Is Your Company's Code of Conduct up to Date?

When reviewing an organization's Ethics and Compliance (E&C) program, regulators look to codes of conduct to ensure that policies and procedures are up-to-date, accessible and a true reflection of the business. Yet a surprising number of companies with otherwise robust E&C programs leave themselves vulnerable on the code of conduct front. A sound benchmarking framework can help you assess the quality of your company's code of conduct and determine whether it's time for a refresh.

Publicly traded companies have been required to adopt and disclose codes of conduct since 2004. Initially, many codes of conduct were created primarily to meet "check the box" regulatory obligations, rather than empower employees to do the right thing when faced with ethical dilemmas. As a result, early versions of codes were boilerplate legal documents filed with a stock exchange and then often pushed aside.

During the past 20 years, codes of conduct in the U.S have evolved in tandem with both federal sentencing guidlines and a growing awareness that well-designed codes of conduct programs mitigate risk by reinforcing a culture of ethical decision-making. The U.S. Department of Justice (DOJ) continues to place increasing emphasis on the scope, substance, and dissemination of company codes and companion training. At this point in time, from the DOJ's point of view, codes of conduct serve as a bellwether of overall ethics and compliance program effectiveness.

Compliance professionals sometimes unwittingly neglect codes of conduct as they grapple with the competing priorities inherent in their roles. However, the practical shelf life of a code of conduct is typically only three to five years at most. The exponential rate of change that is disrupting risk profiles, consumer behaviors and business models can also open significant gaps within code policies and guidelines in a relatively short timeframe.

SAI360 developed a proprietary benchmarking framework for evaluating codes of conduct against best practices and DOJ expectations. In this paper, we'll highlight new standards in codes that are emerging in the face of updated DOJ (and other) guidance and maturing compliance practices. We'll also share our framework to help you determine how your company's code stacks up against today's expectations from regulators (including the DOJ), employees at all levels, and outside parties who may review it.

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What's new with codes of conduct?

At SAI360, we have a birds-eye-view of the evolution of codes of conduct. During the past two decades, we have watched codes progress from check-the-box regulatory exercises to become visually appealing, employee-friendly resources. Before we outline our framework for evaluating codes, we want to share some important emerging trends in the content and design of modern codes of conduct:

Reader-friendly

Companies are ditching boilerplate legalese in favor of conversational, concise language that connects better with employees and reflects the voice and culture of the organization. Average wordcount has dropped considerably, as "readable" codes cover core risk areas in a summary fashion and include links to relevant policy documents for employees who need a deeper dive.

Codes of conduct are becoming more visually appealing, employing media-rich formats and graphic designs that match the look and feel of a company's brand. Shorter, more readable codes make policies and procedures easier to understand and remember. They also demonstrate to employees that the company is respectful of their time.

User-friendly

Codes of conduct are moving beyond just supporting a one-and-done attestation process, instead pivoting to be ready resources that employees can easily find and download when they need a refresh or want to clarify policies or behavioral expectations. Companies at the top of the compliance maturity curve are moving to digital codes of conduct on microsites that are accessible on a range of devices, are easy to navigate and are searchable. This trend reflects DOJ guidance advising prosecutors to consider whether corporate policies and procedures have been published in a searchable format.

We are also seeing an uptick in requests for translation of codes of conduct into what can sometimes be obscure languages. Companies are making concerted efforts to ensure their codes of conduct are not merely disseminated but are truly accessible to all employee populations around the globe (including, when appropriate, third-party partners).

Aligned with corporate values

Codes are becoming more values based as companies align them with mission, values, and principles statements to create uniform expectations that employees can understand and embrace. Some companies take the approach a step further to ensure there is also alignment with relevant ESG goals. The end result are codes of conduct that instruct employees how to "walk the talk" and demonstrate a sincere commitment to putting values and principles into practice.

Relevant and relatable

While traditional code of conduct training focuses on rote memorization of rules, procedures, and legal policies, a more people-centric approach is becoming the norm. Increasingly, clients ask for code training that walks participants through interactive simulations of complex situations and ethical dilemmas they are likely face in their day-to-day work lives. Authentic training scenarios evoke real emotion, which in turn facilitates retention and understanding of policies. Employees who engage in this type of training make better decisions on the job—which is why DOJ guidance prescribes companion ethics training programs that are appropriate to employee job responsibilities, sophistication, and subject matter expertise.

Data-driven

Traditionally, companies met regulatory expectations through attestations signed by employees that they read, and would abide by, the code. Based on DOJ expectations that companies assess how well employees actually understand the code, companies are increasingly turning to analytics to help them evidence program effectiveness and identify potential areas of improvement. In addition to the ability to track the percentage of the workforce that has read the code and completed companion training, clients also want the ability to monitor which policies within the code are attracting the most repeat engagement from employees.

Does your code of conduct measure up to DOJ standards and best practices?

When a company asks us for help assessing or refreshing a code, the first thing we look at is the first thing the DOJ looks at—the date it was last refreshed or amended. The DOJ views outdated codes of conduct as a red flag that a company's underlying compliance program is inadequately resourced, or worse—not a priority at all.

Next we assess the scope, content, and format of the codes to determine whether they serve as a foundation for a well-designed, effective compliance program. Our team utilizes a rubric of criteria we've honed through decades of experience refreshing and revitalizing code of conduct programs.

The "SAI360 Code of Conduct Benchmarking Framework" evaluates codes based on five main criteria (described below). Each of the criteria within our framework includes a subset of standards and metrics that can be used to compare your code to best practices.

1. **Authenticity: Does your company's code of conduct mirror corporate culture and its public-facing brand?**

   Authentic codes of conduct represent the working culture of a company and are aligned with publicly stated corporate values. When assessing codes for authenticity, we look for tone at the top with an introductory message from the CEO. We examine whether middle management is reinforcing code with front line employees. Whether in paper, PDF, or digital format, we look for code to be graphically designed to match company branding. Any training on code of conduct should employ scenarios that reflect the complex situations employees face every day and be tailored to the audience's sophistication, role, and/or subject matter expertise.

2. **Accessibility: Is your code of conduct easy to read and understand, user-friendly, and translated into the languages required to reach your target audiences?**

   Accessibility, like authenticity, has a significant impact on whether employees embrace the code in their behavior and decision-making. Among other things, we assess metrics related to word count, grade level, and searchability. The DOJ made clear in its 2020 guidance that policies and procedures, including codes, should be published in a centralized location and in a searchable format for easy reference, and our assessment rubric takes that into account.

3. **Ethical Decision Support: Does your company's code of conduct include information about how to ask questions, report concerns and escalate complaints?**

   The DOJ expects companies to have an efficient—and trusted—confidential structure in place to report ethical concerns or seek guidance on ethical dilemmas. We look for hot line details and instructions for asking questions, as well as measures to ensure employees can report concerns without fear of retribution. Employees also need ways to clarify policies or ask for support in ethical decision making. The DOJ expects these processes to be made available to third parties as well as employees, so we look for third-party communication channels that can be accessed outside the corporate firewall.

4. **Proof of Effectiveness: What evidence can you provide that your company's code of conduct contains the right material and has been read and understood by your workforce?**

   Early attempts at proof of effectiveness were limited to attestations signed by employees that they had read, and promised to abide by, the code. The DOJ now regards attestations as a bare minimum and expects companies to embrace continuous improvement, driven by data, to ensure effectiveness. In assessing a company's ability to prove actual effectiveness, we look to analytics to assess how well employees understand the material and how often they return to it when they have questions.

5. **Risk Mitigation: Does your company's code of conduct address key risk areas and is it refreshed frequently enough to address new and emerging risks?**

   Last, but certainly not least, we look at the risk areas a company needs to address in its code. Codes of conduct have long included policies designed to prevent bribery and corruption, conflicts of interest, sexual harassment, and health and safety violations. The risk landscape for most companies shifted measurably during the recent pandemic, illustrating the importance of frequent updates to codes of conduct. COVID also ushered in new risks around supply chain management, work from home protocols, and third-party management.

   Every company has a unique risk profile and corporate culture, so every code of conduct assessment we conduct has a unique benchmark formula and outcome. To view the SAI360 Code of Conduct Benchmark Framework, visit here.

WHAT DOES THE FUTURE HOLD FOR CODES OF CONDUCT?

Codes of conduct are evolving to become more interactive, accessible on all types of mobile devices, and data driven. Additionally, the DOJ has added two more expectations which many corporations are in the early adoption stage.

First is that compliance programs be data driven and continuously evaluated. Companies toward the top of the code of conduct maturity curve are creating "Living Code" micro-sites that allow for real-time updates; include searchable, interactive multi-media content; and embed analytics throughout to track content engagement and training effectiveness.

The second area is adequate resourcing of code programs. Continuous evaluation and improvement require continuous funding. Given the priority that the DOJ places on codes of conduct, refreshment should be a recurrent budget item. DOJ investigators perceive codes that are out of date, limited in scope, or inadequately resourced as a red flag that a company is not prioritizing ethics and compliance.

[Download the SAI360 Code of Conduct Benchmarking Framework](#) and let us help you build a Code of Conduct that is led from the top, reinforced by middle management, and embraced at the front lines.

For more information on how SAI360 can help you reinvigorate your Code of Conduct program, [request a demo.](#)

Our unified approach to risk sets us apart

Today's complex risk landscape demands more. SAI360 leads the way with an integrated GRC platform and Learning solution that spans the entire risk spectrum.

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- Policy Management
- Third-Party Risk Management
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- Incident Management
- Conflicts of Interest (COI) Disclosure Management
- IT & Cybersecurity
- Business Continuity Management

Ethics & Compliance Learning Solutions

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- Competition & Anti-Trust
- Conflicts of Interest
- Data Protection & Privacy
- Information Security
- Exports, Imports & Trade Compliance
- Harassment & Discrimination

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SAI360 is giving companies a new perspective on risk management. By integrating Governance, Risk, Compliance (GRC) software and Ethics & Compliance Learning resources, SAI360 can broaden your risk horizon and increase your ability to identify, manage, and mitigate risk. See risk from every angle.
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