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Ethics & Compliance Initiative®

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ABOUT THE ETHICS & COMPLIANCE INITIATIVE

The Ethics & Compliance Initiative (ECI) empowers organizations to build and sustain High Quality Ethics & Compliance Programs (HQP®). ECI provides leading ethics and compliance research and best practices, networking opportunities and certification to its membership.
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*The views expressed in this report reflect the views of the members of the Working Group and do not necessarily reflect the views of the Working Group’s respective organizations.*
INTRODUCTION & BACKGROUND

The purpose of this Best Practice Paper is to provide Ethics & Compliance Initiative (ECI) member organizations with information that will support their efforts to build, support and sustain a respectful workplace.

In February 2018, ECI formed a benchmarking group to review best practices around building respectful workplaces. Civility and respect in the workplace are fundamental to effective ethical cultures in organizations and are common leading indicators for whether there may be larger issues of concern. As such, the Respectful Workplace Benchmarking Group has focused on outlining the areas of concern and the steps that companies can take to prevent the deterioration of civility and respect in the workplace. In particular the Benchmarking Group focused on how to address “bullying” behavior and/or harassment, preparing managers and employees to deal with these issues effectively when they arise, and ensuring that issues are appropriately addressed when they are identified with practical strategies to nurture respect, dialogue and civility in the context of ethics and compliance.

Why Is This So Important?

Respectful workplaces are the foundation that effective organizational cultures are built on to ensure that improper conduct does not occur or, if it does, that it is appropriately identified and addressed. Failure by companies to address concerns about civility and respect in the workplace undermines the success and effectiveness of ethics and compliance programs and can ultimately discourage employees from engaging with the programs to raise issues.

METHODOLOGY

Over a period of 9 months, from February 2018 through November 2018, the ECI benchmarking group conducted its review of actions that organizations can take to build, support and sustain a respectful workplace. The group collected information about the key areas of concern, as well as steps that companies have taken in response. The benchmarking group used this information to compile best practices to support respectful workplaces.

Methods of information gathering included:

- **Conference Calls:** The ECI benchmarking group held monthly conference calls. Groups members shared their perspective on the primary areas of concern and shared their experiences. Conference call participants shared success stories, challenges, and lessons learned.

- **Benchmarking Surveys:** The ECI benchmarking group used pulse surveys distributed to the ECI member community to solicit additional information on what the member community is doing in their respective organizations to address this concern. The pulse surveys were distributed by email and completed by 24 member organizations.

This report is organized into two sections – the first focusing on several common issues related to civility in the workplace, specifically bullying, retaliation and harassment, and the second presenting recommendations on what organizations can do to support a respectful workplace given these concerns.
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When considering how to build and support a respectful workplace, it is critical to understand and anticipate the common issues that can undermine that goal. Although disrespectful or uncivil conduct can take many forms, three of the most relevant ones currently are bullying, retaliation and harassment. Considering these issues can help inform what organizations can do to promote appropriate conduct.

1. ADDRESSING HARASSMENT AND “BULLYING?”

It’s hard to discuss building and supporting a respectful workplace today, without touching on concerns about sexual harassment in the workplace. However, bullying in the workplace is also a concerning behavior although much less defined and understood.

Sexual harassment is an area that has been the subject of intense scrutiny since the #MeToo movement began in October 2017. However, from an organizational standpoint, the effectiveness of sexual harassment prevention programs and, in particular, training has been challenged as more and more senior leaders have been accused of misconduct. It is clear that organizations of all shapes, sizes and business areas have struggled with how to respond and address these concerns. Similarly, bullying is often considered a grey area, which can make it difficult to define. Because it is difficult to define, policies or codes of conduct that define and describe behaviors that are unacceptable in the workplace provide valuable help for employees to recognize bullying and support for employees to report it when it occurs.

So what can companies do to address these issues in the context of a respectful workplace?

According to the survey respondents, the most common practices that have been effective at mitigating the risk and/or occurrence of sexual harassment and bullying, or encouraging the reporting of these incidents when they occur, are:

- Clearly defined ownership and roles/responsibilities between Legal, Compliance and HR on this issue.
- Training for employees that clearly identifies acceptable and unacceptable behavior, as well as how to report concerns confidentially and/or anonymously.
- Effective and conspicuous resources, like an internal/external helpline, to facilitate confidential and/or anonymous reporting.
- Consistent discipline when an investigation reveals misconduct, regardless of the level of the person involved.
- Dedicated reporting to management and/or the board of directors breaking out sexual harassment data from overall helpline metrics.
• Periodic organizational surveys and/or exit interviews to help identify business areas and/or managers of concern.

Some additional findings of note include:

• 92% of the survey respondents indicated that all employees (hourly and salaried) received sexual harassment prevention training in their organizations, with 50% of the respondents identifying that the training occurred annually, and another 19% stating it occurred every other year.

• 76% of the respondents said that “communications to all employees from the CEO or other senior leader regarding the organization’s commitment to respectful treatment of all employees” was the most effective messaging on this issue, followed by ongoing internal communications, including short videos, and communications about how to report sexual harassment concerns via the helpline or other channels (e.g., via plasma screens, posters, etc.).

“• The Workplace Bullying Institute defines bullying as “repeated, health-harming mistreatment of one or more persons (the targets) by one or more perpetrators.”

Although there does not appear to be a clear consensus, respondents to the survey also recommended considering new approaches, such as (i) using a discussion format for training as opposed to a lecture approach, (ii) conducting a post investigation follow-up with the key parties to determine whether a complainant in a sexual harassment case has experienced retaliation for raising the concern or participating in the investigation, and/or (iii) encouraging bystander intervention by incorporating bystander engagement in their training and by adopting a bystander policy.

While there is no legal definition of bullying, organizations focused on preventing bullying through research and education provide definitions that can inform appropriate policy language. For example, The Workplace Bullying Institute defines bullying as “repeated, health-harming mistreatment of one or more persons (the targets) by one or more perpetrators. It is abusive conduct that is:

• Threatening, humiliating, or intimidating, or
• Work interference — sabotage — which prevents work from getting done, or
• Verbal abuse

The Society for Human Resource Management (“SHRM”) defines bullying as unwelcome behavior that occurs over a period of time and is meant to harm someone who feels powerless to respond. It can include teasing, humiliating, spreading rumors, taunting, making insulting or offensive remarks, shouting

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1 http://www.workplacebullying.org/
or yelling, threatening to cause physical harm, or spreading rumors or gossip. A survey of ECI members on this topic identified additional definitions, including:

- Controlling another employee through coercion
- Offensive behaviors that are threatening, humiliating or intimidating
- Threatening an employee with harmful consequences
- Enlisting other employees to harass an employee
- Spreading malicious rumors, gossip or innuendo that is not true
- Creating an offensive, intimidating, humiliating or hostile work environment that unreasonably interferes with another person’s work or performance
- Repetitive, unwanted aggression, occurring in the context of a power imbalance, ultimately leading to fear

Bullying, like harassment, disrupts the work environment, impacts employee performance and morale, and has a negative impact on the culture of an organization. Targets of bullying can experience psychological and physical ailments as a result of the continued stress related to bullying.

What are the challenges in addressing harassment and bullying in the workplace?

Harassment and bullying in the workplace has the potential to create stress-related physical harm as well as psychological harm for employees who are impacted by the behaviors. As a result, employers may experience a loss of employee productivity and morale – not just in the employee who is on the receiving end of the behavior but also with other employees who directly witness the conduct or even learn about it second hand. This should be a critical concern for organizations because harassment and bullying is not a local issue. It is viewed as a national problem - 19% of Americans have suffered abusive conduct at work and another 19% have witnessed it. It can be challenging for organizations to address this concern though due to the following inter-related factors:

- **How to define it.** Despite the impact to workplace culture, some employers find it difficult to address bullying behaviors when they are not tied to a protected category like gender, race or ethnicity. And while employers seek to create respectful workplaces with policies that prohibit harassment, a survey of ECI members found that most companies do not specifically define bullying behavior separately from harassment.

- **How to identify it.** In the absence of a clear definition it can be challenging for those who manage others to identify inappropriate behaviors or for employees to understand what is or is not acceptable conduct. Failure to define inappropriate behaviors creates additional challenges in the workplace, either due to employees associating coaching received for performance-related

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3 EBI - A Closer look: Workplace Bullying vs. Harassment
4 EBI - A Closer look: Workplace Bullying vs. Harassment
5 2017 Workplace Bullying Institute US Workplace Bullying Survey
6 ECI Survey Reference
concerns as bullying, or due to employees not understanding that their actions or words towards others could be perceived as inappropriate or bullying.

- **How to address it.** Another challenge in addressing these behaviors in the workplace is encouraging employees to report it. The very nature of this conduct creates fear of reprisal or retaliation – particularly if a manager or immediate coworker is the individual behaving inappropriately. Many employees may feel that escalating these types of concerns will create a conflict of interest in that the employer will be forced to “take sides” between two employees. Similarly, if an organization tolerates this behavior, whether intentionally or unintentionally, employees may believe that their only option is to “go along to get along.”

> Harassment and bullying in the workplace has the potential to create stress-related physical harm as well as psychological harm for employees who are impacted by the behaviors.

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7 ECI Survey Reference
What should organizations do in response?

As with any form of misconduct, harassment and bullying should be addressed promptly to mitigate the long-term effects on employee morale and productivity. ECI members who responded to our survey noted several approaches to detect and prevent this conduct, including:

- Educating employees on behaviors that would be considered harassment and/or bullying - as well as behaviors that are not a concern - through training and awareness campaigns
- Having a stand-alone Bullying in the Workplace policy or including the bullying component in an existing corporate policy i.e. Harassment policy
- Providing resources (posters, emails, training, digital communications) that explain how employees can raise concerns about bullying
- Defining investigation protocols for addressing reports of bullying
- Proactively training employees on resolving interpersonal conflicts
- Proactively training managers on how to identify and respond to reports of bullying.
- Reinforcing the Company non-retaliation policy and the consequences of violating the policy

Furthermore, there appears to be a trend towards defining bullying and addressing workplace civility that may provide more support for employers who wish to be more proscriptive in defining respect in the workplace. The National Labor Relations Board (“NLRB”) recently approved workplace rules that promote “harmonious interactions and relationships” as categorically lawful. The ruling points to a desire to promote civility in the workplace, define bullying behavior and address it through clearly stated policies with repercussions for engaging in bullying.

Similarly, 29 states have introduced legislation known as the Healthy Workplace Bill. Although currently this legislation has not passed in any state, the bill looks to precisely define an “abusive work environment” and among other things allow an employee to sue the bully as an individual and hold the employer accountable for fostering an abusive work environment. The level of interest by states in introducing the legislation, along with the recent Boeing matter, underscores an opportunity to proactively address bullying through policies and training in advance of potential legislation.

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8 ECI member survey
9 The Boeing Co., 365 NLRB No. 154 (2017)
10 http://www.workplacebullying.org/
2. RETALIATION & PROMOTING A “SPEAK-UP” CULTURE

As noted above, the fear of retaliation is one of the primary reasons why employees fail to report observed misconduct. However, when employees are comfortable speaking up, organizations can experience an increased focus on accountability and product quality over individual reputation, a greater sense of trust and purpose, which in turn fosters a problem-solving culture; driving innovation, performance, and risk mitigation.

So what is retaliation?

Generally speaking retaliation occurs when a person or organization takes an adverse action against another individual because s/he engaged in legally protected activity, such as complaining about, a workplace issue, testifying, or participating in any way in an investigation, proceeding, or lawsuit, regarding: suspected unlawful harassment or discrimination; violation of laws, rules, or regulations; mismanagement or gross waste of funds; abuse of authority; or a substantial and specific danger to public health and safety. The most common forms of adverse actions that employees routinely experience are:

- Exclusion from decisions and work activities (64%)
- Given cold shoulder (62%)
- Verbal abuse by supervisor (62%)
- Verbal abuse by co-workers (51%)
- Harassment (31%)
- Demotion (32%)
- Cut in ours or pay (46%)
- Almost lost job (56%)

Source: Government Accountability Project (GAP) web site, 2013.
What are the challenges in addressing retaliation in the workplace?

This working group identified the following challenges to fostering a speak-up culture in the workplace.

- **Environment/culture/trust.** A work environment or culture that lacks trust in its management is less likely to feel comfortable raising issues and concerns both out of a fear of retaliation and lack of confidence that anything will be done in response.

- **Tone at the top.** Lack of a strong tone at the top that sets an expectation of open and honest communications, trust and integrity, and ethical behavior leads to employees not feeling comfortable raising issues and concerns both out of a fear of retaliation and lack of confidence that anything will be done in response. It may also lead to managers who don’t encourage or worse retaliate against employees who speak up.

- **Absence of non-retaliation and/or speak-up policies.** A lack of formal policies that prohibit retaliation against individuals for engaging in protected activity, or do not encourage individuals to raise good faith concerns of unlawful conduct lead to employees’ reluctance to raise issues and concerns out of a fear of retaliation, lack of understanding how and where to raise them, and lack of confidence that anything will be done in response. It may also lead to managers who don’t encourage or worse retaliate against employees who speak up.

- **Communication of policies and expectations related to retaliation.** A lack of formal training or communications regarding the organization’s non-retaliation and/or speak-up policies, including where and how to raise issues or concerns of unlawful conduct may lead employees to feel uncomfortable raising issues and concerns both out of a fear of retaliation and lack of knowledge of where to raise them. It may also lead to managers who don’t encourage or worse retaliate against employees who speak up.

- **Failure to follow up with individuals who raised concerns to acknowledge concern and/or to determine if there have been reprisals.** A failure to timely acknowledge concerns raised by individuals, whether anonymously or with attribution, creates a sense that the concern will not be acted on internally. A failure to check in with the reporter after the concern has been closed out to determine whether retaliation has occurred creates sense that non-retaliation policies are not meaningful.

- **Lack of management training on how to receive difficult communications/differing professional opinions/contrary views.** Creates opportunity for retaliatory treatment and failure to timely escalate or mishandle issues for proper investigation and disposition.

- **Leader-subordinate cases of retaliation are typical; however, peer-to-peer retaliation is often more feared and more likely to occur, but is harder to monitor and detect.** Creates risk that prevalent form of retaliation is not considered or properly addressed, leading to silent minority of employees who are reluctant to raise issues or concerns for reasons unrelated to management.
Unsurprisingly, the best practices that the ECI Benchmarking Group identified for supporting a respectful workplace are many of the same that are routinely discussed as hallmarks of an effective ethics and compliance program. These include:

1. STRONG CODE AND POLICY GOVERNANCE

Although more than 80% of the respondents who participated in the Benchmarking Group’s Pulse Survey stated that they address bullying through either their Code or corporate policy, almost three-quarters of respondents stated that they do not differentiate bullying from other forms of illegal harassment. This lack of differentiation may mask the severity of bullying or lack of respect in the workplace if the conduct in question doesn’t rise to the level of illegal harassment. As such, employers may consider including a definition of bullying within their codes of conduct or existing respectful workplace or harassment-free workplace policies to clearly identify for employees the scope of behaviors that are prohibited in the workplace. Employers that have adopted such policies are better able to train and communicate on workplace conduct that is not tolerated and address inappropriate behavior when it occurs, even if it does not rise to the level of illegal harassment. Such an approach also provides employers an opportunity to point to specific behaviors that are not in line with the company’s expectations and the consequences associated with such behaviors. Clear definitions and examples of bullying behaviors and/or uncivil conduct allow employers to define what is or is not acceptable, so that employees are clear that such things as performance discussions or conversations on work deliverables do not constitute bullying or incivility in the workplace. Organizations can also conduct ethical culture surveys, or partner with Human Resource functions to add questions to an existing engagement survey, to understand how employees are perceiving their workplace culture and identify areas of concern, gaps in policy, etc.

2. EFFECTIVE TRAINING FOR MANAGERS AND EMPLOYEES

It is recommended that organizations take the time to train their staff on what is or is not appropriate, how to respond to issues when they arise, and what they should do if someone raises a concern to them. Many companies ask employees to work with their managers first when they encounter misconduct in the workplace. For that to be effective organizations need to make sure that managers are equipped to identify when a situation requires involvement from HR to ensure it is managed appropriately. This training should also include guidance on how to coach for performance concerns and the steps to take to avoid the misperception that performance management conversations are bullying.
Similarly, organizations should also train employees to recognize inappropriate behavior – whether that be generally disrespectful conduct, bullying, or harassment – and provide guidance on who employees can go to in order to raise such concerns confidentially and/or anonymously. Organizations should also consider including training on resolving interpersonal conflicts, to empower employees to work together to sustain a respectful workplace. Such activities can use additional educational awareness campaigns, such as internal communications, posters, team meetings, etc. to educate on behaviors that would constitute inappropriate conduct, the consequences of inappropriate conduct in the workplace and the need for employees to call out behaviors that are not in line with the values or policies of the company. Additionally, some of the messaging can be more personal, examples of what some employees or leaders have experienced both inside and outside of the Company, along with specific examples of the actions that Company has taken, the importance of the topic to the Company and the business benefits of making sure that bullying in the workplace is addressed.

Of the organizations in the pulse survey that conducted training:

- 22 of 25 conducted training on encouraging employees to speak up
- 22 of 24 conducted training on how to report or escalate ethics and compliance allegations and concerns, and on the organization’s non-retaliation policy
- 17 of 24 conducted training on the overall reporting and investigation process
- 20 of 24 trained all employees (salaried & hourly), 3 of 24 trained only salaried employees, and 1 trained only mid-level management
- 15 of 24 conducted training annually, 1 conducted it every 6 months, and the rest of the respondents conducted training every other year or at longer intervals

"Organizations should consider affirmatively following up with the reporting individual within a certain amount of time to inquire whether they have experienced any form of retaliation but may also monitor the treatment of the reporting individual to ensure there is no change in performance evaluation or job status that might be in retaliation for the complaint being raised."

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11 ECI member survey
12 http://www.workplacebullying.org/
3. FORMAL MECHANISMS AND PROCESS TO REVIEW AND ADDRESS COMPLAINTS IN A TIMELY MANNER

Organizations need to be prepared to receive and act upon complaints as they arise. That involves having some form of an ethics and compliance helpline through which employees, managers, or even third-parties can raise questions or concerns confidentially and/or anonymously. However, receiving the complaint is only the beginning, organizations should have a formal investigative process which defines roles, responsibilities, and recordkeeping practices to promptly investigate issues or concerns raised about alleged inappropriate or unlawful conduct. As part of that process, the investigations function should reach out to employees, managers or third-parties who raise allegations as soon as possible. The investigation itself should be conducted objectively and, ideally, in a confidential manner to address fears of retaliation. If an allegation is substantiated, discipline should be implemented timely and in a consistent manner regardless of role or level. Organizations should consider affirmatively following up with the reporting individual within a certain amount of time to inquire whether they have experienced any form of retaliation but may also monitor the treatment of the reporting individual to ensure there is no change in performance evaluation or job status that might be in retaliation for the complaint being raised. Organizations may also consider creating a process to determine whether an employee facing involuntary termination has reported misconduct or been a witness in an investigation of alleged misconduct for the same reason.
CONCLUSION

Respectful workplaces are the foundation that effective organizational cultures are built on and are fundamental to the success and effectiveness of ethics and compliance programs. The prevalence of disrespectful and/or uncivil conduct in the workplace should serve as the “canary in the coal mine” for companies – if organizations see this behavior occurring with regularity then they should be worried about potentially larger areas of concern.

As more companies focus on the steps that can be taken to build and maintain a respectful workplace, we hope that the best practices we have identified will serve as a useful guide to Ethics and Compliance professionals. Conveniently, the recommendations identified by the Working Group should be familiar as they are common pillars of effective and compliance programs.