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ERC Says Ethics Risk Landscape Still Treacherous

The prominent not-for-profit Ethics Resource Center (ERC) has released the 2007 version of the National Business Ethics Survey® (NBES), the fifth biennial study of ethical behavior in the U.S. workplace. Based on interviews with almost 2,000 employees at public and private companies in the United States, the study shows that there has been little if any meaningful reduction in the enterprise-wide risk of unethical behavior at U.S. companies since 2005.

Findings show continuing and disturbingly large patterns of workers that witness ethical misconduct at work yet fail to report what they see. Even more disturbing is the fact that ethical progress has been limited—even when compared to the period prior to the 2001 Enron scandals. According to ERC President Patricia Harned, "Despite new regulation and significant efforts to reduce misconduct and increase reporting when it does occur, the ethics risk landscape in American business is just as treacherous as it was before the implementation of the Sarbanes-Oxley Act of 2002." She notes, "Employees at all levels have not increased their 'ethical courage' in recent years….The rate of observed misconduct has crept back above where it was in 2000, and employees' willingness to report misconduct has not improved, either."

In the 2007 study, 56% of employees surveyed had personally observed violations of company ethics standards, policy, or the law—compared to 52% in the 2005 study and 46% in the 2003 study—and many reported seeing multiple violations. The three most frequent types of observed misconduct were conflicts of interest, abusive or intimidating behavior, and lying to employees. While these reflect personal lapses rather than organizational violations that further the company's agenda, they still pose significant risks to a company's value, reputation, and growth prospects.

Conflicts of interest—putting one's own interests above those of the organization—were observed by 23% of employees. Twenty-one percent witnessed abusive and intimidating behavior, and 20% saw employees being lied to. (The total exceeds 56% because respondents observed multiple types of misconduct.)

More than 42% of employees who witnessed misconduct didn't report it through any company channels, which is a reduction from 47% in 2005 but an increase from 36% in 2003. Failing to report ethical violations is a significant problem. If management has no knowledge that misconduct has occurred, it can't remedy the situation and ensure that it is properly addressed so that future occurrences are prevented. Of those who didn't report observed misconduct, 54% believed that reporting wouldn't lead to any corrective action, and 36% feared retaliation from at least one source.

More than a third of employees "took matters into their own hands" rather than reporting it through official company channels. Forty percent of these didn't report the misconduct because they would have had to report it to the person involved, and

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25% weren't aware of any mechanism to report anonymously.

Although many employees indicate that their company has elements of an ethics and compliance program in place, only one in four reports that their company has the key elements of an effective program, where employees:

- Are willing to seek advice about ethics questions that arise,
- Feel prepared to handle situations that could lead to misconduct,
- Are rewarded for ethical behavior,
- Do not believe their company rewards success obtained through questionable means, and
- Feel positive about their company.

Employees generally aren't using established hotlines to report misconduct, preferring to talk with a person with whom they already have a relationship. In describing the reasons that employees fail to use established procedures for reporting wrongdoing, the NBES concludes that relatively few companies have comprehensive and effective ethics and compliance programs in place. Most programs are driven by legal and regulatory demands and were designed in reaction to past mistakes. They focus on teaching employees what to avoid rather than addressing what to do should an ethics or compliance issue arise. The study found fewer ethics and compliance programs focused on employee training and advice or helplines. Because of the legal and listing requirements implemented after the Sarbanes-Oxley Act was enacted, comprehensive ethics and compliance programs are more common in publicly held companies (35%) than in privately held companies (27%).

Drilling down into additional causes of employees failing to report misconduct, the NBSE found there wasn't enough trust in company leadership to overcome the fears of futility (i.e., nothing will be done to correct the situation) and retaliation. This illustrates a gap between the perception of employees—the retaliation/trust/fear reaction—and the reality. Only 12% of those who reported wrongdoing experienced retaliation—compared to 36% who didn't report misconduct because of the fear of retaliation. Additionally, 80% of employees in the NBES believe that management wouldn't tolerate retaliation against individuals that report wrongdoing.

The best news in the 2007 NBES is that ethics risks improve dramatically in companies that have a strong ethics culture. Only 24% of employees in companies with a strong ethics culture observe wrongdoing, less than half the national average. And the reporting of observed misconduct nearly doubles in companies that have well-implemented ethics and compliance programs.

The most room for improvement lies in the fact that only 9% of companies in the U.S. today have strong ethical cultures. The four components of a strong enterprise-wide ethical culture are:

Ethical leadership. The tone at the top is an essential element, and employees believe that leaders can be trusted to do the right thing.

Supervisor reinforcement. Individuals directly above the employee in the company hierarchy set a good example and encourage ethical behavior.

Peer commitment to ethics. The ethical actions of peers support employees who "do the right thing."

Embedded ethical values. Values promoted through informal channels are complementary and consistent with a company's official values.

An unfortunate trend seems to be developing where an increasing percentage of employees believe their peers aren't committed to ethics. In 2003, the percentage was 25%. It rose to 34% in 2005 and reached 39% in 2007.

The most important lesson to be learned from the 2007 NBES is that an enterprise-wide ethical culture combined with a comprehensive and effective ethics and compliance program will significantly decrease misconduct, increase the likelihood of reporting, and reduce retaliation against employees who do report. ■

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