

THE EXCELLENT FIDUCIARY

Ethics and Culture: A Predictor of Fiduciary Behavior

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There is one issue that will determine an employer's risk status during the novel coronavirus (COVID-19) pandemic. It is how its finance and human resources executives manage the emerging complex fiduciary challenges.

Developing the culture of character and integrity of a business enterprise falls at the feet of leaders in human resources, human capital management, and talent management. The culture of an enterprise reveals its moral values. The expected behaviors of an enterprise's fiduciaries, which include its board of directors, finance executives, and human resources leaders, define its ethics. We will explore the impact of ethics and

culture on the operation of employer-sponsored retirement and pension plans and the careers of those who manage them. This article also includes the outline of a framework for developing an ethical, fiduciary culture.

KEYS TO PRINCIPLED BEHAVIOR

Human resources (HR) leaders are responsible for developing ethics and culture for the enterprises that employ them. An enterprise's treatment of the interests of its stakeholders is a reflection of its fiduciary ethics, no more so than concerning its employees. More than just ideas, though, the subject of ethics and culture exemplifies the basic prin-

ciples of governance, risk management, and compliance (GRC). Mixing culture and ethics into an overall HR management approach is a hallmark of a modern GRC system.

To be clear, GRC is not a technology. GRC is a combination of processes, controls, and human resource development. Retirement plan operations are heavily dependent on the capabilities that a well-designed GRC structure delivers. Where those capabilities are lacking, HR leaders face a daunting task of managing complex operations that are rife with legal risks and moral obligations.

A framework of preset activities and internal controls is a vital element of a GRC model.

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Depending too much on procedures and statistical measurements, however, can leave untreated the root weakness of a sub-par fiduciary environment. Furthermore, a smoothly running HR technology platform does not, on its own, ensure principled behavior by employers. An employer's culture and ethics have a much more significant impact on its alignment with fiduciary standards of care than does the mechanics of its GRC implementation.

Vendors of services on which retirement plan operations rely dominate the way many HR leaders think about the requirements of their oversight duties. Those vendors do not, however, bear the full legal and moral weight of principled behavior that fiduciary laws impose on their clients. Consequently, attention to the responsibility for developing ethics and culture gains little support from service providers whose success measurements are expressed almost entirely in transaction metrics. An employer's culture has an essential impact on the ethics expressed in its conduct as a fiduciary organization. Let us start by examining two differing perspectives on ethics.

TWO PERSPECTIVES ON FIDUCIARY ETHICS

It is hard to believe that any

sponsor of a corporate or non-profit retirement plan still views ethics merely as an altruistic principle. The impact of fiduciary negligence on the reputations of many prominent businesses, higher education institutions, and lesser-known organizations as well over recent years is a powerful testimony to the flaw in that thinking. The boards of directors of enterprises caught up in breach of trust allegations by their employees would undoubtedly agree that adherence to ethical methods and conduct—taking care of resources entrusted to the employer—would benefit all of its stakeholders.

Some believe that there is no universal agreement on the expression of ethics and that their enterprise has *proprietary ethics*. That means whether its actions are right or wrong is contingent on the time, place, and even its unique preferences. Proprietary ethics manifests itself in the way retirement plan managers respond to fiduciary standards of care. Rather than adopting a workflow framework developed from the collective experience of other practitioners, those managers hold to the belief that “our culture is different.” In essence, they believe that ethics is relative.

Another view among HR ex-

ecutives is that a common morality applies to all employers. A common morality pursues high-level principles such as those embodied in the fiduciary standards of care expressed in the Employee Retirement Income Security Act of 1974 (ERISA). Adherents to universal morality in the human resources sphere place a primary priority on the execution of industry best practices for overseeing operations and vendors. They invite a periodic independent assessment of their alignment with such methods. Proponents hold the view that the universal morality for retirement plan fiduciaries is not only about what is right or wrong. It is also about what is best.

MAKING FIDUCIARY ETHICS REAL

Many HR leaders are now committed to modernizing their management approach, embracing the principled behaviors embedded in GRC design. An essential activity of which is testing the objectivity of their management practices and vendor relationships. A periodic authentication of the workflow framework, for example, is one of several dependencies that benefit from a structured review.

A critical goal in adequately testing fiduciary methods is to eradicate relativism. An organi-

zation that comes to decisions on a relative basis is exposed to inconsistencies at best, and outright breaches in conduct at worst. Creating standards or policies in non-relative terms results in producing more predictable, measurable outcomes. The testing of methods combines measuring not only *what* is done (performance) but *how* it is accomplished (ethics). A culture that encourages and rewards self-assessment is evidence of a commitment to fiduciary ethics.

In order to properly test methods, a standard must first exist against which methods are measured. In earlier years, HR leaders may have relied on past experiences, “the way things have always been done,” or collective consensus to dictate a standard. Due to an increasing amount of outsourcing practices in the last decade, many times, even third party providers were able to define standards—which often resulted in a focus on transactional performance. The challenge with measuring success based on transaction metrics alone is that there is no guarantee that the level of performance will continue. Only measurement of the practices that caused the performance can ensure that the infrastructure, talent, and spirit exist for continued success.

STANDARDS DRIVE PERFORMANCE

In order to measure the fiduciary practices of HR organizations with meaningful results, a standardized workflow framework is essential. Standards established should be based on what is best for a retirement plan’s participants and beneficiaries, which will drive performance. Admittedly, developing ethical standards is easier said than done. There are significant and real pressures in the market that work against the implementation of principled behavior. In the banking community, for example, the offer of reduced borrowing costs to an employer in exchange for the employer’s use of the bank’s retirement plan product can generate stress among the employer’s fiduciaries as they try to manage their duties under the principles of universal morality. In the short-term, setting performance standards may look more attractive—even more comfortable—than implementing and maintaining a standard for principled behavior. However, as is often the case, the shortest route is not always the best route in the long run—and sacrificing ethics or sound practices for short-term results can often play against an employer in the end.

The development and publi-

cation of the *Retirement Plan Administrator: Scope and Conduct* would seem to show that, within the fiduciary community, agreed on universal moral values exist, which apply to employers that are subject to ERISA’s jurisdiction. The workflow framework defined in that publication forms a much-needed boost for constructing an ethical, fiduciary model. While the choices of a retirement plan’s features and its preference for its vendors are an employer’s alone, the *Scope of Conduct* outlines repeatable steps for inclusion in a GRC system that maps the way to fulfill ethical, fiduciary responsibilities to employees and their beneficiaries. (Obtain a digital copy of the handbook *Retirement Plan Administrator: Scope and Conduct* at excellentfiduciary@rolandcriss.com.)

Questions To Ask:

- What are our standards for principled behavior for our fiduciaries?
- How does our culture align with ethical principles?
- Do the vendors that serve our retirement plan have conflicts of interest that may negatively impact our enterprise or employees?
- How do our fiduciary com-

mittee members measure performance, and how does it measure that of our vendors?

INTEGRATING ETHICS AND CULTURE

Several government agencies have acknowledged the need to develop practical ethics and compliance programs—examples include the U.S. Securities and Exchange Commission and the U.S. Department of Labor. Both agencies passed legislation recently that focuses specifically on the vital priority of ethics and compliance at the retirement and pension plan fiduciary level. Without investing the time to determine how well a retirement plan's fiduciary management methods align with an enterprises' culture, implementing an ethics and compliance program will produce little benefit.

In essence, an enterprise's culture is that firmly held set of beliefs established by top management that is supported by strategy and standards. The GRC model for integrating ethics into an enterprise's culture emphasizes the importance of performance measurements. Naturally, without an objective benchmark (that is, standards), the results would be inconsistent and of little value. Measuring and analyzing compliance and ethics efforts ensures a

well-run fiduciary capability, supports organizational integrity, and delivers information for strategic and operational decision-making.

GRC fiduciary ethics and culture design requires five factors for success:

1. **Obtain C-Level Support:** Senior management's endorsement of principled behavior standards and allocation of resources needed to implement a workflow framework that guides behaviors at middle management, and front line levels are essential.
2. **Engage Operations Personnel:** Conformance with standards by operations personnel in human resources, payroll, finance, and legal is vital and is made beneficial for everyone by making compliance measurable and reviews meaningful.
3. **Understand the Culture:** Assess what information is needed to support the enterprise's established values, improve HR's compliance efforts, and better manage the employer's resources.
4. **Centralize Information and Employ Automation:** Consolidate

the sources of performance metrics and ensure increased accuracy for better analysis and decisions. Replace manual compliance tools such as spreadsheets with computer-based capability explicitly designed for fiduciary workflow tracking.

5. **Make it Easy to Use:** Enable quick, meaningful, and straightforward management of data and reports for viewing and analyzing performance metrics by the retirement plan's fiduciaries.

Setting fiduciary ethics entails more responsibility for the executive class but also results in immeasurable internal and external rewards. Internally, principled behavior standards ensure higher accountability and reliability across management levels, predictability in employee behaviors and performance, and peace of mind gained through monitored systems and results. Externally, conformance to universal morality rewards employers with less risk of legal or other sanctions against faulty (or unchecked) practices and more robust, more dependable vendor relationships—in addition to gained trust with stakeholders and investors. Being mindful of the need for defined fidu-

ciary ethics elevates an enterprise's awareness from a singular profit perspective to a

holistic, process-centric vision, which, over time, produces the most rewarding results—

through ethical, responsible, and intentional behaviors.