2010 BEST PRACTICES FORUM

October 11 – 12, 2010

The Four Seasons Resort & Club at Dallas

CONSTRUCTION INDUSTRY
ETHICS & COMPLIANCE
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Techniques for Auditing/Monitoring/Reviewing Your Ethics and Compliance Program

A discussion led by our seasoned veterans and an outside expert on methods to measure the successes and weaknesses of your program. Discussion includes both larger and smaller construction companies.

Christine McAnney, Balfour Beatty, Panel Moderator
Larry Cochran, VP, Quality & Compliance, Kiewit Corporation
George Fadool, Chief Ethics & Compliance Officer, Skanska
Patricia J. Harned Ph.D., President, Ethics Resource Center

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Techniques for Auditing/Monitoring/Reviewing Your Ethics and Compliance Program

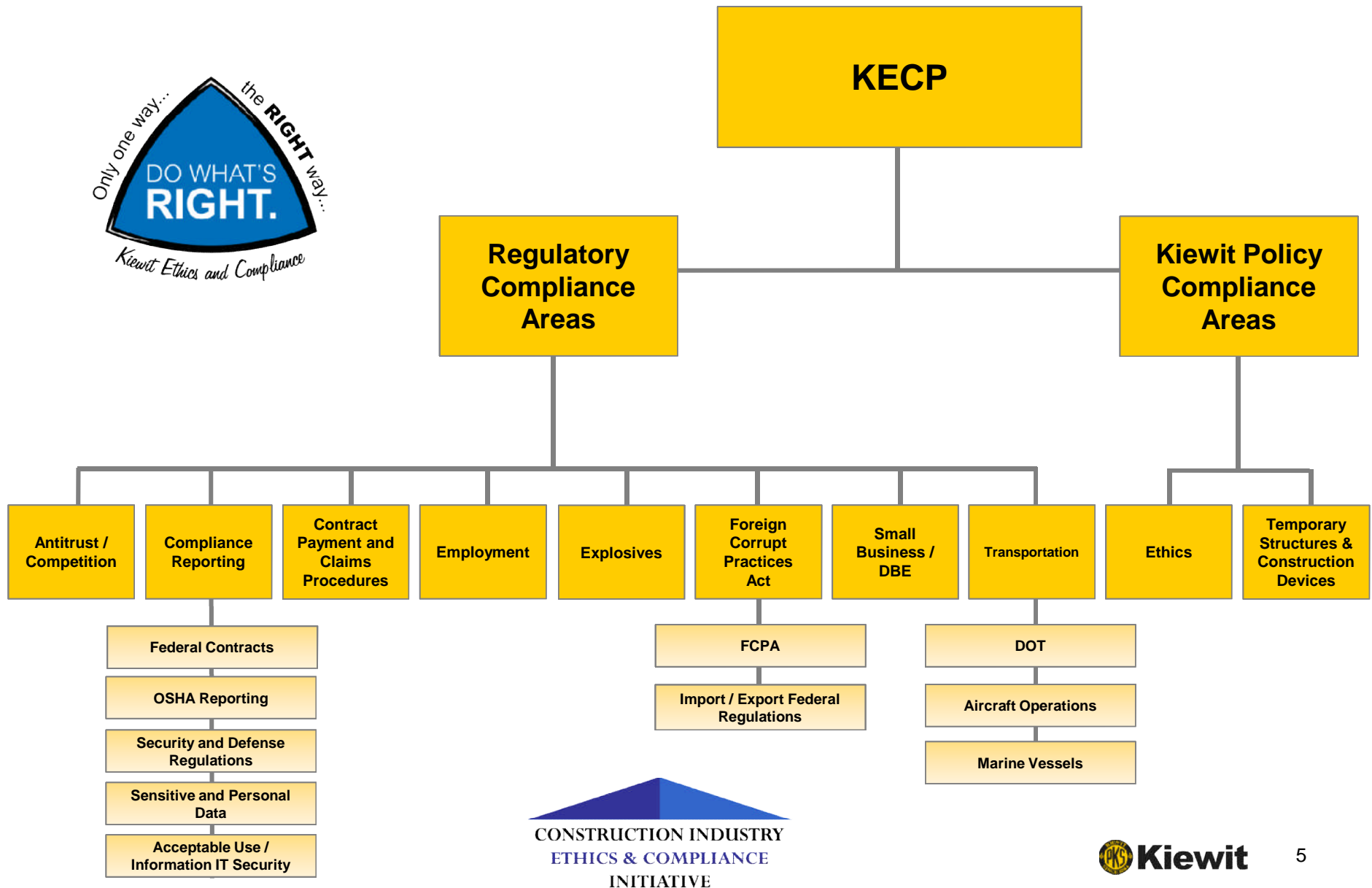**Larry Cochran** */* Vice President Quality and Compliance

Kiewit Corporation

Kiewit Ethics and Compliance Program (KECP)

Objective:

▶ To drive Ethics and Compliance down to the field level to affect behavior of our employees

▶ Make it part of our very day business

▶ Risk reduction through compliance

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2010 Kiewit Ethics and Compliance Program

KECP

Regulatory Compliance Areas

Kiewit Policy Compliance Areas

Antitrust / Competition	Compliance Reporting	Contract Payment and Claims Procedures	Employment	Explosives	Foreign Corrupt Practices Act	Small Business / DBE	Transportation	Ethics	Temporary Structures & Construction Devices

Under Compliance Reporting:
- Federal Contracts
- OSHA Reporting
- Security and Defense Regulations
- Sensitive and Personal Data
- Acceptable Use / Information IT Security

Under Foreign Corrupt Practices Act:
- FCPA
- Import / Export Federal Regulations

Under Transportation:
- DOT
- Aircraft Operations
- Marine Vessels

DO WHAT'S RIGHT.
Only one way... the RIGHT way...
Kiewit Ethics and Compliance

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KECP Key Elements

▶ Management Understanding and Involvement

▶ Organization Structure and Support

▶ Plan Components

  ■ Know the Requirements

  ■ Training and Education

  ■ **Performance Measurement**

  ■ **Reporting and Accountability**

  ■ **Assessments / Risk Evaluation**

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Performance Measurement

▶ Project Self Assessments

▶ Internal Audits

▶ Hotline Reporting

▶ Employee Surveys – K22

▶ Reviews with Compliance Committee

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Performance Measurement

► Project Self Assessments

- Performed by District Compliance Coordinator

- Assess all projects a minimum of once per year

- Utilize standardized assessment checklists

- Discovered issues are reported per bubble-up reporting

- Provides data for trend analysis for improvement

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Performance Measurement

Assessment Checklist

Item No.	Report Level	Item	Verification	Record Provided (Y, N, or N/A)
1	1	The district utilizes the Joint Venture Formation Form for all Joint Venture Agreements (Appendix 3 of Antitrust/Competition Manual).	Provide a copy of the "Request for Approval – External Joint Venture Formation" Form that is signed by an Executive Committee Member.	
2	3	A copy of the executed Joint Venture Agreement has been submitted to Accounting.	Obtain confirmation through H.O. Accounting that the JV Agreement has been submitted.	
3	1	The district personnel will not exchange pricing information between actual or potential competitors or discuss bid strategies.	Interview individuals in the District that are involved in pricing/estimating (for example, business development, area manager, sponsors, lead estimators, etc).	
4	1	District personnel will not schedule any information exchanges relating to potential mergers or acquisitions without the approval and involvement of the Legal Department per Antitrust / Competition Manual Section V. A.	Interview district manager and area managers. Ask if the district is engaged in any mergers or acquisitions. If yes, then ask if they contacted Legal prior to scheduling any information exchanges.	

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Performance Measurement

Bubble-Up Reporting

Item	Report To	Timeline
Corporate Reports • Corporate Compliance Scorecard • Federal Contracts Scorecard • Corporate CAR Summary • District CAR Details • Trend Report	• Internal Audit, Corporate Compliance Committee • District Managers, Division Managers – District CAR Details only sent to the corresponding district.	Quarterly Monthly

* CAR is Corrective Action Report

Performance Measurement

▶ Internal Audits

  ■ Half of the districts audited each year plus one job from each district (approx 50 locations/yr)

  ■ Identify new areas to assess

  ■ Report findings to Senior Management and Audit Committee

  ■ Work with Compliance Department to enhance program

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Performance Measurement

▶ Hotline Reporting

- Hotline is administered jointly by Legal / Compliance

- Any and all violations are expected to be reported to the appropriate manager or anonymously through the Compliance Reporting Hotline

- Significant issues are reviewed with CCO / Senior Management as appropriate

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Performance Measurement

▶ Employee Surveys – K-22

- Administered through HR Department
- Source of feedback to management for areas to improve
- Expanding to include questions on Ethics

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Performance Measurement

▶ Review Results with

Compliance Committee

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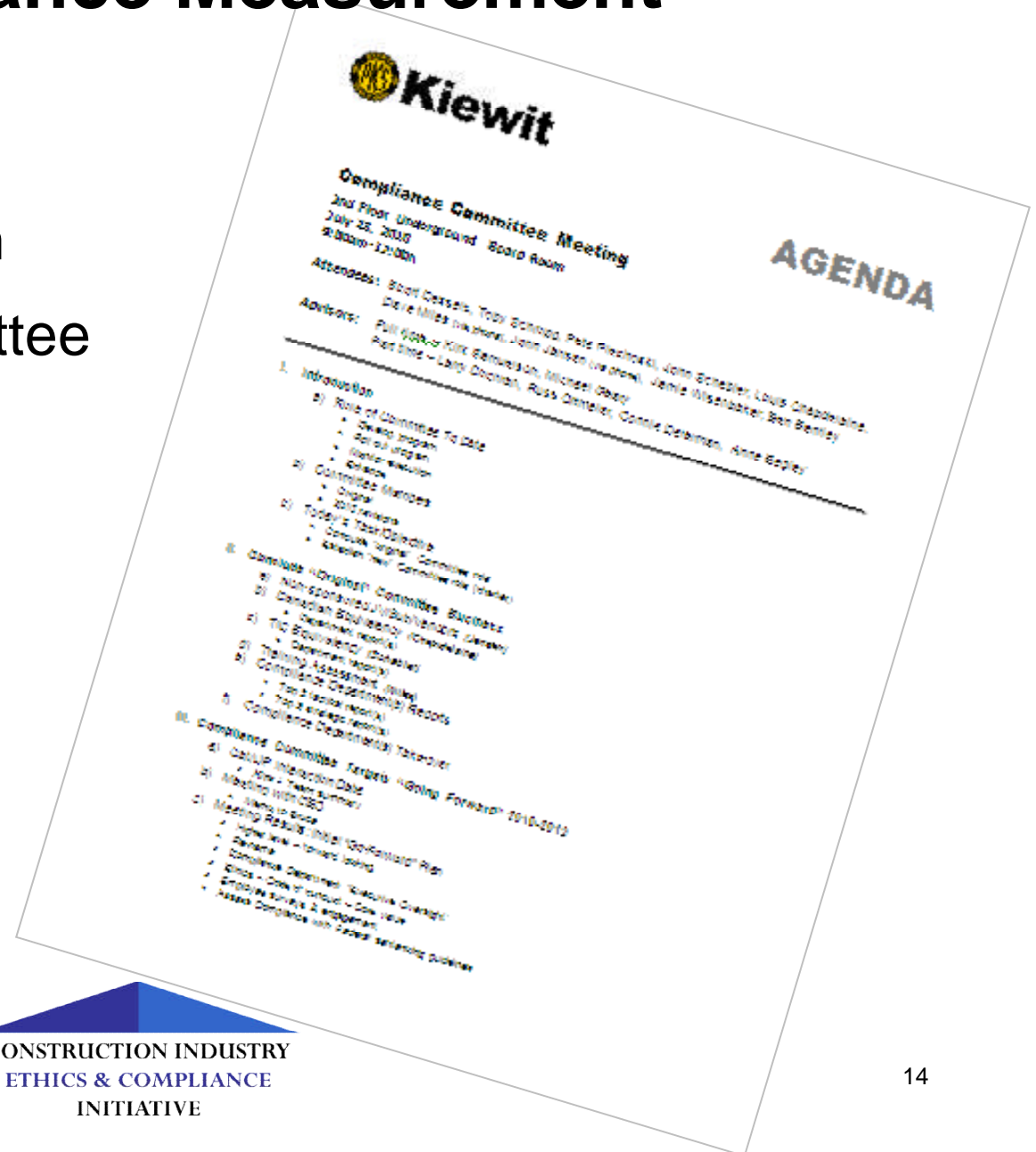
Kiewit Ethics and Compliance Program (KECP)

Objective:

► Make it part of our very day business

► Employees have bought in to our Compliance Program

- Visibility of our program

- #3 Agenda item at every meeting

- Request for training

- Sharing of Best Practices

- Tracking for Compliance

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Tracking for Compliance

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Techniques for Auditing/Monitoring/Reviewing Your Ethics and Compliance Program

George Fadool, Chief Ethics and Compliance Officer

Skanska

Establish Clear Objectives for E&C Assurance Reviews

► Measure the Business Units' compliance with its ethics and compliance procedures, policies and other control systems;

► Gauge the effectiveness of the Business Units' <u>formal</u> and <u>de facto</u> procedures;

► Discovery and deterrence of improper conduct and activities; and

► Ensure corrective measures are promptly instituted and carried out.

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Typical E&C Assurance Reviews

► Policies: Are appropriate policies in place?

► Process: Does a process introduce risks not otherwise existing?

► Procedure: Are procedures routinely followed?

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Expanded Types of E&C Assurance Reviews

► Business Operations: Are there systemic issues?

► Forward Looking: What are the new and evolving risks?

► Training: Measure comprehension and retention;

► Corrective: Follow-up on a previous recommendation from a risk assurance assessment or investigation.

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Use all the Available Information to Advance your E&C Program

► E&C Assurance Reviews

► Operational Peer Reviews

► Internal Audits

► Financial Audits

► Employee Surveys

► Input into Ethics Risk Assessment

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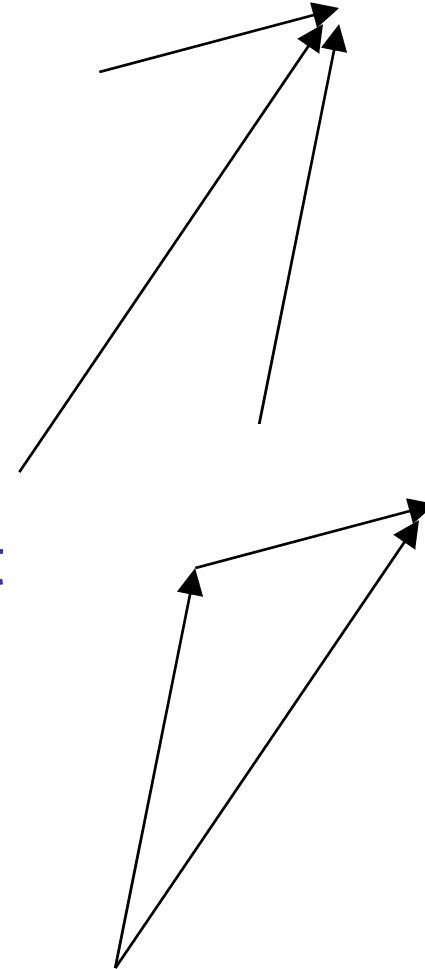
Best Practices in Monitoring Ethics and Compliance Programs

Patricia J. Harned Ph.D., President

Ethics Resource Center

US Government's Philosophy on Enforcement

▶ Prosecutors expect compliance programs to be:

- Vigorously enforced
- Strongly supported by senior management and the board
- Autonomous from management
- Directly accessible to the board

"Prosecutors are not impressed by flow charts, but only by 'living, breathing, practical programs.'"

- Greg Andres, Deputy Assistant Attorney General, Criminal Division, US Dept. of Justice

ERC Fellows Meeting, July 2010

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US Philosophy on Enforcement

► "We are surprised sometimes by the lack of action and seriousness with which some companies respond to misconduct."

► "Business can support deterrence efforts with strong compliance programs that not only deter illegal behavior, but also discourage employees from straying into the 'gray area' of borderline conduct."

- Lorin Reisner, Deputy Director, SEC Enforcement Division
ERC Fellows Meeting, July 2010

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Measuring Ethics

► Organizations should "otherwise promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law."

- USSC§8B2.1(a)(1)

► The organization shall take reasonable steps (B) to evaluate periodically the effectiveness of the organization's compliance and ethics program.

-USSC §8B2.1(b)(5)(A) and (B)

► "The question we are going to be looking at fundamentally is, is this a corporation whose culture and structure in some way facilitated or allowed this to happen?"

– Criminal Division Chief of Staff, DOJ (2004)

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Best Practice

► Program Design – Does our program align with FSGO?

- Code review
- Systems check
- Focus groups
- Internal & external audit

► Program Results – What difference are we making?

- Risk assessment
- Measurement of employee perceptions and conduct
- Culture assessment

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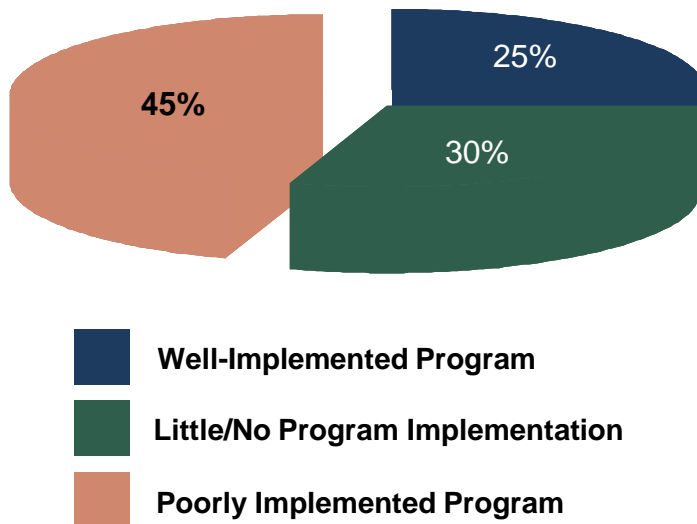
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Measuring Programs and Culture

► ERC metrics:

- Well-implemented Program?

- Strength of Ethical Culture?

- Impact of Program and Culture on Outcomes?

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Measuring a Well-Implemented Ethics Program

One-quarter of the US workforce say their company has a well-implemented ethics and compliance programs*

25% — Well-Implemented Program

30% — Little/No Program Implementation

45% — Poorly Implemented Program

■ **Well-Implemented Program**

■ **Little/No Program Implementation**

■ **Poorly Implemented Program**

Awareness

- – Written standards of conduct
- – Ethics training
- – Advice line
- – Anonymous or confidential reporting
- – Discipline system
- – Evaluation of ethical conduct

Implementation

- – Willingness to seek ethics advice
- – Receipt of positive feedback for ethical conduct
- – Employee preparedness for misconduct
- – Mgmt can be questioned without fear
- – Rewards for following ethics standards
- – Questionable means NOT rewarded

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*ERC's National Business Ethics Survey

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Measuring a Strong Ethical Culture

Ethical Leadership

- **Satisfied with information** from top management
- **Trust top management** to keep promises and commitments
- Top management **talks about importance** of doing the right thing
- Top management would be **held accountable**
- Top management sets a **good example**
- Top management **supports employees**
- Top management does **not tolerate retaliation**

Supervisor Reinforcement

- **Satisfied with information** from direct supervisor
- **Trust direct supervisor** to keep promises and commitments
- Direct supervisor **talks about importance** of doing the right thing
- Direct supervisor would be **held accountable**
- Direct supervisor sets a **good example**
- Direct supervisor **supports the employee**
- Direct supervisor **provides positive feedback**

Coworker Commitment

- **Trust coworkers** to keep promises and commitments
- Coworkers **talk about importance** of doing the right thing
- Coworkers set a **good example**
- Coworkers **support the employee**
- Coworkers **consider ethical issues**
- Non-management employees would be **held accountable**

Embedded Values

- When employees in my company make business decisions they consider the effect on:
  - **Society and community**
  - **The environment**
  - **Employee well-being**
  - **Future generations**

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Measuring Expected Results

► Fewer observations of misconduct

► Decreased pressure to compromise standards

► Increased reporting

► Less exposure to risk

► Better prepared for situations involving risk

► Improved satisfaction with organization

► Employee engagement

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Sample Analysis – Industry Benchmarks

Employee Awareness of E&C Program

Legend:
- ■ 2009 Survey
- ■ 2007 Survey

Y-axis: Employee Awareness (60% to 100%)
X-axis: Ethics Program Elements
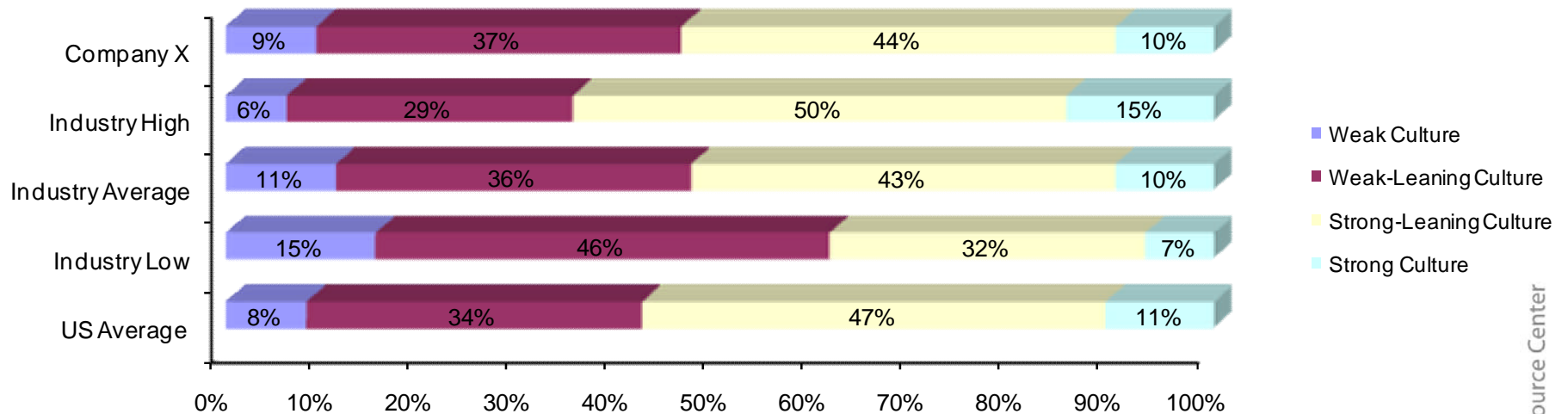
Element	2009 Survey	2007 Survey
Written Standards	97%	99%
Training	95%	89%
Advice Line	96%	94%
Anonymous Reporting	93%	90%
Discipline System	91%	n/a*
Evaluation of Ethical Conduct	80%	68%

Benchmarks

	Written Standards	Training	Advice Line	Anonymous Reporting	Discipline System	Evaluation of Ethical Conduct
2008 Industry Average	99%	99%	99%	98%	97%	89%
2007 Industry Average	99.8%	97%	97%	96%	n/a	75%
2008 US Average	83%	75%	65%	80%	88%	67%
2007 US Average	83%	65%	63%	71%	n/a	n/a

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Analysis – Industry

Employee Perceptions of the Strength of the Ethical Culture

	Weak Culture	Weak-Leaning Culture	Strong-Leaning Culture	Strong Culture
Company X	9%	37%	44%	10%
Industry High	6%	29%	50%	15%
Industry Average	11%	36%	43%	10%
Industry Low	15%	46%	32%	7%
US Average	8%	34%	47%	11%

Legend:
- Weak Culture
- Weak-Leaning Culture
- Strong-Leaning Culture
- Strong Culture

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Benchmarking

▶ All benchmarks are not alike. Be wary of:

- ▪ Organizational differences
- ▪ Sampling / delivery differences
- ▪ Timing of surveys

▶ Compare to industry high and low performers in addition to the average

▶ Be sure question sets are consistent

ERC Research and Resources

► Too Big to Regulate? Preventing Misconduct in the Private Sector (2010)

► 2009 National Business Ethics Survey

► The Importance of Ethical Culture: Increasing Trust and Driving Down Risk (2009)

► Reporting: Who's Telling You What You Need to Know, Who Isn't and What You Can Do About It (2009)

► Leading Corporate Integrity: Defining the Role of the Chief Ethics & Compliance Officer (2007)

► Improving Ethical Outcomes: The Role of Ethics Training (2007)

All available at www.ethics.org

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Questions?