



WHITE PAPER SERIES

A Naked Manager with Only “SOX” is Still Naked: *The proper scope of ethics training in a post-Sarbanes world*

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So you want “SOX” training for all of your managers? Not so fast. While all managers should get ethics training, Sarbanes-Oxley (SOX) is only part of a general business ethics course. This article discusses the proper scope of general ethics training in a post-Sarbanes environment.

Training Required by SOX

SOX is primarily an accounting law. Its primary goal is to assure that public corporations have proper financial controls in place so that financial statements and disclosures are accurate. SOX itself doesn't mandate training. However, the Federal Sentencing Guidelines work in conjunction with SOX. The Guidelines describe what criminal penalties a judge should impose for violation of SOX and numerous other federal laws. The Guidelines also provide for reduced fines and decreased jail time if the company has effective compliance and ethics training. Effective training compliance includes periodic review of the program's effectiveness, and consistent enforcement through appropriate incentives and discipline, in addition to training.

Because SOX focuses primarily on regulating accounting practices and processes, its focus is on establishing correct auditing and internal controls. By now, most large publicly traded corporations have these processes and procedures in place.

Once the proper accounting procedures and practices are in place, it is essential that those involved in creating these financial numbers – from the sales organization all the way to the executive team – are trained. This is all the more important since most of the scandals that led to the creation of SOX occurred in the area of revenue recognition (more specifically overstating revenue). This type of training is best conducted by internal personnel who understand both the specific statutory requirements and have an active day-to-day role in implementing and monitoring how the employer treats revenue recognition and other SOX-related issues. Those NOT involved in sales or accounting may have very little need to know the intricacies of accounting and revenue recognition. Sending all managers through the same “SOX” training is unnecessary and potentially counter-productive. Such general training could end up being far too much for those who have nothing to do with the revenue side of the business and far too little for those who do.

So what type of ethics training do all managers need?

There are aspects of SOX that have nothing to do with accounting and apply to all employees at all corporations – public, private and even non-profits. Specifically, SOX makes it a federal crime to:

1. retaliate against individuals who provide information to the government or the company about a federal offense; or
2. destroy, alter or falsify documents that are part of a federal investigation.

Of course, “retaliation” and “document destruction” were already illegal under a variety of other state and/or federal statutes. SOX and the Federal Sentencing Guidelines now provide very stiff penalties for such conduct. The Sentencing Guidelines also require companies to establish an anonymous reporting mechanism so that employees can report or seek guidance regarding possibly unethical or criminal conduct without fear of retaliation.

All employees, regardless of their roles in the corporation, must receive ethics training that covers these aspects of SOX. All employees should be made aware of an organization’s reporting system -- and managers must be taught how to respond to complaints. All employees must be told about proper document retention and controls. The requirement to speak truthfully to government investigators, auditors, and the penalties for failure to do so, must be known by all employees regardless of their job duties or titles.

Other important ethics topics

In addition to SOX, there are other important legal requirements that govern day-to-day business life that all employees should know. Many of these laws are reflected in organizational “Codes of Conduct.” Unfortunately, our experience is that these codes are often distributed, but rarely read; and even if read, are often not understood by employees. But if your company gets involved in a lawsuit, you can bet the other side’s attorney will read your Code of Conduct and look for areas where your employees fell short.

Some of the more important topics that all employees and managers need to know about include business practices related to:

- ◆ market integrity (especially insider trading),
- ◆ proprietary information,
- ◆ conflicts of interest,
- ◆ gifts and entertainment,
- ◆ antitrust and other prohibited anti-competitive practices.

Also, in this increasingly global economy, employees should have a basic understanding of:

- ◆ export control laws,
- ◆ foreign corrupt practices act, and
- ◆ restrictions relating to boycotts.

Some of these topics may not be as “in the news” as SOX, but as seen in the table below, failure to comply with these laws can be equally devastating to companies and employees.

Law	Prison Time	Corporate Fines	Personal Fines
Sarbanes-Oxley	20 years	no limit	no limit
Inside Trading	10 years	n/a	\$1 million +
Industrial Espionage	10 or 15 years	\$10 million	\$500,000
Antitrust	10 years	\$100 million +	\$1 million
Export Control	10 years	\$1 million	\$250,000
Foreign Corrupt Practices	5 years	\$2 million	\$100,000
Boycotts	10 years	\$1 million +	\$250,000

Compliance with these laws is often not a matter of common sense. Some of the laws are counter-intuitive. That’s why it’s important to train all managers in the do’s and don’ts of these laws. Not only will training help prevent violations, but if violations do occur, a well-established training compliance program can help show the company’s good faith and potentially reduce corporate liability.

Under the Federal Sentencing Guidelines, a company that can demonstrate it has an "effective compliance program" to prevent and detect violations of

these laws can mitigate the potential fines, in some instances up to 95%. Such a program is also likely to result in mitigation of fines and penalties in civil actions brought by the Securities and Exchange Commission and other regulators.

Conclusion

In this day and age, all employees should have general ethics training that communicates an employer's general values on how to do business right. A part of this training should include the general provisions of Sarbanes-Oxley that relate to all employees. Beyond that, SOX training on accounting, revenue recognition, and other technical requirements should be tailored to employees' job duties and responsibilities.

General ethics training should go well beyond SOX and touch upon other topics such as insider trading, export control, and antitrust. After all, a manager with only SOX is still, well...naked.

About The Author

Jonathan Levy is CEO of Fair Measures, Inc., a legal management training company. Fair Measures, Inc. has a variety of legal training programs for managers, including an ethics program titled "Managing Ethically: *Corporate Compliance Laws*." For more information about these programs, please contact Jo-Ann Birch, COO, at 800-458-2778 or visit our website at www.FairMeasures.com.

Resources

Federal Sentencing Guidelines: www.ussc.gov/GUIDELIN.HTM

Sarbanes-Oxley:

<http://news.findlaw.com/hdocs/docs/gwbush/sarbanesoxley072302.pdf>

<http://www.sarbanes-oxley.com/>

Export Control Laws & Cases: www.bis.doc.gov