

The future of compliance

Technology helps in-house counsel improve corporate compliance efforts

By Ed Silverstein

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Technology is a key tool that can help companies ensure they are acting in compliance with government regulations or internal policies. Traditionally, companies involved with finance have been extremely interested in technology-based compliance solutions, but these days, organizations in diverse sectors are recognizing that these solutions can improve compliance functions and reduce overall risk.

At the same time, various jurisdictions and individual companies are enacting rules that impact compliance. State legislatures, the federal government and foreign governments continue to pass laws that relate to corporate compliance. Also, recent news about data breaches at large companies and the email controversy related to Hillary Clinton's tenure as Secretary of State demonstrate how all companies need to be concerned about compliance as it relates to such matters as data security.

L&E evolutions

Similar issues arise with employment law. In an interview with InsideCounsel, Scott Forman, an attorney at Littler Mendelson who helped develop the Littler CaseSmart product based on his experience in labor and employment law, says that tech solutions let companies "see the big picture" and view "trends during litigation."



By using technology, in-house counsel can spot growing trends, he explains. That way they can act ahead of time before a government agency launches a full-blown investigation or matters blossom into litigation. "[Technology] allows the in-house legal department to be much more proactive," Forman says.

In fact, even a single company policy may lead to issues. Technology can help spot these potential issues and then allow the company to address them proactively. The policy can be corrected and/or employees can be given appropriate training.

In the field of employment law, Littler CaseSmart helps defend against Equal Employment Opportunity Commission

charges and single-plaintiff employment litigation. It provides case management and data analytics solutions through a dashboard interface that is protected by attorney-client privilege.

General counsel can look at the dashboard to see how an entire company is doing and then drill down on individual business units, perhaps identifying a problem in a particular facility or with a specific manager. "Hot issues" can be identified for the client, Forman says.

"Legal departments are becoming more and more focused on data," Forman observes. That data can be analyzed so more informed decisions can be made that better help to manage risk, he adds.

Dealing with data

Typically, tech products that assist with compliance efforts generate a lot of data. But that data needs to be analyzed, Marie-Charlotte Patterson, vice president of corporate marketing at Hiperos, advises. Without that analysis, data simply can be overwhelming.

“Technology can be ... used as a tipping point to get compliance on people’s radars,” Bryan Starrett, an attorney with Brooks Pierce who formerly worked in corporate finance at both General Electric and Deloitte Consulting, told InsideCounsel. He explains that often a lawyer’s phone will ring after an issue has arisen. Companies may be reluctant to spend money on compliance ahead of time.

Some sectors, such as healthcare and finance, may be more proactive on compliance spending than businesses in other fields because of the presence of sector-specific regulations. But attorneys should realize that technology can show what a company has done in the past if evidence is needed later in some type of proceeding.

“Technology shows the digital paper trail of compliance efforts [that were] made,” Starrett says. “It can be a great evidentiary warehouse for you.”

If a company is large enough, it may want to design its own compliance tools, Starrett advises. If a company is using third-party, off-the-shelf compliance products, at the very least, those products may need to be tailored to a particular company or industry. But he suggests that the company ask itself if it can really get something from a vendor that can perfectly align with what it really needs.

‘The Right Way’

One example of how companies can

improve compliance efforts with their own compliance technology is seen at Ford Motor Co. The automaker recently launched an app for its employees and business partners called “The Right Way.”

The app provides compliance- and ethics-related information on a select number of topics, which were included to keep it streamlined. Ford’s key goal when designing the app was to provide users with information that is succinct and easily understood. The company wanted to “make it as easy as possible for our employees to do the right thing,” Raphael Richmond, Ford’s global director of compliance, explained in an interview.

One benefit of the app is that it can be used with a smartphone instead of a laptop. This makes it more accessible, given that employees are more likely to have smartphones with them during the day.

Earlier this year, Ford tested the app in a pilot program where some 300 employees worldwide used it during a trial period, Richmond says. Over 80 percent of these employees responded in a survey they would be “highly likely” or “likely” to use the app.

The mobile app went live in March, and Ford is encouraging its use through an internal marketing campaign. For those outside of the company, the app can be downloaded for free by anyone. It is available for iPhone and Android phones and is downloadable on iTunes, Google Play and Baidu in China.

“It gives you a very good sense of Ford’s stance on key compliance issues,” Richmond says.

Among its many features, the app pro-

vides policy summaries on different ethical and compliance issues. For instance, it will tell an employee how to respond when offered a meal by a supplier or whether an employee should accept a gift or even a complimentary ticket to an event from a supplier. Because there are different perspectives on offering gifts in different cultures, a global company like Ford needs to let its employees know the right way to respond and still be sensitive to diverse cultures. Ford understands that its employees have to avoid being rude, but they still need to comply with company policy. In the case of gifts, they may be donated to a charity or possibly returned to the giver. Ford even provides its employees a sample note that is “culturally respectful” when returning a gift, Richmond says.

The app can also launch an email to Ford’s personnel relations or the compliance office when needed, such as when an employee may want to report a suspected violation of company policy.

The board and C-suite supports Ford’s compliance initiative, and the apps’ use shows a commitment by employees, too. “We are tremendously committed to ethics and compliance,” Richmond says.

Ford’s experience may be useful to other companies. For instance, Richmond recommends doing some initial testing before releasing any compliance app. That way, a company will get useful feedback. Also, try to keep the app simple. She suggests avoiding verbose answers. In addition, when releasing a compliance app, be prepared for it to open the floodgates from other company departments wanting to get their policies included as well. But keep it limited to compliance, or otherwise it simply will become too complex for employees to use.