

6 WAYS to Reduce Risk and Comply with the Law



Don't wait till a lawsuit derails your organization. Take these steps now.

By Jennifer Cameron

Compliance and risk management top the list of organizational concerns this year, but the challenge of managing compliance in a cost-efficient manner is nothing new. Compliance-related activities have traditionally been delegated to human resources staff, who endured the paper-shuffling headaches that came with the territory — often at the expense of devoting less energy to more value-added activities, such as mission fulfillment. So what's this new buzz about?

New regulations such as the Sarbanes-Oxley Act have brought personal liability to non-compliance. (See “Resources” on page 14.) Although the Act initially targeted corporations, it has increased scrutiny of all organizations, including nonprofits. Donors, boards, and the public are demanding greater transparency, forcing nonprofits to demonstrate regulatory compliance. Many view these demands as headache inducing, but they're also a chance to reduce organizational risk and its costs.

Organizational risk results from noncompliance with laws,

Documentation is key to showing that your organization has instated a culture of compliance.

standards, and best practices on discrimination, harassment, document retention, safety, drug policies, certification, and the like. While compliance management may be of only marginal concern to those in the front office, the risk and financial burden of *noncompliance* can be immense.

At the same time, the cost of risk prevention is skyrocketing. Premiums for employment practices liability insurance (EPLI) and directors' & officers' (D & O) insurance are sharply on the rise. So are the frequency and severity of employment-related lawsuits. During the past 10 years, employers have seen a threefold increase in lawsuits, with two-thirds of jury awards exceeding \$775,000.

Faced with this risk environment, many organizations can't afford a

single claim. The key to minimizing these risks? Create a culture of open communication in which all employees have access to the information they need to be compliant.

How do you create a “culture of compliance”? The task will require some rethinking on management's part and some new routines for employees. Here are tips to pave the way:

1. Keep Abreast of New Regulatory Information.

One reason for the increasing number of lawsuits by current and former employees is the ever-expanding web of laws regarding the workplace. Legislation at the federal, state, and local levels has proliferated in the last 20 years. The Sarbanes-Oxley Act reflects the government's new tendency to dictate deadlines for organizational change.

This abundance of laws has created a formidable administrative burden for employers. Some managers look to their legal counsel to keep them abreast of changes in regulatory law; though this can be a reliable solution, it is also costly.

Using Technology to Control Risk



With 2,300 children in its after-school and child-care programs every day, the Y needs an efficient way to monitor potential risk. Its compliance management system helps employees take corrective action before problems arise.

With 1,300 employees scattered among 130 program locations around Portland, Oregon, the YMCA of Columbia-Willamette faced several compliance challenges. First, they had no efficient way to monitor compliance efforts or pinpoint areas of risk. They also lacked the means to bring new employees up to speed quickly regarding the organization's policies. Finally, with nearly 60,000 participants making over 2,152,000 annual visits to YMCA facilities, the frequency of employee

contact with members, volunteers, and the public raised substantial liability.

The Y chose a compliance management system (created by Compli, www.compli.com) to streamline their compliance processes and get a handle on organizational risk. Compliance management systems (CMSs) are a new breed of enterprise software applications, easily accessed from any computer connected to the Internet.

"When we were using a paper-based system to manage compliance, we had nearly 24,000 documents to track in an average year," says Heather Jackson, the YMCA's human resources manager. "We used multiple checklists, file audits, and spreadsheets to track everything. If we had to retrieve compliance-related material, we'd have to go through an employee's personnel file. Most of the time, we couldn't find what we were looking for. We'd then spend an inordinate amount of time and energy trying to track down lost paperwork through phone calls and e-mails."

Now, when new regulations come into force, Ms. Jackson's team can consult sample policies provided by their compliance management system, as well as policy templates from the National YMCA and YMCA Services Web sites. This reference material helps them create policies that meet compliance standards while conforming to the Y's mission. They can then share the new policies electronically with staff. The system tracks acknowledgment of policies by every employee.

In addition to easing the administrative burden, the system has valuable monitoring and reporting capabilities. Managers can now monitor compliance activities instantly, from a variety of perspectives. In a few seconds, for example, a manager can see how many employees at a specific location have signed off on a particular policy. By pinpointing any gaps in compliance, managers can identify risks and take action to eliminate them.

By reducing risk and its costs, the YMCA of the Columbia-Willamette can focus more resources toward achieving its mission: to put Christian principles into practice through programs that build healthy spirit, mind, and body for all through love, respect, honesty, responsibility, and service. ■

An alternative is to subscribe to a regulatory monitoring service, such as CCH, Inc. (hr.cch.com), which informs you of legal changes that affect your organization. Once you've been notified, usually via e-mail, you click through to a Web page with detailed information.

2. Update Your Policies, and Inform Your Staff.

Being informed of regulatory changes is a first step — but meaningless if you don't amend your policies and let employees know about the changes. Use these guidelines:

- **Decipher** the legal language of new regulations, and paraphrase key points in language non-lawyers can understand. Run your version by your attorney to be sure you've interpreted the law correctly.

continued on page 14

During the past 10 years, employers have seen a threefold increase in lawsuits.

- **Communicate** new regulations in ways that are meaningful to employees in their different roles. For example, a manager will need different information than a front-line staffer.

- **Explain** how people should adapt their behavior to adhere to the new policies.

- **Be sure** supervisors have a solid understanding of new requirements. They must be able to answer workers' questions about how each new policy affects them. Supervisors also need to make consistent decisions when employee behavior doesn't comply with regulations.

3. Document Workers' Understanding of Policies.

To cultivate a culture of compliance — and to protect your organization from unfounded lawsuits down the road — it's important to ensure that employees understand policies and to provide evidence of that understanding. Follow these steps:

- **Train** employees about your policies, either online or in a classroom. Then test them to be sure they understand the material. This test will identify those who need further education.

- **Ask** people to acknowledge and document that they've learned about each policy and understand it.

Paraphrase key points in language non-lawyers can understand.

- **Document** employees' compliance-related activities, including acknowledgment of policies, assessment test results, and any grievance forms they've filed.

Documentation is key to showing that your organization has

instated a culture of compliance. It is also the best way to avoid miscommunication and misunderstanding. Maintaining records that show you've made a good-faith effort to inform your employees virtually eliminates the "but I didn't know" argument. In a court of law, records have more power than remembrances.

4. Create an Assessment Model to Monitor Compliance.

Next, you need to measure the effectiveness of your compliance efforts. To do so, you must monitor compliance from a variety of perspectives — at the employee level, the supervisor level, by policy, by location, by specific job function. Such an assessment will identify areas of risk in your organization. With this information, you can adjust your operations to mitigate risk — or transfer a greater amount of risk by purchasing more insurance if necessary.

In a court of law, records have more power than remembrances.

5. Report the Results.

Now, announce the success of your compliance efforts to key stakeholders, including executive management and the board of directors. Communicating your achievements will increase people's buy-in to your compliance program. In addition, being able to present a "risk portrait" to underwriters will help you negotiate lower insurance premiums.

6. Automate the Process.

Many of the above action steps are feasible only if you automate them. The most efficient way to do so is with compliance management system software. This software is easy to use on any computer connected to the Internet. (See "Using Technology to Control Risk" on page 13.) ■

Resources

To learn more about risk management and liability, see these *Nonprofit World* articles (www.snpo.org/members):

Do You Need a Record-Saving Policy? (Vol. 19, No. 5)

Is Your Organization Lawsuit-Proof? (Vol. 20, No. 1)

Planning for the Unforeseeable: How Smart Risk Management Provides Peace of Mind (Vol. 24, No. 2)

For more on the Sarbanes-Oxley Act, see: **Boards Must Change the Way They Do Business** (Vol. 21, No. 4)

The Sarbanes-Oxley Act & Nonprofits: But I Thought That Didn't Apply to Us (Vol. 22, No. 5)

For information on other laws regarding the workplace, see:

How to Accommodate Disabilities under ADA (Vol. 18, No. 5)

Don't Be Sued for Negligent Hiring (Vol. 21, No. 3)

The Most Likely Lawsuits — and How to Protect Yourself (Vol. 19, No. 1)

As a member of the Society for Nonprofit Organizations, you are eligible to receive D & O insurance that includes special coverage enhancements and preferential pricing. To learn more, visit <http://www.snpo.org/insurance/index.php>.

Jennifer Cameron, former CFO at the YMCA of Columbia-Willamette, is now an executive producer at OMG Multimedia (www.apjtv.com). To learn more about the YMCA and their compliance management system, visit www.ymca-portland.org or contact jrundle@ymca-portland.org.
