Questions		
	Planning the Work Effort		
01	**Have we decided on the goals and objectives for our ethics program/code development?**	**No**	**Yes**
	Have specific goals been articulated?		
	Have we had a meeting where people could share their vision(s) of success?		
	Have we determined how we will evaluate our effort?		
02	**Do we have the support of our leadership?**	**No**	**Yes**
	Does leadership support the code or has leadership initiated the ethics program development?		
	Has leadership agreed to the basic benefits and rationale for the program?		
	Will they devote resources to getting this done and done right?		
	Will they talk publicly about the code development process and program?		
	Will they rally support for the program?		
03	**Have we created a code development taskforce/committee?**	**No**	**Yes**
	Have we decided who should be on the taskforce?		
	Are the taskforce members representative of the organization as a whole?		
	Have we decided how often the taskforce shall meet?		
	Have we defined what will constitute success?		
	Have we agreed on how to disagree?		
	Have we prepared our data collection plan?		

	Collecting Data		
04	**Conduct interviews**	**No**	**Yes**
	Has our data collection plan been approved?		
	Do we know what information we need?		
	Do we know from whom we can get it?		
	Do we know who is gathering what information?		
	Do we have prepared questions to ask of all interviewees?		
	Have we scheduled interviews?		
05	**Gather focus groups**	**No**	**Yes**
	Do we know what information we need?		
	Do we know from whom we can get it?		
	Do we have prepared instructions and starter questions for all focus groups?		
	Have we scheduled the focus groups?		
06	**Conduct a survey**	**No**	**Yes**
	Have we decided whether or not to use a survey?		
	If yes, have we written clear, concise questions that can be readily answered?		
	Have we reviewed the surveys and aggregated the data ?		
	Have we removed all indicators that could reveal the individual identity of the responder?		
	Have we sorted the data according to demographics (if appropriate)?		
	Writing the Draft Code		
07	**Identify Values**	**No**	**Yes**
	Have we compiled the data?		
	Have we decided how we should analyze the information?		
	Have we analyzed the information?		
	Have we decided how we will communicate our finds to the taskforce?		
	Have we made provisions to keep leadership informed and part of the process?		

	Writing the Draft Code (continued)		
07	**Identify Values (continued)**	**Yes**	**No**
	Can we identify our organizational strengths and weaknesses?		
	Are any values associated with our organization clearly identifiable?		
	Are there any potential ethical danger areas that need to be mentioned in the code?		
	Are there any specific suggestions for what should be included in the code?		
	Have you collected samples of other codes to follow?		
	Are you planning to include any "best practices"?		
08	**Draft The Code**	**Yes**	**No**
	Have we identified key components of the code?		
	Do we know which values or standards we want to include?		
	Have we arranged the values or standards in a logical fashion?		
	Are we using clear, action-oriented language?		
	Have we outlined our code drafting process?		
	Have we identified our timeframe for drafting the code?		
	Have we identified an author?		
	Have we involved the key stakeholders in drafting the code?		
	Have we involved the key stakeholders in reviewing the code?		
	Are we taking care not to discuss more than one value at the same time as an aid to reduce confusion?		
	Specifying Reporting and Enforcement Mechanisms		
09	**Have we decided on appropriate enforcement and reporting mechanisms?**	**Yes**	**No**
	Have we tasked someone with the ultimate responsibility for enforcing the code?		
	What provisions will the company make to protect the confidentiality of employees who report apparent misconduct?		
	Have we outlined the mechanisms for reporting and enforcement?		

	Specifying Reporting and Enforcement Mechanisms (continued)		
09	**Have we decided on appropriate enforcement and reporting mechanisms? (continued)**	**Yes**	**No**
	Have we described the procedures by which allegations will be evaluated and resolved?		
	Have we identified penalties that will apply to violations of the code?		
	Are procedures outlined for appealing the decisions, and before whom would such an appeal be made?		
	Is "due process" described, and afforded to those against whom allegations have been made?		
	Have any final edits been done?		
	Have we identified the person who needs tosign off on the final draft?		
	Did we revise/redraft the code based on input?		
	Having the Code Reviewed		
10	**Have we gotten leadership approval of the draft code and revised according to input?**	**Yes**	**No**
	Have we gotten approval for the final draft?		
	Did we revise/redraft the code based on input?		
	Have any final edits been done?		
	Have we carefully considered the code draft input from leadership and others and made appropriate edits?		
11	**Have we had the code reviewed by legal counsel?**	**Yes**	**No**
	Have our attorneys reviewed our code draft?		
	Are our employees union represented? If so, have we gotten union approval?		
	Does the code cover the specific legal issues we need to be concerned about?		
12	**Have we field tested the code and made final revisions?**	**Yes**	**No**
	Did we review the redraft?		
	Did we outline the specific input we looking for from our select reviewers?		
	Have we mailed the draft code to select stakeholders and asked for written edits?		
	Have we interviewed people once they have read the code during a special meeting?		

	Obtaining Board Approval		
13	**Have we obtained Board approval of the final code?**	**Yes**	**No**
	Do we need to call a special meeting of leadership?		
	Have we determined how leadership will announce their commitment to the program?		
	Will the Chairman of the Board write an introductory letter?		
	Communicating to and Educating People About the Code		
14	**Deciding on a communication and education strategy.**	**Yes**	**No**
	Did we communicate the goals of the program to our employees and other important audiences?		
	Have we identified the audiences for our communications?		
	Will we educate our employees and volunteers, and stakeholders?		
	Have we planned a kick-off event to introduce the code?		
	Will we provide ongoing ethics communications and training?		
	Have we outlined a training method and time frame?		
	Will we incorporate ethics training in employee orientations?		
	Revising and Updating the Code		
15	**How will we evaluate the program and revise the code/program as necessary?**	**Yes**	**No**
	Do we know how we want our new code and program to make a difference?		
	Have we discussed what measures will tell us that the program is successful?		
	Do we know who will conduct the evaluations?		
	Do we know when we plan on revising the code in the future?		
	Will we make adjustments to the code as the program evolves?		
	Do we know who in the organization has ownership responsibility for the code?		

APPENDIX F:
WRITING CODE PROVISIONS

Code provisions are the standards of behavior and performance expectations that your organization chooses to highlight and address in your code. As we've discussed, codes can be brief or comprehensive depending on the objective. They address a wide variety of issues, ranging from legal and regulatory concerns to relations with the organization's employees and volunteers. Specifically, code provisions detail the application of the organization's values to particular situations.

The choice of topics to be included in your code will be influenced by three factors:

1) The code's purposes and objectives;

2) Your organization's overall purpose and objectives; and

3) The questions or concerns expressed by your intended users – your employees and stakeholders.

In deciding which topics to address, you might ask:

- What are the principal laws and regulations applicable to our organization?

- What has gone wrong in the past?

- What else could go wrong?

- What guidance do we need to offer our employees?

- Where are there gray areas? What do we need to clarify or confirm?

We recommend an easy, clear structure to maximize the code's readability and usability. Consider writing your code so that it outlines the core principles (basic truths, concepts or motivating forces) that address appropriate conduct for your organization, followed by what you are trying to accomplish (intent). Guidelines for appropriate behavior, rules, and examples would then follow. Most organizations choose to highlight five to seven key areas or code provisions in their codes.

These are the basic elements of a best practices code provision. Depending on your goals, there are a variety of styles that can be used in crafting a code provision—from a formal reference as seen in our example code provision or using an informal narrative style. You may choose to group all

principles together, followed by values, and so on. You can simplify but try not to omit central ideas or key elements covered.

1. *Principle*: A basic truth, concept or motivating force that addresses appropriate conduct for an organization and its employees and volunteers.

2. *Statement of Intent*: The rationale underlying a principle and why that ethical principle is important to the organization's overall goals and mission.

3. *Guidelines/Rules*: Criteria for decision making that are specific to the organization. These guidelines and rules may prohibit certain actions and require others.

   Guidelines provide a basis for ethical decision making when employees and volunteers face situations where black-and-white rules are impossible or inappropriate. They may involve especially sensitive issues like conflicts of interest, insider trading, and the offering or acceptance of gifts, gratuities or entertainment.

   Rules have a standard setting function. They may draw heavily on existing law or policies as a source or outline other obligations for an organization.

4. *Examples*: Examples are definitions, rationales and illustrations that help clarify the application of the principle and rules and guidelines.

■   Sample Code Provision

Title: <u>USE OF INFORMATION</u>

Core Principle

HR professionals must protect the rights of employees, especially in the acquisition and dissemination of information while ensuring truthful communications and facilitating informed decision-making.

Intent

To build trust among all organization constituents by maximizing the open exchange of information, while eliminating anxieties about inappropriate and/or inaccurate acquisition and sharing of information.

Guidelines

1. Avoid the acquisition and dissemination of information that may not be used in employment related decisions.

2. Investigate the accuracy and source of information before allowing it to be used in employment related decisions.

3. Correct inaccurate HR information promptly.

4. Do not knowingly reveal restricted or confidential information.

5. Insure the accuracy and completeness of all communicated information about policies and practices.

6. Insure the accuracy and completeness of all communicated information used in training.

Example

Situation: As a benefits administrator, while processing an FMLA form, you become aware of a senior employee who is incurring huge medical expenses with a serious illness. You work for a small firm and the insurance claims will have a big impact on the company's financial situation. In addition, the employee is responsible for national sales programs and sales are lagging.   At the weekly administrative staff meeting the fact that the sales executive is on leave is noted. People start to chuckle and speculate the person is probably golfing with customers. Someone asks in a serious tone, "Does anyone know what's going on?"

Solution: As an HR professional you are bound to protect the confidentiality and privacy of employees. Keep quiet.

■ Code Provision Worksheet

Code Provision Title: _____

Core Principle

_____

_____

_____

Intent

_____

_____

_____

_____

_____

Guidelines

1. _____

   _____

2. _____

   _____

3. _____

   _____

4. _____

   _____

Examples

1. **Situation:** _____

   _____

   _____

   _____

   _____

   _____

   Solution: _____

   _____

   _____

2. **Situation:** _____

   _____

   _____

   _____

   _____

   _____

   Solution: _____

   _____

   _____

■ Common Provisions Covered in Codes of Ethics/Conduct

Below are some common provisions found in organizational codes. The list of provisions is not exhaustive, nor are the category headings definitive. Organizations tend to label and categorize their code provisions in many different ways depending on their unique characteristics, their goals for the code and so forth. Similarly, code content (i.e. provisions) can vary substantially across organizations depending on their industry, regulations/requirements and goals for the code.

Employment Practices

- Workplace Harassment

- Equal Opportunity

- Diversity

- Fair Treatment of Staff

- Work-Family Balance

- Discrimination

- Illegal Drugs and Alcohol

- Use of Organization Property

Employee, Client and Vendor Information

- Maintaining Records and Information

- Privacy and Confidentiality

- Disclosure of Information

Public Information/Communications

- Advertising and Marketing

- Development and Fundraising

- Clarity of Information

- Access to Information

- Transparency of Information

Conflicts of Interest

- Gifts and Gratuities

- Political Activity

- Outside Employment

- Family Members

Relationships with vendors

- Procurement

- Negotiating Contracts

Environmental Issues

- Commitment to the Environment

- Employee Health and Safety

Ethical Management Practices

- Accuracy of books and records and expense reports

- Proper use of organizational assets

- Protecting proprietary information

Employment Practices

- Proper Exercise of Authority

- Employee volunteer activities

Conflicts of Interest

- Disclosure of Financial Interests

Political Involvement

- Political Activities

APPENDIX G:
INFORMATION SOURCES

Additional support is available through the following resources:

Ethics Resource Center
1747 Pennsylvania Avenue, N.W., Suite 400
Washington, D.C. 20006
Phone: (202) 737-2258
Fax: (202) 737-2227
ethics@ethics.org
http://www.ethics.org

Society for Human Resource Management
Information Center
1800 Duke Street
Alexandria, VA 22314
Phone: (800) 283-7476
Fax: (703) 836-0367
http://www.shrm.org

Business for Social Responsibility
609 Mission Street, 2nd Floor
San Francisco, CA 94105
Phone: 415.537.0888
Fax: 415.537.0889
http://www.bsr.org

Center for Business Ethics
Adamian Graduate Center, Room 108
Bentley College
Waltham, MA 02452
Phone: 781.891.2981
Fax: 781.891.2988
http://ecampus.bentley.edu/dept/cbe/

Ethics Officer Association
30 Church St., Suite 331
Belmont, MA 02478
Phone: 617.484.9400
Fax: 617.484.8330
http://www.eoa.org

Institute of Business Ethics
12 Palace Street
London, SW1E 5JA
United Kingdom
Phone: 44.171.931.0495
Fax: 44.171.821.5819
http://www.ibe.org.uk/assist.htm

Institute for Global Ethics
11 Main Street
P.O. Box 563
Camden, Maine 04843
Phone: 207.236.6658
Fax: 207.236.4014
http://www.globalethics.org/corp/default.html

Visit the ERC website at http://www.ethics.org for more information:

- Searchable database of company codes

- Articles

- Subscription form for our online newsletter, *Ethics Today*

- Links to other resources

APPENDIX H: GLOSSARY

Aspirational   A strong desire to achieve something high or great. An aspirational code would be intended to reach a higher ethics standard that supercedes being in compliance.

Benchmarking   In the instances used in this book, benchmarking is the process of comparing one's ethics climate to that of a previously established "best practices" climate.

Codes of Conduct   Rules-centered. Frequently they take the form of a list of behavioral requirements, the violation of which could result in disciplinary action.

Codes of Ethics   Values-centered. They offer a set of ethical ideals, such as integrity, trustworthiness and responsibility, which companies want employees to adopt in their work practices.

Code Provision   Code provisions are the specific standards of behavior and performance expectations that your organization chooses to highlight and address in your code.

Compliance   Conforming or adapting one's actions to another's wishes, to a rule, or to necessity. A compliance code would be intended to meet all legal requirements.

Credo   Fundamental beliefs (or a set of beliefs) or guiding principles.

Ethics   There are many definitions as to what ethics encompasses.

1.   The discipline dealing with what is good and bad and with moral duty and obligation;

2.   Decisions, choices, and actions we make that reflect and enact our values;

3.   A set of moral principles or values;

4.   A theory or system of moral values; and/or

5.   A guiding philosophy.

Ethical Dilemmas   Situations that require ethical judgment calls. Often, there is more than one right answer and no win-win solution, leaving one or more parties dissatisfied.

Ethical Differences   Situations in which two people agree on a particular value and disagree as to the action to be taken or decision to be made.

Focus Group   A small group of people whose response to something is studied to determine the response that can be expected from a larger population. Information obtained from focus groups is not analyzed statistically, but instead used for informational purposes (i.e., to assess the culture of an organization).

Gray Areas   Situations in which the individual's business standards lack clarity. The lack of clarity may be due to an individual's not being familiar with a guideline or a guideline that is vague and subject to interpretation. Guidelines are often written to provide managers with as much latitude as appropriate, and this may create gray areas.

Leadership Interview   One-on-one interviews with top-level executives or managers that are intended to bring forth information regarding one's ethics climate. Information obtained through these interviews is not intended for statistical analysis, but instead for informational purposes.

Survey   A survey is a set of questions used to examine a condition, situation or value.

Task Force   A temporary grouping under one leadership for the purpose of accomplishing a definite objective.

Values   The core beliefs we hold regarding what is right and fair in terms of our actions and our interactions with others.

ABOUT THE AUTHORS

Creating a Workable Company Code was first drafted by ERC staff in 1980. Just like an effective code, the document was in need of revision, especially in light of new legislation in 2003. The original document was revised by the following individuals on our writing team:

▶ *Patricia J. Harned, Ph.D.*

Dr. Harned joined the Ethics Resource Center (ERC) as the Director of Character Development in January 1999, assumed the role of Director of Research in 2001, and became Managing Director for Programs in 2002. Dr. Harned coordinates the efforts of the ERC program staff as they work with organizations across educational, business, and international sectors, and consults with organizations in all areas of ERC work.

▶ *Ingrid Matuszewski*

Ingrid Lohr Matuszewski joined the Ethics Resource Center (ERC) as an Advisory Services Consultant in December of 1999. She now manages the ERC Fellows Program and is a consultant in the International Programs Division at the ERC.

▶ *Jerry Brown*

Jerry Brown joined the Ethics Resource Center (ERC) as the Program Development Manager in December 1997. He is responsible for consulting with internal and external ERC clients to help them determine the best possible answers for their ethics consulting and training needs.

▶ *Frank J. Navran*

Frank Navran joined the ERC after a career spanning 17 years as a corporate manager, trainer and internal consultant. Frank J. Navran is a Principal Consultant at the Ethics Resource Center. Navran spearheads more than 50 training seminars and workshops on organizational and business ethics for the ERC and its clients.

▶ *Leslie Altizer*

Leslie Altizer joined the Ethics Resource Center (ERC) in March of 2003 as an Associate Consultant. Mr. Altizer's principal work is with the Programs Department in the areas of proposals, Character Development, Organizational Ethics, International Program Group, research and data analysis.

▶ *Katie Sutliff*

Katie Sutliff joined the Ethics Resource Center as a member of the Character Development department in 2001. Before joining the ERC, Ms. Sutliff spent four years teaching high school. During this time, she taught 9th, 10th, 11th, and 12th graders, created curricula for a Morality course, served as adviser to the Student Government Association and to the Student Service Organization, and acted as department chair.

▶ *Lauren Larson*

Lauren Larson joined the Ethics Resource Center in 2002 as Webmaster after working on contract to the ERC's for three years. She is responsible for all of the ERC's websites, writes and produces the monthly electronic newsletter, *Ethics Today*, and occasionally designs publications, including *Creating a Workable Company Code*. She is also a lawyer licensed in the state of Virginia.

The Ethics Resource Center

The Ethics Resource Center (ERC) is one of the oldest nonprofits in the United States addressing the issue of ethics. Established in 1922, we work with businesses, nonprofit organizations, schools and governments around the world to foster ethical work environments. Over the years, the ERC has played a leading role in creating corporate ethics offices, formulating government-wide codes of conduct, and transforming schools.

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