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A CODE OF ETHICS - ESSENTIAL FOR BUSINESS TODAY

In an effort to make corporate America more accountable for its actions, Congress passed the landmark Sarbanes-Oxley Act in July 2003. As a result, public companies are facing what healthcare firms faced a decade ago - civil and criminal penalties for wrong doing.

The implications for all businesses are far-reaching. Operating in an ethical fashion and following all the rules is more important today than ever. The magnifying glass is on public companies, but all businesses should take heed.

One important step toward creating a compliant culture in any organization is the development of a Code of Ethics. Much like a mission statement, a Code of Ethics has to be more than words on a piece of paper. The statement must be adopted by the highest levels of leadership and serve as the constitution that governs the conduct of the organization. Anyone with responsibility for ensuring its implementation should be involved in its creation.

Creating a Code of Ethics can backfire, however, if an organization does not follow it. The code can be used in a court of law against a firm that fails to live up to the policies outlined in it.

Every business, however, should have some type of compliance program in place to create a culture of honest and ethical behavior. Wording for a Code of Ethics will vary according to the size and nature of the business. Below are a few sample Code of Ethics opening sentences:

- ◆ “Our guiding values, as set forth in the following Code, describe the policies, standards and values by which all colleagues must govern themselves. Every colleague is required to understand and fully comply with the Code as a condition of employment, or to maintain a contractual relationship, with the company.”
- ◆ “As an employee or agent of (company), you are expected to abide by a high standard of ethical behavior at all times. You must obey the laws and rules that apply to our business operations and to your particular job duties. ... You should be careful not to engage in any of the following illegal activities:.”

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The elements of an effective corporate compliance program for a business organization as defined by the Federal Sentencing Guidelines for Organizations, should include:

1. Standards and procedures aimed at reducing improper conduct in the business.
2. High-level individuals with responsibility for overseeing adherence to these policies.
3. Safeguards for avoiding the assignment of discretionary authority to individuals who have a propensity for illegal activities.
4. Effective communication of these standards and procedures to all employees and agents.
5. Monitoring, auditing and reporting systems that allow employees to report suspicious conduct without fear of retribution.
6. Appropriate disciplinary systems.
7. Steps for responding to and preventing offenses.

A company that implements a program covering these areas can substantially limit its financial exposure if a legal issue does arise. Any business, no matter how small, should have some efforts in place to detect and prevent improper conduct of its employees and contractors.

Most important is creating a culture that allows employees to feel comfortable reporting adverse activities. Many healthcare companies and defense contractors learned the hard way that dealing with problems internally is much easier than dealing with them externally. Because of whistleblower laws, employees may be enticed to report issues externally if they don't feel comfortable making reports through internal channels. Such cases have been known to bring companies to their knees.

Taking preventive measures through the development of a Code of Ethics and a compliance program to back it up can help a

business avoid serious legal tangles in the future.

A standard in the healthcare industry for several years, a Code of Ethics is becoming a standard in the general business world as well.

The attorneys in Broad and Cassel's White Collar Criminal and Civil Fraud Defense Practice Group have a sophisticated understanding of how government investigators work at every level as well as our clients' operations and workforce. Broad and Cassel's attorneys believe in litigation prevention and have experience in the informal resolution of investigations, without formal criminal or civil fraud enforcement action. We also have unsurpassed experience in dealing with fraud matters in its many forms (criminal, civil and administrative) and with all its collateral consequences, such as Federal and state sanctions and disciplinary matters and government debarment and exclusions and contractual relationships. Broad and Cassel's attorneys also offer clients the tools they need to proactively avoid criminal and civil exposure and protect their businesses, property, and liberty. For more information, visit our website at www.broadandcassel.com.