THE SAFE & OPEN CULTURE ISSUE

INSIGHTS FROM THE 2023 ETHICAL CULTURE REPORT

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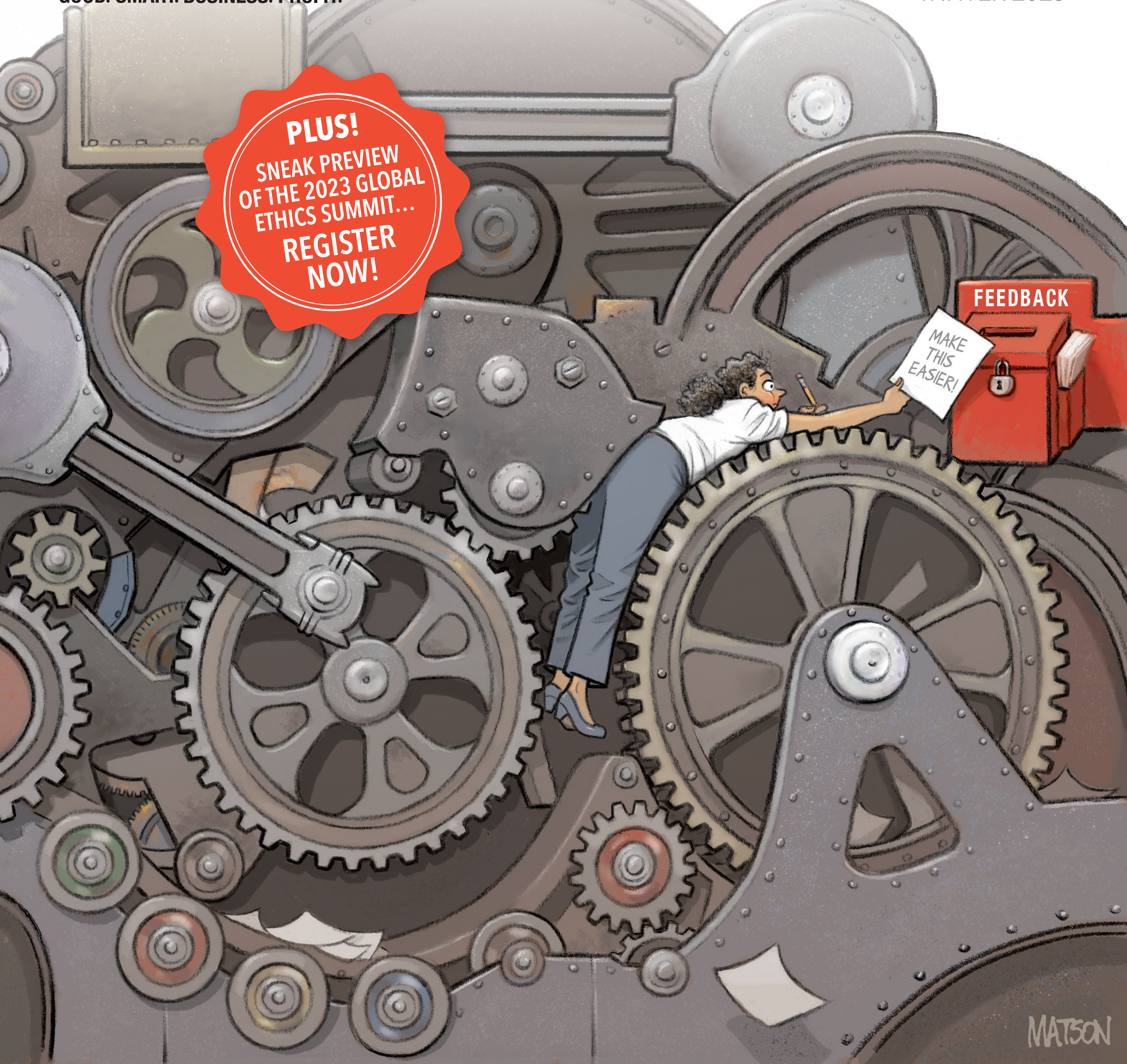
WINTER **2023**



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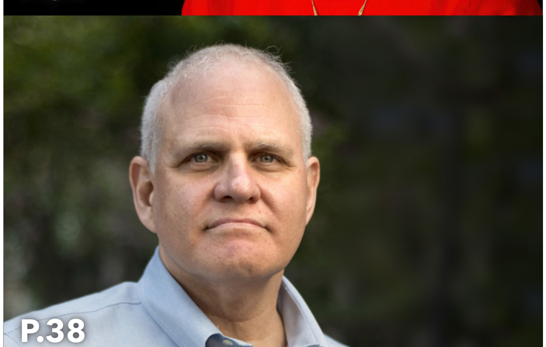

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Ethisphere® is the global leader in defining and advancing the standards of ethical business practices that fuel corporate character,marketplace trust and business success. We have a deep expertise in measuring and defining core ethics standards using data-driven insights that help companies enhance corporate character. Ethisphere believes integrity and transparency impact the public trust and the bottom line of any organization. Ethisphere honors superior achievements in these areas with its annual recognition of The World's Most Ethical Companies®, and facilitates the Business Ethics Leadership Alliance (BELA), an international community of industry professionals committed to influencing business leaders and advancing business ethics as an essential element of company performance. Ethisphere publishes Ethisphere Magazine and hosts ethics summits worldwide.

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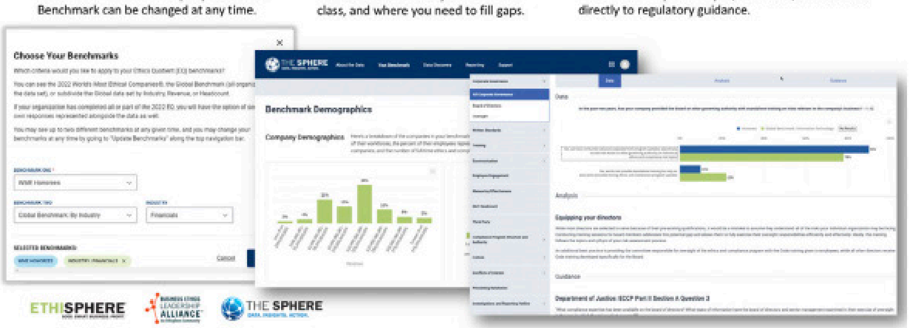

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Ethical Culture Matters More Than Ever

by Erica Salmon Byrne

Before the pandemic, the world was tuning in to the benefits of an ethical culture. Investors were writing to CEOs and pledging to question board members, and regulators around the globe were calling on organizations to examine their culture. Employees were asking about culture in the interview process. Following the COVID-19 pandemic those trends have grown even stronger.

The focus makes sense – after all, the advantages of a strong ethical culture are manifold. Studies have repeatedly shown that businesses with strong ethical cultures outperform those without. There are a variety of reasons underlying that performance data. Companies with stronger cultures tend to have employees who are more engaged and committed. Turnover tends to be lower and productivity higher, and when you do need to hire, it's easier to attract high-quality employees.

Employees at organizations with strong ethical cultures feel less pressure to compromise company standards to achieve business goals. And if they do observe misconduct, they are more likely to feel comfortable reporting it, allowing an organization to address issues early, saving time (from the distraction of a substantial issue) and money (in the form of legal fees, fines, and penalties). An ethical culture can be self-perpetuating, with effects far beyond employees' individual conduct and perceptions.

But what is culture? We all have a vague sense of what it is and what it looks like at our organizations, but it can be hard to define. Merriam Webster's definition tells us that culture is the "set of enduring and underlying assumptions and norms that determine how things are actually done in the organization."

In other words, what levers are being pushed or pulled to accomplish the goals of the organization? The factors that comprise culture can have a fundamental, long-lasting effect on a company's success. But how can an organization best get a handle on its culture? By measuring it.

That is what we set out to examine with the release of our 2023 Ethical Culture Report, which you can download at www.ethisphere.com/2023-culture-report/, and which we will be discussing in depth later this issue.

In this report, we cover three trends from our global dataset, which has grown to over 2 million employee responses. With a "N" that large, we are able to do multiple demographic data cuts, including a pre-pandemic and pandemic era analysis, a generational analysis and an update on the importance of managers. Why managers? Our data shows that 62 percent of employees who made a report say they took their concern to their manager. These front-line employees are critical to ensuring that an ethical culture is embedded across an organization and that reports are effectively addressed.

At Ethisphere, sharing our data and expertise–so that all can learn and improve–is central to our mission. I hope that this report gives you insights you can immediately put to use inside your organization so that your ethical culture can thrive. ■

ERICA SALMON BYRNE
CEO, Ethisphere

In the News

ACC and General Counsel Oath Survey

GC Report Mixed Progress Promoting DEI Practices

GC in larger organizations report stronger progress and the majority of GC report they do not request their law firms to track KPIs, but those that do rated significantly higher progress in achieving DEI objectives.

On January 11, the Association of Corporate Counsel (ACC), in partnership with the General Counsel Oath initiative, released the [General Counsel Diversity, Equity, & Inclusion (DEI) Survey], which outlines the impact and sentiment of general counsel (GC) and chief legal officers (CLOs) around DEI.

ACC is a global legal association that promotes the common professional and business interests of in-house counsel who work for corporations, associations and other organizations.

Building on the ideals and values found in the [General Counsel Oath] (introduced by Simon Zinger in 2020 and endorsed by many leading global CLOs and legal organizations including ACC), this survey aims to provide an overview of how GC/CLOs around the world view DEI in the context of individual progress impacting DEI within their legal team, wider organizational progress, and progress made by law firms they work with on cultivating diverse teams.

A few of the survey's key results include:

- GC are having greater success promoting DEI practices among their own teams, as opposed to being able to influence change across their wider organizations.
- GC are experiencing only moderate support and success promoting DEI progress in overall organizations.
- While the majority of GC currently do not request their law firms track advanced DEI KPIs, those that do observe significant headway in achieving DEI progress.
- While the strongest level of participation came from GC based in the United States, the responses show a high degree of global input, suggesting DEI topics remain top of mind in many parts of the world.

"It is encouraging to see that general counsel and chief legal officers are generally finding success in promoting DEI practices within their own departments," **says ACC President and CEO, Veta T. Richardson**. "Despite the clear benefits and increased focus on DEI in recent years, that success doesn't seem to be translating to organizations as a whole. While resources and bandwidth may differ, consistent and vocal leadership is critical to help move DEI practices forward regardless of an organization's size or geography. ACC values the opportunity to work with Simon Zinger to take the pulse of chief legal officers globally on such an increasingly important topic and we appreciate his work to highlight these issues on an international scale in the legal community and beyond."

"The impetus for launching this global survey was my desire to understand whether GC were making progress with their team and organizational commitments around DEI," **said Simon Zinger, GC of Entain plc, a FTSE-listed company**. "Although many GC have identified with the General Counsel Oath, it felt important to ask GC around the world about their perceived levels of actual progress and to consider whether more could be done. This survey suggests areas where there is still work to do and encourages GC to continue playing leadership roles in progressing DEI inside their organizations."

The GC DEI Survey was completed by 232 respondents spanning 28 countries around the world.

Organizations interested in benchmarking their DEI programs are encouraged to complete the [ACC Foundation DEI Maturity Assessment], powered by [Ethisphere]. This innovative resource offers the methodology to evaluate DEI progress along a continuum of early to more advanced stage efforts using the framework of the acclaimed ACC Foundation DEI Maturity Model to complete an online assessment module, which allows organizations to quickly and easily benchmark their DEI efforts to those of their peers and receive back a written self-assessment generated by the module for the organization's internal review. This tool is offered as a free service by ACC and Ethisphere for use by the entire legal and business communities.

MEANWHILE…

News coverage around the **2023 Ethical Culture Report** continues to roll in, with stories from Amber Burton from Fortune, and Matt Kelly from Radical Compliance. Be sure to check out our special section on this report, and additional commentary around it, beginning on page 12.

JUST Capital and **CNBC** release the 2023 JUST 100 List, which ranks the largest public U.S. companies according to how well they serve five key stakeholder groups: Workers, Communities, Customers, Shareholders & Governance, and Environment. The Workers category is weighted twice as heavily as any other category. **Bank of America**, **NVIDIA**, **Microsoft**, and **Accenture** had the list's top scores, while Wells Fargo, Meta, PG&E and Boeing were called out for their especially low scores.

Baker McKenzie releases its Year Ahead Global Disputes Forecast 2023, which focuses on legal dispute trends in areas such as cybersecurity, ESG, post-M&A, taxes, and employment, as well as by industry and by geographic region.

The **American Red Cross** releases its first ESG Report, making it one of the first humanitarian nonprofits to publish a complete ESG Report. The Red Cross started its ESG program in 2021.

Climeworks, a Swiss company specializing in carbon dioxide capture, announced it has successfully removed carbon dioxide from the air and put it underground—a major advance for companies seeking carbon neutrality and carbon net zero status.

HOT WATER

The dramatic collapse of cryptocurrency exchange **FTX** last November continues to create regulatory and legal shockwaves as ex-CEO **Sam Bankman-Fried** faces multiple charges in the U.S. for his role in the bankruptcy as the U.S. federal government seizes more than $600 million in assets from Bankman-Fried. As other crypto lending operations, such as BlockFi and Genesis Global Capital, go under in a related string of crypto bankruptcies that wipes more than $1.7 trillion in token value off the books, regulators take notice.

Crytptocurrency exchange **Coinbase** reaches a $100 million settlement with the **New York State Department of Financial Services**—$50M in fines and $50M in program investments—for failing to build and maintain adequate know-your-customer and anti-money laundering practices. NYDFS also issues new guidance to crack down on the kind of commingled crypto funds that led directly led to FTX's collapse. Congress begin to lay bipartisan groundwork for federal crypto regulation while EU lawmakers prepare to vote on tighter crypto regulations.

A New York jury finds the **Trump Organization** guilty on all 17 charges in a wide-ranging, 15-year tax fraud scheme. The Trump Organization is later ordered to pay a $1.6 million fine for the fraud, the maximum penalties allowed by the law.

Four people, including European Parliament VP Eva Kaili, are charged in an ongoing corruption scandal in which **Qatar** allegedly used money and gifts to illicitly secure favorable economic and political treatment from the **European Parliament**. The scandal erupted on the heels of the **FIFA 2023 World Cup**, a sporting event hosted by Qatar and shadowed by deep ethical concerns.

Epic Games, publisher of videogame Fortnite, ordered to pay $520M in fines for failure to protect children's data privacy. Meanwhile the California Privacy Rights Act is likely to become one of the big compliance issues of 2023.

OF INTEREST

Stanford President and neuroscientist Marc Tessier-Lavigne is under investigation for possible research misconduct amid concerns of widespread ethical misconduct within higher education, where fear of failure erodes good decision-making.

EU warns that **Twitter** has "huge work ahead" to comply with its upcoming Digital Services Act amid fears that the site's chaotic operations will help worsen global political violence.

Meanwhile, **Twitter** disbands its Trust and Safety Council, which advised the social media company on issues such as online safety, human and digital rights, suicide prevention, child sexual exploitation and dehumanization. The move occurred shortly after members of the Council resigned in protest.

As OpenAI's AI chatbot **ChatGPT** passes the Wharton Business School MBA exam, and **Google** plans to roll out an AI search tool, we can expect significant AI Ethics regulation some time this year.

According to a recent **Gallup** poll, 79% of U.S. adults think nurses practice high ethical standards. Less than 10% give high ethical marks to Congressional representatives and telemarketers. That only 23% of adults think journalists are ethical is an impenetrable mystery unworthy of further examination.

BELA of the Ball

On-Demand Events

As we charge into 2023, the BELA events calendar will regularly showcase a wide range of webinars, roundtables, and virtual and hybrid forums covering a host of topics aimed at improving your experience as an ethics and compliance professional. Below are some of our recent events that are on-demand. Be sure to check the Ethisphere Events page to reserve your spot for upcoming events!

Ethical Culture Data Findings: Pandemic Lessons and a Path Forward

Looking to improve your organization's ethical culture in 2023? Learn from Ethisphere experts as they discuss the latest findings featured in The 2023 Ethical Culture Report: Accountability Reigns, GenZ Refrains. Join Ethisphere's Vice President of Data Strategy, **Douglas Allen**, Editor-in-Chief of Ethisphere Magazine, **Bill Coffin**, and Client Success Manager, **Cassidy Davis** as they discuss interesting insights from Ethisphere's latest data set, including:

- **The state of ethical culture in 2023:** Learn where leading organizations improved – and slipped back – during the pandemic, across Ethisphere's Eight Pillars of an Ethical Culture.
- **The kids are not alright:** Hear about the rise in bullying, challenges for Gen Z, and differences in reporting across generations.
- **Data to inform plans and priorities:** Discover top areas where you can make a difference in improving your ethical culture and hear examples of how leading organizations are advancing programs and practices.

This data features the views of more than 2 million employee respondents from around the world and has been covered by Fast Company, Fortune, and others, so see what the buzz is about! ***Watch Now >>***

Ethical Leadership Masterclass

In this masterclass, Ethisphere's **Erica Salmon Byrne** and **Brian Beeghly** will be joined by **Dr. Linda K. Treviño**, Distinguished Professor of Organizational Behavior and Ethics at The Pennsylvania State University and co-author of *Managing Business Ethics*, for an in-depth discussion on ethical leadership and how leading organizations recruit, develop, and promote ethical leaders from within. In this masterclass session, you will learn about:

- Defining ethical leadership and why it is critically important to an organization's success
- Understanding the importance of ethical leadership for an ethical culture
- Hearing from a leading expert in behavioral ethics
- Identifying the 3 key traits of an ethical leader
- Promoting ethical leadership in your organization

In addition, data from Ethisphere's ethical culture survey will be shared to show the impact of ethical leadership on employee perceptions of ethical culture, including an organization's speak-up culture and fear of retaliation. ***Watch Now >>***

2022 Asia Pacific Ethics & Compliance Virtual Forum

Check out our on-demand sessions from the event that gathered the BELA Asia Pacific community and its dedicated Forum Working Committee of leaders as they engage in practical conversations to advance your ethics and compliance framework with proactive approaches to addressing ethical culture, training and awareness, geopolitical influences, cybersecurity, the changing role of the compliance officer, and much more.

- Emerging Markets: Creating a People-Centric Culture of Integrity ***Watch Now >>***
- Taking a Hands-On Approach to Maximizing Third-Party Integrity ***Watch Now >>***
- How ESG Can Address the Biggest Global Challenges & Promote Value Creation ***Watch Now >>***
- New & Emerging Expectations for Compliance Officers ***Watch Now >>***

Europe Ethics and Compliance Virtual Forum

In this two-day virtual event, ethics and compliance leaders from across Europe came together to address the issues impacting corporate integrity today, which you can now watch on-demand:

- Growth Rooted in Values: How to Cultivate Your Business Through Ethics & Sustainable Means ***Watch Now >>***
- ESG and Its Impact on Ethics & Compliance Programs ***Watch Now >>***
- Engaging and Effective Training & Communications Approaches for Virtual Work Environments ***Watch Now >>***
- Keeping Up with the Pace of Change: Managing Compliance Programs Amidst Evolving Business Challenges ***Watch Now >>***
- Understanding the Health of Your Ethics & Compliance Program: What to Measure and Why ***Watch Now >>***
- Coordinating Compliance Sanctions Management Across a Global Organization ***Watch Now >>***

Measuring Ethical Culture: Data Sources & Planning Remediation

Ethics and compliance functions have evolved from "check the box" exercises towards a more complex mission, attempting to create a safe and open corporate culture that enables employees to speak up. But how should you think about measuring culture at your organization? And what should you do with that information once you have it? In this webinar, we'll cover:

- Various sources of ethical culture data you could be tapping into
- Various partners within the organization you might leverage
- What a dedicated ethical culture survey can accomplish
- How to translate disparate culture data into a clear, cohesive picture of your organization
- How to translate data into action plans for remediation across your business

Join Ethisphere experts **Tyler Lawrence** and **Emme Devonish**, along with **Carlos Zamudio**, Business Integrity Manager, Diageo (Southern Europe) as they discuss this topic as part of measuring and maintaining a Safe and Open Culture, with resources from Ethisphere and benchmarking data available from The Sphere. ***Watch Now >>***

BELA of the Ball

New Community Resources

BELA members receive enterprise-wide access to the BELA Member Hub—a premier repository of key resources featuring examples of work, presentations, and research provided by BELA companies, exclusive data from Ethisphere's unparalleled data set, program benchmarking, and expert reports, event sessions and other insights.

Be sure to check on the resource hub regularly to see the latest content that addresses some of the most important issues facing the ethics and compliance field today. And if you are interested in showcasing your organization and sharing a resource with the BELA Community, reach out to Ethisphere Content Manager, **Samantha Johnson** (samantha.johnson@ethisphere.com) to learn more.

Improving Compliance Program Performance & Effectiveness Through Cross-Functional Collaboration

This presentation from **ADM** stems from a recent BELA Virtual Roundtable and shares examples of ways that compliance can partner with other functions in your organization, including M&A/Business Development, Human Resources, Information Technology, Internal Audit, and Procurement/Supply Chain. Within are slides that provide examples of ways compliance professionals can strengthen relationships and influence key stakeholders; improve their knowledge and understanding of business, operations, and strategy; design tailored compliance programs, policies, and controls; and more.

Download this presentation from the BELA Member Hub. **Need access? Email** bela@ethisphere.com.

stc—Communicating Ethics & Compliance to Employees

This presentation was shared by the ethics and compliance team of Saudi telecommunications company **stc** to share an overview of the considerations made while communicating ethics and compliance with employees. It includes identifying stakeholders, messaging outcomes, utilizing communications channels, and more. It is part of a series of presentations that also includes Middle Management as an Enabler of Integrity Culture, Empowering Employees Through Integrity Training, and Code of Ethics: The Foundation for a Culture of Integrity).

Download this presentation from the BELA Member Hub. **Need access? Email** bela@ethisphere.com.

Ethics Everywhere Annual Report

This report from **JLL** shares the heart of their culture and business. Including, why they report on their ethics program, key focus areas of risk, addressing and assessing risk, investigation process roadmap, 2021 highlights and recognition, monitoring ethics, and investigation data.

Download this report from the BELA Member Hub. **Need access? Email** bela@ethisphere.com.

The Power of Storytelling in Building an Ethical Culture

Storytelling can be an impactful tool to help instruct and engage employees on the topic of ethics, and to help build an organization's ethical culture. Humans are hard wired to learn through stories. In this resource, learn how to utilize storytelling in your communications with your organization, and enhance your culture. Inside is advice on taking inspiration from real incidents, how to show a variety of outcomes, and real company examples of storytelling.

Download this guideline example from the [BELA Member Hub]. **Need access? Email** bela@ethisphere.com.

Code of Ethics

Genetica Credicorp has shared their Code of Ethics in both English and Spanish. The comprehensive code includes guidance on their purpose, role, vision, and values, which all inform how the company behaves regarding its customers, fellow employees, suppliers, stakeholders, and the communities in which they operate.

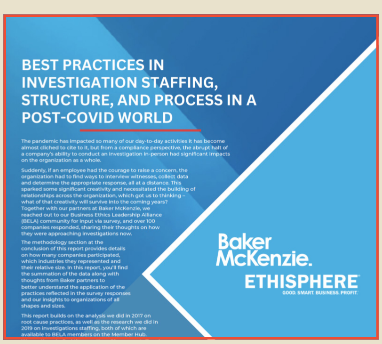
Download this policy example from the [BELA Member Hub]. **Need access? Email** bela@ethisphere.com.

Essential Elements for Creating a Compliance Training Plan

There is no one-size-fits-all when it comes to creating a training plan and schedule. It will define goals and objectives, the resources and staffing required to carry out the plan, what training is needed immediately, mandatory training, training specific to different roles at the organization, and how to review and revise the training plan. This guide covers the essential elements that make up a training plan, including: purpose, training goals, resources needed, new and emerging training needs, role- and event-specific training, and more.

Download this guideline example from the [BELA Member Hub]. **Need access? Email** bela@ethisphere.com.

Best Practices in Investigations Staffing, Structure, and Process in a Post-COVID World

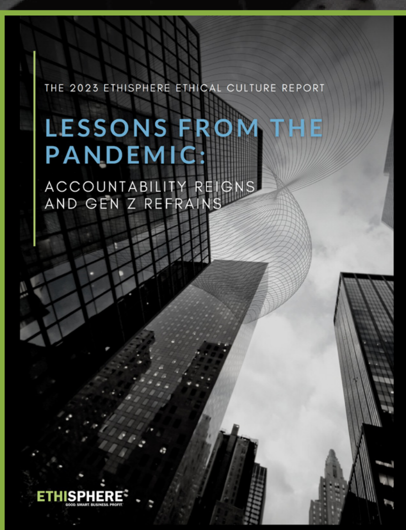


This report, created in partnership between Ethisphere and Baker McKenzie, shares data from a survey of BELA members on investigations staffing, structure, and process, along with commentary on topics such as the structure and ownership of the investigations function, collecting information that may trigger an investigation, root cause analysis, and more.

Download this guideline example from the [BELA Member Hub]. **Need access? Email** bela@ethisphere.com.

The 2023 Ethical Culture Report

Accountability Reigns and Gen Z Refrains



Download Report Now

On January 12, Ethisphere published the latest volume of its ongoing series of Ethical Culture reports, which derive their insights from Ethisphere's proprietary Ethical Culture Quotient (CQ) data set. The CQ studies the elements of ethical culture, such as whether employees will report any ethical wrongdoings within their organization.

Data for this report was collected from an Ethisphere survey of over two million global employees from Ethisphere's client base. The 54-question survey focused on reporting behavior and how the behavior reflected certain realities around organizational speak-up culture. As Ethisphere's data team analyzed the survey data, they paid particular attention to how results differed between early 2020, when COVID-19 was officially designated as a pandemic by the World Health Organization, and now, when the pandemic may not be over, but businesses have had a chance to adapt to a new kind of normal and evaluate how their cultures have fared over a few years of acute global turmoil.

The report's key findings each present a unique opportunity for organizations to advance ethical cultures within their own organizations, especially by paying close attention to the needs of their youngest employees.

Ethical culture within businesses increased across the board. Based on Ethisphere's Eight Pillars of an Ethical Culture, respondents showed more favorable perceptions of their company's ethical culture during the pandemic. Like all businesses, respondents faced greater turmoil during the last few years. But even amid such trying conditions, the culture of ethics they had in place before COVID-19 grew even stronger—helping to reduce risk, retain talent, and build value within their organizations. However, during the pandemic, although people said they were more willing to report misconduct and observed more of it, they actually tended to report it less.

Claims of bullying increased significantly. In stark contrast to the other 26 types of reported misconduct, Ethisphere's report found that bullying jumped a shocking 13 percent during the past few years. The report highlights several possible explanations for this significant increase, including the increasing presence of Gen Z employees, who as an age cohort report high levels of workplace bullying, as well as high levels of bullying in general. This increase also correlates with an increase in bullying during the pandemic, especially as people spent more time on-screen.

Gen Z employees are least likely to report misconduct. While Gen Z represents a smaller portion of the data set from this research, it is interesting to note they are the least likely age group to report bad behavior. When compared to their Millennial, Gen X, and Boomer colleagues, 56 percent of Gen Z employees stated that they did not report misconduct when they saw it because they didn't believe corrective action would be taken, followed by 47 percent who feared retaliation.

Managers matter. More than half of respondents (56 percent) named their immediate manager as the avenue by which they reported misconduct, which aligns with prior Ethisphere cultural reports for being the most common method of reporting misconduct.

This underscores the importance of businesses preparing their managers to facilitate discussions around raising concerns and proactively set corporate-wide expectations around what reporting, investigations, and actions will entail.

Culture has become a topic of critical importance to every corporate stakeholder, from employees and consumers to investors and regulators. In the pages that follow, three of our top experts on culture will each provide their insights to a specific aspect of the report and how ethics and compliance officers can build a winning strategy for engaging their employees meaningfully, building a sense of trust, and creating an environment where everyone, regardless of their professional status, feels equally invested in and protected by their organization's commitment to business integrity. ■

The 2023 Ethical Culture Report—Lessons from the Pandemic: Accountability Reigns and Gen Z Refrains *can be downloaded here.*

Why This & Why Now

with Erica Salmon Byrne

Ethisphere CEO **Erica Salmon Byrne** provides her insights into the 2023 Ethical Culture Report, which contains the latest data on the forces driving ethical culture within organizations, comparisons on key ethical culture metrics pre- and post-pandemic introduction, and how this report's particular timing and focus on Generation Z proves that ethics "matters more than ever."

ERICA SALMON BYRNE

In January, Ethisphere published the 2023 Ethical Culture Report—Lessons from the Pandemic: Accountability Reigns and Gen Z Refrains. It is a deep dive into our culture survey database of more than two million responses, which provides a level of insight into corporate culture that is second to none. This year's report answers some important questions: how has corporate culture fared over the course of the pandemic, and how has that experience produced different results for different age groups?

We feel a real obligation here at Ethisphere to share our insights so that all can learn. That's part of the founding ethos of the business. So much has been written about what the pandemic is going to do to the future of work, what the next wave of work looks like, and what we have learned over the course of the pandemic. And so, given the size of our dataset, we thought it was a natural opportunity to cut the data to see what happened before March 2020 and what has happened since.

We also wanted to think about what lessons the data tells us about what managing the workforce of the future is going to look like. Because our dataset is as big as it is, we were also able to look at our survey results by generation, and that produced some really interesting results.

Looking at ethical culture data from a generational standpoint was a really interesting way to approach it. What it told us was something that that we have been talking about for a while now, that the manager continues to be a really important part of advancing ethical culture. That is especially true in the way that we prepare our managers to lead, what we have expected of our managers over the course of the pandemic, and the way people need to prepare to manage the generation of the future.

We said in the report that the kids are not alright. There is a big cohort of the youngest members of our workforce that need more support from their managers, and we've got to be prepared for that. We have to be prepared to lead with an open door, and for those new voices in the workplace to challenge us. Members of Gen X, for example, had a very different attitude when it came to what they expected from their managers when they came into the workforce, than the people who are coming in now. So as compliance professionals, and as people who are interested in the topic of safe and open speak up culture, we really need to think through how to prep managers for the kids that are coming out of college. We've got to get ahead of that.

WHY NOW?

The timing of this report is as important as it is intentional. Since 2020, we have done a lot of webcasting and visual data presentations about our ethical culture data and received encouraging feedback from the BELA (Business Ethics Leadership Alliance) community, as well as our various event attendees.

Now, we wanted to give people something tangible that they could bring directly to their internal audiences. We want ethics and compliance professionals to be able to walk into their CEO's office, or into their next Board meeting, or into a meeting with their chief people officer and say: here's what the data is saying, and how much of this are we seeing inside our own datasets? Is our internal data saying something similar? Is our engagement survey data saying something similar to what Ethisphere is saying? How are we measuring culture? And importantly, what are we doing with those results?

All of those are real opportunities now, particularly as we think about what the working environment of the future looks like. If a business is going to be a hybrid environment, that creates one set of expectations for managers. If everybody is coming back into the office, that creates a different set of expectations. And if a company allows people to continue to work remotely, that is a third set of expectations for managers.

To that end, the 2023 Ethical Culture Report thinks through all of those pieces so that those who read it can ask of themselves what their internal data says compared to what Ethisphere's data is saying. It enables them to ask how they can use this data to make things better for their workforce, and to give them the opportunity to tell their employers what they are thinking. The fundamental message of this report: that all of this information is a gift. It is all something you can accomplish great things with. You just have to have the right attitude.

CULTURE MATTERS MORE THAN EVER

As we pulled this report together at this particular moment in time, we looked at the generational data we gathered as a way to gain insight into the expectations of the workforce of the future. As we look at some of the things that are happening out in the world, especially the economic situation, the fact of the matter is that the average company today has somewhere between 70 and 80% of its value tied up in intangible assets. Value isn't stuff for most companies, it's brand value. It's goodwill. It's reputation. Its' intellectual property. And most of all, it's people. And how do you hold on to your best asset? Its culture.

That is the reason why we are seeing investors care so much about this. It is the reason why we are seeing future employees care so much about this. And it is the reason why we are seeing regulators mention it as much as they have been recently. There is an immense amount of focus from board members, investors, regulators, and future employees on some really key questions: Are you nurturing the right kind of culture? Are you supporting the right kind of culture? Are you growing the right kind of culture?

It is incredible to me—just incredible—how the business community has coalesced around this question of culture. For a lot of people, that is kind of amorphous. What is culture? To me, it is easy to measure. Do your people know what's expected of them? Are they willing to raise their hand when they have a question? And how do they feel about those processes? Those are the fundamental questions that you ought to be able to answer about the organizational ecosystem in which your people are operating. And if the answer to any one of those questions is something your organization does not know or have, then that is the cue to solve for that.

It is enormously expensive to replace a mid mid level executive—I have read the costs can be as high as a million dollars every time somebody turns over. And why do people leave jobs? More often than not, they're not leaving the job. They're leaving their manager. So really, it all comes down to culture, that fundamental linchpin around which everything else spins. It is absolutely measurable, if you've got the appetite to do it. And with the right data and the right insight, you can build an ethical culture that will make your organization more resilient, valuable, and sustainable. Strong ethics is good business. And the latest culture data proves it, yet again. ■

The 2023 Ethical Culture Report—Lessons from the Pandemic: Accountability Reigns and Gen Z Refrains *can be downloaded here. This content originally appeared in video form as an episode of the Ethicast. To watch that episode, please click here.*

ABOUT THE EXPERT

Erica Salmon Byrne *is the CEO for Ethisphere, where she has responsibility for the organization's data and services business and works with Ethisphere's community of clients to assess ethics and compliance programs and promote best practices across industries. Erica also serves as the Chair of the Business Ethics Leadership Alliance; she works with the BELA community to advance the dialogue around ethics and governance and deliver practical guidance to ethics and compliance practitioners around the globe.*

Diving Into the Data

with Doug Allen

Interview by Bill Coffin

Ethisphere Vice President of Data Strategy **Doug Allen** discusses the data behind the key takeaways from the 2023 Ethical Culture Report, which includes how bullying claims skyrocketed over the course of the pandemic, how ethical culture trends vary by age cohort, how team reputation factors into employees' decisions to report misconduct, and the critical role that data and measurement play in building a thriving workplace culture.


DOUG ALLEN

I love to hear you talk about the size of the respondent pool we're talking about here that inform this report. Exactly how big is the Sphere's culture dataset? And how does the Sphere get all that terrific data?

The data that underpins our 2023 Insights report on culture comes from our universe of more than two million individual employee data responses that we have collected since about 2016. These are data points from organizations around the world, representing industries of all shapes and sizes. The data itself comes from a proprietary survey and engagement process that came about at the behest of the Business Ethics Leadership Alliance community.

We developed this survey methodology in 2015, through conversations we had with the BELA membership, which at the time was a fledgling community. Now, it's much larger, but back then, BELA members came to us and said that a pain point for them was that nobody was measuring the ways in which their compliance programs were actually producing results. That's when Ethisphere stepped to the plate and came up with something that could help ethics and compliance officers measure the efficacy of their programs,

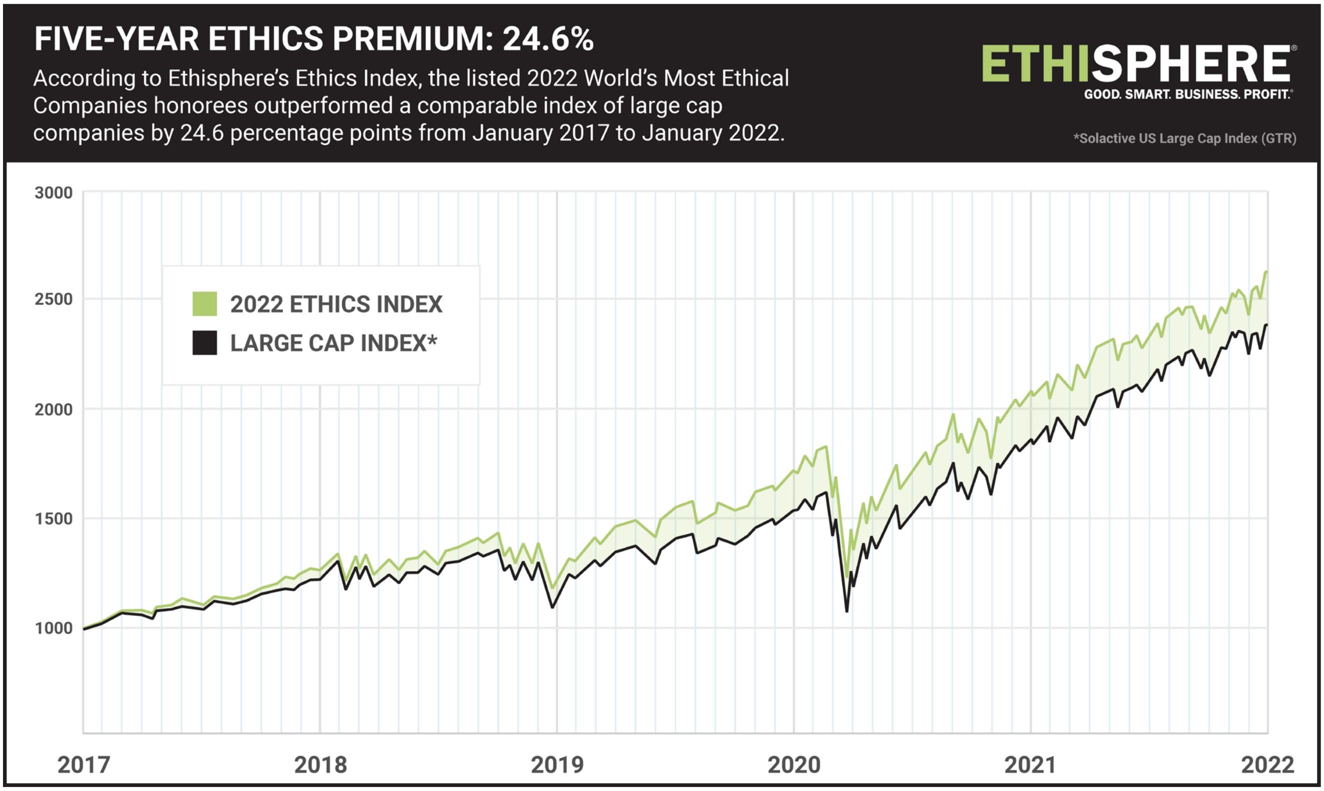


*Table from **The 2023 Ethical Culture Report—Lessons from the Pandemic: Accountability Reigns and Gen Z Refrains** which can be downloaded here.*

what their employees are thinking about these programs, and what the workforce's overall take is on the culture of ethics within their organization.

With the BELA community's collaboration and partnership, and with our own internal experts, we developed what we call the Ethical Culture Solution Set. The survey is now in its eighth year, and we have collected more than two million responses from hundreds of organizations around the world. That unique breadth and depth is what we are bringing to bear in this report.

We have released previous versions of the Ethical Culture Survey that have delved into other insights, but in the 2023 version, things are a little different. Our audience today has been through some pretty tumultuous times of change. The COVID-19 pandemic is not yet over, but we felt that we are at a point now where we could collect enough data at this point to really dig into trends that arose during the pandemic, both from a time period perspective, but also involving various demographic dimensions as well. We are hoping that this survey will just be the first in a regular series of great insights that we can pull from our data and share with our wonderful community on what we're seeing regarding compliance and ethics topics.

A major aspect of this report is its focus on how ethical cultures in general fared over the course of the pandemic. How did ethical cultures do when put to the test?

We are looking at ethical culture pre- and post-pandemic—and we are calling our present moment "post-pandemic," even though we fully realize that we are still in an ongoing COVID-19 situation. But when looking at our data, we were able to segment all of the results we collected prior to March 2020 versus everything after that. Then we looked at trends in how employees are perceiving the culture of integrity within their own organizations during those two different time periods.

Now, before we get into the findings, a quick primer on what we've looked at as part of our process. The way we've approached measuring ethical culture is defined by what we call our Eight Pillars of Ethical Culture. Many of our audience members today, and devotees of Ethisphere in general, know of these pillars. But for those who do not, the Eight Pillars cover what we consider to be the foundational elements of an effective and sustainable culture. For example, what is the awareness of the employees of the compliance and ethics program? What are their perceptions on whether or not that program is working? What is their overall sense of willingness to speak up? Are they, in fact, speaking up? What are they seeing that falls within observed and reported misconduct? To what extent are employees feeling pressure to achieve their business goals at the expense of potentially compromising the policies of their code of conduct? We review the law, we look at dimensions of organizational justice, we look at perceptions of one's immediate manager,

WHEN YOU SAW MISCONDUCT, DID YOU REPORT IT?

AGE	YES	DECLINED TO ANSWER	NO
GEN Z (≤ 25)	43.6 %	17.5 %	38.9 %
MILLENNIAL (26 - 41)	45.5 %	22.7 %	31.8 %
GEN X (42 - 57)	53.5 %	18.8 %	27.6 %
BOOMER (58- 77)	50.3 %	22.1 %	27.6 %

Table from ***The 2023 Ethical Culture Report—Lessons from the Pandemic: Accountability Reigns and Gen Z Refrains*** *which can be downloaded here.*

and how are employees thinking about their senior leadership team? And finally, how do they employees perceive their co workers and their immediate environment? These constitute the Eight Pillars of Ethical Culture.

When we compare our survey data to the Eight Pillars, one of the first things that stood out to us is that when you look at the data after March 2020—which for a lot of people is when the pandemic timeframe really begins—many of the results we measure increased in terms of their overall perception. Employees really put more trust in their employers across just about every dimension that we looked at, in terms of the pre- and post-pandemic landscape. That is at a broad thematic level.

There is, of course, a lot of nuance in the details. If we really focus on one of our hotbed areas—the pillar observing and reporting misconduct—we see some really interesting results when we compare pre- and post-pandemic data. After the pandemic, the volume of misconduct that employees said they observed went down. However, when we asked those individuals who did in fact see something, if they raised their hand to say something, that proportion is also decreasing. So ,we are seeing a decrease, at least from the eyes of the employees that we survey, that there is less misconduct that they believe is taking place, but those who are seeing something are also less are willing to come forward than they might have been before the pandemic. The questions remains, why? What is driving some of these different types of behavior in this environment?

Before we get to that, however, it is worth noting that when we looked at what types of misconduct folks are observing, just about every one of the different classifications of misconduct we measure all went down over the course of the pandemic. There is one category, however, that really skyrocketed over the last few years, and that is bullying. As the pre- and post-pandemic data showed, we saw a 13 percent jump in bullying misconduct claims. So that was one of the findings that really jumped out to us.

Let's focus on the bullying piece for a moment. Can you talk about the rise in bullying claims, especially compared to how other forms of misconduct rose or fell during the pandemic? How much of an outlier is the bullying situation?

When you look at the 27 different types of misconduct that we measure, I believe 20 of them actually went down over the pandemic. Of the seven categories that increased, bullying was far and away the biggest one, at 13 points. The next highest category was "violations of health and safety policies," and that only increased by a little more than a single percentage point. Within the margin of error, really. So that helps to put the bullying statistic into perspective, I think. Bullying went through the roof, and really is an outlier here. It's pretty impressive.

Another interesting thing about this survey is the degree to which it breaks down data by generational cohorts—specifically, Boomers, Gen X, Millennials, Gen Z. What findings did that particular approach yield?

Some pretty exciting results came from looking at this data from a generational perspective. As a caveat to the audience, the age categories we group data into use generational terms that are very U.S.-centric, but the data itself comes from around the world. When organizations administer the survey and collaborate with us to measure their own culture, a lot of times they will indicate age ranges or age values, and those all get grouped under the similar classification. And then as part of our analysis, we apply more U.S.-centric terms, such as Gen X, Gen Z, Millennials, Boomers, and so on.

With that being said, what was interesting in the data is that several different dimensions jumped out. The one I will touch on one for now, and let folks dig into the report for some more information, is Generation Z, or employees among the youngest class of survey respondents by our definition, which is 25 years of age or younger. When looking at trends around an overall willingness to speak up, Generation Z employees are actually less likely to report than those in their older generational peer groups. They are 10 points less likely to report than their Generation X colleagues. Those who are just entering the workforce now are showing some reluctance to report misconduct, so we really dug into the data to figure out what is driving this.

What we are seeing is that Generation Z employees broadly seem to have a very good awareness of the concept of non retaliation, and there is decent faith behind how they feel their organization supports that policy. But when you look at the why behind Gen Z, and what they are thinking through in terms of not reporting misconduct, the same two responses that we see across other generations also come to the top. The first is the concern that if they raise their hand, they don't think anything is really going to happen as a result. It is a lack of faith that something will be done about what has been reported. And the second is that there is an underlying fear of retaliation among those who say they observed misconduct but did not report it. There are some differences between generations around those two reasons, but they do represent a common thread across all generational classifications.

We also noticed that the younger an employee is within their organization, the stronger their perception is of their own reputation within their team. With Generation Z employees, reputation matters significantly more than any other generational classification. As a result, Generation Z employees are saying they are concerned about the reputational harm that reporting misconduct will cause to themselves, and to their team if they raise their hand and say something. That was one dimension of our findings that really jumped out. Those were some of the key generational differences that we saw, among others, when specifically examining the lens of speaking up and reporting misconduct.

This is the crux of it. To be candid, the way in which we measure these survey results within Ethisphere, we are blessed with the opportunity to work with some of the most forward-thinking, most developed, most integrity-focused companies in the world, including those who partner with us to measure their culture specifically.

The first recommendation is fairly obvious, but you've got to measure ethical culture. That expectation is coming down from the regulators themselves as something they are putting an increased focus on. In the Monaco memo, and some of Ken Polite's comments in some of his speeches, making a culture of compliance is top of mind for these regulators. Measuring culture is something you need to be doing. You've got to put forward the resources. This has to become a priority as an ethics and compliance professional, to figure out what your employees thinking. These are your internal customers, right? Are they satisfied with the service you're providing as part of the compliance team? Are they engaging with materials you're providing? What is really their take on the services you are delivering as a compliance function across the organization?

The second recommendation is to look at the generational trends we are seeing come out of this report. To my mind, this data and some of the research we are seeing elsewhere suggests that this is really the tip of the proverbial iceberg. We are already seeing articles in The Wall Street Journal, and John Haight at NYU, Stern saying, "Look, there's a crisis among Gen Z. They've been awash in this victimhood mentality. Social media has played a significant role in their general mental health and well-being. These Gen Z individuals are now transitioning out of college to the workforce, and as they do, that is bringing significant ramifications to compliance and ethics teams, as well as to businesses in general around the world. So I think the data that we are seeing today is only just starting to allude to what these changes could be. The research on generational culture that we are seeing from other sectors and from other sources is really indicating that what we are seeing in the 2023 Ethical Culture Report is part a much broader piece.

Businesses that have relatively young workforces—especially companies in the retail and food service industries—are probably seeing a lot of this already. If they are not taking this opportunity to speak with some of their compliance peers who are already having this experience, then they are not exactly preparing themselves for what is to come, potentially. This is a big change, culturally speaking. The data alludes to it, and we are seeing it in other research. So, be proactive and prepare your teams, your organization, and your compliance programs for this new generation of young folks coming into the workplace and be the change requires to communicate effectively with them.

The 2023 Ethical Culture Report—Lessons from the Pandemic: Accountability Reigns and Gen Z Refrains *can be downloaded here. This interview originally appeared in video form as an episode of the Ethicast. To watch that episode, please click here.*

ABOUT THE EXPERT

Doug Allen *is the Vice President of Data Strategy at Ethisphere, where he leads benchmarking, certification, and partnership efforts. Previously, Douglas spent six years providing compliance- and ethics-related advisory services, including developing compliance and ethics risk assessments, codes of conduct, corporate policies and procedures, and communication and training curriculum plans.*

Transparency & Trust

with Cassidy Davis

Interview by Bill Coffin

The 2023 Ethical Culture Report offers plenty of insight on what some of the emerging issues are when it comes to what different groups of people expect when it comes to business integrity from their workplace, particularly Generation Z. So what can companies do to act on these findings and build a better ethical culture of their own? Drawing on her own experience as a Client Success Manager for Ethisphere, and having seen field-tested solutions at work, **Cassidy Davis** has some ideas.

CASSIDY DAVIS

The Ethical Culture Survey yielded some surprising data on how much bullying has grown as a cause for missing a reported misconduct, rising by 13 percent over the course of the pandemic, far more than any other form of misconduct in the survey. How can companies take action to address this?

I was surprised by that finding on bullying as well. What organizations can do—and what I've seen organizations do when it comes to bullying is not that dissimilar from what works with other issues, as well—is to promote speaking up. I have seen that done most effectively specifically through how companies communicate the reporting process to their employees. What does that look like? How do you use it? What is the hotline? What is the reporting portal? Who can you go to? What happens during the process? How transparent is the process? Do you highlight the fact that there are many different outcomes of an investigation?

As with most reasons for reporting, speaking up allows for a solution. If an issue is going to change, someone has to say something, and from what I have seen, that is especially true of bullying, where speaking up can be especially difficult. So it's really important to encourage employees to speak up. That is the number one thing to spoke to focus on.

The Ethical Culture report noted that time will tell what the actual root cause of the bullying trend is that we noticed. It could be a lot of things. It could be the stress of the pandemic, Gen Z being especially sensitive to bullying as something that is unacceptable, managers needing more training, and so on. But giving the employees the keys to say something and what managing what happens after that process begins are fundamental to success.

"The data show that Gen Z does not always trust an organization's anti-retaliation policy, whether that's because they don't know about it, or because they're so new to the workforce that they don't trust it."

Another surprising finding from the report is that when it explored how different age cohorts have noticeably different levels of awareness around what tools are available for them to report misconduct, and how to take advantage of those tools and speak up. The younger the age cohort, the lower the general level of awareness. One would imagine that everyone knows what these tools are, but the data shows that clearly, that's not the case. How important is it for companies to really make a special effort to ensure that employees know what the full range of speak up tools and options and protections are?

It's everything, I would say. Companies should focus on the presence of the ethics and compliance function. How are you communicating? How well do you understand your employees' basic psyche? Are you sending out newsletters? Do you have posters? How are you conducting ethics week? Do you even have ethics week?

The more they're aware of your function, the more you're able to get the word out about the different avenues for reporting. Yes, you may have your annual training, and yes, there may be that poster in the cafeteria or the lunchroom. But it needs to be a more consistent communication. There needs to be a certain rhythm or cadence, if you will. Reaching out once a year is not enough, and something static like a poster is good, but that will not be enough, either. It needs to be more, and it needs to be consistent.

Maybe you do a quarterly newsletter and remind people of those avenues. Maybe you do a campaign in partnership with your people managers to remind employees of how they can speak up, and what their protections are. You could even gamify this around where how people find the hotline or displaying how many different ways there are to report. There are lots different options to explore, but I would say that the most important thing is to focus on promoting the presence of the function. That's what I'm seeing.

In the culture survey that is the basis for this report, we see a lot of data that over the course of the pandemic, Generation Z employees seemed especially hesitant to speak up against misconduct. That looks like a particularly important development, so how might organizations best respond to that?

The data show that Gen Z does not always trust an organization's anti-retaliation policy, whether that's because they don't know about it, or because they're so new to the workforce that they don't trust it.

This actually sent me back to the Edelman report from December 2021, which is called The Power of Gen Z. And what they found is that Gen Z, also called "the sensible generation," has a huge concern for safety, whether that's physically, mentally, financially, socially. So, fast forward to our report, it's been really neat to see our data reflect that very thing.

It's clear that these young people coming into the workforce are extremely concerned about their safety. They want to keep their job. Those who started during the pandemic, are coming into the workforce for the first time, literally scared for their own health when there has never been a more uncertain time than in these past few years. And you know, these bright-eyed young people, they don't know what's going on, they just want to keep their job.

So with that, another finding that the Edelman report talked about is that Gen Z can sniff out manipulation a mile away, they don't even bother with a show. They want to know the facts. Facts, they trust. So what I see the most successful companies doing is focusing on transparency. If you want to gain Gen Z's trust and make them feel safe, they need to know what's going on. For example, when we help a client with a culture assessment here at Ethisphere, I get to speak with our clients about what they did after the survey. The companies with the strongest cultures are the ones that show the data and say, "Hey, everyone, here are our results. Here is where we think we are excelling. Here are the areas where we think we are struggling." And where they are struggling, they make a point about saying what they are going to do about it. And then, they follow through. That is the only way you are going to gain Gen Z's trust, because, you can say as much as you want, but until they see it in action, they will not trust you. That is why they probably don't trust your anti-retaliation policy, or why they might say they want to speak up about misconduct, but they don't actually do it when they see it, because they are not yet sure what is really going on around them. So transparency, in any way possible, is going to help gain the Gen Z's trust. Show transparency, and you'll see them speaking up more.

"The more transparent you are, the more Gen Z is going to really feel safe to speak up."

There is something else to consider, too, when it comes to Generation Z. This generation is so passionate about justice and doing the right thing. They have a mentality of "if I protect you, then that also protects me." I believe that time will tell how Gen Z's reporting behavior changes after the pandemic. But the more transparent you are, the more Gen Z is going to really feel safe to speak up. Once that happens, I think we will see the reporting numbers for that particular generation group start to grow.

It is going to be really interesting to see how much of an impact Gen Z has on broader cultural expectations at the workplace, because they are just starting to show up as a cohort. Their influence will only grow in the years to come. It seems like the generation findings of this report are a kind of early indicator that organizations need to get their culture right by Gen Z, because Gen Z is going to expect it, and it's going to really shape things in the years to come.

Absolutely. And that is where you attract talent as well. These young people are so smart, so bright, so wise, and the best of them are going to go to the best companies with strong cultures that care about how people are treated. You already are seeing this with things like brand loyalty; as consumers, Generation Z are already known for choosing brands that they feel are ethical. So it follows that they are going to choose companies to work for that are also ethical.

One of the most attention-grabbing sections of the Culture Report is the third section, which is about how managers still matter. We have seen in this survey, that the role of managers as an immediate source of support is still very, very important to employees across the board. How can companies support their managers as pillars of corporate culture, especially during times when cultures are really put to the test as they were during the pandemic?

I love this question. According to our data, managers are the highest influence on an ethical culture. I see organizations supporting their managers by making it easy to talk about ethics.

I have the great pleasure of working with our culture content subscribers. One of the resources that we offer to them is a manager's toolkit. This is a wonderful tool for managers to take into consideration when they are having those weekly, monthly, quarterly discussions with their direct reports. It helps them keep in mind how to talk to their employees and understand the tone that they need to present to get through to them.

What I see companies doing is giving their managers different options and different modalities for communicating topics. Humor is one worth considering. Humor goes such a long way with learning, because science shows that we retain more information when there's humor around or within a conversation. Or, maybe it's a short and sweet video to communicate something specifically and quickly and get some energy behind it. Maybe it's scenario learning. Maybe it's, talking through an issue hypothetically, tapping into how we all learn through storytelling.

It could be through gamification, where you have a friendly competition around a particular topic that can create the room for a team celebration. I had a great opportunity recently to speak with an organization about how they gamified their ethics week. It was really impressive—they rolled out a different topic every day during that week, and every day, they had quizzes on that topic. The business unit with the most respondents got a prize. It was a really fun way to, to incorporate that. So, if your managers are able to give your managers a bit of hand-holding, then that's the quickest and most effective way to help you help them. A little hand holding goes a long way. It puts them at ease. ■

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ABOUT THE EXPERT

Cassidy Davis *is the Client Success Manager for Ethisphere's Business Ethics Leadership Alliance (BELA) and Data & Services teams. She has the pleasure of serving as a key client contact by providing support throughout the lifecycle of services and ensuring products are optimally adopted and deployed. Prior to joining Ethisphere in 2021 as a BELA Account Representative, Cassidy spent 15 years in the hospitality industry. Her last role was at The Ritz-Carlton New York, Central Park with their legendary Guest Relations team. She played a key role in maintaining the property's Forbes Five-Star status and was a nominee for the J. Willard Marriott Award of Excellence.*

10 Key Takeaways

From the 2023 Ethical Culture Report

01 Despite the extraordinary pressures placed upon them by the COVID-19 pandemic, ethical cultures continued to advance.

02 Over the course of the pandemic, while people became more willing to report misconduct, they observed less of it – and actually reported it less.

03 Bullying misconduct claims skyrocketed during the pandemic while most other types of misconduct declined.

04 Gen Z report misconduct less than any other age cohort, despite their professed willingness to call out bad behavior. The younger the employee, the less confidence they have in anti-retaliation policies and procedures, and thus, the less likely they are to risk professional harm by calling out misconduct.

05 Non-binary and third-gender employees became much less likely to report misconduct over the course of the pandemic, going from the most likely gender cohort to report unethical behavior to the least likely.

06 While Gen Z represents the smallest age cohort in our culture dataset, it is also a rapidly growing one, and Ethisphere expects that the trends that drive Gen Z's responses will only expand and gain importance over time.

07 Regulators expect companies to build robust ethical cultures, and to take responsibility when those cultures fail to prevent misconduct.

08 The rising popularity of compliance web portals could overtake both helplines and compliance and ethics representatives as a reporting channel. They're still not close to the levels at which people are talking to their managers.

09 Traditionally, however, people still vastly prefer to speak to another person when reporting misconduct—especially their immediate manager.

10 Immediate managers are still at the forefront of corporate culture in general and have enormous opportunities to drive, strengthen, and improve their workplace's ethical culture.

CALLS TO ACTION

Elevate ethics: Companies are expected to create a strong accountability culture within their organization. The benefits reap rewards—a strong ethical foundation helps meet expectations of regulators and other stakeholders; and importantly, fosters a work environment where employees feel comfortable speaking up and contributing.

Help employees do the right thing: Over the course of the pandemic, while people became more willing to report misconduct and observed more of it, they actually reported it less. People are far more likely to report to other people—with a preference for managers—than through automated channels. Make sure your managers and broader teams are encouraging these conversations and are prepared to elevate concerns.

Consider and adapt to the needs of different employee populations: Gen Z and Millennials lack understanding about retaliation and reporting misconduct. Gen Z employees who don't report are not confident that reporting won't harm them professionally. As a result, there is a clear opportunity to improve anti-retaliation and reportability training and awareness among these employees. Additionally, the compliance web portals are poised to overtake both helplines and compliance and ethics representatives as a reporting channel—so take your technology to the next level while also preparing managers.

Focus in on the hot spots: Bullying misconduct claims skyrocketed during the pandemic while other types of misconduct declined. Determine if this is a challenge in your organization and develop a plan to address it. Employees are also concerned about retaliation if they do speak up. Communicate expectations and reinforce positive behavior through stories, examples, and leadership through actions. ■

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Get Ready for the 2023 Global Ethics Summit!

April 17-19, Atlanta, GA, Grand Hyatt in Buckhead
https://globalethicssummit.ethisphere.com

by Emily Rickaby

We couldn't be more excited for this year's Global Ethics Summit, the ethics and compliance community's most eagerly anticipated gathering of the year. This year, there will be two options to attend. We are thrilled to announce that we will be back in-person in Atlanta, GA at the Grand Hyatt in Buckhead, and we will also offer a virtual Summit experience with select sessions live-streamed from Atlanta along with exclusive content for the online audience.

No matter if you are joining us in person or virtually, all panel sessions will be recorded, and every attendee will receive access to session replays following the event. And, if you are attending in person and want to check out the virtual platform content, all registrants have access to the online Summit experience.

In the Ethisphere community, there is an embarrassment of riches when it comes to thought leadership, vision, and subject matter expertise. This often makes topic selection the most difficult thing about planning the Summit experience each year, as we curate the most compelling and relevant arrangement of topics that cover the breadth and depth of interests, insights, and issues that are top of mind within Ethisphere and throughout the Business Ethics Leadership Alliance (BELA). We listen carefully to the ethics and compliance community to understand the forces of influence on your organizations, your programs, and you as a leader.

In many ways, the core of the E&C landscape remains the same across time and circumstance:

- What are your organization's risks and opportunities?
- Do you have the authority and resources to do something about it? If yes, what and what first? If no, how do you collaborate or negotiate to get the authority and resources necessary?
- Are the leaders, managers, and employees at your organization taking action and exhibiting desired behavior to reduce risk?
- How do you prove what is working and what's not? How do you show the value of your ethics and compliance program?

Even if these questions do not quickly change, the roles, processes, systems, techniques, and tools that are employed to answer them do as our field strives for excellence. We have seen the incredible resiliency and innovation that has allowed your programs to shift, respond, and evolve during the three years since our last in-person Summit, and this year's agenda is a reflection of that journey as we continue to move forward together.

The faculty for the Summit grows every day and this year the organizations represented among the speakers continue to make this the premier ethics and compliance event. Hear from leaders at **Clarios**, **Lincoln Financial**, **Assurant**, **Rimini Street**, **Bridgestone**, **Voya Financial**, **Booz Allen Hamilton**, **Iberdrola**, **Southwire**, **Kohler**, **Rockwell Automation**, **Aflac**, **WSP**, **CareFirst**, **Carter's Inc**., **Petrobras**, **Honeywell**, **HCA Healthcare**, **Brown Forman** and more. And, we are pleased to also feature our long time sponsors **Morrison Foerster**, **Baker McKenzie** and **Husch Blackwell**, whose leaders and experts will also be among the panelists.

Now is the perfect time to plan your Summit experience. Our agenda is full of opportunities to hear from Ethics and Compliance leaders, receive information on the latest data and trends from Ethisphere and connect with peers. What follows is a summary of the conversations and opportunities for connection you can look forward to at this year's event. For even further detail, please visit the Global Ethics Summit website at https://globalethicssummit.ethisphere.com. *(Please note that all times are in U.S. Eastern.)*

The only thing missing is you! Take the time to register today and start planning your experience. If there's anything we can do to support your experience at the Summit, reach out to your BELA Engagement Director or directly to me. We'd love to hear from you and look forward to seeing you in April.

APRIL 17: BELA DAY

12:00 pm - 8:30 pm

The first day of the Global Ethics Summit is devoted exclusively to the members of the BELA Community. This time together will include:

- Hearing from your peers during an opening panel conversation on the state of the E&C profession
- Getting a first look at data, trends, and highlights from the 2023 World's Most Ethical Companies dataset
- Participating in real-time polling and benchmarking to go deeper into the challenges and opportunities driving priorities for BELA member company programs
- Gathering for the announcement of the 5th Annual BELA Award winners and toasting this year's honorees
- Joining your peers for an evening of food and fellowship at the BELA Member Dinner

At 1:15, join us back at the Main Stage for **Voice of BELA: The State of the Profession**, where we will hear from BELA company leaders on what is driving the ethics and compliance profession today. What do compliance teams look like in terms of skillsets? How have compliance leaders been able to take a larger role in overall organization business strategy? What are the challenges and opportunities for ethics and compliance professionals, programs, and priorities as we look toward the 2025 milestone year?

APRIL 18

8:30am-6:30pm

Check in early and connect with colleagues over breakfast, and then get additional data, trends, and highlights from across Ethisphere's datasets throughout the day.

Beginning the day from the mainstage is **A CEO Conversation on the Value of Values: Making Integrity a Business Opportunity** This high-powered panel discussion will be simulcast live to the virtual audience and will cover how ethics and values can, and should, set the direction of a business. Chief Executive Officers are in a unique position to drive transformation and ethical culture at their organizations as the voice of leadership. They can embolden the ethical course and voice the values that matter most. Hear from this panel of CEOs as they talk about doing just that and how integrity can be a competitive advantage, how to develop and maintain stakeholder trust, and fueling performance with integrity in this Ethics Economy.

After our CEO Panel concludes, the morning breakout panel sessions will begin, which include:

- Managers as Pressure Regulators: Ensuring Employees Achieve with Integrity (simulcast live to the virtual audience). Pressure is not inherently good or bad and depends on the circumstances surrounding it and the degree to which it is applied. It often cascades downward from senior leadership, with middle managers having a huge impact on how employees experience pressure to perform. In this session, hear from the panel on how managers can help their employees navigate pressure without compromising ethical values, how to lead by example, and how manager behavior can influence that of their employees.
- Equipping the Board to Lead on Ethics & Compliance. While we usually think of the broad employee base when talking about education and training, they are not the only group at your organization that needs attention. Your Board of Directors should also receive training and education on organization policies and values. In this session, learn how you can educate your Board of Directors on ethics and compliance, the what, when, and how of training board members, and the value of using case studies.
- Driving Your Program Forward with Operationalizing Compliance Data. Some compliance programs are just starting to think about gathering and using operational data to monitor, assess, and improve their programs. Others

have already made strides in this area. Whether you are on one end or the other of your journey, or somewhere in between, join this panel to understand how compliance programs are using data and metrics to better assess program performance and learn how they improve their efforts.

- Walk Before You Run: How to Stand Up or Support a Compliance Program Early in Their Journey (live session exclusively via the virtual platform). Not every organization is at the same point in their compliance program journey or has the same maturity level. Those with more mature programs can help cultivate and support smaller or less mature programs in their journey. Whether your compliance program is small or early its maturity, or you work with those in your value chain, let this session be your guide to building the foundations of a good ethics and compliance program at your organization or helping those who are early in their program maturity.

Afternoon Activities and Sessions

Grab a bite and watch our **luncheon keynote** broadcast live from the mainstage (simulcast live to the virtual audience), and then listen to back-to-back plenary conversations from the mainstage (simulcast live to the virtual audience):

- Claws, Carrots, & Sticks: Selecting the Right Tools to Encourage Ethical Behavior. In her September 2022 memo, Deputy Attorney General Lisa Monaco discussed using instruments of individual accountability such as discipline, claw backs, restitution, and others to discourage wrongdoing. This raises an interesting question: what is the best way to encourage ethical behavior at your organization? In this session, panelists will share their insights into how you can answer that question. The discussion will include how to create effective incentives or deterrents, partnering with other functions at your organization, and recognizing employees when they get it right.
- Avoiding ESG Potholes: The CLO View on Aligning with the Board, Delivering on Commitments, & Evolving Governance. The focus on ESG has increased dramatically in recent years. This has led to promises and commitments being made on a range of fronts from carbon-neutrality to community aid. However, these statements can lead to greenwashing, the false idea that products, aims, or policies are environmentally friendly. In this session, hear from leaders about the big picture on promises versus the ability to deliver, assurance and auditing, and avoiding greenwashing.

After that, select from a robust lineup of afternoon breakout panels, including:

- Helping Managers Get Ethics & Compliance Right in a World of Increasingly Varied Employee Expectations (simulcast live to the virtual audience). Speaking up to a manager is a common modality for reporting concerns and potential misconduct for employees. However, with varying employee expectations, cultural and generational differences, and multiple types of work environments in the same organization, it can be challenging to prepare managers for these conversations. In this session, the panel will discuss how to prepare managers for ethics and compliance conversations, dealing with the mental health of employees, and creating an environment where employees feel safe speaking up.
- A New Dawn in Third Party Due Diligence. More and more organizations are stepping up their due diligence efforts for suppliers and other third parties. They are moving beyond certifications to garner a greater understanding about the way their potential partners operate. The scope of due diligence is also broadening with more attention on areas such as human rights. In this session, panelists will discuss how organizations can increase their due diligence efforts, strategies for successful monitoring, building trust and relationships with third parties, and how data analytics play a role in due diligence.
- Maximizing Time & Attention of the Board, Leadership, and Other Stakeholders to Showcase Your Program. It will come as no surprise to anyone to hear that it can be challenging get the attention of the Board or leadership, let alone get their time to discuss and showcase your ethics and compliance program. In this session, hear from ethics and compliance leaders on how they highlight their program and its value, get tips on creating dashboards, defining KPIs, and building reports, and learn how and how often they are able to get in front of their Board or board committees.
- The Blurring Lines of Training & Communication: Using the Best of Both Approaches to Build Employee Competency (live session exclusively via the virtual platform). Training and communications are so often paired together when talking about ethics and compliance. This isn't necessarily a bad thing as they typically go hand-in-hand. One can be used to increase the effectiveness of the other. In this session, hear from panelists about how you can utilize a communications mindset to deliver training content, keep the important conversations going throughout the year, and capitalize on the opportunity of compliance or integrity weeks.

Then, join us back in the grand ballroom for another mainstage conversation on **Putting Ethics & Culture in the Driver's Seat of Business Strategy**. A poor ethical culture will eat compliance policies and certifications for lunch. The phrase, "it was a business decision" is still used in defense of ethically gray actions, as if ethical culture is somehow separate from business. In this session, learn from the panelists about the importance of including ethics in the conversation about business strategy, holding leaders accountable for setting cultural expectations at the organization, and how to make ethical behavior a business goal.

Afterward, be our guest at a **cocktail reception** where you can unwind and gather with peers and colleagues.

APRIL 19

8:30am - 1:00pm

The final day of the Summit begins with another opportunity to connect with colleagues over breakfast in advance of a schedule of events that will highlight more data, trends, and highlights from across Ethisphere's datasets.

But first, listen our opening keynote for the day, **A Board Conversation on Today's Risk Environment** (simulcast live to the virtual audience). Board members have had to guide companies in a risk environment being fed by a firehose of new challenges. How does the board view the current risk environment? What data is the Board seeking to properly evaluate the risks at hand. In this session, a panel of Board members will discuss how the board looks at today's risk environment, how they assess the current business climate, and the role of compliance, integrity, and governance in aligning with the Board to more effectively improve in areas such as ESG to ensure values and opportunity outweigh the cost.

After that comes a block of breakout sessions that include:

- The Power of Transparency & Storytelling to Bring Commitment to Values to Life. In this session, panelists will talk about utilizing storytelling in their communications, how to increase transparency, and using data and real examples to educate employees on the investigations process and outcomes.
- Defining the Right Scale and Scope of Ethics & Compliance Risk Assessments for Your Organization. In this session, learn from panelists on how they created ethics and compliance risk assessments that fit their organizations.
- People Impacts & ESG: Stakeholders as ESG Drivers (simulcast live to the virtual audience). In this session, learn how to define and prioritize your stakeholders, focus on the "S" in ESG, and understand the risks and opportunities that your stakeholders' expectations can create.
- Culture Measurement 101 Revisited: What Remains the Same & What is Changing (live session exclusively via the virtual platform). In this session, panelists will discuss the varying methods of measuring culture, what has consistently been effective, and what changes they have seen in recent years.

Once the breakout sessions are finished, join us back on the Main State for **Increasing Enforcement Efforts & What That Means for Evaluating Compliance Programs**, in which experts at regulatory agencies will share their unique insights on how enforcement efforts have been increasing, what they expect from ethics and compliance programs, and how these changes will impact their evaluation process for compliance programs.

*(One final session note: Throughout the Summit, there will also be ongoing **Solution Sessions**, **Client Conferences**, **Peer-to-Peer Roundtable Conversations**, and **BELA Programs in Action** that provide access to some of the most impactful and relevant intelligence for advancing your E&C program. Be on the lookout for them, as well.)*

And with that, our Global Ethics Summit for 2023 will come to a close, but that won't mean the event's over. Be sure to watch for on-demand versions of the sessions you attended—and the ones you missed—on the virtual event platform shortly after you return home. And if you liked what you learned here, make sure to keep an eye on Ethisphere and BELA's events program for the remainder of the year, where there are many more incredible educational, benchmarking, and networking opportunities to come. We look forward to seeing you! ■

ABOUT THE EXPERT

Emily Rickaby *is Director, Shared Expertise and Strategic Projects for the Business Ethics Leadership Alliance (BELA) at Ethisphere. In her role, she works with Ethisphere's data and analytics team, members of the BELA community and other compliance and ethics professionals to foster collaboration and the sharing of best practices through the development of Ethisphere and BELA events, overseeing BELA working groups and directing the curation and publishing of relevant content resources, and enhancing the BELA member hub experience in support of the BELA member community.*

How Leaders at Eaton Own Ethics

by Joe Rodgers

Eaton's philosophy that everyone has a role to play in building a culture of integrity has delivered big dividends for this diversified intelligent power management company. But the company is very clear about something: for there to be a truly ethical culture, it starts with the tone at the top. Here's how they do it.

At Eaton, we are exceptionally proud of the fact that we have been named one of the World's Most Ethical companies eleven times. But we also understand that evolving our program is not just important, it's required.

Our philosophy is simple: We all own ethics. This means we believe everyone at our company plays a role in creating and sustaining an ethical culture, regardless of their role. We expect all employees to do the right thing every time, challenge the status quo and lead by example. In essence, we expect everyone to be a role model.

Explaining to employees why this matters is crucial—and data from Ethisphere helps build a case. It reveals that when we frequently discuss ethics and compliance, employees are:

- **Two times** more likely to be comfortable approaching their manager with concerns or questions
- **90%** more likely to have faith in their manager's commitment to non-retaliation
- **24%** more likely to believe they have a personal responsibility for making sure that their company does the right thing

We take this to heart. It is why we empower our leaders to openly and frequently engage in conversations with their employees on ethics and compliance topics. It is central to our we-all-own-ethics philosophy, and as you will see, we apply several strategies to ensure that ethics always remains a priority.

"Our philosophy is simple: We all own ethics. This means we believe everyone at our company plays a role in creating and sustaining an ethical culture, regardless of their role."

But first, let's be clear about something: For ethics to be a priority throughout the enterprise, senior leaders must first set the tone at the top and, more importantly, act in ways that are consistent with that tone. For Eaton, this means demonstrating values-based leadership, following up on matters by taking clear and visible action, and cascading company values throughout the organization—every day. It is one thing to talk about ethics; it is another to model it. And it's one of the reasons the leader of Ethics and Compliance, the role I currently hold, is a member of Eaton's senior leadership team. It gives ethics a seat at the table, where we are visible and able to share important information directly with the company's top leaders.

But let's face it; "ethics" can mean different things to different people, and that makes it challenging to operationalize. It is by no means impossible, however. Here are a few of the ways we do it.

PROVIDE DIRECTION WITH AN ETHICS ROADMAP

Eaton is a large, global company. We are capitalizing on global growth trends of electrification and digitalization, accelerating the planet's transition to renewable energy, and helping to solve some of the world's most urgent power management challenges.

With more than 85,000 employees worldwide, we reported revenues of $19.6 billion in 2021 and today we serve customers in more than 170 countries.

To enhance how we do business, we leverage the Eaton Business System or EBS. Central to Eaton, EBS ensures the entire company is run in a common way. It is based on the belief that standard processes lead to superior performance and establishes common metrics we use to consistently achieve measurable outcomes. It also enables the transfer of best practices and learning which leads to continuous improvement.

Ethics and Compliance is a foundational element of EBS, which is why we created an Ethics and Compliance maturity roadmap. In 2021, we overhauled it to increase accountability and operationalize what many leaders across the company had already been doing—engaging in and normalizing ethics discussions with their teams. Our roadmap provides a clear sense of direction.

It calls on Eaton leaders to "own" ethics by focusing on three key dimensions: policies and governance, risk management, and legal and ethical behavior. We provide clear expectations in each area. For example, when discussing legal and ethical behavior, we added, among other expectations, that leaders are expected to:

- Ensure ethics and compliance requirements, including Eaton's Code of Ethics, remain a priority by regularly incorporating topics such as compliance data, trends and lessons learned as agenda items during regularly scheduled meetings
- Consider input from the Ethics and Compliance team in their strategic planning process to ensure relevant policy and compliance-related issues are incorporated
- Regularly reinforce Eaton's policy of strictly prohibiting retaliation against employees who report ethics and compliance concerns
- Ensure mitigation strategies for key risks are completed on time and assessed and enhanced throughout the year, as needed

As part of EBS, we periodically evaluate our businesses through internal assessment processes. These assessments have resulted in the sharing of opportunities for improvement, strengths, and transferable practices, with the intent of driving higher levels of maturity and performance.

In addition, ethics is one of six Eaton leadership attributes we assess during performance reviews. We ask each

Eaton leader to 1) create an atmosphere that encourages employees to speak up about ethics concerns, 2) serve as a role model for honesty, integrity, and ethical decision-making in all circumstances, 3) hold themself and others accountable for demonstrating ethical behavior, and 4) establish and reinforce clear expectations for integrity.

MAINTAIN TRANSPARENCY

It is difficult for leaders to own ethics, however, if they do not know what is happening across the enterprise or within their businesses regarding ethics-related issues, developments, and trends. That is why we developed a cadence of regularly creating and sharing customized dashboards for our leaders and their business teams. The information we provide can include the number and types of matters reported, substantiation rates, matters per 100 employees, anonymity rates, relevant investigation findings, lessons learned, and key ethics and compliance initiatives. We also get granular with the data, providing regional, site, and facility-level details that can identify trends and opportunities for improvement.

We likewise share key external developments, including regulatory updates (such as new guidance by enforcement agencies), emerging trends and industry developments involving ethics and compliance. For example, at a recent senior leadership team meeting, we discussed a Foreign Corrupt Practices Act settlement involving a company in our industry and what we could learn from it. We asked leaders to then share the lessons we discussed with their teams. And we even went a step further: We posted a message accessible to all managers at Eaton, which included a reminder about our values and our anticorruption policy.

Conversations such as these cannot happen once or twice a year. That simply won't keep ethics top of mind. Our philosophy at Eaton is that Ethics and Compliance serves as a key business partner and strategist, meeting regularly (typically quarterly) with leaders and business teams to review their dashboards, provide updates and engage in ethics-focused discussions.

Eaton's senior leaders are also strongly committed to fostering an environment where ethics is front of mind. How do they achieve this? One way is by incorporating ethics into meeting agendas. In fact, Eaton's chief operating officers—Heath Monesmith and Paulo Ruiz—both include ethics as a top agenda item during their respective senior leadership team meetings. As Monesmith once shared, he puts ethics towards the top so that it never falls off the agenda. "If something falls off the agenda," Monesmith says, "it's not going to be ethics."

Our CEO, Craig Arnold, has high standards when it comes to ethics and compliance and makes it a priority to include ethics topics during Eaton's senior leadership meetings throughout the year. We have found that when senior leaders prioritize ethics, there is often a "snowball" effect. Their teams then include ethics as an agenda item as well. That is how powerful and influential the tone—and conduct at the top—can be.

We are also fortunate to have a Board of Directors that is active and passionate about ethics. The Governance Committee of the Board, which oversees Eaton's Ethics and Compliance program, expects in-depth updates every quarter on all aspects of the Ethics and Compliance program, including initiatives to cascade the tone at the top.

Ethics can never be relegated to a check-the-box training exercise or merely online training. At Eaton, ethics is foundational, and we treat it as such by giving it the time and attention it deserves both at the highest levels and across the enterprise.

ENGAGE IN POWERFUL CONVERSATIONS

In 2021, more of our leaders were given an opportunity to share their views on ethics. That year, we launched a new internal video series called Integrity in Action with a simple premise: To periodically sit down with leaders around the globe to hear how they demonstrate ethical leadership and how their commitment to integrity shaped their careers and way of operating at Eaton. The recorded conversations have been an engaging way for employees to see and hear the tone at the top. Because the conversations are largely unscripted, answers are often natural, off the cuff, and authentic.

"If you want to gain the trust of your employees, show them that you are not a faceless function behind closed doors."

At Eaton, leaders are expected to be transparent, saying what they think and sharing the good with the bad—which is exactly what has happened. During these enlightening 10-minute conversations on Integrity in Action, leaders have revealed personal moments, ethical dilemmas and explained how they overcame obstacles. They have also shared how they prioritize ethics, how it forms a great culture and the importance of speaking up. In fact, the Ethics and Compliance team received a tip from an employee who explained that an episode they watched even inspired them to speak up about an ethical issue they faced.

All too often, employees do not witness their leaders specifically addressing ethics. But Integrity in Action has helped change that, which was our objective. Every time an episode is produced, it is emailed globally to all managers of people and placed on our intranet for Eaton employees to see. The videos are also shared on a pre-hire onboarding site for new employees to access before their start date—making it some of the first messaging from leaders that our new hires hear. Shorter highlights are created for employees to use on social media.

Knowing this impact, Eaton leaders are very willing to participate in these discussions. And though they know the questions will change based on the dialogue, they also know to prepare for two questions that are posed every time: First, who was the person who most shaped your sense of integrity? Second, what advice would you give for leading with Eaton's values? No two answers have been the same.

It is imperative that leaders openly serve as advocates for our values-base culture. Not only does this tool make them visible messengers, but it also offers an unfiltered way to set the right tone and personally emphasize what matters most to them. Video can train, inform, and certainly inspire. And it can be used again and again, referred back to at any time.

SHARE YOUR STORY AND THE LEARNINGS

There's another strategy we've also been applying. Consistent with our emphasis on transparency and learning, we've published an annual, stand-alone internal Integrity Report (referred to earlier), which is usually published in February or March. We make it available to all Eaton employees worldwide. Our report includes messages from senior leaders, data (including region-specific data), top-reporting countries, compliance-related initiatives, and investigations by type. It also covers the evolution of the Ethics and Compliance program and provides tools for employees. In 2021, for example, we included an easy-to-follow ethics decision tree for working through questionable matters.

As we share summaries of real-life investigations, we also share lessons learned. In 2021, we discussed a situation where a contractor working for Eaton made inappropriate comments that violated our Harassment-Free Workplace Policy during a meeting. The concerns were then escalated to the Ethics and Compliance team and company leaders; the contractor involved was terminated.

We don't share examples from the perspective that "this happened, and people got in trouble," but rather, to focus on lessons learned and underscore how employees spoke up and made a difference. We also share the example of a customer's employee who approached two Eaton employees and demanded money in exchange for continuing orders. Our employees immediately told their manager, who escalated the matter to Ethics and Compliance. The situation was investigated and promptly addressed, and the senior leader in the region reached out to the employees to personally thank them for doing the right thing.

If you want to gain the trust of your employees, show them that you are not a faceless function behind closed doors. Seek to advance a "we all own ethics" culture in which you listen and respond. Get leadership actively involved and drive transparency. You may just inspire future role models within your business too..

ABOUT THE EXPERT

Joe Rogers *is senior vice president, Ethics and Compliance at Eaton, a global intelligent power management company. In this role, Joe is responsible for leading Eaton's ethics and compliance programs and strategies.*

Building a Better Training Program

Interview by Bill Coffin

In December 2022, the Business Ethics Leadership Alliance's Training Effectiveness Working Group published [Effective Employee Education: Training and Communications for the Current World of Work](), a white paper that explores how ethics and compliance officers can ensure that their training programs are innovative, engaging, and impactful. **Susan Divers** of LRN—who played a key role in both the Working Group and its report—weighs in with some further thoughts on what is holding back compliance training, and how programs can embrace new state-of-the-art tools and techniques that will bring their training to the next level.


SUSAN DIVERS

For those in the audience who are unfamiliar with BELA Working Groups, could you give an overview of the Working Group behind this particular report? What problem or challenge did the group convene to address, and how did they bring their collective expertise to bear to craft a solution?

I was active in BELA when I was a chief ethics and compliance officer, before I joined LRN, and it is a forum for best practices that brings together some of the best and the brightest people who think about ethics and compliance as an issue, and who are doing a lot of innovation to improve their ethics and compliance programs.

The BELA Working Groups and the reports they generate are a really amazing feature of BELA. The working groups can zero in on specialty topics that are of interest in the whole community. When [Ethisphere CEO] Erica Salmon Byrne and I have talked about compliance training in the past, and when we've talked to our clients at LRN about it, one of the most

Effective Employee Education: Training and Communications for the Current World of Work

difficult areas that keeps coming up is figuring out if a training program is effective and impactful. It's very easy to have a training program that rolls out 12 hours of mandatory courses a year, and then say to your board or your leadership that you have 90% completion as an accomplishment. But what we've seen in the last 10 years is that doesn't necessarily mean that people change their behavior. It's a bit like throwing flower seeds out the window and hoping they sprout.

There's an anecdote in our report about a Morgan Stanley financial services trader who had been trained an amazing number of times and he still engaged in misconduct. So that question of what the most effective training is, and how to measure impact, is at top of mind for a lot of people in ethics and compliance today. That is what this Working Group set out to address and what the white paper we created gets into.

How would you characterize the state of ethics and compliance training right now? As an area that is more defined by its challenges, or by its opportunities?

I would say that it is at a tipping point. In the past, there was a real focus on shoveling content toward employees without a huge amount of regard to whether it was having any real impact on them. That focus has changed, especially over the course of the pandemic. Among the best companies, it's no longer about including the biggest amount of content they can manage and hoping that something happens with it. It's about focusing on the employee experience. What is the best way for the employee to learn? What does the employee really need to learn?

One of the many good analogies that came up in the working group is one of the participants noted that not every airline employee needs to take pilot training. That says it all, doesn't it? There's much more of a focus on employees now, and whether training actually helps them avoid misconduct. That's a big change.

Another big change is that there's a recognition that less can be more. Really focusing on messages that resonate, particularly values-based training, is much more effective than a 45-minute lecture on the intricacies of the Foreign Corrupt Practices Act. I used to call that Soviet-style training because it read like a Russian manual for how to fix a truck. Good luck figuring that out!

And finally, regulators are pushing for more focus on impact and effectiveness, away from checklists or "paper compliance." The Department of Justices' June 2020 Program Effectiveness Guidance makes clear that E&C teams need to be able to show whether their programs are impactful and effective, not just that they do training or have policies.

So, those things have changed, and people are in the ethics and compliance community are much more focused on delivering training in ways that the employees can relate to. A good example of that is short-burst learning. That approach takes a particular topic and encapsulates the key messages around it, rather than focusing on a long course.

Another example is modular learning. For LRN courses, when you log into a course, there's a series of modules, and if you're in a hurry and need to know, for example, what the gifts and entertainment rules are for foreign government officials, or hiring third parties, or recordkeeping…you can click on that module first and go back and complete the rest of the course later. That kind of modular approach is really good because allows people to go in, do maybe one or two modules and if something comes up, they can pause their training and go back in later and do a refresher.

Another thing is just-in-time training. LRN's mobile app can be set up so that if someone is traveling to, say, China, when they land at the airport and turn

Best practices for navigating risk in challenging times

on their phone, they get a message saying, "Would you like to review the gift and entertainment rules for China? Or take this short training segment?" That is much more impactful than throwing the kitchen sink at people.

Also, the latest Department of Justice guidance shows regulators are beginning to recognize that training that is tailored by role and more focused, as opposed to the kitchen-sink approach, is a good thing. I think we're turning the corner on that, hopefully.

The critical thing is to inform, to instruct, and to really get people to absorb what you're trying to teach them.

We still see a lot of training programs that continue a traditional approach, with an extensive curriculum of classroom training—including three-hour marathon courses. But now that we are seeing how shorter and more self-directed training is a more efficient approach, to what degree so organizations have to get past a certain cultural resistance to moving away from traditional long-form training?

One of the benefits that the BELA community provides is to help educate people (such as regulators) that chaining people to their computers for a full hour with a very repetitive course with mind-numbing detail is not particularly helpful. But the research shows that approach really doesn't work in a professional setting. Some of it may stick, but what works much better is shorter, more self-directed training that is more relevant to your role.

There is an interesting section in this report on adult learning theory as a way to frame modern compliance training programs. Could you talk about that a bit?

That's definitely something that companies like LRN care about. That kind of approach doesn't assume that dumping the kitchen sink on someone is really going to work. Rather, you pick your key messages, and then learn it, prove it, use it.

Our courses usually include quizzes interspersed in the course, so you'll be taking a course, and rather than wait till the end. a quiz will come up. Some of them are pretty challenging, and they really make you think about what you learned (or didn't). If you get them wrong, then you have to go back and answer it the correct way. That approach helps make the training stick.

We also recommend using "test out." It allows an employee who believes they know an area to say "I'm going to test out and not have to take this Foreign Correct Practices Act course." If they pass, great, they can be directed to a shorter, more advanced refresher. But if they fail to test out, they are really going to pay attention to the course content. as they have had a somewhat sobering experience around the limits of their knowledge. That makes the training much more effective traditional lecture format.

Another important area is customizing online training to look and feel like the employee experience. Our enhanced course customizer, Catalyst Design, lets E&C teams edit online training the same way they do Word documents. You can swap in examples of challenging situations or other company relevant content with a few clicks.

What are your thoughts on how data analytics can drive better training outcomes?

I think this is the most important development in the past 10 years in the E&C space. It allows E&C teams to get data in real time about impact and effectiveness, the Holy Grail of compliance. At LRN, we just launched a new version of our training platform that has tremendous analytics capabilities as well as other powerful tools that enable E&C teams to do more with less and do it effectively. The new platform includes a function called Reveal that provides an integrated dashboard of real time data.

One component of that is Reveal.

What Reveal does is, let's say you have 13,000 employees, and they're all taking four courses a year. You're able to see at a glance in a dashboard how long people are taking to complete specific modules or topics. That in and of itself is interesting. If you look, and you see that people in Latin America are taking twice as long as people in Asia to complete Gifts and Entertainment, that's a clue to something.

And, if you see that, that the failure rate on the quizzes is much higher in a particular region or a particular topic, and maybe that correlates to taking more time to complete that module, that's real-time information that helps inform your program. You can also see at a glance what questions caused the most wrong answers and what topics your employees find most difficult. You can benchmark over time and identify trends as well as get real-time employee feedback in end of course surveys (see the word cloud below).

With our powerful dashboard, you can compare with just a few clicks against how you did last year, by employee function, region, or business line. We also have an integrated disclosures function that will identify whether required disclosures, for example, conflict of interest spike after employees take a conflict of interest course—that's evidence of impact. Our Reach capability allows E&C teams to launch supporting communications to reinforce key training messages. And measure how many clicks they receive. That type of analytics is much more predictive than the old kinds of measures for ethics and compliance programs where people just looked at the number of training completions and number of courses, number of hours, and all of that. This gives you real insight into what's happening.

And, the Department of Justice recently hired Matt Galvin, who, as CECO of Anheuser-Busch InBev, pioneered data analytics as the foundation for measuring E&C program effectiveness. That means that companies meeting with DOJ to resolve and address misconduct issues should have robust and meaningful analytics as part of their programs.

How important is it to focus on the crafting of the training presentation itself? It seems that sometimes, training courses focus so much on program structure and length, but perhaps overlooks how clearly it communicates intent and expectations to the students.

That's a very good point. We were fortunate to have an expert instructional designer in our BELA working group, and there's a whole section that she contributed, which is included in the in the white paper. Very clearly defining what it is that you want people to acquire through the training, and then designing the course to that, is one of the key principles. As I mentioned earlier, LRN's Catalyst Design tool allows E&C teams to get the benefit of our updated, broad content, modular approach and key analytics while customizing courses and content with a few clicks.

Focusing on values-centered messages is critical. If you're taking a training on diversity, equity, and inclusion, for example, a lecture on the code of Federal regulation is unlikely to impact behavior. Focus instead on respect and fairness and what the main principles are and what the behaviors are that I need to adopt, and then ask participants to apply the lessons. This is part of the shift in emphasis on the employee experience rather than just throwing content over the fence and hoping something grows.

As a representative of LRN, you played an especially important role in crafting this report. When it comes to best practices in compliance training, are there any particular challenges or opportunities that you are seeing that this Working Group didn't get a chance to explore?

We just are publishing our annual Program Effectiveness Report, which I write every year. This year's report is due out in early February. One of the things that was somewhat surprising in this year's report is that we asked people what the biggest obstacle was to improving their programs. Our survey included 1,860 ethics and compliance professionals around the world, across all kinds of programs. And the number one obstacle was they had internal systems that weren't adequate, whether it's a training platform or a web-based system. I see that in my practice at LRN all the time, and I still find it shocking. Name-brand companies, even within the Fortune 100, have internal systems that aren't very user-friendly and don't enable them to scale their efforts, especially if they're using LMSs that don't have a lot of functionality. Best practice is to make your Code of Conduct and policies web-based and searchable, easy for employees to find, and able to display who hits what section of what policy. A good platform can make so many aspects of E&C programs easier from training to disclosures, to communications and any follow-up.

You'd be surprised how many companies don't have a web-based, robust way to track disclosures, and some do it manually by excel spreadsheet. When you think about it, this is a time when most programs don't have enough resources and enough staff, so having to do something like that manually is crazy. We didn't have a chance to talk about that in the report.

One of the many things I like about working at LRN is that our platform is powerful and really state-of-the-art, and it can do a lot of things. It can do things for the communications department, like help roll out sequenced communications, track who opens them, who reads them, how much time people spend on them. Not having a robust platform is sort of like the IT security equivalent of not having good firewalls. It can really hold you back.

Any closing thoughts?

One of the things that we saw in this year's Program Effectiveness Report is a really striking correlation between program effectiveness and companies that have boards of directors that are trained in ethics and compliance (more than once—not just during onboarding) or have ethics and compliance expertise. In such companies the ethics and compliance programs tend to have more resources, better standing within the company, and have better cooperation from other parts of the company. That is quite a multiplier.

In my own experience, working with boards at LRN, and I find that they don't really understand that you need to invest in the infrastructure of programs. They often think, "We have a great policy, we have great procedures, so we're good to go." And it doesn't work like that. Things are always changing in this area, and I think it is a really important part of the Board's responsibility here to make sure that you're keeping up with best practices, and that you're investing in things like good internal systems and data analytics Those things are key components of any good ethics compliance program.

ABOUT THE EXPERT

Susan Divers *is Director of Thought Leadership and Best Practices, at LRN, a leading advisory and education firm specializing in ethics, regulatory compliance, and corporate culture. Susan brings her 30+ years' accomplishments and experience in the ethics and compliance area to LRN partners and colleagues. This expertise includes building state-of-the-art compliance programs infused with values, designing user-friendly means of engaging and informing employees, fostering an embedded culture of compliance and substantial subject matter expertise in anti-corruption, export controls, sanctions, and other key areas of compliance.*

Breaking the Chains of Modern Slavery

Interview by Bill Coffin

Matt Friedman is one of the world's foremost experts on modern slavery, and what can be done to stop it. As the founder and CEO of The Mekong Club, a non-profit dedicated to advancing sustainable solutions to eliminate modern slavery in the private sector, Matt has spent the last 35 years advising companies on how they can eliminate slavery from their own supply chains, and had keen insight on why, despite his efforts, modern slavery is growing rapidly.


MATT FRIEDMAN

What changed you from being a regular person to being an activist when it came to modern slavery?

Many years ago, I was a public health officer in Nepal. I was seeing a lot of 12- and 13-year-olds who were HIV-positive and couldn't understand what was going on, so I started to go and interview them, and heard the stories about how a trafficker would come into their community, find a 12 year old girl, marry her, and say he's going to take her to Kathmandu. But instead, he'd take her to Mumbai, India, to the brothels. When they arrive he would put her in a room and say, honey, stay here. I'll be back in a few minutes. He then went off to the madam to get the $500 for having sold her to the brothel. He has the gold from the wedding, and he hands the wedding pictures over. He then leaves to go back to do this again 40 or 50 times a year. The Madam then goes into the room and says to the girl, guess what? Your husband just sold you to me, and you're going to be with 20 or 30 guys a day every day because I say so.

After a couple of years, some of these girls get diseases and go back to Nepal, and we were getting their stories. But I didn't understand the evil of it until I went to those brothels at the invitation of the Indian Government to do public health check. I had a police officer with me. We went into one brothel and there was an 11 year old trafficking victim who ran up to me and said, "Save me, they're doing terrible things to me." I told the police officer we needed to get this girl out of there, but the officer said if we tried to leave with her, we would all be killed. We left without her and came back with more police, but of course by then, the girl was gone.

Every once in a while in life, we are faced with a test. That was my big test, and I failed miserably. But once I knew about this, I couldn't turn my back on it. For a long time, I interviewed people who were involved in modern slavery almost daily. I had to learn how to put aside my feelings when I heard their stories because otherwise, I would internalize their pain and suffering and burn out. And I couldn't afford to do that because actually being there for that person is the priority. It's not about me. It's about them.

How did you come to launch the Mekong Club, and why is its mission so important today?

I've been addressing modern slavery for about 35 years. As part of my career, I ended up in Thailand working for the United Nations. I was basically managing offices in China, Vietnam, Laos, Cambodia, Thailand, and Myanmar, and during the time that I was there, the numbers related to how many people were associated with human trafficking were better. At the time, we knew there were 21 million enslaved people, and that the world was helping about 34,000 of them That's not even half a percent of the victims. When our office accepted the reality of that, we went back to the numbers. Out of that 21 million, 75 percent was forced labor, and 60 percent of that was associated with supply chains. That's how we realized we needed to talk to the private sector.

As I spoke with captains of industry to get their perspective on this, I learned that they didn't know much about this issue, they recognized it was a business risk, and what they needed was an organization in Hong Kong to help them understand and address the issue of modern slavery. That's how we set up the Mekong Club, which is a business association with members from banking, manufacturing, retail, and hospitality to discuss and identify what that community needs to do in order to address modern slavery.

"Every once in a while in life, we are faced with a test. That was my big test, and I failed miserably. But once I knew about this, I couldn't turn my back on it."

Tell us about your book, *Where Were You? A Profile of Modern Slavery*.

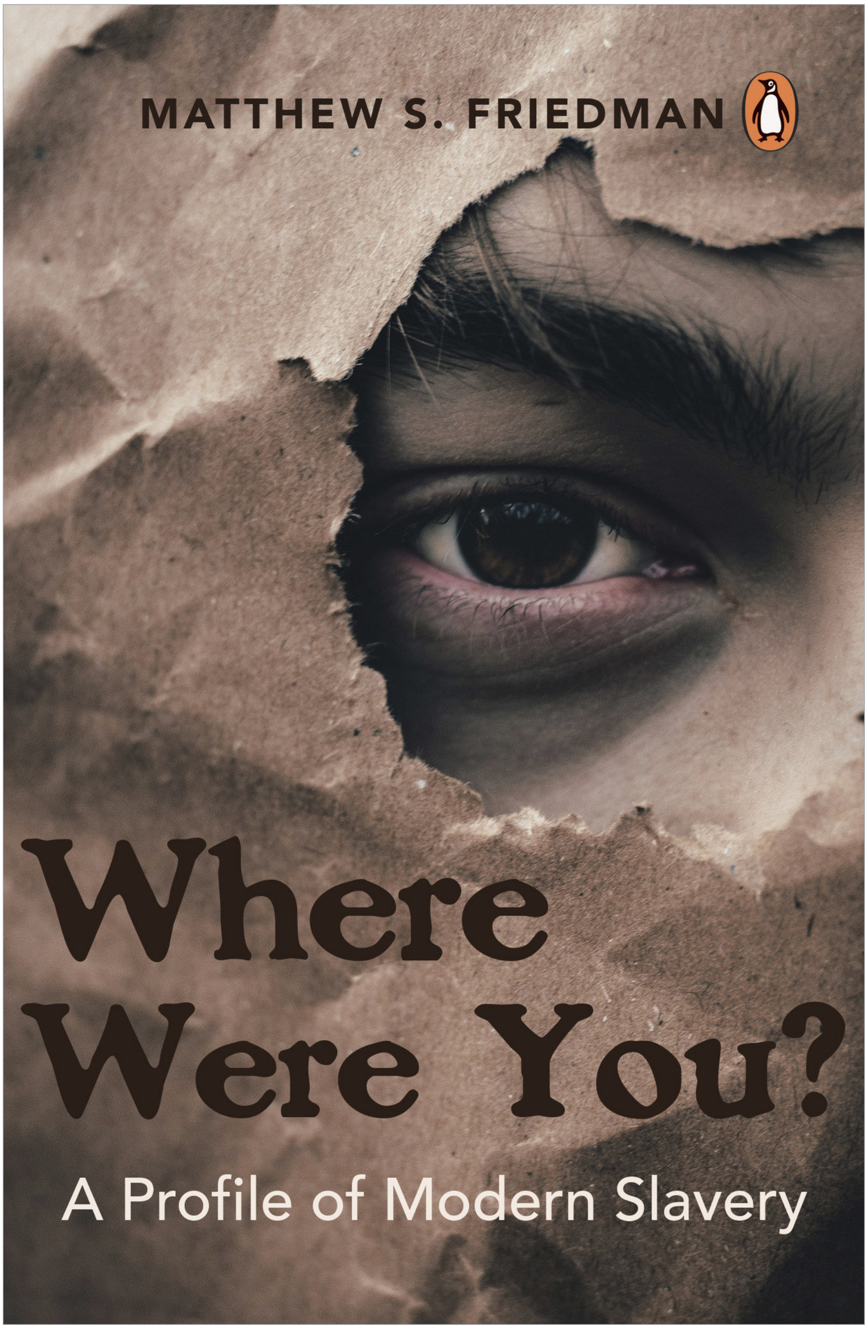
My wife and I recently finished a 53-day presentation tour across North America. We did 91 events, spoke to more than 12,500 people, and what we learned was that people have a superficial understanding of this topic. They think of human trafficking and modern slavery as sex trafficking, and they don't know much about forced labor. They think it's something that's far away, so I wrote Where Were You" A Profile of Modern Slavery because I felt like general awareness was needed. This is our textbook on human trafficking. It explains how we got to where we are now, and what the private sector can do about it.

This particular topic is very emotional, you know. Sometimes you can overwhelm people with too much information on sex trafficking. Or you can get into the technical sides of things, and it just gets very dry and uninteresting. So I worked hard to find that balance between encouraging people to learn more, giving them the information they need, not overwhelming them with the horrors of human trafficking, and ending with a hopeful message that we as human beings can all be part of the solution.

A few years ago, the global population of modern slaves was equivalent to the population of Canada. Is that still accurate?

For a while, the number was 40 million people in modern slavery, which exceeds the population of both Canada and Australia. But the official number was revised to 50 million about 2 months ago, which exceeds the population of Spain. The reason why it went up is the economic turmoil around COVID-19. According to the World Bank, a half billion people who were out of poverty went back into poverty as a result of the pandemic. A person in Bangladesh works in a garment factory; she is supporting six or seven people. All of a sudden, her factory is closed for a long time. Soon she runs out of money and must borrow to survive. When there's no way of paying that money back, the moneylender says, "I need a family member. They're going to go off to a brothel or a fishing boat or a sweatshop and all of their proceeds are going to come to me." That's how we're seeing a significant increase in modern slavery.

It is such an affront to humanity that this should be something that should be front-page every day, but it's not.



People just don't want to read about this, so we struggle to figure out what we need to do to get people to say, "It's 2023. It's unacceptable that 25,000 people enter modern slavery every day. $150 billion is generated from modern slavery. This just has to stop."

Part of it is that people feel like the do-gooder types like me should just go out and address it, but there's about a half-million criminals that are trafficking humans, and maybe 30,000 people who do what I do. Criminals don't have to follow rules and regulations, but we do. We have to get permission from our donors to do things. We can't evolve the same way that the criminals do.

The other part of it is, we may have done a disservice years ago, when we spent so much time talking about the horrors of sex trafficking, because it just got people to the point where people don't want to hear about it anymore. But there's a point at which we, as human beings, have to accept some responsibility for the world, and we have to expose ourselves to the bad things in it.

What are your thoughts on the labor exploitation issues that surrounded the 2022 FIFA World Cup?

People from all parts of the world go to other countries with the hope, expectation, and dream of having a better life. In the case of Qatar and the World Cup, that's not what happened. Many people from South Asia were told that they could have a great opportunity to make money to send back to their family. They put up money in order for the possibility to have that option only to face terrible health/safety issues and living conditions, and a lot of these migrants never made it home.

We're talking about a part of the world that doesn't have any non-government organizations to determine whether or not working conditions meet a standard that is acceptable for the world. As a result, many of these World Cup workers in Qatar were disenfranchised, hurt, or killed.

We're talking about slavery, something that is so awful and evil that we have to care about this. So whether or not Qatar, or any other Middle Eastern countries, or other countries that are averse to looking at this topic, feel like it's acceptable to do this, it isn't.

How can organizations ensure that they and their supply chains do not contribute to modern slavery?

Most major manufacturers are responsible for submitting reports for transparency legislation. In the past, you would have, say, a running shoe company that would be auditing Tier One factories where the where the assembly of the running shoe takes place. You usually don't find problems at that level. But they've never looked at Tier Two where you get the rivets in the shoelaces, and the zippers, and so forth. Or Tier 3, where the raw material comes. Why? Because they haven't been asked to. Now, the legislation says you have to go all the way down to the lowest level, so that means that instead of doing 2,000 audits, maybe you have to do 7,000 audits, and the question is, who's going to pay for that? Is the running shoe going to go from $100 to $200?

What we're seeing is a consolidation where competitors are coming together and say, you do zippers, we'll do shoelaces, somebody else does rivets, and so on. In the past, that sharing of information would have been an intellectual property thing, but now it's not.

Your C-suite and directors must understand this issue and that you need policies and procedures that cascade down through your supply chain. You need a point person or team to ensure that comprehensive and up-to-date training is taking place. You need a risk assessment to determine if supply chain is in problematic locations which you need greater due diligence. You have to do audits that are comprehensive enough to catch things that are there. You should have grievance mechanisms in place. And if you run into a problem, remediation is an important part of the process.

If you think that going in and looking at Tier One factories is enough, it isn't. With ESG being what it is, the expectation will be that you, as a company, have to go deeper into addressing assurances that modern slavery isn't in your supply chain. And you have to validate and verify how you're proving that that's the case.

Have you ever come across a company that realized it needed to do better and really put in the work to improve its anti-slavery efforts?

I was asked to do a presentation for a large company on the issue of human trafficking and modern slavery as part of a three-day regional event. All their compliance people were there. I did the presentation on a Monday morning, first day, first hour, and they canceled everything afterwards because they recognized how vulnerable they were, and that they hadn't really paid attention to this. They spent a lot of time identifying who needs to do what and who is responsible. They asked for our advice and guidance, and within an eight-month period of time, they were where the average manufacturing company or conglomerate was related to this particular topic, and they continued to move forward from there.

Another time, I was having a series of conversations with a family-owned manufacturing business, and they said, "With all due respect, we've been working with these particular factories in Bangladesh for 35 years. We don't feel there's a need. We know our business." Two months later, they called and said that an investigative journalist discovered some issues with the company in Bangladesh. They wanted us to provide guidance and technical assistance, but it was too late. They lost their entire business.

There was a bank that was fined $1.3 billion AUS because they didn't pay attention to this. A fast-fashion brand in the UK recently lost about £2 billion of business share as a result of a modern slavery accusation that didn't even turn out to be true. Modern slavery is a very emotional term, and when you put it next to a particular company's name, it can have a devastating impact. That's why it's so important to take it seriously.

How can an enterprise move the needle on this in a positive way?

Whether you're a bank, manufacturer, retailer, hospitality, tech…make sure that your house is in order in terms of policies and risk assessments, and that you have people who focus on this so you can do what's legally required of you. You don't have to reinvent the wheel. There are organizations like ours that know how to work with companies and get them to a point of compliance quickly.

Corporations donate to charities of all types, but they tend not to give to this because it's a sensitive topic. AIDS was like that for a long time. But unfortunately, right now, we've gone from 40 million to 50 million modern slaves and funding to address this issue has gone down.

That said, I honestly think that the private sector is heroic, and it has been for a long time. The banks have been addressing issues related to human trafficking by looking at their transactions to see whether or not people are being exploited. That helps reduce modern slavery. Manufacturers have been auditing for years and have improved factories all over the world. They may not have done it low enough in the supply chain, but they'll do that. The private sector has always had a part to play in this. They've never gotten credit for it. But manufacturers, retailers, and banks are doing work that's really making a difference, and they should feel proud of that because they're part of the solution.

But we are dealing with something that is such a terrible problem for so many people that we have to care about this. We have to put pressure on our governments, our law enforcement, and our businesses to say enough is enough. We have to step up. All of us. ■

ABOUT THE EXPERT

Matt Friedman *is an international human trafficking expert with more than 35 years' experience. He is CEO of The Mekong Club, an organization of Hong Kong's leading businesses which have joined forces to help end all forms of modern slavery. Mr. Friedman previously worked for USAID and the United Nations in over 30 countries. Mr. Friedman offers technical advice to numerous governments, banks and corporations working to eliminate all forms of modern slavery and is the author of twelve books. In 2017, Mr. Friedman won Asia's prestigious "Communicator of the Year" Gold Award.*

Antitrust Enforcers Continue to Target Labor Market Practices

by Wendy Arends and Scott LeBlanc

Ongoing efforts by the Biden Administration to prohibit practices that restrict employee mobility or otherwise tighten the labor market are seriously impacting many companies' antitrust and labor policies, so the time to review them is now.


WENDY ARENDS


SCOTT LEBLANC

The Biden Administration's antitrust enforcers have doubled down on their stated goal to protect U.S. workers by continuing to target employers who allegedly restrict workers' mobility or otherwise suppress competition in labor markets. On the heels of two years of aggressive prosecution by the U.S. Department of Justice Antitrust Division (DOJ) against alleged no-poach and wage-fixing agreements between competing employers, the Federal Trade Commission (FTC) recently announced a proposed rule banning all non-compete agreements between employers and workers. Given these recent developments, companies may want to review their antitrust policies and procedures, along with hiring, recruitment, non-compete, and compensation policies to ensure they are consistent with current law.

WHAT'S OLD IS NEW AGAIN: LABOR-RELATED ANTITRUST ENFORCEMENT

In late 2016, DOJ and the FTC issued the Antitrust Guidance for Human Resource Professionals (HR Antitrust Guidance) outlining the agencies' view that wage-fixing and no-poach agreements[i] violate U.S. antitrust law. This was not news—the HR Antitrust Guidance summarized the history of the agencies' civil enforcement efforts against no-poach and wage-fixing agreements going back to at least the early 1990s. The headline from the HR Antitrust Guidance was DOJ putting companies on notice regarding the potential for future criminal prosecution. As outlined below, four years after issuing the HR Antitrust Guidance, DOJ made good on its promise to criminally prosecute naked no-poach and wage-fixing agreements with a string of indictments and trials. The HR Antitrust Guidance proved to be harbinger of things to come for other types of labor-related antitrust enforcement.

Fast forward to 2021, when calls for increased regulation of non-competes led Democratic and Republican senators to introduce legislation to limit or prohibit the use of non-compete agreements. In July 2021, with congressional action looking unlikely, President Biden issued Executive Order 14036 aimed at promoting competition in the economy. The Order, among other things, directed the FTC to consider promulgating a rule "to curtail the unfair use of non-compete clauses and other clauses or agreements that may unfairly limit worker mobility." In November 2021, the FTC released a draft strategic plan for FY 2022-2026, containing a goal to "[s]tudy and investigate…non-compete and other potentially unfair contractual terms resulting from power asymmetries between workers and employers. One month later, the FTC and DOJ hosted a joint workshop on antitrust concerns in labor markets.

Now the FTC has announced a proposed rule that, if enacted, would amount to a near-total ban on the use of non-compete agreements and leave employers with fewer legal means of protecting their confidential and proprietary information.

DOJ RAMPS UP PROSECUTION OF NO-POACH AND WAGE-FIXING AGREEMENTS

Since the issuance of the 2016 HR Antitrust Guidance, DOJ has repeatedly stated that it views naked wage-fixing and no-poach agreements between competitors as criminal violations of the

Sherman Act. At the end of 2020, DOJ's first criminal prosecution was announced and others closely followed, including:

- *U.S. v. Jindal* – in December 2020, a criminal indictment against Neeraj Jindal was returned by a federal grand jury alleging a per se illegal conspiracy for wage-fixing involving a Texas-based physical therapist staffing company. The criminal indictment alleged that the defendant (Jindal) agreed with a competing staffing agency to reduce the rates paid by each company for physical therapists during a five-month period in 2017. Jindal was also alleged to have separately reached out to four other competing agencies about collectively decreasing rates and was accused of obstructing the FTC investigation.

- *U.S. v. DaVita* – in January 2021, DOJ brought criminal charges against Colorado-based DaVita Inc. (DaVita) and its former CEO, alleging that DaVita and its competitors entered into and engaged in a conspiracy not to poach and hire one another's senior-level employees. The alleged agreement included phone and email conversations between HR professionals, instructions not to solicit certain senior-level employees, and monitoring employees to ensure their adherence to the agreement. The senior-level employees were also required to notify their respective employers that they were seeking new employment in order for their application to be considered by the other companies participating in the arrangement.

- *U.S. v. VDA OC LLC* – in March 2021, another grand jury returned an indictment against a Nevada-based healthcare staffing company, VDA OC LLC (VDA) and a former manager of the company, alleging they had entered into and engaged in an agreement with a competitor to allocate employee nurses and fix their wages in violation of the Sherman Act. VDA recently plead guilty and was sentenced to pay a criminal fine and restitution.

- *U.S. v. Manahe* – in January 2022, four individuals in home healthcare industry were indicted for alleged agreement to fix wages of personal support workers and not hire each other's employees during the pandemic.

In April 2022, juries in Texas and Colorado found DaVita and Jindal not guilty of criminal antitrust charges brought by DOJ. Despite the two losses, DOJ continues to move forward with pending charges brought against other companies and more indictments are likely to follow in 2023.

DOJ has also been active in civil labor market antitrust cases, including:

- *U.S. v. Cargill* – DOJ reached an $85 million settlement in July 2022 with Cargill and other poultry processors who allegedly shared information about their plant workers' wages and benefits over a period of years.

- *Markson v. CRST Int'l* – DOJ filed a statement of interest in a civil suit filed by truckers claiming that trucking companies conspired not to hire each other's workers where it reiterated position that no-poach deals are per se illegal.

FTC DOUBLES DOWN WITH A SWEEPING NON-COMPETE BAN

On January 5, 2023, the FTC announced a proposed rule that would prohibit employers nationwide from entering into new non-compete agreements and maintaining existing non-compete agreements with workers, generally defined as employees and independent contractors. The draft rule defines a "non-compete clause" as a "contractual term between an employer and a worker that prevents the worker from seeking or accepting employment with a person, or operating a business, after the conclusion of the worker's employment with the employer."

The rule also covers so-called "de facto" non-competes, defined as contractual terms that don't explicitly qualify as "non-compete clauses" but have the effect of one, such as overly broad non-disclosure agreements, customer or employee non-solicitation agreements, or agreements where an employee is required upon termination to reimburse an employer for certain costs which are not reasonably related to actual costs incurred. The proposed rule would also require employers to rescind existing non-compete clauses and actively inform workers that such clauses are no longer in effect.

While the proposed rule recognizes the traditional state law exception to non-compete agreements entered into in the sale of a business, the exception is narrow, and applies only to those who own at least 25% of a company. The proposed rule, as a matter of federal preemption, would supersede any state statute, regulation, order, or interpretation that is inconsistent with the provisions of the final rule except to the extent that they provide workers with greater protections.

The FTC's draft rule, which deems non-competes as an "unfair method of competition" under Section 5 of the FTC Act, will likely receive a significant amount of comments that must be considered by the FTC before it issues a final rule. The final rule could also result in legal challenges that will delay its implementation.

The day before announcing the new rule, the FTC announced three enforcement actions against companies who allegedly imposed non-compete agreements on lower-wage workers. The actions were brought under Section 5 of the FTC Act with the FTC stating that "each of the companies and individuals illegally imposed noncompete restrictions on workers in positions ranging from low-wage security guards to manufacturing workers to engineers," that prohibited them from seeking or accepting work with another employer or operating a competing business after they left the companies. In each case, the FTC ordered the company to cease enforcing, threatening to enforce, or imposing a non-compete agreement on the affected workers. The companies are also required to notify all affected employees that they are no longer bound by the non-compete agreements.

Historically, the FTC has not regulated non-compete agreements between employers and employees. However, the FTC has the authority to enforce Section 5 of the FTC Act ([15 U.S.C. § 45]) which broadly prohibits unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce.[ii] It is unclear whether Section 5 provides the FTC with the authority to issue and enforce a nationwide rule prohibiting non-competes.[iii]

Currently, non-competes and related provisions such as non-solicits remain subject to challenge under state law regarding restrictive covenants, as well as state and federal antitrust law. Most states limit non-compete clauses at least in some way; for example, requiring that certain specific requirements be met (e.g., minimum salary requirements) or simply that their geographic scope, duration, and purpose are reasonable under the unique circumstances of the individual and the job. This leaves non-compete agreements subject to courts' interpretations about what constitutes a legitimate business interest. Other states—including North Dakota, Oklahoma and, notoriously, California—ban non-competes altogether, but permit their use in connection with the sale of a business. Until the FTC implements a final rule, employers who use non-compete agreements should still look to applicable state laws to determine the enforceability of non-compete agreements while keeping an eye on the FTC's rulemaking process.

RISK ASSESSMENT IN AN EVOLVING LEGAL LANDSCAPE

The remainder of the new year will surely bring more enforcement actions by DOJ and the FTC for alleged antitrust violations relating to the labor market. Because this area of the law is in flux and given the recent DOJ and FTC enforcement actions, we recommend that companies review current HR practices (including participation in salary benchmarking and wage surveys), provide antitrust training for relevant management and employees, and commit to a robust compliance program that accounts for the evolving legal and regulatory landscape.

As mentioned, the FTC's proposed non-compete rule is the first step in what will likely be a lengthy rulemaking process—thus, companies do not need to take immediate action to rescind or stop using narrowly tailored non-competes. However, employers may want to prepare for future changes in the law, including the issuance of a final rule by the FTC. Companies can start by identifying current non-competes (along with non-solicitation and confidentiality agreements) with employees and independent contractors, particularly if they involve lower-wage workers, and should consult with legal counsel as needed.

ABOUT THE AUTHORS

Wendy Arends *is a Partner with Husch Blackwell LLP. Her practice includes all aspects of antitrust law, including enforcement actions brought by DOJ, the FTC, and state AGs, issues arising in mergers and acquisitions, and antitrust compliance and training.*

Scott LeBlanc *is a Partner with Husch Blackwell LLP. His practice includes all aspects of employment law, with a special focus on employment issues arising in mergers and acquisitions and in the healthcare industry.*

i Wage-fixing is an agreement to keep wages for similar employees at similar levels to prevent employees from leaving one employer in search of higher wages at another. No-poach agreements concern employers' conspiring to not solicit or hire one another's employees. A "naked" agreement is one that lacks any larger business justification or rationale. A non-solicit agreement in the context of a sale of a business is typically considered "ancillary" or reasonably necessary, and, thus, is not a naked non-solicit agreement. See HR Antitrust Guidance, at 3, available at https://www.ftc.gov/system/files/documents/public_statements/992623/ftc-doj_hr_guidance_final_10-20-16.pdf.

ii The FTC recently issued a policy statement regarding the scope of unfair methods of competition under Section 5 of the FTC Act. See Fed. Trade Comm'n, Policy Statement Regarding the Scope of Unfair Methods of Competition Under Section 5 of the Federal Trade Commission Act 15 (Nov. 10, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/P221202Section5PolicyStatement.pdf. The policy statement does not specifically mention non-compete agreements.

iii The FTC's jurisdiction under Section 5 is not unlimited—banks, federal credit unions, air carriers, common carriers, meatpackers and poultry dealers are exempt from its coverage. Importantly, Section 5 may only be enforced by the FTC (not by private plaintiffs) against "persons, partnerships, or corporations." The FTC Act defines the term "corporation" as an entity "organized to carry on business for its own profit or that of its members," which renders certain conduct engaged in by non-profit entities as beyond the FTC's reach.

The Case for Removing Scope 3 Emissions

by Torill Bigg, PhD

Scope 3 emissions, despite being the broadest category of an organization's carbon emissions, are often overlooked. But there is a compelling case to be made for prioritizing these forms of carbon emission—and eliminating them from your operations.

TORILL BIGG

Businesses globally are looking to reduce their carbon footprints. This activity is being driven by a number of factors. It is both ethical business practice to operate business sustainably for the environment but it is also smart for sustainable business success. Demonstrating environment leadership enhances business reputation, retains and attracts customers, investors and staff - and enhances market value. Importantly marketplace trust will be built by robust carbon accounting and genuine action and genuine reporting.

As the environmental element of an ESG program, carbon quantification and reporting must be completed to a recognised standard and methodology. This can follow the CDP model (previously called the Carbon Disclosure Project) and calculated in accordance with The Greenhouse Gas Protocol or an international ISO standard such as BS EN ISO 14064 part 1. This ISO standard has a verification element published as part 3 of the standard, making it particularly suitable to a CDP model of carbon measurement and the basis of a carbon reduction plan. Compliance with this standard requires measurement, quantification, and reporting of the three scopes of greenhouse gas inventories.

Scopes 1 and 2 largely comprise direct and indirect energy use through business operations, travel, heating, and lighting. These are the most commonly reported scopes. Scope 3 emissions—which are not produced by the organization itself but are the result of activities from assets the organization owns or controls—despite being often the largest of the scopes is less frequently reported.

It is sometimes misunderstood that a company's scope 3 greenhouse gas emissions are simply the scope 1 and 2 emissions of their suppliers. This would merely be the carbon equivalent of fuel and energy use and could be considered to represent a double counting of carbon emissions. Sometimes, this reasoning is used to justify not measuring or reporting an organization's scope 3 emissions. It has been stated by some, that if all companies report their scopes 1 and 2, there would be no need for these "other indirect emissions" that make up scope 3 to be reported. However, there are 15 different emission sources included in scope 3, as defined by the greenhouse gas protocol corporate reporting standard. They can be the largest part by far of an organization's carbon footprint, and not all of them can justly be laid at the foot of the supply chain.

Before we go any further, let's take this back a step. Scope 1 emissions are direct emissions from sources such as stationary combustion for example furnaces, ovens and central heating plus direct mobile combustion such as in company owned vehicles like company cars or delivery vans. Scope 2 emissions are indirect emissions from purchased energy sources, most commonly this is electricity bought in to operate the business lights, IT, and machinery.

Although scope 3 emissions include the scope 1 and 2 emissions of suppliers, for example, it also includes items that are very much the emissions of the reporting organization. While some scope 3 emission sources can be a little harder to collate data for, the size of their contribution to an organization's greenhouse gas emissions in total means that environmental responsibility demands sufficient commitment to their measurement and so the visibility that lends allowing for reduction opportunities from them. Let's examine these scope 3 emission sources and consider if there is a legitimate reason for their omission:

Emissions from business travel. For example, if an employee travels to a business meeting on behalf of the company, in their own car and then re-claims that in expenses, these are scope 3 emissions. And organizations have the opportunity to reduce these emissions through actions such as incentivising more remote meetings, encouraging greener travel through bicycle purchase schemes, rail travel season ticket loans, and incentives for employees to buy electric cars as their private car.

Transmission and distribution emissions resulting from the purchase of electricity. While the electricity bought in is part of scope 2, the transmission and distribution losses belong in scope 3. Not reporting scope 3 emissions means that this element of electricity used in the running of the business is not reported.

Water use and treatment. There are plenty of good options allowing the reduction of supplied water use. These include harvesting of rainwater, water re-use in a grey water system, maintenance and prevention of leaks and losses and fitting water reduction gadgets to hand washing basins and toilet cisterns. Reducing the quantity of water supplied saves money, conserves an essential resource, reduces the quantity of wastewater to be treated, reduces your greenhouse gas emissions—and belongs in scope 3.

Waste disposal. How a company disposes of their waste materials is included in scope 3. The organization can choose to dispose of refuse by landfill, or by separating out their waste for recycling. They can play an active part in reducing waste materials so that the amount disposed of is less. These are all part of business practices in business strategies that all decisions made by the reporting organisation.

Investments. Money is a powerful enabler. An organization has the opportunity to select investments that are environmentally responsible. It might invest in green bonds or it might choose to invest without taking into account the profile of their investments. This choice is still within the organization's power and can be one of the greatest tools in the fight against climate change. Move the money, move the power. Investments are part of your scope 3 emissions.

Freighting and transport. When transporting out goods or mail packages, an organization can select how those items are freighted. We can select the type of transport with the lowest carbon emissions for the purpose. For example, larger cargo ships have a smaller carbon footprint per ton of goods conveyed, and transport by train has a lower carbon footprint than transport by HGV. Changes can be made to ensure optimal use of freighted loads, and how they are packed can consider reusability of the packaging materials or structures themselves.

All in all, organizations have control over, and choices in, a very large element of the scope 3 emissions. As such it is not acceptable to plead that scope 3 is out of their control and is effectively in the gift of their supplier chain.

Moreover, a corporation that is committed to environmental responsibility has the opportunity to work with their wider value chain to facilitate visibility and understanding of the scope 3 emissions that do include their suppliers' emissions. A larger organization can empower their supply chain. There can be either a carrot or a stick approach to this. They can work with their supply chain collaboratively providing support, information or active technical support to suppliers in developing their greenhouse gas inventories and carbon reduction plans. Alternatively, a stick approach could be taken by requiring suppliers to have a carbon reduction plan in order to be included either as suppliers or preferred suppliers.

Ultimately, we're all in this together. We only have the one planet and all of us will be adversely affected by climate change. It makes both business and moral sense to be on the side of your suppliers, and to provide them with a collaborative framework through which we can all collectively arrive at a low carbon economy. ■

ABOUT THE AUTHOR

Torill Bigg, PhD *is the Chief Carbon Reduction Engineer of Tunley Engineering, a UK-based engineering management firm with a focus on decarbonization. Dr. Bigg heads the Tunley carbon reduction team, and has extensive experience in engineering design, innovation, operational and asset management, as well as academic backgrounds in biochemistry, chemical engineering, and business management.*

By the Numbers

ENTER GENERATION Z

One of the biggest findings of the 2023 Ethical Culture Report is how much Generation Z is already making its presence felt within workplace culture. As Gen Z enters the workforce, their unique cultural expectations need to be taken into account. Whether we call them Gen Z, the Internet Generation, the Realists, the Global Generation, or the Rainbow Generation, the impact made by these young adults is only just beginning.

52%

of Gen Z are white, making this the most racially diverse U.S. generation. By 2026, Gen Z is expected to be majority non-white. (*Pew Research*)

55%

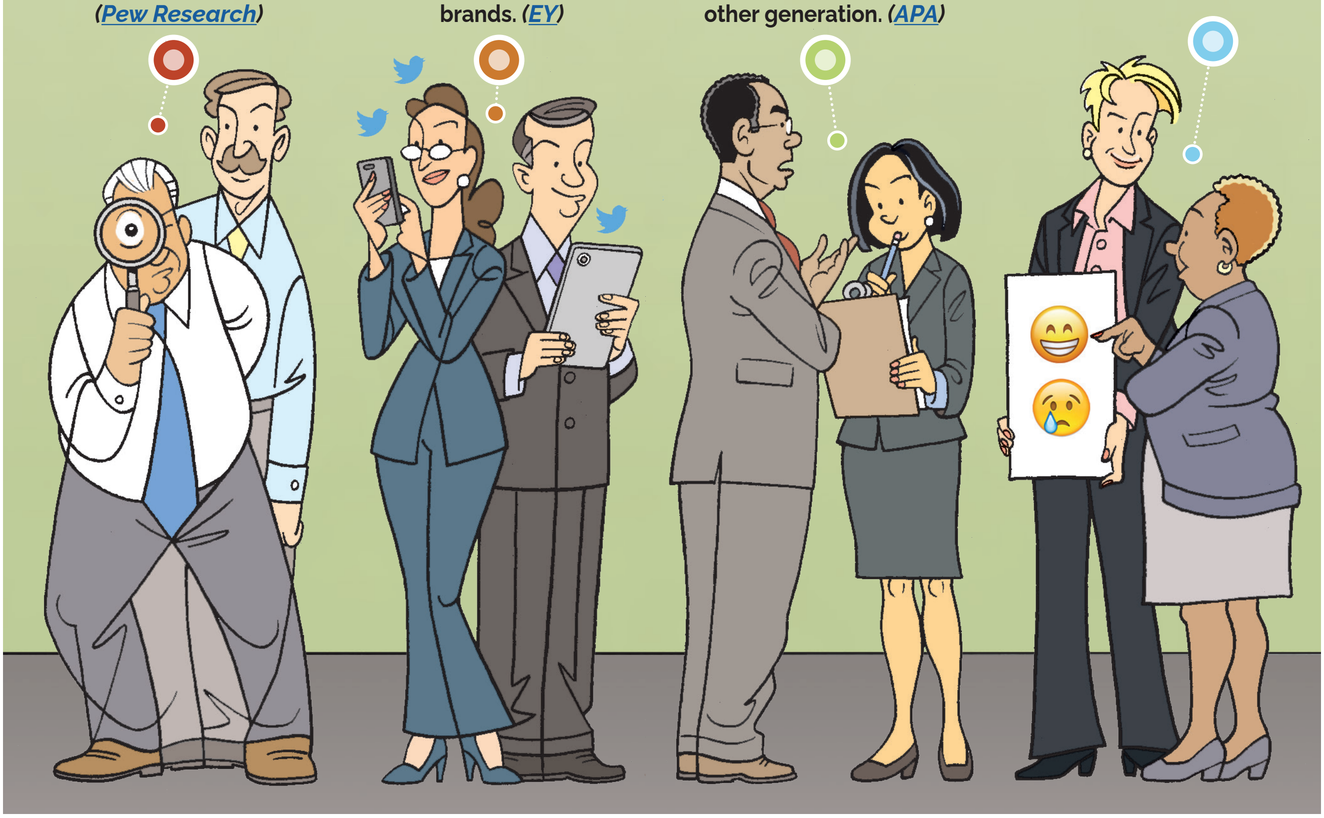
are "extremely interested" in environmental issues, with 57% believing in the importance of buying from pro-environmental brands. (*EY*)

73%

describe their mental health as "excellent" or "very good;" reporting higher rates of anxiety and depression than any other generation. (*APA*)

30%

do not feel financially secure; they often work more than one job and place great importance on work-life balance. (*Deloitte*)



The Final Word

We Get By With a Little Help From Our Friends

by Bill Coffin

On January 17, Assistant Attorney General Kenneth A Polite, Jr. laid out the details of revisions to the FCPA Corporate Enforcement Policy (CEP) that provide "specific, additional incentives to companies for voluntary self-disclosures, as well as for cooperation and remediation." In short, expanding the parameters by which companies that have broken the law may still earn lighter treatment from the DOJ, and deepening the rewards for good companies that got into trouble because of an isolated bad apple.

Polite is clear in his comments—which you can read in full here—that as much as the DOJ values the cooperation of the very companies it polices, and as much as the DOJ wishes to give those companies more reason to cooperate (or at least defuse fears that cooperation could actually lead to more severe punishment), it also expects those same companies to go truly above and beyond if they are to expect special treatment. These are, after all, companies that have broken the law. At that point, the rewards for mere compliance are off the table—and rightfully so.

There's a lot to unpack in Polite's commentary, which doubles the range and broadens the discretion by which companies may receive reduced penalties, depending on their intensity of self-disclosure, cooperation, and remediation. This is no effort to let bad guys get away with things, but rather, an intentional effort to make companies understand that even if there are serious issues in their self-disclosure, cooperation, and remediation, there is probably still an avenue by which they can get better treatment than if they do nothing. The DOJ wants the people it's policing to help them do the policing. These new guidelines prove it, and one suspects, they will be successful at it, as well.

Of particular interest is the degree to which having a robust and effective compliance department beforehand can help even an egregious offender receive lighter treatment. Ideally, the kind of compliance program the DOJ is looking for is one that will prevent conversations with the DOJ from ever taking place. But Polite's comments underscore what we all know: humans are flawed creatures who will always find new ways to disappoint. And sometimes those disappointments can be severe. Polite understands this and wants to make sure that companies that take compliance seriously have an option to distinguish themselves from the average corporate wrongdoer. Not only is that fair, but it provides another avenue by which compliance departments can (admittedly, under suboptimal conditions) prove the value of their investment. Strictly from a compliance point of view, this is a pretty big carrot.

"We are going to be closely examining how companies discipline bad actors and reward the good ones," Polite notes. That last part is especially significant, in light of the new guidelines on allowing even egregious offenders a wide lane of partial redemption, because it puts cultures of integrity and accountability front and center. A great compliance program does not exist in a vacuum. There are zero companies out there with world-class compliance programs that don't also have significant support from the top and strong ethical culture throughout the enterprise. These are the pillars on which a good compliance program rests. To have the kind of compliance program you need to get a declination, you need something even bigger, really. You need to care enough about ethics to invest meaningfully in it. That means a strategic view toward accountability and integrity, so when and if there is a tactical failure—and they do happen—that should not automatically discount what is, for the company, a virtuous way of life..

BILL COFFIN
Editor in Chief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