

How to Implement Effective Training: Assessing the DOJ's Guidance on Evaluating Effective Compliance Programs

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In June 2020, the Department of Justice (DOJ) updated its guidance titled “Evaluation of Corporate Compliance Programs.”¹ While the DOJ outlined several important factors for evaluating the effectiveness of corporate compliance programs, this article will focus exclusively on their recommendations related to training and communications.

The DOJ is clear that training is no longer a check the box exercise leaving many companies to rethink their approach. Ultimately, training needs to inform people how to behave and how to apply the company's policies. Much like other elements of the compliance program, training needs to be “risk-based” where employees in higher risk functions receive additional guidance on how to mitigate risk.

As companies look to implement the DOJ's recommendations, it will be helpful to develop a strategic training plan that considers the learning objectives for each course *and* prudently evaluates the delivery format (e.g., live vs. on-demand), instruction format (instructor-led, computer-based, or self-directed), the specific audience, the duration, the frequency, and the language (for global companies).

It is also no longer sufficient to just measure training completion. Now companies need to measure whether the information is retained and subsequently applied. Gathering data on learner knowledge and the long-term understanding of information is no longer a best practice. It is how prosecutors will determine whether training is effective.

Tailored and Targeted

In the new guidance, DOJ is highly skeptical of one size fits all training. Specifically, they recommend training be “tailored to the audience's size, sophistication, or subject matter expertise.” To make training effective, it should also align to the learner's role, focusing on critical topics related to the learner's unique job responsibilities. For example, while many companies traditionally develop different compliance training for field sales professionals than field medical professionals, they should take it a step further. To keep field sales audiences engaged, compliance training should adjust training based on their unique sales roles, such as traditional sales representatives, managed care account managers, nurse educators, reimbursement specialists, or other field-based commercial roles. Scenarios should be customized to their role and feature the unique risks of their position.



Questions Directly Posed by DOJ

Has the company provided tailored training for high-risk and control employees?

Has the training been offered in the form and language appropriate for the audience?

¹Available at: <https://www.justice.gov/criminal-fraud/page/file/937501/download>



To tailor content well, companies should embark on improving the data quality of their user profiles within the learning management system (LMS) or supporting HR data feeds. Curricula then needs to be assigned based on the attributes available, ideally at a very granular level while also narrowing the content to match the role.

The advantage of focus is shorter duration courses. Ideally, this allows companies to reduce overall seat time for learners. Companies should also look to develop training in shorter bursts, covering what is most needed for the specific audience. These quick periodic trainings throughout the year also help reinforce key concepts and enable compliance professionals to continuously engage with the business.



Key Takeaways

Maintain accurate user data within the LMS to define narrow curricula

Create shorter, more frequent role-based training

Ensure training matches the employee's sophistication and language capabilities

Get "Real"

It is important that training reflects real life. While many companies have used scenarios or case studies for years, it is important to make sure these engagements match real challenges faced by front line employees. These should ideally move towards the gray areas of compliance where even compliance professionals may disagree on the correct approach. They need to provide examples of the application of the policy, for instance, providing guidance on how the company wants the learner to respond when facing a difficult dilemma.

Scenarios and case studies are also a great way to impart lessons learned from prior compliance incidents. These can be anonymized based on prior real events at the company (e.g., such as auditing and monitoring findings or investigations) or hypotheticals addressing industry-wide areas of enforcement cases.

Questions Directly Posed by DOJ

Has the company provided training that addresses risks in the area where the misconduct occurred?

What has senior management done to let employees know the company's position concerning misconduct?

Has the training addressed lessons learned from prior compliance incidents?

Effective training also goes hand-in-hand with effective tone at the top. Whenever senior management communicates the importance of compliance, whether at a townhall or via a firm-wide email communication, it should be captured and tracked by Compliance professionals. The compliance department should easily be able to provide examples where senior management has clearly stated that misconduct will not be tolerated.



Key Takeaways

Develop real-world scenarios and case studies that show how to apply the policy

Directly address areas of previously identified misconduct (appropriately anonymized)

Track statements made by senior management about the importance of ethical conduct

Ask Away

When developing the strategy for your training delivery, consider whether the learner may have follow-up questions. If this is likely, deploy the content via smaller, live interactions rather than in large auditoriums or by on-demand content. This may not be practical when given the need to train large numbers of people, so companies should look to embed the contact information of the compliance team and encourage follow-on questions as part of any course. For example, online courses could link directly to a website that allows users to submit questions to the compliance department.

Compliance departments should also consider where employees most typically go with follow-on questions: their direct supervisor. When developing content for specific audiences, especially in the highest risk areas, it can be very helpful to create separate content for management on how they should respond to questions. It is difficult and somewhat unreasonable to expect managers to be able to handle escalated questions if they receive the exact same training as their direct reports.



Questions Directly Posed by DOJ

Whether online or in-person, is there a process by which employees can ask questions arising out of the training?

Have supervisory employees received different or supplementary training?

What resources have been available to employees to provide guidance relating to compliance policies?

The DOJ wants to know whether employees know where to go to receive guidance. Beyond the training itself, companies should consider supplementing their training with a variety of communications such as flash cards, job aids, policy highlights, and FAQs. These guidance documents are helpful resources to reinforce difficult training concepts.

Unfortunately, as companies look to develop and deploy these tools, too often compliance professionals assume that their stakeholders know how to access them. In reality, business teams are often confused and unsure. As part of the training process, consider developing quick videos showing the business where to go to access supporting communications as either stand-alone or embedded training content.



Key Takeaways

Identify mechanism for Compliance to receive follow-on questions

Train line management separately on how to respond

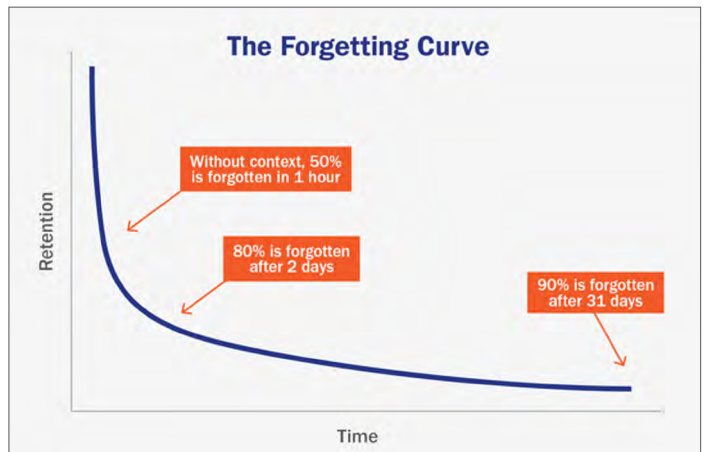
Consistently communicate availability of compliance resources and how to access them



Measure Knowledge

The DOJ requires prosecutors to assess whether the compliance program is “understood by employees in practice.” But many forms of training from live audience training to “read and acknowledge” policies do not measure retention or comprehension. Other forms of computer-based training allow users unlimited attempts to answer questions correctly. While these formats have been standard practice for years, the DOJ questions whether they are sufficient for demonstrating whether the policies are understood.

Testing only at the time of the training also fails to address the “forgetting curve.” Identified in the late 1800s by psychologist Hermann Ebbinghaus, the forgetting curve states that when people first learn something, the information disappears at an exponential rate over the first couple of days. Measuring knowledge of the training material in small, regular intervals has the dual effect of addressing the forgetting curve by enhancing retention while also demonstrating understanding of the content to prosecutors. This can be done through free online survey tools or via more sophisticated ways such as mobile applications that use algorithms to optimize when learners receive the reminders.





Questions Directly Posed by DOJ

How has the company measured the effectiveness of the training?

Is the training provided online or in person (or both), and what is the company's rationale for its choice?

Have employees been tested on what they have learned?

How has the company addressed employees who fail all or a portion of the testing?

Evaluate Outcomes

Ultimately, the purpose of training is to influence behavior. This cannot be accomplished via training alone but requires measuring results.



Questions Directly Posed by DOJ

Has the company evaluated the extent to which the training has an impact on employee behavior or operations?

The key is designing testing thoughtfully through challenging, practical questions. Companies also need to develop a purposeful plan for data capture and analysis. The data can be used to provide insights on which type of training (on demand or in person) is best based on the specific content and audience. It can also be used to identify gaps in knowledge in the compliance program, potentially indicating the need for policy enhancements or improvements to the underlying training.

Collectively, the data also provides an opportunity to assess future course assignments. Curricula can be created based on which specific learners already understand the content. This can reduce the need to conduct annual refresher trainings for those that are already experts while also identifying which employees clearly need refresher or remediation training.

All Compliance departments need to identify where they can collect data on outcomes, not just the process itself. One such place is through your auditing and monitoring program. Another such source is anonymous survey data about employees' perceptions of compliance and company culture. But ideally the gold standard, is identifying underlying business metrics that can demonstrate ethical conduct.



Key Takeaways

Evaluate whether training is effective by measuring outcomes

Auditing and monitoring often provide inputs on comprehension of training

Survey employees on comfort level in seeking advice and company expectation



Key Takeaways

Test knowledge regularly following the training (as opposed to only during the training)

Require employees who do not understand the content to take additional remediation training; allow learners who know it well to place out

Track the data and evaluate patterns to identify areas to strengthen compliance controls

As compliance continues to evolve, one thing is clear: data is paramount. Compliance teams should be looking for ways to measure their employees' knowledge, not just training completion. Companies should evaluate whether employees know what is expected of them, where to go for help, and what resources are available. Ultimately, as compliance professionals, we need to show that we have provided our teams with relevant training on the most important topics and emphasized the importance sufficiently to reinforce compliant actions.

Author Biographies and Headshots included on subsequent page.

Author Bios and Contact Information

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Jon has been consulting on life science compliance since 2002. He advises Chief Compliance Officers, legal counsel, and senior executives on a range of complex compliance issues and has worked with more than 100 life science firms. Jon is a frequent speaker and moderator at industry conferences on a range of compliance issues. He has also served as faculty for the Seton Hall School of Law Healthcare Compliance Certificate Program.

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Christian joined Potomac River Partners in 2018. Christian assists clients on an array of compliance initiatives. Christian enjoys starting with a holistic view of a client's compliance program and then drilling down into the details to develop and implement solutions to enhance these programs. Christian has experience developing training, conducting risk assessments and auditing & monitoring.

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