

Global HR Hot Topic

Global Code of Conduct Drafting Strategy



Challenge:

Multinationals launch global codes of conduct that take surprisingly-different forms, but that too often are unclear as to purpose.

Most major multinationals, particularly those based in the US, seem to have issued a global code of conduct that spells out certain rules governing worldwide operations. But global codes of conduct vary substantially in both purpose and content. According to the International Labour Organisation, "corporate codes of conduct do not have any authorized definition...[T]here is a great variance in the way these statements are drafted." Indeed, "code of conduct" is not a term of art, but is merely a label affixed to a range of corporate and non-governmental-organization policies.

■ Many corporate policies called "codes of conduct" have little to do with employment relationships: There are professional-association antitrust compliance codes of conduct, environmental-protection codes of conduct, and advisory codes of conduct on topics like intellectual property and computer programming. These codes—while vital—are only loosely connected to global efforts at legal and ethical *human resources compliance*.

Anchoring our code of conduct discussion in the international employment context, there are two very-different types of codes to distinguish: *External supplier codes* chiefly protect employees working for a multinational's suppliers from so-called "sweatshop" conditions, whereas *internal ethics codes*

chiefly impose compliance rules on a multinational's own employees across its worldwide workforces. In one sense, these two global codes of conduct are opposites: External supplier codes seek to *protect* employees not on the code issuer's payroll, while internal ethics codes seek to *restrict* (impose rules on) a code issuer's own employees. Some multinational codes of conduct try to combine these two types of document, but effectively doing so is difficult, because both the goals and the intended audiences differ. As such, any multinational launching a global "code of conduct" should first clarify which type of code it needs.

External supplier ("sweatshop") codes of conduct

In the US, multinational employers' supplier ("sweatshop") codes of conduct first got traction in the 1990's when American human rights activists championed them to promote worker rights in the developing world, and teamed up with US labor-union activists promoting job security for American workers. These activists continue to urge that multinationals selling third-world-sourced product to rich first-world consumers police the labor conditions of overseas workers who make the product.

Pointer:

In drafting a global code of conduct, clarify the intent. Include only topics susceptible to a single global approach.

Each monthly issue of *Global HR Hot Topic* focuses on a specific challenge to globalizing HR, and offers state-of-the-art ideas for ensuring best practices in international HR management and compliance. White & Case's Global Human Resources Practice helps multinationals globalize business operations, monitor employment law compliance across borders and resolve international labor and employment issues.

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Supplier codes of conduct are external in that they seek to protect employees of multinationals' unaffiliated suppliers. An external code's text often may reach a multinational's own employees, but internal compliance is rarely a primary concern. External codes' terms almost always reach suppliers worldwide—in developed and developing countries alike. But these codes implicitly focus on supplier employees in the developing world. (Labor law violations of course occur everywhere, but domestic "sweatshops" are not seen as a pressing social issue in, say, Canada, Denmark or Japan.)

External supplier codes tend to require a multinational's suppliers to meet minimum basic labor protections set out in the code. Some codes offer specific lists of core labor protections, while others increasingly incorporate by reference International Labour Organisation conventions, model industry code templates, or local employee-protection laws.

Multinationals usually impose supplier codes as appendices to supply contracts or sourcing agreements with factories around the world. Some (largely unsuccessful) lawsuits filed in US courts have sought to enforce global supplier codes for overseas workers on a third-party-beneficiary theory. The lurking legal issue here is *privity-of-employment-contract*: Multinationals that order product from unaffiliated factories are mere customers. In the normal course of business, a customer has little information or say about a seller's work conditions. Legally (as opposed to economically), customers tend to be powerless to direct and monitor sellers' day-to-day human resources. How can a customer get access to a supplier's premises to monitor, let alone dictate, work conditions? Who monitors work conditions upstream, at the materials suppliers that supply the factory?

The issuers of robust supplier codes of conduct tend to be multinationals that source low-cost manufactured tangible products from the developing world: Think of athletic shoe companies like Nike and Adidas, retailers like WalMart and Target, clothing makers like Liz Claiborne and Kathy Lee Gifford, and sports equipment and toy makers like Reebok and Mattel. In addition, some oil companies and some global manufacturing conglomerates (General Electric, for example) also impose tough supplier codes. However, supplier codes remain rare among luxury goods companies that source product from developed countries, and also rare among *services firms*. Until now, the supplier code of conduct movement has targeted institutional buyers of tangible products, even though most of the social, compliance, public relations, and business-case arguments for a supplier code of conduct apply equally to suppliers of services. The next frontier, perhaps, will be imposing supplier codes on outsourced call centers and other low-wage back-office services operations in the developing world.

Internal ("ethics") codes of conduct

Completely distinct from external supplier codes of conduct but still within the context of international human resources are internal ("ethics") codes of conduct. These are internal human resources policies by which multinationals use human-resources enforcement tools to impose ethics rules and compliance standards on their subsidiaries' workforces worldwide—reining in employee misbehavior by sanctioning illegal, unethical, and inappropriate acts.

Successfully launching an internal "ethics" code of conduct requires attention to two disparate issues: code *content* versus code *roll-out*:

- **Code content:** Distinguish an internal code of conduct from an *employee handbook*. Employee handbooks tend to address every-day aspects of human resources that mostly differ from country to country, local topics that tend to be best relegated to local employee communications. A well-drafted global code of conduct, on the other hand, focuses on minimum base-line compliance rules that apply across borders. A good internal code also propagates corporate culture and fosters compliance with ethical standards tailored to the specific needs of the issuing organization. Multinationals based in the US tend to be particularly concerned that their internal codes address global rules on anti-discrimination/harassment, Sarbanes-Oxley, bribery, and adherence to data privacy, antitrust, and intellectual property standards, and that the code meets US federal sentencing guideline standards. (A checklist of topics that make up typical internal codes of conduct will appear in the June and July 2009 *Global HR Hot Topic*.)

- **Code roll-out:** Completely separate from code content is the distinct issue of the *process* for launching an internal code. Because an international internal code of conduct is a set of detailed rules that subject violators to discipline, every code needs to get implemented consistent with local-law restrictions against unilaterally imposing restrictive new terms/conditions of employment. In rolling out any internal global code, be sure to address five key issues: (1) multiple versions, (2) dual employer, (3) consultation, (4) translation and (5) distribution/acknowledgement (topics addressed in our March 2007 *Global HR Hot Topic*).

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