

Insights for writing a code of ethics/conduct



As Deloitte consults with clients across the globe and gains increasing ethics and compliance insights, it is clear to us that the heart of an organization is often expressed in its code of ethics/conduct. It tells the world what really matters to your organization. It's who you are. And we have found that companies that follow both the letter and the spirit of the law by taking a "value-based" approach to ethics and compliance may have a distinct advantage in the marketplace. Give the average employee a legalistic "thou shall not..." code, and a negative response is almost guaranteed. Give employees a document that states clearly and concisely the organization's expectations, outlines acceptable behaviors, and presents viable options for asking questions and voicing concerns, and the likelihood is much greater that they will meet those expectations and exhibit the desired behaviors. Make the contents of the code equally applicable to, and understood by, everyone in the organization—at all levels, across all business units, and spanning the geographies—and you have a key ingredient for a code that becomes cultural, with all of the benefits.

Code basics

There is no standard wording for a code of ethics/conduct. Each organization should develop one to suit the needs of its personnel in defining expected behaviors and in addressing the risks, challenges, and customs in the countries in which it operates, as well as to fit their specific industry and regulatory environment. However, there are some basic points to keep in mind when creating or modifying a code:

- The code language should be simple, concise, and easily understood by all employees.
- The code should be user friendly, and written with the employee in mind.
- The code should not be legalistic—written as "thou shall not"—but rather state expected behaviors.
- The code should apply to all employees and be global in scope. If the code addresses financial risk and applies to all personnel, there may be no need for a separate financial code of ethics.
- The code should be written, reviewed, and edited by a multidisciplinary team in order to be reasonably confident that it is consistent with other corporate communications and policies, addresses relevant risk areas, has buy-in across the organization, and represents the organization's culture. Consider inclusion of representatives from the following areas: Risk Management, Human Resources, Communications, Office of General Counsel, Internal Audit, Security, and relevant business units.
- The code should be revised and updated as appropriate to reflect business and regulatory changes.

Recommended elements

The elements or sections within a code can vary, but here are some standard recommendations:

- An introductory letter from the senior leadership team or CEO that sets the tone at the top and defines the importance of ethics and compliance to each employee and the organization.
- The organization's mission statement, vision, values, and guiding principles that reflect the organization's commitment to ethics, integrity, and quality.
- An ethical decision framework to assist employees in making choices. For example, a code might ask employees to answer some questions to guide them in making an ethical decision about a possible course of action. The goal is for employees to think before acting and to seek guidance when unsure. They should be encouraged to think about this type of question in the context of an ethical dilemma "Would you be unwilling or embarrassed to tell your family, friends, or co-workers?"
- A listing of available resources for obtaining guidance and for good faith reporting of suspected misconduct. For example:
 - A means to report issues anonymously, such as a helpline or postal address
 - How to contact the ethics and compliance officer or office
 - A definition of the reporting chain of command (e.g., supervisor, department head, etc.)
 - A listing of any internal ethics and compliance websites
- A listing of any additional ethics and compliance resources and/or the identification of supplementary policies and procedures and their location.
- Enforcement and implementation mechanisms that address the notion of accountability and discipline for unethical behavior. For example, unethical behavior will be subject to disciplinary action up to and including termination.
- Generic examples of what constitutes acceptable and unacceptable behavior could be included to further explain risk areas. Examples could be based on relevant organization or industry experiences.

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Areas of risk

It is important that a code cover relevant and important issues or risk areas. For example, a manufacturing organization would place greater emphasis on environmental responsibilities than a professional services firm. Code content and depth of coverage on a specific topic may vary by industry objectives, or past organization history, i.e., an organization operating under a corporate integrity agreement or with a history of ethical violations or infractions. Content also may vary because of the regulatory environment, as well as the questions and needs of intended audience, local laws, customs, and culture.

Code topics can be organized alphabetically or organized to reflect groupings that make sense to the organization. Topics also can be grouped according to the organization's objectives, risk matrix, or related topics such as employment practices, use of corporate assets, or third-party relationships.

Potential code topics

The following is a list of issues, topics, and risk areas that could be addressed in a organization's code, either under their own subject heading or as part of a broader topic:

- Accurate records, reporting, and financial recordkeeping/management
- Fraud/antitrust/competitive information/fair competition
- Billing for services
- Customer service/relations
- Customer, supplier, and third-party vendor relationships
- Customer/supplier/vendor/contractor confidentiality
- Communications on behalf of organization (public relations (PR), media, speeches, articles)
- Communications systems
- Community activities – civic activity
- Compliance with professional standards and rules:
 - Conflicts of interest
 - Independence
 - Licensure and professional certifications
- Confidential and proprietary information
- Consultation
- Contracting (approvals)
- Conflicts of interest (including independence and objectivity)
- Copyrights
- Corporate governance
- Discrimination
- Diversity and inclusion
- Document retention
- Electronic professional conduct
- Employment practices (Equal Employment Opportunity and affirmative action
- Environment
- Expense reimbursement and time reporting
- External inquiries/public disclosure and reporting
- Family and personal relationships
- Family Medical Leave Act
- Fraud
- Gifts, entertainment, gratuities, favors, and other items of value to/from customers, suppliers, vendors, contractors, government employees
- Government contracting, transactions, and relations
- Government reporting, inquiries, investigations, and litigation
- Harassment (sexual and otherwise)
- Health and safety
- Honesty and trust
- International and global business practices:
 - Anti-boycott laws
 - Embargoes
 - Export/import laws
 - Export licensing
 - Foreign Corrupt Practices Act
 - Foreign economic boycotts
- Marketing, sales, advertising, and promotions
- Money laundering
- Outside employment and other activities:
 - Outside businesses
 - Outside employment
 - Professional organizations
 - Charities and community service
 - Fundraising
- Personal conduct
- Political contributions and activity: lobbying, holding office, and finance
- Privacy
- Procurement/purchasing
- Professional competence and due care
- Quality
- Securities trading and insider information
- Security
- Social responsibility
- Supplier, vendor, and contractor relationships
- Use of organization resources:
 - Computer and network security (information security)
 - Computer software and hardware
 - Cyber risk
 - Email and voicemail (communications systems)
 - Internet and intranet
 - Industrial espionage and sabotage
 - Property
- Work/life balance
- Workplace violence

Implementation considerations

Assign a core team, reporting to the Chief Ethics and Compliance Officer, with the task of drafting the code. The code development or enhancement will require the successful completion of the following steps:

- Appoint a multidisciplinary advisory team
- Draft an outline of the proposed code and circulate amongst the multidisciplinary team for review and comment
- Draft code based on approved code outline
- Consider whether the code is aligned with the organization's policies, procedures, values, and industry standards
- Circulate draft code amongst the multidisciplinary team for review and comment
- Update code to reflect input of advisory team
- Use focus groups and other methods to get feedback from all levels of personnel on the code update based on their feedback
- Present "final" version of code to management and board for approval
- Circulate final versions to offices of Communications and General Counsel
- Communicate the code to all employees

Implementation can also include use of external consultants to assist in writing the code, reviewing the draft code, and, as an example of continuous improvement, assessing the code on a periodic basis to recommend opportunities for improvement and emerging risk areas for consideration.

An organization's code of conduct/ethics can only be effective if it is properly disseminated to employees of the organization. Although many organizations continue to use hard and soft copies of their codes of conduct, a number of other organizations are embracing new technologies in order to share their codes with their employees. For instance, an organization may feature an interactive code on its internal website, allowing employees to easily search topics, perform deeper dives in certain areas, etc., while also still allowing them to use the same "standard" code. No matter which format is used, and it can depend widely on the type of organization, the method used to communicate the code to all employees is crucial in order to make the code effective.

For more information, please contact:

Nicole Sandford

Partner | Deloitte Advisory
National Practice Leader
Enterprise Compliance Services
Deloitte & Touche LLP
+1 203 708 4845
nsandford@deloitte.com
Stamford, CT

Keith Darcy

Independent Senior Advisor to
Deloitte & Touche LLP
+1 203 905 2856
kdarcy@deloitte.com
Stamford, CT

Maureen Mohlenkamp

Principal | Deloitte Advisory
Deloitte & Touche LLP
+1 212 436 2199
mmohlenkamp@deloitte.com
Stamford, CT

Nolan Haskovec

Senior Manager | Deloitte Advisory
Deloitte & Touche LLP
+1 212 436 2973
nhaskovec@deloitte.com
New York, NY

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