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Educational Article

The Feds are Looking: What Compliance Needs to Know About the Justice Department's Review Business

Chuck Gallagher

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"The Feds are Looking: What Compliance Needs to Know About the Justice Department's Review Business"

By: Chuck Gallagher

You're driving down the road using Waze as your GPS guide and you hear, "Police reported ahead." What do you do? I've asked that question at a number of conferences recently and everyone says unanimously – "Slow down!"

Attorney General Merrick Garland has made it clear in recent speeches and that the Department of Justice is coming for white collar crime in business. Organizations that have had prior ethics and fraud convictions will be at the top of their list to reexamine. In fact, just in one market segment criminal charges were filed against 36 defendants in 13 federal districts across the United States for more than \$1.2 billion in alleged fraudulent telemedicine, cardiovascular and cancer genetic testing, and durable medical equipment (DME) schemes.

"The Department of Justice is committed to prosecuting people who abuse our business system and environment."

It's time to re- evaluate where we've been, what we've done and what needs to change, because we just heard – "Police reported ahead!"

Now let's be clear, most organizations, including associations, don't voluntarily choose to make unethical (or illegal) choices. In fact, it's been said, "We're all ethical, till we're not." Cynical...maybe not. If I asked, "How many of you would voluntarily make an unethical choice," few people would raise their hands. Follow that question with, "How many of you think voluntarily breaking the law is unethical," the hands start to go up. But here's the kicker...if I asked, "How many of you drive on the highways and exceed the speed limit," all hands would go up!

What? That's right, it's easy to make unethical choices when those choices seem to be socially acceptable. It happens every day and considering that we all have experienced something that is unprecedented – a global pandemic – the norms of operation have changed and so have our habits. In fact, we are in the trifecta of times when all three reasons people may stray off the "straight and narrow" are in play – Financial Challenges; Relationship Challenges and Health Challenges.

Here's the problem, it's all too easy to continue doing what's been done in the past saying, "Well, everybody does it," assuming that is a defense. If there's one thing that's clear, the current administration is tired of lax application of well-known rules. And they are actively looking...so the question most organizations, especially the compliance departments need to ask is – "what are we doing to shore up our employee's behavior so that we don't fall victim to the active approach the Justice Department is taking?"

Let me pose this question to you - what makes smart, well-educated, well-intentioned people make unethical choices? Let me be clear unethical actions don't start big. It's one step on a slippery slope that leads to another and before one knows it, you're on a black diamond slope headed for a disaster. It all can be prevented.

Let me give you an example. A Fortune 50 business had a salesperson who dominated his territory. He was so good that it was hard for other competitors to make any headway. He knew the rules, but to him they were just guidelines – kind of like the speed limit. So, rules be damned. He routinely provided lunches to corporate client staff, bought small gifts for birthdays or holidays, and was known to pick up the tab for office items – "just to help the operation," he'd say. This was just how it was done. As he put it, "Everybody does it."

To be clear the competitors were beside themselves. What was being done was outside of the guidelines and wrong, but it was hard to convince the salespeople from other firms to be compliant

when their sales suffered at the hands of a player that played loose with the rules – or ignored them.

Enter the Justice Department announcing – “Police reported ahead.” His company recognized that while his sales were outstanding, he was a liability. Their choice, keep a successful salesperson that ignored the rules and risk the fury of the Justice Department or let him go. Better to cut someone who breaks the rules and say, “We’re solving an internal compliance problem,” than to have a full-blown audit of all company compliance activities.

So, let’s cut to the chase. The US Sentencing Guidelines (the rules used to sentence folks to prison) say in summary: To have an effective compliance and ethics program, an organization shall— (1) exercise due diligence to prevent and detect criminal conduct; and (2) otherwise promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law.

Most programs of compliance and ethics fail both tests. It’s time to re-think, re-imagine and re-invent how we communicate our ethics training and do it in a way that is not “check the box” boring! Taking it a step further, here’s a question to ponder. Is it time to remind your members about the importance of ethics in a way that is engaging and connects the dots between behavior and consequences?

There has never been greater legal focus on the ethics crisis facing associations and organizations than now! Why? What has changed over the past decades that created the environment for such amazingly poor behavior? What real pressures are people facing that make them feel backed into a corner? The pressures will not get easier.

“Police reported ahead!” You’ve been warned. It’s time to take action to demonstrate that you care about ethics, preventing and detecting criminal conduct and encouraging a culture of ethical compliance with the law. Failure to do so...we’ll let’s say I’d hate to see someone in an orange jumpsuit.

Chuck Gallagher, CSP (Certified Speaking Professional) is the President of the Ethics Resource Group – an organization that provides keynotes, breakout sessions and consulting to organizations regarding ethics and compliance – including ethics reviews and guideline creation that meets US Guidelines for criminal protection. He can be reached at chuck@chuckgallagher.com or 1-828-244-1400 for more information.

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