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Do's and Don'ts for Effective Corporate Compliance and Ethics Programs

Companies across all business sectors are facing significantly greater exposure to investigations and enforcement actions by government regulators or enforcement authorities. To combat corporate malfeasance, regulators and enforcement authorities are employing aggressive investigations, prosecuting corporate executives, compelling compliance and business practice reforms, entering into deferred prosecution and corporate integrity agreements, and appointing monitors. To operate within this business climate, a company must have an effective corporate compliance and ethics program. However, despite the plethora of guidance and directives pertaining to effective corporate compliance, significant deviation still exists in corporate compliance and related practices. The following do's and don'ts are suggestions for organizations that are reviewing or developing corporate compliance and ethics programs to address the ever growing threat of enforcement activity.

Do's

- Do create a strong culture of compliance by establishing top down organizational support for ethical operations and continue to communicate the commitment to doing the right thing.
- Do make compliance a business priority - not just a matter for the lawyers.
- Do assess the organization's operations to determine what areas a compliance program must address—e.g., import/export, FCPA, etc.
- Do create written policies and procedures that cover all aspects of the organizations operations.
- Do create due diligence procedures to follow for mergers, joint ventures, or consultants/agents.
- Do involve personnel from operations when writing policies and procedures to ensure that the policies and procedures can be implemented.
- Do appoint a person(s) to be in charge of the compliance program and create a clear channel for reporting any issues outside an employee's usual reporting requirements.
- Do conduct periodic assessments to gauge whether the compliance program works as intended and make necessary refinements.
- Do make use of available metrics to confirm that hotlines and other key compliance features are operational and effective.
- Do continue training and education in order to convey the commitment to compliance and ensure that personnel know their responsibility for doing the right thing.
- Do understand enforcement authorities' perspectives on effective compliance and gear the program to meeting those expectations.
- Do reward employees who bring forward concerns or reports of non-compliant business practices.
- Do know the value of self-disclosures of potential violations as part of a functioning compliance program.
- Do impose meaningful and consistent discipline for conduct that violates the company code of conduct and ethical standards.
- Do ensure there is adequate board of directors, committee and other oversight of the compliance program.
- Do make needed improvements to the compliance program based on uncovered problems, risk analysis and evolving guidance and best practices.
- Do reviews that will generate employee feedback on the compliance culture and program.

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Don'ts

- Don't ignore the lessons represented by cases in which compliance requirements were imposed together with a monitor and other onerous settlement terms due to the absence of an effective program.
- Don't fail to provide adequate resources and support to compliance officers and others responsible for overseeing the compliance program.
- Don't talk the talk without walking the walk--ensure that the directors and all levels of management send out a clear message that the organization is committed to ethical and lawful conduct.
- Don't adopt policies or procedures with which the organization is unable to comply.
- Don't assume that one set of standard policies and procedures will be effective for all operations or locations.
- Don't assume that all locations or operations are implementing or following the policies and procedures identically or at all.
- Don't put the compliance program on a shelf and then operate in disregard of stated operational requirements.
- Don't end compliance and ethics training, education and communication at new hire orientation.
- Don't neglect to establish compliance committees and other mechanisms necessary to ensure the compliance culture is supported.
- Don't ignore the critical value of ongoing risk assessments allowing for tailored compliance program response.
- Don't fail to refine and upgrade compliance policies and procedures.
- Don't disregard compliance and ethics in performance reviews and compensation decisions.

- Don't allow your organization to have corporate compliance and ethics requirements dictated under enforcement settlement terms or run the risk of an appointed monitor to oversee the compliance process.

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The LLB&L practice attorneys assist clients across the country with advice and guidance relating to the development and operation of corporate compliance and ethics programs as part of a strategic plan to reduce risk of exposure to enforcement risk. The LLB&L practice group members are experienced and provide practical counsel and insights respecting enforcement authorities' perspectives on effective compliance, voluntary disclosures and related subjects. LLB&L attorneys also represent and defend corporate organizations and executives in enforcement actions.

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