



Where does misconduct stem from at your company?

The importance of identifying and addressing the root cause of noncompliance



With so much of compliance focused on identifying organizational risks and putting measures in place to monitor and mitigate those risks, it's clear that preventing issues is top of mind. But what actually causes misconduct at your company?

Can you pinpoint a gap in policies or training? Is it a culture issue? Identifying the root cause of cases is key if compliance professionals have any hope of truly getting ahead of issues and building a strong program.

Without understanding the weaknesses that lead to misconduct, you might as well be throwing darts while blindfolded when trying to improve your program. The initiatives, policies, training and communications you

put in place might be a bullseye, but they might be completely off the board—and you won't know until another incident occurs or you're issue free for months. Not an entirely effective way of running a program, and definitely not a steadfast way of protecting an organization.

Predictive compliance is a goal of many companies, and while we haven't quite gotten to a *Minority Report* level of predication, carefully analyzing the root cause of each case your team investigates will help you focus future efforts and stop potential misconduct at its source.

An article in the September 2014 issue of *Compliance & Ethics Professional* noted that “less than a quarter of C&E officers say

their monitoring identifies root causes of compliance failures and predicts future risk.” The reason? “It is difficult to identify what will actually lead to misconduct.”

But honestly, is any part of compliance easy? Being a relatively new field means that compliance teams are trying to figure out how, exactly, to build a strong, effective compliance program. Identifying root causes and influencing factors of noncompliance isn’t simple, but that shouldn’t stop teams from doing the best they can—which involves digging a little bit deeper.

Compliance and ethics programs create the most value by preventing noncompliance. By moving toward a predictive monitoring program, Compliance improves the program’s ability to proactively mitigate compliance risk. Tracking metrics that quantify the root causes of noncompliance (i.e., the processes, conditions, and attitudes that drive misconduct) set the foundation for a predictive monitoring program that prevents noncompliance.

— CEB Compliance Building a Risk Based Monitoring Dashboard, 2014



WHY IT'S WORTH IT

The Problem

While at face value, issues may seem like straightforward instances of people simply not following policies and procedures, it's often far more complicated. The root cause of many cases is nuanced, with several factors (both internal and external) frequently contributing to the noncompliance.

“One shortcoming of compliance programs is that they assume misconduct comes from bad apples, rather than good people doing bad things. ... We rationalize our bad behaviors to such an extent that we do not realize we are crossing ethical boundaries until it is too late,” a [Harvard Business Review](#) article explained.

This can make pinpointing the true cause of an issue difficult—sometimes even for the employee who committed the infraction. An employee may be 100% up to date on their policy attestations with near perfect training scores, but one small bad or misguided decision can lead to a slippery slope of noncompliance that the employee often doesn't recognize at first. Once one misconduct deed has gone unnoticed and unpunished, it's easy to rationalize additional noncompliance, especially if the employee perceives it as not hurting anyone or the company.

With that in mind, the importance of really digging into the root cause of misconduct becomes more apparent. Without actually understanding what happened and what specific influences contributed to the issue (or the rationale behind the issue), it's hard to accurately address the problem. Simply adding another policy or increasing training might not address the right root cause—essentially wasting your time, not improving your program and leaving the weakness open to future noncompliance.



How Root Cause Helps

Working to identify the true influencing factors behind issues helps you focus and actually address program weaknesses. Program assessments and regular benchmarking highlight problem areas in relation to federal guidelines and expectations, but root cause analysis shines a light on problems within your organization right down to the employee level—things that more structured assessments might not uncover.

When considered in conjunction with attestation and training completion rates, analyzing the root cause and contributing factors in cases of misconduct will uncover those nuanced aspects of each case that lead a potentially committed employee to make the wrong decision. Something as simple as stress at home or pressure to keep up with a peer can have a larger impact than you may realize.

Tracking the root cause (in a manner that allows you to easily analyze it for trends) helps teams move away from short-term incident triage and being solely reactive. Instead, you'll have the chance to be proactive and actually get ahead of issues.

You'll finally understand that sales incentives are rewarding “business-at-all-cost” and leading your sales team to making questionable decisions. Or you might realize that retaliation issues aren't from intentional malice, but stem from inconsistent training and sparse communication. In both cases, another policy isn't going to help. Instead, root cause insights allow you to focus your efforts and actually make a difference and fix what's wrong.



WHAT TO LOOK FOR

There are two main factors that can help influence noncompliance: 1) the mind set of the individual committing the misconduct (behavioral factors); and 2) outside influencers that helped promote, encourage or justify that behavior (environmental factors). Nested within each category is a slew of potential factors.

Personal Behavioral Factors

The most logical place to start when trying to determine the root cause of noncompliance is to figure out what was going on in the head of the person who committed the misconduct.

It could be that the employee blatantly disregarded your company's policies, that they rationalized their behavior or that they simply didn't know that they were acting outside the bounds of compliance. Here are some common behavioral factors that lead employees to misconduct:

- **Insubordination** - An act of willfully disobeying
- **Lack of Sensitivity** - "I wasn't aware my conduct would have that effect on others." "I knew that my conduct would have a negative effect on others, but that's just the way I am."

- **Lack of Awareness** - "I didn't realize that the conduct was wrong." "I didn't realize that I needed to abide by this rule."
- **Company Loyalty Rationalization** - "I was generating profits for the company."
- **Legitimate Action Rationalization** - "It is an outdated rule." "Everyone else is doing it."
- **No Harm Rationalization** - "It didn't really hurt anybody."

Environmental Factors

There may also be outside influences that helped lead to the noncompliance—such as pressure from organizational or managerial expectations (either explicated expressed or quietly implied). According to a 2014 Ethics & Compliance Initiative survey, 23% of employees feel pressured to compromise standards at large companies with ineffective compliance programs. (Only 3% of employees feel the same pressure at large companies with effective compliance programs.)



Here are some other examples of environmental factors that commonly contribute to noncompliance:

- **Cultural Influences** - Cultural differences, from inside or outside the organization, caused the violation.
- **Financial or Performance Incentives** - Incentive compensation or a performance reward drove the violation.
- **Operational Burden** - An undue operational burden left insufficient time to perform in a compliant manner.
- **Pressure from Management or Peers** - Pressure to conform or complete tasks at all costs driven by a superior or peers contributed to the violation.
- **Process Design** - A poorly designed process created conditions that facilitated misconduct.
- **Remote or Inadequate Supervision** - Conduct occurred in a remote affiliate and/or under insufficient supervision.
- **Weak Controls** - There were weak controls over the employee or third-party activity that allowed for a violation.

It's important to remember that there may be more than one influence from each category. For example, it's entirely possible that an employee was feeling pressure while also in a situation with weak controls. And there may not be an influence from each category for every issue. There are surely instances of strong behavioral factors with little environmental influence.

However, together, these two types of influencing factors create a perfect storm for noncompliance. While it may be hard to truly address and correct behavioral factors—beyond encouraging an ethical company culture and stressing regular training and monitoring—it is absolutely feasible to mitigate many environmental factors.

“Interestingly, cultural drivers tend to be most prevalent. This is important to recognize because misconduct linked to cultural failures also tends to yield higher average settlements and fines.”

— *Compliance & Ethics Professional, Sept. 2014*



THE BOTTOM LINE

Analyzing the root cause of compliance misconduct won't lead to a fully predictive program, but it can help you spot holes in your program or cultural trends that need addressing. Used correctly to influence program improvements, addressing these issues can certainly help you prevent further misconduct and strengthen your program.

Life isn't simple, and the causes behind misconduct aren't always simple either. Yes, you may occasionally encounter an employee who is simply out for his or her own good regardless of everyone else. But more often than not there are underlying contributing factors that led an otherwise ethical employee to make a less-than-perfect choice.

Taking the time to understand these factors is how compliance professionals are going to take their programs from good to great ... and get one step closer to a predictive program that can stop noncompliance before it ever happens.



IDENTIFYING THE ROOT CAUSE OF NONCOMPLIANCE

What behaviors should be attributed to this person?

- Management/interpersonal communication style
- Rationalization - No harm
- Rationalization - Normal behavior
- Rationalization - Greater loyalty to company
- Rationalization - Legitimate
- Lack of awareness
- Other or unknown behavioral factors

Cancel Done

Rationalization - No Harm X

CONTRIBUTING FACTORS ANALYTICS

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