

By The Numbers:

Making the Business Case for Employee Compliance Training

In today's business environment, organizations of all sizes need to demonstrate the value of every dollar they spend. Unfortunately, compliance initiatives like training are sometimes seen as "nice to haves" that can be scaled back-or eliminated entirely.

In reality, effective compliance training reduces costs, protects your organization's brand and reputation and helps avoid potentially crippling legal liability.

The challenge for compliance, legal and human resources (HR) professionals is to make the business case for the value of employee compliance training. This requires communicating the magnitude of legal, financial and reputational risk mitigation that training provides, as well as demonstrating the value of choosing a proven partner with trusted, legally defensible training content.

The Risk is Real – And Hitting Your Bottom Line

The first step in building the business case for compliance is to understand and communicate the legal risk confronting your organization. And the numbers are startling, whether you look at broader enforcement and litigation trends or focus specifically on high-risk areas like the Foreign Corrupt Practices Act (FCPA), harassment and discrimination, wage and hour issues and Dodd-Frank whistleblower-related claims.

■ The Big Picture: Record Recoveries, Losses and Litigation

\$24.7B
total DOJ
collections in 2014

In 2014 collections by the Department of Justice (DOJ) hit an **all-time high**, with the DOJ collecting a staggering \$24.7 billion in fines, penalties and settlements.¹ This is **three times the amount** collected in 2013.

5%

**of total revenues
lost to fraud**

A typical organization **loses 5% of its annual revenue to fraud**. Applied to the estimated 2013 Gross World Product, this figure translates to a potential global fraud loss of **nearly \$3.7 trillion**.²

\$1.6B

**in sanctions for
FCPA violations**

Claims under the Foreign Corrupt Practices Act (FCPA) are showing **continued highs**, with more than \$1.6 billion collected in fines and penalties in fiscal year 2014.³

88,778

**EEOC
private-sector charges**

88,778 private-sector discrimination charges were filed in 2014, continuing the trend of **sky-high private-sector enforcement actions**.⁴

\$365.5M

**EEOC budget
dollars likely to be
allotted to enforcement**

Confirming its focus on enforcement, the Equal Opportunity and Employment Commission (EEOC) requested \$365.5 million in its 2015 budget, including \$29.5M for state and local programs for **increased enforcement and private-sector activities**.⁵

438%

**increase in
FLSA cases**

Since 2000, the number of Fair Labor Standards Act (FLSA) cases has **increased by 438%**.⁶

300

**new wage and
hour investigators**

In 2014, President Obama requested funding for 300 new DOL wage and hour investigators. This will greatly bolster the **division's ability to respond to complaints** as well as the number and the depth of investigations initiated.⁷

\$30M

bounty paid out to a single, anonymous whistleblower

In 2014, an anonymous whistleblower received a \$30 million bounty from the U.S. Securities and Exchange Commission (SEC) for bringing alleged wrongdoing to the attention of government investigators. The award **more than doubles the previous record** of \$14.7 million.⁸ The \$30M bounty went to a foreign whistleblower—the fourth non-U.S. whistleblower to participate in the agency’s program.⁹

0

the number of times whistleblowers are required to use internal reporting

Under the Dodd-Frank Act, whistleblowers are not required to use internal reporting procedures before going to the government. In fact, they are **incentivized to go directly to the government** to preserve their potential claim for compensation. This makes training employees on expectations for internal reporting all the more critical.¹⁰

■ It Doesn’t Stop Here: More Real Costs

Critically, these numbers do not include the dollars organizations spend defending themselves against claims, the cost of damages to brand and reputation or the loss in productivity caused by the distraction of a major government investigation or lawsuit.

Even without considering these real additional costs, however, all of these statistics underline the potentially debilitating impact that just one claim can have on an organization’s bottom line and—in some cases—viability.

Making the Case: Taking Action Today to Mitigate Your Risk

The next step in building your business case is to help your leadership understand specifically how training helps protect your organization from legal, financial and reputation risk.

Here again the story is compelling. Effective, high-quality employee compliance training not only lowers the likelihood that wrongful conduct will take place, but also provides critical legal defenses in nearly every key legal risk area.

“Increased enforcement has not only cost unprepared employers substantial amounts of money—but also irreparable damage to their reputations. Investing in high-quality compliance training programs now will help to save your organization from costly litigation, lost management time, and harmful publicity later. The costs associated with just one major litigated enforcement effort could fund your compliance efforts for a quarter century.”

— **Garry Mathiason**, Senior Shareholder, Littler Mendelson

Understanding the Critical Legal Defenses that Training Provides

Protects Organizations in a Legal Defense

48% of respondents to a 2015 NAVEX survey said that their training had been used to defend their organization in a lawsuit or agency action—or to help secure a better position in a settlement. Survey respondents noted that, on average, an organization's training had been used in a defense setting four times in the past three years.

Lowers or Eliminates Damages in Harassment Claims

The U.S. Supreme Court decisions in Faragher and Ellerth (1998) permit employers to avoid some or all potential liability in harassment claims, provided they periodically train managers and employees on the organization's policies and their rights and obligations under the law.

Lowers or Eliminates Punitive Damages in Discrimination Claims

The U.S. Supreme Court in Kolstad (1999) held that employers can avoid punitive damages in discrimination actions if they can show that the conduct at issue was contrary to the employer's "good-faith efforts to comply with Title VII." Employers do this by adopting and implementing anti-discrimination policies and by providing periodic training on discrimination issues.

Reduces Damages in Wage and Hour Claims

Under the "avoidable consequences" doctrine, employers may avoid up to 66% of potential liability for wage and hour violations by showing that they made good-faith efforts to comply with wage and hour laws. Training managers and employees on their duties is compelling evidence of an organization's good-faith efforts.

Reduces up to 95% of Fines and Penalties for Violations of Federal Law

Under the Federal Sentencing Guidelines, both public and private organizations can avoid up to 95% of potential fines and penalties assessed for violation of federal laws—including laws like the FCPA and the Dodd-Frank Act—if those employers can show that they had an effective ethics and compliance program in place.

Essential for Federal Contractors

The Federal Acquisition Regulations were amended in 2007 and 2008 and now affirmatively require most organizations doing business directly or indirectly with the federal government to adopt a code of business ethics and conduct and to train all employees on its provisions. Contractors that fail to comply with these requirements could face withheld payments, loss of a fee award, or even debarment, suspension, or other disciplinary action.

Critical for Organizations Subject to the U.K. Bribery Act

The United Kingdom's 2010 Bribery Act applies to all organizations that do business in the U.K and is one of the most far-reaching and stringent anti-corruption requirements in the world. The act also created an affirmative defense for organizations that have in place "adequate procedures" to prevent bribery. Guidance from the Ministry of Law confirms that "adequate procedures" must include training and that online training is expressly endorsed.¹¹

Most importantly, these legal protections translate into demonstrable value and a proven return on investment (ROI) for every dollar spent.

Be Prepared to Show How the Training You Recommend is a Proven, Reliable and Effective Tool for Managing Risk

You have educated your leaders on the risk and shown how and why employee training can help—but your work is not over yet. You must be able to demonstrate that the training you've selected is the right choice to best protect your organization.

With More Than 13,000 Clients around The Globe and Millions of Employees Trained, NAVEX is the Proven Leader in E&C Training.

Rock Solid Defensibility

Our courses are built in close collaboration with Littler, the world's largest and most experienced labor and employment law firm. Every training solution is crafted to deliver rock-solid legal content, address the latest trends, create powerful legal defenses and withstand intense scrutiny.

Exclusively Endorsed by SHRM

The Society for Human Resource Management (SHRM), the world's largest association dedicated to human resource management, has fully vetted NAVEX's courses and has exclusively endorsed our training as the solution of choice for its members.

Maintained and Refreshed Regularly

NAVEX's ability to stay abreast of legal developments is unmatched. Our close working relationship and access to Littler's top experts gives us the unique ability to predict trends, anticipate changes in laws and adapt our training to address those changes. As a result, we develop best-in-class learning solutions that reflect current issues—and ensure that your top risks are covered.

Engaging, High-Quality Experience for End-Users

Leveraging the latest technology and high-end media, our solutions reflect the level of quality your organization wants to associate with its compliance program. Employees are transported into a virtual world, where they meet compelling characters and learn from interactive exercises and simulations that are based on actual cases and real events. As a result, learners stay engaged, and training has a much greater likelihood of creating real behavior change.

The Numbers Don't Lie

Here's one last number for you to keep in mind as you decide which compliance training partner to recommend for your organization and learners:

Zero

The number of times—after a problem develops—that judges, juries, investigators, and members of your senior management accept excuses like:

- We didn't train because we didn't think we would have a problem.
- We cut our compliance and training budget to save money.
- We chose this training because it was cheaper.
- We didn't think the credentials of training course creators would be an issue in a lawsuit—or that government investigators would care.

Remember, compliance is about your organization's values, but it's also about making a prudent business decision that can protect your organization from potentially devastating financial liability. It's a story that is told by the numbers, one that you need to be prepared to defend—and one that every organization should embrace.

Sources

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- ⁹ Ibid.
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- ¹¹ Ministry of Justice, "The Bribery Act: Guidance" (March 2011). Web. 11 May 2015. <http://www.justice.gov.uk/downloads/legislation/bribery-act-2010-guidance.pdf>.

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