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Enforcing An Ethical Line Against Bribery

By Patricia Harned, *Compliance Week Guest Columnist* — March 6, 2007

In February 2007, health products giant Johnson & Johnson disclosed that some of its foreign units might have made improper payments related to the sale of medical devices. By voluntarily disclosing the information to the Justice Department and the Securities and Exchange Commission, pledging full cooperation with the agency investigations, and accepting the early retirement of the executive responsible for the business units involved, the company may face lighter penalties and limit damage to its reputation. And that's the good news.

The bad news is that even a company with a longstanding reputation for ethical conduct and responsible behavior can get mixed up in the bribery and corruption maze. Because of its reputation and strong response, Johnson & Johnson may be able to weather this storm. And that should serve as a reminder to every organization involved in international commerce that, along with legal, financial and societal considerations, ethical culture counts.

Addressing the risks associated with foreign activities is certainly not new territory for most multinational organizations. There are many resources that discuss the legal, financial, and societal ramifications of corruption and bribery. But there is another dimension that is often overlooked: the risks of corrupt behavior on an organization's ethical culture.

First, it is clear that engaging in corrupt behavior can lead to:

Inconsistent messages. When company leadership promotes integrity as one of its values but also condones making improper payments as a necessity of doing business, it effectively tells its employees to ignore ethics when advantageous to do so. Likewise, a policy that prohibits providing or accepting gifts that could be perceived as attempts to influence business loses its effectiveness if the company also allows facilitation payments that "grease the wheels" of foreign trade. Employees given these mixed messages will be confused at best if faced with a bribery request or attempt.

A culture of cheating. When staff is instructed to misrepresent bribes and improper payments to avoid anti-corruption laws such as the Foreign Corrupt Practices Act, they learn how to keep secret accounts and bend the law. Furthermore, believing that management engages in unethical behavior will erode staff loyalty. Employees will start to question why they need to adhere to high ethical standards within the company, when the company itself does not adhere to those same standards externally.

ABOUT THE AUTHOR

Patricia Harned has been president of the Ethics Resource Center since May 2004, serving in a variety of research and executive positions there since 1999. In those years she has led ERC to develop research and benchmarks that measure organizational ethics and compliance program effectiveness.

Harned has also helped shape ethics training for the securities industry, commented on the ethical dimensions of regulatory efforts by both the SEC and the U.S. Federal Sentencing Commission, and testified before Congress on federal legislation. She is the primary author of the 2005 National Business Ethics Survey, has written several book chapters on corporate ethics, character development and ethics education, and serves on the editorial board of *Public Integrity Journal*.

Harned welcomes specific questions from readers on ethical dilemmas they encounter; when appropriate, she will try to address them in future columns. She can be reached via email at Pat@ethics.org.

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Management ineffectiveness. Managers who expose the organization to criminal or civil sanctions through bribes and improper payments lose their ability to positively influence the behavior of their employees. Additionally, if the company fears civil and criminal sanctions, management will spend its time hiding or defending the behavior, instead of engaging in the true business of the company.

Damage to company reputation. Corruption and bribery can substantially damage an organization's public image and reputation. In today's global environment, and with a multitude of organizations playing watchdog and enforcing high standards, tired arguments that "everyone else does it" or "this is the way it's done around here" no longer hold water. In fact, new research suggests that some multinationals are largely to blame for increased corruption in the public sector and harm to communities in developing economies.

Loss of financial support. A company that develops a reputation for bribing officials will eventually be seen as untrustworthy by many sources of funding, including international lending institutions and potential investors, especially given the rise of socially responsible investment funds. Conversely, an organization that refuses to engage in corrupt behaviors, even when others do, demonstrates to investors and partners that it can be trusted to act honestly in other areas, such as financial and shareholder reports.

Unpredictable budgets. Bribery costs can be large or small, but they are often recurring, since companies that pay bribes usually are asked to pay more, and larger, bribes. Bribes don't often show up in a budget but end up increasing the cost of a project or resulting in cuts elsewhere that might impact quality—or employee pay or benefits. Along with creating personal dissatisfaction, this may encourage employees to ignore budgets or produce lower-quality products in anticipation of losing funds to bribes and improper payments.

Security risks. Companies that pay bribes under the table expose themselves and their employees to the risk of blackmail and extortion. Employees who feel their managers knowingly and willfully put their personal security at risk will not remain loyal for long.

Lost sense of fairness. Research suggests that employees' perceptions of fairness have a critical impact on the success of an ethics program. Employees who get reprimanded for actions that they feel others "get away with" will become less trusting and loyal. This may result in high turnover or increased misconduct.

How To Improve The Culture

Along with enforcing the law and operating with integrity and transparency, an organization might take the following steps to protect its ethical culture.

Include anti-corruption language in the ethics code. Make it clear that corruption and bribery are not just legal and financial concerns but matters of ethics and integrity. Make use of the code to substantiate the prohibition against bribes. For instance, most ethics codes thoroughly cover conflicts of interest—and allowing a bribed official to obtain personal gain at the expense of the greater good is a really big conflict.

Educate employees. Provide ample opportunity for employees to ask questions about what is proper and improper. If you do business in a country or region where corruption abounds, plan ahead and discuss with employees how to prevent problems rather than waiting until they come face to face with a bribe.

Establish a corruption reporting mechanism. At the very least, employees should be encouraged

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and feel comfortable reporting FCPA violations through a company hotline. For employees engaged regularly in international business, consider establishing a separate FCPA help-line that is familiar with the law in all countries where the company does business.

Mandate accountability for all expenses. Create a system of internal controls, promote accurate recordkeeping and hold all employees accountable to the same standards. If facilitation payments are approved and made, record them as such.

Demand integrity from employees, customers and contractors. Create an atmosphere where all individuals are truthful with their colleagues, customers and others associated with your company. Insist on full and transparent disclosure of all misconduct and known areas of risk.

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