

IADC CORPORATE COUNSEL TRAINING ACADEMY 2022 Compliance and Ethics Challenges for In-House Counsel

We've all seen the slogans ... *ACT WITH INTEGRITY, DO THE RIGHT THING, EVERY ACTION MATTERS*, and *TONE FROM THE TOP*. For us in-house lawyers, they seem simple enough. Indeed, they make perfect sense, right? So, why are we constantly putting out fires in our organizations caused by employees who have not acted with integrity, who did not do the right thing, or who thought a shortcut -- just this once -- wouldn't hurt anything? Today's in-house lawyers are no longer simply risk managers on the back end -- making lemonade out of lemons. Instead, we are now firewalls tasked with anticipating and identifying potential problems before improper conduct ignites into liability flames. We are proactive Code of Conduct teachers and Corporate Policy leaders, creating awareness and educating our workforces on how to avoid missteps and pitfalls. Please join us for this interactive compliance and ethics discussion with two Fortune 100 legal officers focused daily on doing it right the first time -- and every time.

Facilitator: Thomas W. "Trea" Southerland III, Lead Counsel – Legal Compliance and Investigations, FedEx Express, Memphis, TN USA

Speakers: Jane Duke, Chief Compliance Officer, Vice President and Associate General Counsel, Tyson Foods, Springdale, AR USA and Richard R. Roberts, Vice President – Litigation and Risk Management, FedEx Express, Memphis, TN USA

U.S. Department of Justice Criminal Division Evaluation of Corporate Compliance Programs (Updated June 2020)

In June 2020, the U.S. Department of Justice updated its previous guidance on the evaluation of corporate compliance programs in the criminal context. *U.S. Department of Justice, Criminal Division, Fraud Section – Evaluation of Corporate Compliance Programs*. As part of that update, the DOJ referenced specific factors prosecutors should consider when conducting an investigation of a corporation, determining whether to bring charges, and negotiating plea or other agreements. **Moreover, the DOJ also included three “fundamental questions” prosecutors should ask when making informed investigative decisions: (1) Is the corporation’s compliance program well designed? (2) Is the program being applied earnestly and in good faith? (3) Does the corporation’s compliance program work in practice?**

Discussion

Background regarding Tyson and FedEx -- What they do and where they do it, including Compliance and Ethics Challenges faced by both (Food Industry) and (Transportation Industry)

DOJ guidance (above) regarding effective compliance programs

Why satisfying that guidance NOW is critical -- with real-world examples of DOJ enforcement activity

Top Five Corporate Compliance Challenges 2022

1. Evaluating Risk and Prioritizing Compliance Initiatives, Including Focused Implementations
2. Setting a "Tone From the Top," Including Securing Buy-In Across Operating Companies/Units
3. Effectively Reaching and Training Employees -- From Those on the Front Lines to the CEOs -- on Codes of Conduct and Company Policy and Procedure, Including Avoiding Training Fatigue
4. Considerations for Creating/Developing a Well-Designed and Earnestly-Applied Corporate Compliance Program, Including Adequate Resourcing
5. Once Created/Developed, Adequately Testing the Program to Ensure it Works in Practice, Including the Utilization of Data Analytics for Corroboration

And one timely freebie, Nuances of a Post-Covid Workplace ... What will this look like and how will organizations address this issue.