

***The Cost of Non-  
Compliance:  
Creating a Culture of  
Compliance...  
Oh, and Why Should I care?***



# OBJECTIVES

- Explore why we need a compliance program
- Discuss what makes an effective compliance program.
- Discuss proven ROI methods from industry and the costs of non-compliance.
- Explore how building a culture of compliance leads to better ROI and improves the company

# Climate and Pressures on Companies and institutions increase need for Compliance Programs

- Increased regulatory climate (FCPA, GDPR, EPA, OSHA, DOJ, etc.)
- Pressure for quality and excellence initiatives across industries.
- Expectations to bring early resolution to regulatory problems
- Requirements to detect and mitigate risks from variety of sources
- Challenges to Affect positively the “bottom line”
- Increased market pressures on branding and reputation

# Top 10 FCPA fines

- 1. [Petróleo Brasileiro S.A. – Petrobras](#) (Brazil): \$1.78 billion in 2018.
- 2. [Telia Company AB](#) (Sweden): \$965 million in 2017.
- 3. [Siemens](#) (Germany): \$800 million in 2008.
- 4. [VimpelCom](#) (Holland) \$795 million in 2016.
- 5. [Alstom](#) (France): \$772 million in 2014.
- 6. [Société Générale S.A.](#) (France): \$585 million in 2018.
- 7. [KBR / Halliburton](#) (United States): \$579 million in 2009.
- 8. [Teva Pharmaceutical](#) (Israel): \$519 million in 2016.
- 9. [Keppel Offshore & Marine Ltd.](#) (Singapore): \$422 million in 2017.
- 10. [Och-Ziff](#) (United States): \$412 million in 2016.

# Top 10 Employment Compliance Issues

- ▶ Paying employees outside of payroll
- ▶ Overtime rules and the work week
- ▶ Overtime rules and salaried employees
- ▶ Tips and Overtime
- ▶ 1099s and misclassification of contracted employees
- ▶ Confusing pre-tax vs. post-tax deductions
- ▶ Missing tax payment deadlines
- ▶ New Hire reporting/garnishing wages/child support
- ▶ Employee work state issues
- ▶ Health insurance premium reimbursements

# TOP OSHA Fines

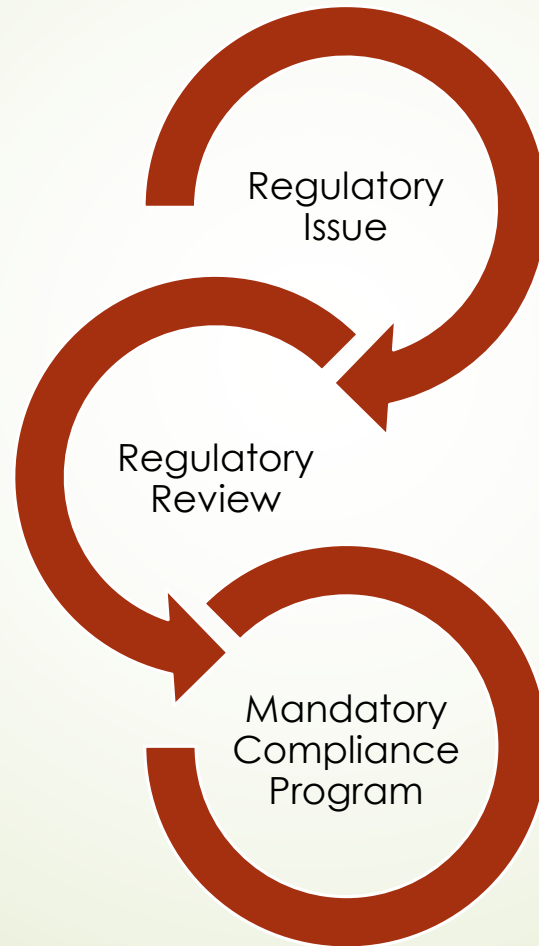
- ▶ Fall protection general requirements: 6887 violations
- ▶ Hazard Communication: 4652 violations
- ▶ Scaffolding: 3697 violations
- ▶ Respiratory protection: 3381 violations
- ▶ Lockout/tagout: 3131 violations
- ▶ Ladders: 2567 violations
- ▶ Powered industrial trucks: 2349 violations
- ▶ Machine guarding: 2109 violations
- ▶ Fall protection training requirements: 1724 violations

## EPA in 2017:


- 153 years of incarceration for individual defendants
- Fines of \$2,829,202,563 for individual and corporate defendants
- Additional \$3,092,631 in court ordered environmental projects and \$147, 520, 585 in restitution



# History Repeats Itself Over and Over







# Fraud, Waste and Abuse Detection, Prevention and Correction Compliance Program Elements



# Okay, We got it. We need a compliance program. But.....

- Executives ask: "What about bottom-line effects?"
- Executives ask: "Why do we need to maintain or increase our compliance program when we haven't had "any" problems?"
- Leaders ask: "So what happens if we don't have a compliance program—what's the real cost?"
- Executive Considerations: Why do we need both compliance and legal?

# Traditional ROI Approaches

- Document the loss of revenue
- Document the cost of fines
- Document the cost of mitigation after an audit, fine, or penalty
- Document the savings resulting from a new initiative
- Document revenue created from implementation of a new initiative or program

# Traditional Approach

- Traditional ROI approaches often used to reward management and leaders
- Some companies “penalize” leaders when ROI not met

ROI Pressures



Elements of an Effective Compliance Program



# ROI: Effective compliance programs mitigate criteria used by Regulators for fines & penalties

- ▶ Extent & pervasiveness of misconduct
  - ▶ Amount/number of employees
  - ▶ Types
  - ▶ Duration
- ▶ Remediation
  - ▶ Types
  - ▶ Severity
- ▶ Timeliness of response
  - ▶ Length of time for investigations
  - ▶ Independence
  - ▶ Promptness of any self-disclosure
  - ▶ Board/C-Suite notification

# “Stick” approach doesn’t really work as ROI to document compliance effectiveness

- ▶ “Company has not received any fines”
- ▶ “Business as usual” works generally
- ▶ “Good” business practices
- ▶ “It won’t happen to us—we’ll take the risk”
- ▶ “See no evil, hear no evil, speak no evil”
- ▶ **More importantly: Stick approach often DECREASES ethical culture and does not promote ethical leaders**

## ***So then...How do we apply ROI to Compliance to document the cost of non-compliance?***

- ➔ ROI is increased, enhanced, and protected when the seven elements for an effective ethics and compliance program are applied consistently and effectively



# Effective Compliance Program Affects ROI

## Inputs

### Structure

- Does Board know risks?
- Access to Board & C-Suite

### **Effective Compliance Program**

### Processes

- Employee Training
- Confidential Reporting
- Clear Investigation & Enforcement

ROI

## Outcomes

- Better Board Decisions
- Increased Employee Comfort
- Improved Productivity
- Increase Employee Awareness
- Identification of Regulatory Issues
- Morale Improvements

# ROI: Defining Compliance as Prevention

Compliance Program Costs



Risk Review & Mitigation Process



Compliance Training Needs  
Compliance Program Reviews  
Mitigation Processes

Balance  
Cost of  
non-  
compliance  
events



Balance  
Cost of  
compliance  
management  
operations



ROI Measures:

- Avoidance of bad events
- Decrease in negative cost outlays
- Increase in reputation & retention

# Metrics for ROI of Non-Compliance

Number of returned items, refunds, for quality issues

Number of safety and workers' compensation claims

Number of lawsuits and related litigation costs and settlement amounts

Amount of Regulatory Fines

Number of Whistleblower Hotline complaints

R

O

I

Number of breaches and amounts paid for privacy violations

Number of Discrimination Cases

Number of late orders

Accidents?



**However--Let's reframe the question from:**

**A. “What is cost of non-compliance?” or “What is the ROI for compliance?”**

**to**

**B. “How does an effective ethics and compliance program add value to our ROI, bottom line, and culture?”**

# *Compliance ROI: Must be seen as* Prevention and Increasing an Ethical Culture

- Major effort of compliance structure is to prevent issues, fines, and reputational lost.
- Measuring something that “never happens” is a challenge but DOES document an effective compliance program
- Compliance ROI is more about “staying ahead of the curve”
- Very little, if any, data on ROI for compliance programs
- Compliance ROI is definitely result of having an ethical culture

# KEY ROI outcome: Reputation & Ethical Culture

- ▶ Reputation is key for most company's bottom line—key factor for BBNC
- ▶ Whether a product, a program, a construction project, an investment, or advice—reputation drives profits and business
- ▶ Effective compliance program supports and enhances reputation
- ▶ First requirement for government fines: COMPLIANCE PROGRAM
- ▶ Loss of branding momentum

# Compliance Metrics for Reputational Loss



# Compliance Training Affects ROI

## Effective Training Program

- Mandated
- Well-received
- Positive reviews
- Timely

## Immediate Return

- Better knowledge
- Behavioral change
- Less risk

Growth in Positive Culture

## Long-term ROI

- Cost savings
- Employee retention
- Increased returns

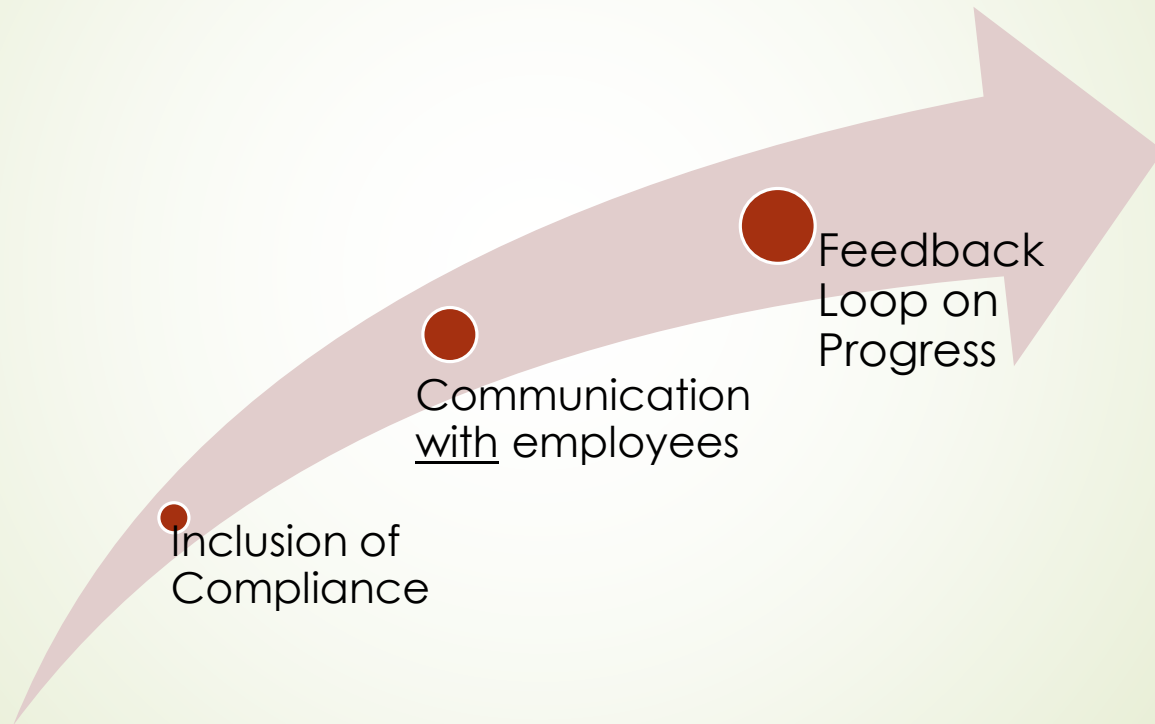


# Towards a culture of ethical compliance

- ▶ “Corporate culture is a key differentiator between the companies that sustain winning performance and those who barely meet average benchmarks. Those who get it right thrive when culture and strategy work together. Culture is invigorated when who you are on the inside, and who you are on the outside, is aligned.”
- ▶ **72%. of executives say culture is extremely important for organizational performance**
- ▶ ***but only***
- ▶ **32% say their organization’s culture is fully aligned with the business strategy**

Source: [https://www.bluebeyondconsulting.com/management-consulting-services/corporate-culture-consulting/?gclid=Cj0KCQjwxvbdBRC0ARIsAKmec9afol2ledj7SoZ7ci81LpJf7CKIKyPWeiN1ZmGmbD562wKDtSwfRjcaAlZfEALw\\_wcB](https://www.bluebeyondconsulting.com/management-consulting-services/corporate-culture-consulting/?gclid=Cj0KCQjwxvbdBRC0ARIsAKmec9afol2ledj7SoZ7ci81LpJf7CKIKyPWeiN1ZmGmbD562wKDtSwfRjcaAlZfEALw_wcB)

# Supporting BBNC's reputation on a compliance foundation



# ***Culture of compliance: Tone at the top and behavior FROM the top***

- ▶ **Unitary Policies and Procedures**
- ▶ **Penalties and Recidivism**
- ▶ **Hiring Practices**
- ▶ **Training**
- ▶ **Incentives**
- ▶ **Resolving Conflicts of Interest**
- ▶ **Aligning Interests for ethical decisions**

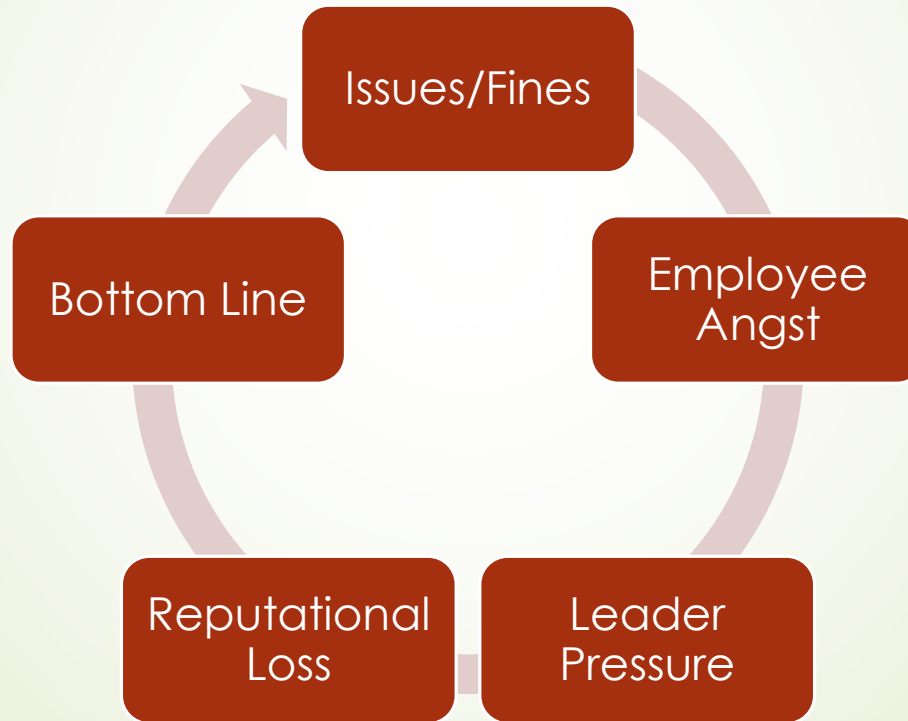
# Creating an Ethical Culture of Compliance



# Ways to Create Ethical Leadership

- ▶ setting the right tone from the top;
- ▶ developing and embedding an effective value statement;
- ▶ promoting an open culture within the organization;
- ▶ developing a whistleblowing procedure;
- ▶ providing impartial, confidential advice on ethical issues for employees;
- ▶ developing and embedding an organizational code of conduct;
- ▶ training staff in ethics;
- ▶ rewarding ethical behavior;
- ▶ ensuring disciplinary procedures are effective;
- ▶ monitoring organizational integrity, and the effectiveness of techniques.

# One Model of Non-Compliance



# Rather: The Benefits of an Ethical Compliance Culture



# Question for you...

- ▶ What are you doing to:
  - ▶ Walk the talk?
  - ▶ Engaging your employees?
  - ▶ Making ethical decisions and demonstrating those actions?
  - ▶ Encouraging feedback, questions, and dialogue
  - ▶ Demonstrating the importance of compliance for BBNC



# Questions for Me?

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