ENTREPRENEURIAL ETHICS – TOPICS

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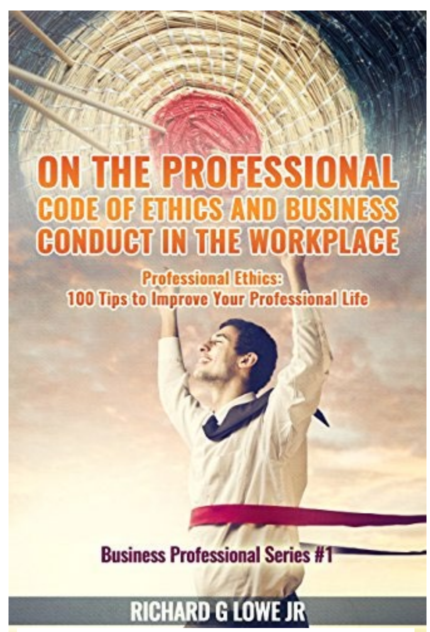
TOPIC 5
CAN CODES OF ETHICS CREATE MORAL BEHAVIOR?

Introduction

The question we will consider in this section is whether professional codes of ethics (CoE) are effective for producing ethical behavior in practice. If not, what is there value? The answer seems to be that they *can* be effective in shaping employee attitudes and behavior, depending on how they are implemented, embedded in company culture, and practiced in relation to the overall business model of the company. This is particularly true regarding upper management. Research consistently supports the intuition that the "tone at the top" sets the moral value orientation of company culture, and company culture is a crucial factor impacting the effectiveness of codes of ethics. It's a case of having to walk-the-walk as well as talk-the-talk. Otherwise, codes of ethics are pretty much useless, and may be counter-productive.

This was the finding of a recent study that looked at the effectiveness of codes of ethics to bring about moral behavior. The authors concluded that

> *…there is a gap between the stated intention by companies to conduct their business in line with an ethics policy and their ability to ensure that this is happening. Companies with values and ethics codes continue to experience lapses, many of which have been well publicized.*
>
> *The main reasons for the apparent gap between corporate principles and practice can be summarized as a failure to embed core ethical values in a way that affects decision making at all levels throughout the organization. We have proposed that in order to encourage high standards of ethical corporate behavior, organizations should develop and implement formal ethics programs. More importantly, to make those ethics*



programs effective, they need to nurture an ethical culture on a continuing basis. Indeed, the creation of an ethical culture is crucial for ensuring that a company lives up to its stated ethical values. Ways of achieving and sustaining such a corporate culture include:

- *Agreement on explicit core values*
- *A relevant and 'user friendly' code of ethics*
- *Continuous training and 'awareness raising' programs*
- *Means for employees to raise issues without fear of retaliation*
- *Employee engagement (consultation and feedback)*
- *Consistent communication and exemplary behavior from both top and other levels of management*
- *Regular surveys of stakeholder opinion*

Board level oversight and reporting. Without explicit and sustained leadership from the chairman and the board, the apparent gap between policy and practice in many organizations is unlikely to be bridged.[1]

Take a look at the Code of ethics for Wells Fargo, for example, which is easy enough to find online. It is graphically attractive and accessible. No doubt all employees had to read this legal document and sign off on it when they were hired. Wells Fargo's CoE certainly fulfills all the formal requirements for a good CoE as these are presented in the Compliance Action article below--except for a couple of things. It certainly did not reflect an orientation to virtue at the top at Wells Fargo since the bad idea of "Eight is Great" (a policy to push the cross-selling of products to customers) came from the CEO, John Stumpf, who was right there on the first page of the bank's CoE saying what a virtuous company he runs. And, thus, the CoE at Wells Fargo failed to inform the culture with the values as stated in the code due to the hypocrisy of top management. Check out the section entitled "Ethics." It would be humorous were it not tragic.

It is not hard to see how, at Wells Fargo, the CoE would definitely be detrimental to the moral value orientation of employees since what it clearly represents is the hypocrisy of the company and not its orientation to virtue. All employees would be aware of this obvious moral hypocrisy which, together with the toxic culture at Wells Fargo, would contribute to the widespread willingness of Well's employees to act immorally and illegally.

You should take note of the fact that the Compliance Action article below presents the traditional elements that should be present in a CoE from the standpoint of how the company should cover its legal butt against rogue employees so that there would be a clear reason for termination of employment of such an employee--which is what happened to the 5400 employees at Wells Fargo who pushed the limit due to a sustained pressure to cross-sell products. So, not only did the CoE encourage immoral actions, but it was then used as a legal document to terminate the

[1] Webley, Simon and Werner, Andrea. "Corporate Codes of Ethics: Necessary but not Sufficient." *Business Ethics: A European Review. Vol 17/4,* 2008.

offending employees, as well as some who did nothing wrong but try to blow the whistle on the immoral practice.

So, from this perspective, you will see that the reason for having a CoE, which is a legal document that is required by the Sarbanes-Oxley legislation for all publicly traded companies (at least for the moment), is clearly for the compliance protection of the company. This is a perspective drawn from the framework of an ethics of justice.

The second article by Susan Heathfield presents another perspective on morality in the workplace that is informed more by an ethics of care than an ethics of justice. She looks at the situation 'on the ground' among the ranks of the working people at the workplace, a view from the employee's existential, everyday point of view, where formal Codes of Ethics have little bearing in practice since the good don’t need them and the ‘bad apples’ won’t heed them. Most people don’t really need moral guidance from an authoritative source in their everyday behavior, and those that do, in all likelihood, won’t be stopped by a CoE.

Sure, there is the big picture to be considered, like the moral failure that brought down Enron, the financial debacle of 2008, and the scandal at Wells Fargo. But there is also the existential, everyday interaction among coworkers in many different unique and unrepeatable contexts and practices where your moral value orientation can be tested in many small ways and for which a CoE is generally no practical help at all. And, it may be a hindrance.

More importantly for Heathfield is the fact that even the smallest of moral transgressions impacts your sense of self and your whole moral value orientation in relation to a set of integrated social and work practices from which you configure your essence as a human being, as she puts it. I like this orientation because it reflects more of the values of the Ethics of Care, whereas the Compliance Action article reflects more of the Ethics of Justice.

Why anyone working in the tech industry should know about the industry codes of ethics. (Video 6:20)

The compliance view

Why a Code of ethics is important for business[2]

The Enron case has caused all of us to look closely at business structures and at the ethics of business. Consumers have high expectations for the ethical standards and practices of financial institutions. We recently interviewed Sue Walters of Kraemer and Walters, LLC to get her views on ethics. Kraemer and Walters, LLC, is a firm that specializes in providing compliance and risk management support to mid-size and large institutions. They have dealt frequently with questions of business ethics and the policies and procedures businesses should have in place.

What can we learn from Enron?

While the saga of Enron continues to unfold, a report issued by a special committee of Enron's board makes it clear that an "across-the-board failure of controls and ethics at almost every level of the company" contributed to the organization's failure. The report cites: "a flawed idea, self-enrichment by employees, inadequately designed controls, poor implementation, inattentive oversight, simple (and not so simple) accounting mistakes, and overreaching in a culture that appears to have encouraged "pushing the limits" as causal factors. The report states, "Our review indicates many of these consequences could and should have been avoided."

To protect yourself, and your institution from these pitfalls, a review of your Code of ethics and its administration is timely.

Why is a Code of ethics important?

A Code of ethics is important on many levels. It sets the "tone from the top" of the company's culture. An effective Code of ethics establishes the ethical

[2] Anon. "Why a Code of Ethics is important for business." *Compliance Action*, Vol. 7, No. 6, 5/2002.

expectations for employees and management alike, and sets forth the mechanisms for enforcement and consequences of noncompliance. When the Code is perceived as an integral component of the organization's culture, is understood, followed and enforced, it can provide protection for the organization from the actions of a "rogue employee" under the Federal Sentencing Guidelines.

What should a Code of ethics contain?

First of all, your institution's Code of ethics must reflect your organization's policies, controls and processes. While it may be tempting to short-cut the process by "borrowing" policies from other institutions under the guise of following "best practices", unless those policies, controls, and processes adequately reflect your institution's unique organization and business practices, the Code will not be effective in providing guidance or offering protection.

Depending on your regulator, there may be specific requirements for contents in a Code of ethics. In general, at a minimum, the Code should contain policies on: conflicts of interest, insider trading, gifts and hospitality, information security and privacy, recordkeeping, cooperation with investigations and audits, and, of course, a "whistleblower" provision. The whistleblower provision establishes procedures whereby employees can report, without fear of reprisal, suspected illegal or unethical activities by others within the organization. And, in light of current events, it would be wise to include in the Code the company's policies regarding political activities, particularly those concerning lobbying and political contributions.

The Code should set forth the process for its administration, including mechanisms to disclose and document any potential conflicts of interest or to obtain waivers from any particular policy or provision. It should also provide guidance to assist employees and ethics program management in evaluating specific circumstances, with the standard for behavior being: if all the facts and circumstances regarding the matter were made public, would the employee involved and the organization be proud to be associated with the activity? Additionally, the Code should provide referrals to resources on where to go for further information or guidance. You may want to consider having a separate Code of ethics for your board of directors. There are many transactional components within an organization's Code that may not have applicability to outside directors, and conversely, there may be additional requirements that pertain only to board activities. Similarly, it may be appropriate to extend certain provisions of the Code beyond employees, to vendors, contract workers, service providers, counter-parties or related organizations.

How should a Code of ethics be administered?

Here again, there is no "one size fits all" solution. In some companies, the general counsel has oversight and administrative responsibility. In others, the responsibility rests with Human Resources, Risk Management, Audit, or Compliance. In other organizations, a special Ethics Committee is empowered specifically for purposes of oversight and enforcement. Regardless, of where the accountability lies organizationally, the important considerations in choosing an administrator are that: (1) accountability is clearly assigned, (2) the designated administrator has the organizational stature necessary to facilitate enforcement, and (3) it is assigned to someone who does not have a propensity to engage in illegal or unethical activities.

Important components of the administration of the Code include initial and on-going training and awareness efforts, with visible executive management participation and support; employee acknowledgment of receipt, understanding, and compliance with the Code; standards for documentation of exceptions; standards for investigation of suspected or reported wrongdoing; consistent enforcement; and, finally, periodic review of the Code to ensure that it is comprehensive and reflects the current organizational structure and business practices.

Issues to consider for a Code of ethics:

- Employment conflicts and whether employees may work for other companies.
- Relationships of employees with other businesses in the market area. Laws, such as RESPA and Regulation O, give a framework for issues to consider.
- Acceptable types and value of gifts to give and receive.
- Reward and compensation systems.
- Work quality and productivity expectations.
- Representation of the institution (loyalty) outside of work.

ACTION STEPS

- Review your Code of ethics. If you don't have one, take steps immediately to develop a Code of ethics.
- Work from the top down and the bottom up. Find out what the Board of Directors and Senior Management expect from staff. Also find out what staff thinks the prevailing ethics standards are in your institution. If there is a gap, you need to take steps to close it.
- This is an excellent time to brief the Board on ethics and gain their support for a strong Code of ethics. Schedule time for a Board briefing, attach this article to the Board materials. Try to leave time for discussion so that you can find out what the Directors expect.

• Review and compare your institution's marketing materials and sales programs with the stated Code of ethics. Look for stress points. Then find out whether these stress points are managed or result in problems of an ethical nature.

• There is more to ethics than ethics. Consumer protection laws set a standard for customer treatment. Look at your most recent compliance audits and examination reports for issues relating to ethics.

• Review and revise your code of ethics. Use a team whenever possible. Make sure that the management of the Code is ongoing and active.

• Ask the ultimate question: if all the facts and circumstances regarding the matter were made public, would the employee involved and the organization be proud to be associated with the activity? If the answer is yes, you've done a good job.

Codes of Ethics: the existential view

Susan M. Heathfield

Did You Bring Your Ethics to Work Today?[3]

Think you are a person of integrity and that you bring your highest standards of ethics to your workplace each day? You may reassess your thinking as you explore the topic of workplace ethics in this article.

Despite hundreds of pages of policies, codes of ethics, codes of conduct, organizational values, and carefully defined work environments, company cultures, lapses in workplace ethics occur every day.

Lapses in workplace ethics result from inappropriate officer behavior such as insider stock trading, expense account fraud, sexual harassment, and involvement in conflicts of interest.

Lapses in workplace ethics do not need to rise to that level to impact the workplace environment you provide for employees, though. Lapses in workplace ethics can occur because of simple issues such as toilet paper, copy machines, and lunch signup lists.

[3] Heathfield, Susan. "Did You Bring Your Ethics to Work Today?" Human Resources/The Balance. June 28, 2016. www.thebalance.com

In a nationally important workplace ethics case, Hewlett-Packard company's, successful ex-CEO, Mark Hurd, became embroiled in workplace ethics issues. I have no insider knowledge, but the public statement from the company indicated that Mr. Hurd left because he violated the company's expected standards of conduct.

Cathie Lesjak, H-P's chief financial officer, who was appointed interim CEO until the company found a permanent replacement for Mr. Hurd, asked employees "to remain 'focused' and said 'Mark had failed to disclose a close personal relationship he had with the contractor that constituted a conflict of interest, failed to maintain accurate expense reports, and misused company assets.'"

While most of us don't have as far to fall as Mr. Hurd, and unfortunately, he is not the first or only high-profile executive to bite the dust over personal conduct in recent years, lapses in ethics occur in workplaces every day.

You can violate the spoken and unspoken, published and unpublished, code of conduct in your organization without a CEO title.

You can also violate these rules without your actions rising to the level of conflict of interests and questionable expense accounting.

Lapses in Workplace Ethics Drive Policy Development

Policies most frequently exist because some employees are untrustworthy. For example, many in HR debate the effectiveness of a paid time off (PTO) policy versus time off policies that divide available days between personal, sick days, and vacation time off.

The only reason these policies exist at all, to define the relationship between employer and employees, is because a few employees took advantage of the employer's attempts to offer sympathetic time off for legitimate life reasons.

Consequently, employers limited management discretion and decision-making about individual employee situations and instituted policies to govern the many. You can build a similar case for most organizational policies. The failure of some employees to practice principled workplace ethical decision-making results in policies that cover all employees.

Codes of conduct or business ethics exist to guide the expected behavior of honorable employees. But, much of their origination occurred for the same reason as policies. Some employees conducted themselves in ways that were unacceptable to the business.

In today's workplace, potential charges of unfair treatment, discrimination, favoritism, and hostile work environment replace much management discretion. The many suffer for the few and sometimes, your best employees get caught in the equal treatment trap. At best, time off policies, to use just one example, require organization time and energy – hundreds of hours of tracking and accounting.

Everyday Workplace Ethics

Few employees will undergo the challenges experienced by Mr. Hurd and other senior company executives in their practice of workplace ethics. But, all employees have the opportunity daily to demonstrate the core and fiber of who they are as people. Their values, integrity, beliefs, and character speak loudly through the behavior that they engage in at work.

Lapses in the practice of workplace ethics come in all sizes, large and small, far-reaching and close to home.

Some ethical lapses affect individual employees. Other ethical lapses affect whole work groups, and in particularly egregious instances, such as Mr. Hurd's, whole companies and all of the stakeholders in the company suffer as a result.

Some failures to practice everyday workplace ethics are invisible. No one but you will ever know about the decision that you made, but each lapse in ethics affects your essence as an individual, as an employee, and as a human being. Even the smallest lapse in workplace ethics diminishes the quality of the workplace for all employees.

Examples of Lapses in Workplace Ethics

Each failure to practice value-based workplace ethics affects your self-image and what you stand for far more than it affects your coworkers. But the effect of your behavior on your fellow employees is real, tangible, and unpredictable, too.

Following are examples of employees failing to practice fundamental workplace ethics. The solution? Change the behavior, of course. You may never have thought of these actions as problems with ethical behavior - but they are. And, all of them affect your coworkers in negative ways.

What are signs that you know that your actions are substandard? You make up excuses, give yourself reasons, and that little voice of your conscience, that chatters away in your head, tries to convince your ethical self that your lapse in workplace ethics is okay.

Here are sixteen examples of employees failing to practice fundamental workplace ethics.

You are using the company restroom and use up the last roll of toilet paper, or the last piece of paper towel. Without thought for the needs of the next employee, you go back to work rather than addressing the issue.

You call in sick to your supervisor because it's a beautiful day and you decide to go to the beach, or shopping, or…

You engage in an affair with a coworker while married because no one at work will ever know, you think you're in love, you think you can get away with it, your personal matters are your own business, the affair will not impact other employees or the workplace.

You place your dirty cup in the lunchroom sink. With a guilty glance around the room, you find no one watching and quickly leave the lunchroom.

Your company sponsors events, activities, or lunches and you sign up to attend and fail to show. Conversely, you fail to sign up and show up anyway. You make the behavior worse when you say that you took the appropriate action so someone else must have screwed up.

You tell potential customers that you are the vice president in charge of something. When they seek out the company VP at a trade show, you tell your boss that the customers must have made a mistake.

You work in a restaurant in which wait staff tips are shared equally and you withhold a portion of your tips from the common pot before the tips are divided.

You have sex with a reporting staff member and then provide special treatment to your flame.

You take office supplies from work to use at home because you justify, you often engage in company work at home, or you worked extra hours this week, and so on.

You spend several hours a day using your work computer to shop, check out sports scores, pay bills, do online banking, and surf the news headlines for the latest celebrity news and political opinions.

You use up the last paper in the communal printer and you fail to replace paper leaving the task to the next employee who uses the printer.

You hoard supplies in your desk drawer so you won't run out while other employees go without supplies they need to do their work.

You overhear a piece of juicy gossip about another employee and then repeat it to other coworkers. Whether the gossip is true or false is not the issue.

You tell a customer or potential customer that your product will perform a particular action when you don't know if it will and you didn't check with an employee who does.

You allow a part that you know does not meet quality standards leave your work station and hope your supervisor or the quality inspector won't notice.

You claim credit for the work of another employee, or you fail to give public credit to a coworker's contribution, when you share results, make a presentation, turn in a report or in any other way appear to be the sole owner of a work product or results.

This list provides examples of ways in which employees fail to practice workplace ethics. It is not comprehensive as hundreds of additional examples are encountered by employees in workplaces daily. Won't you take a moment to add your own examples of lapses in workplace ethics that you've experienced below?