

Revising Your Code of Conduct - Don't Wait for Another Great Fire of London

In 1666 the dates of September 4 and 5 are generally recognized as the worst days of the Great Fire of London. The Great Fire started at the bakery of Thomas Farriner on Pudding Lane, shortly after midnight on Sunday, 2 September, and spread rapidly west across the City of London. The fire gutted the medieval City of London inside the old Roman City Walls. It is estimated to have destroyed the homes of 70,000 of the City's 80,000 inhabitants. The City was rebuilt, with much of the old street plan being recreated in the new City, with improvements in hygiene and fire safety: wider streets, open and accessible wharves along the length of the Thames, with no houses obstructing access to the river, and, most importantly, buildings constructed of brick and stone, not wood. New public buildings were created on their predecessors' sites; the most famous is St. Paul's Cathedral and its smaller cousins, Christopher Wren's 50 new churches.

Not all rebuilding requires such drastic destruction however. In a recent article in the Society for Corporate Compliance and Ethics (SCCE) Magazine, entitled, "Six steps for revising your company's Code of Conduct" authors Anne Marie Logarta and Ruth Ward suggest considering the following issues before you take on an update of your Code of Conduct.

- ▶ When was the last time your Code of Conduct was released or revised?
- ▶ Have there been changes to your company's internal policies since the last revision?
- ▶ Have there been changes to relevant laws relating to a topic covered in your company's Code of Conduct?
- ▶ Are any of the guidelines outdated?
- ▶ Is there a budget to create/revise a Code?

After considering these issues, the authors suggest that you should benchmark your current Code of Conduct against others companies in your industry. If you decide to move forward the authors have a six-point guide which they believe will assist you in making your revision process successful.

1. Get buy-in from decision makers at the highest level of the company

The authors believe that your company's highest level must give the mandate for a revision to a Code of Conduct. It should be the Chief Executive Officer (CEO), General Counsel (GC) or Chief Compliance Officer (CCO), or better yet all three to mandate this effort. Whoever gives the mandate, this person should be "consulted at every major step of the Code review process if it involves a change in the direction of key policies."

2. Establish a core revision committee

The authors believe that a cross-functional working group should head up your effort to revise your Code of Conduct. They suggest that this group include representatives from the following

departments: legal, compliance, communications, HR; there should also be other functions which represent the company's domestic and international business units; finally there should be functions within the company represented such as finance and accounting, IT, marketing and sales.

From this large group, the authors believe that Code of Conduct topics can be assigned for initial drafting to functions based on "relevancy or necessity". These different functions would also solicit feedback from their functional peers and deliver a final, proposed draft to the Drafting Committee. The authors emphasize that creation of a "timeline at the outset of the revision is critical and hold the function representatives accountable for meeting their deliverables."

3. Conduct a thorough technology assessment

The authors argue that the backbone of the revision process is how your company captures, collaborates and preserves "all of the comments, notes, edits and decisions during the entire project." They believe that technology such as SharePoint or Google Cloud can be of great assistance to accomplish this process even if you are required to train team members on their use.

In addition to this use of technology in drafting your Code of Conduct revision, you should determine if your Code of Conduct will be available in hard copy, online or both. If it will be available online, you should assess "the best application to launch your Code and whether it includes a certification process". Lastly, there must be a distribution plan, particularly if the Code will only be available in hard copy.

4. Determine translations and localizations

The authors emphasize that "If your company does business internationally, then this step is vital to ensure you have one Code, no matter the language." They do note that if you decide to translate your Code of Conduct be sure and hire someone who is an "approved company translation subject matter expert." Here I would simply say to contact Jay Rosen at Merrill Brink, as those guys are the SMEs and know what they are doing when it comes to translations. The key is that "your employees have the same understanding of the company's Code-no matter the language."

5. Develop a plan to communicate the Code of Conduct

A roll-out is always critical because it "is important that the new or revised Code is communicated in a manner that encourages employees to review and use the Code on an ongoing basis." The authors believe that your company should use the full panoply of tools available to it to publicize your new or revised Code of Conduct. This can include a multi-media approach or physically handing out a copy to all employees at a designated time. You might consider having a company-wide Code of Conduct meeting where the new or revised Code is rolled out across the company all in one day. But remember, with all thing compliance; the three most important

aspects are Document, Document and Document. However you deliver the new or revised Code of Conduct, you must document that each employee receives it.

6. *Stay on Target*

The authors end by noting that if you set realistic expectations you should be able to stay on deadline and stay within your budget. They state that “You want to set aside enough time so that you won’t feel rushed or in a hurry to get it done.” They also reiterate that to keep a close watch on your budget so that you do not exceed it.

Logarta and Ward’s article provides a useful guide to not only thinking through how to determine if your Code of Conduct needs updating, but also practical steps on how to tackle the problem. If you are a compliance practitioner, I would urge you to take a look at your company’s Code of Conduct. If it has been more than five years since it was last updated, you should begin the process that the authors have laid out. Do not wait for a catastrophe like the City of London did with the Great Fire of London to rebuild. It is far better to review and update if appropriate than wait for a massive Foreign Corrupt Practices Act (FCPA) investigation to go through the process.

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