A Corporate Compliance Framework for Sexual Misconduct Prevention

Sexual misconduct is a significant enterprise risk. Reports of the downfall of corporate leaders who have been accused of, or admitted to, sexual misconduct are all too prevalent. Such misconduct leaves in its wake not only damage to the reputations of the accused, but a corresponding downfall in their company’s share price and reputation.

Because of the reputational and economic damage to organizations wrought by sexual misconduct, its prevention should be central to an effective corporate compliance program. Chapter 8 of the United States Sentencing Guidelines (“USSG”) is instructive in the development of a sexual misconduct prevention program. Indeed, the seven elements of an effective compliance program delineated therein provide a useful framework for the prevention of sexual misconduct. Set forth below are practical applications of such guidelines that will mitigate the risk of sexual misconduct in your organization.

1. Establish Standards and Procedures

Ensure that employees understand that sexual misconduct will not be tolerated by establishing written policies, standards and procedures that are unequivocal in their message that such behavior is improper. Such documents should clearly define sexual misconduct and provide examples of prohibited behavior. As is the case with other corporate compliance programs, during established intervals, employees should be asked to affirm that they have read and understand the policies, standards and procedures prohibiting sexual misconduct.

2. Charge Chief Compliance Officer with Implementation

Prevention of sexual misconduct should be a charge of your organization’s Chief Compliance Officer (“CCO”) and should be an element of her or his performance. The CCO should identify a compliance champion in each business unit who is a direct report of the CCO and reports to her or him during established intervals on the progress and effectiveness of the program. The Board of Directors should provide oversight of the compliance program and receive reports during established intervals on the progress and effectiveness of the program.

3. Ensure that Chief Compliance Officer and Compliance Champions are above Reproach

Use reasonable efforts to ensure that the CCO and her or his compliance champions have not themselves engaged in sexual misconduct. Reasonable efforts include due diligence on their adherence to the written standards, policies and procedures of the company as well as their history of compliance in prior workplaces. Such individuals are stewards of the sexual misconduct prevention program and should have the credibility to effectively fulfill such a role.

4. Implement through Effective Communication and Training

Communicate the elements of the sexual misconduct prevention program to all employees including those at the highest levels in the organization to ensure that the standards, policies and procedures

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1 https://www.ussc.gov/guidelines
are understood and permeate the culture of the organization. Conduct training programs during regular intervals and disseminate information underscoring the organization’s commitment to the prevention of sexual misconduct. Retain outside facilitators to lead training programs and incorporate sexual misconduct modules in online training programs.

5. **Audit, Evaluate and Facilitate Reporting**

Develop mechanisms to determine whether your sexual misconduct prevention program is being implemented across the organization. Charge compliance champions in each business unit with identifying patterns of behavior that may signal the presence of sexual misconduct. Make course corrections to the program as necessary. Facilitate mechanisms for employees to confidentially report sexual misconduct and to protect them from retaliation. Promptly investigate allegations of sexual misconduct ideally with the support of third party investigators to both ensure neutrality and reduce allegations of bias.

6. **Enforce and Incentivize Compliance**

Promote and enforce consistently throughout the organization incentives to comply with the sexual misconduct prevention program. Make efforts to prevent sexual misconduct a performance measure in the organization’s compensation program. Ensure that appropriate disciplinary measures are imposed consistently at all levels of the organization when sexual misconduct is detected or when employees fail to report its occurrence.

7. **Respond Appropriately to Violations**

Upon discovery of a violation of the sexual misconduct prevention program, take reasonable steps to respond to and prevent such conduct in the future. Make any necessary modifications to the program. Seek input from employees on strategies to improve the program. Communicate the corrective action taken across the organization. Monitor at the executive leadership and board levels the effectiveness of such corrective action and communicate the findings across the organization.

Elevating the prevention of sexual misconduct to the level of other “bet the company” corporate compliance issues, and communicating its importance both by words and actions, will promote a culture of intolerance for sexual misconduct and thereby mitigate reputational and economic risk to your organization.

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