Don’t Expect Ethics in Your Firm’s Code of Conduct

Harold Weston, J.D., CPCU, RPLU, ARM
Clinical Assistant Professor
Department of Risk Management & Insurance
Georgia State University – Robinson College of Business
Atlanta, Georgia

Ethics do not come in a firm’s code of conduct.

Have you read your employer’s code of conduct? Ok, that’s the first problem. You probably didn’t read it. But even if you did (or maybe you will now), you will not find anything useful about ethical conduct.

Codes of Conduct as Corporate Administrative Code

The code of conduct is where we might expect to find something about ethical conduct. Mostly it states conduct and practices to follow, and if you get them wrong, well, then, see the employee manual, which says you can be fired at any time because you are an employee at will. These codes also say the firm wants to be an ethical company and expects its employees to be ethical. And if you are in doubt about some action, then contact your immediate supervisor, or contact a hotline. But how to be ethical? Details are not likely.

A typical statement of conduct is that an employee should not personally benefit from a decision made in the course of employment, such as making a contract on behalf of the firm with the employee or his/her spouse or relative. That is a conflict of interest. But employees are supposed to make decisions that may benefit them. That is why firms give bonuses as incentives. The aim is to “align incentives” as it is called, to make sure the firm gets the bigger benefit and the employee’s benefit is disclosed to and approved by management. In other words, bonuses are ok, kickbacks and rebates are bad, even if the kickback or rebate would be about the same amount as a bonus.

Another statement of conduct might be to put the customer’s interest ahead of the firm’s unless the employee suspects fraud or criminal conduct. That is reasonable, but the firm needs to train employees how to identify the clues for fraud and criminal conduct, unless the employee is hired based on having that particular expertise. Think Nordstrom here as the epitome of customer-first priority, and insurers’ special investigation units for identifying fraud and criminal conduct.

The code of conduct is thus more like an administrative code for how the company operates, and the procedures it has. For insurance people, it’s like an underwriting or claims manual. This is a good thing. It protects the employees to some extent by giving employees a guide to what is acceptable conduct, what is unacceptable, and what to do when you are unsure. It protects somewhat protects the employee, and mostly protects the firm, by allowing the firm to say it has its own administrative code so it isn’t acting arbitrarily. The code also protects the firm from authorities and shareholders by saying the employee – not management – acted improperly.

Then there is that statement about asking your supervisor. As if your supervisor is trained in ethical decision making! Actually, you may want to report your supervisor for what you think is improper conduct, whether a compliance issue, violation of law, or unethical conduct. (That goes to whistleblowers and legal protection, a separate topic.)

Is There An Ethicist In The House?

The code of conduct has almost nothing to do with ethics.

First, ethics has to do with making decisions in situations where there is uncertainty about right conduct, such as conflicts between two good outcomes or two bad outcomes. Or where rules do not exist or conflict. This is asking a lot of a corporate code of conduct. The best a code of conduct can do here is tell employees they are not authorized to make such decisions. The classical ethics illustrations are deciding which of your two children to save and which to let die or kill, or whether to throw the switch on the trolley track and kill one person tied to the track to save the five people tied to the other track. Has any employee ever had make those decisions, or faced anything like that, or been trained with equally awful choices that might arise in the course of employment?

How about this ethical situation for an employee: you have 1000 employees trapped in the factory and the toxic gas in the storage tank is about to explode and kill them, or we can

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break the valve outside and let the gas escape but it will kill 100 people in the neighborhood. Does it matter if the neighbors are low-income, or if the wind that day will blow the gas to the high-income neighborhood? Or this one: you can meet the year-end targets if you release the toxic sludge into the river at night, but because it is a slow-acting sludge it will be 5 to 10 years until its effects are noticed and the cost of harm and clean-up will then be 100 times the cost of proper disposal now but that will show on the 2023 financials, not the 2013 financials.

Second, firms lack expertise in ethics so are hardly equipped to write their own ethics books. Philosophers and their specialized variety, ethicists, write plenty of ethics books, few of which agree with each other. Even the books dealing with applied ethics fill shelves and disagree with each other. We should not expect a bunch of managers, executives, compliance experts and lawyers would come up with an ethics code that beats an ethics book written by an expert in ethics. Rarely will a firm have on staff or retain a real ethicist, with a Ph.D. or Masters degree in ethics, to deal with the real ethics situation that arises. (Except hospitals and medical research centers typically do have trained medical ethicists on staff.)

Third, it is hard to train and implement ethics with one book. How will we know that the employee actually read the book? Even if we make them sign a statement that they have read and will abide by the firm’s code of conduct, does that really constitute training? Or merely compliance, and another ground to fire the employee if they get it wrong later?

(If we could use one book, I would suggest Aristotle’s *Nicomachean Ethics*, or Plato’s *The Republic*, or W.D. Ross’ *The Right and The Good*, or Adam Smith’s *Theory of Moral Sentiments*, or a few others. But I can’t imagine any firm requiring its employees to actually read a book for work, let alone assure that its employees understand it with the necessary high level of critical thinking and philosophical insight. But people don’t have to be trained in elevated ethical decision making to be ethical.)

Fourth, there are outside pressures on firms to show they have a code of conduct and maybe a little training. The New York Stock Exchange requires its listed firms to have a “code of business conduct and ethics” (Listed Company Manual § 303A.10). The U.S. Department of Justice will give credit on a “culpability score” for a firm with an “effective compliance and ethics program” that will “prevent and detect criminal conduct” and “encourages ethical conduct and a commitment to compliance with the law.” (Guidelines Manual, Ch. 8 – Sentencing of Organizations, § 8B2.1, http://www.ussc.gov/Guidelines/2013_Guidelines/Manual_HTML/8b2_1.htm). The Sarbanes-Oxley Act requires a code of ethics for senior financial officers, but this is narrowed to conflicts of interest, “full, fair, accurate, timely, and understandable disclosures in the periodic reports required to be filed by the issuer,” and “compliance with applicable governmental rules and regulations.” (§ 406). We should expect a firm’s code of conduct is written at least in part to comply with these laws.

**Cheating – With and Without a Code of Conduct**

Consider two news-making examples of cheating.

One is the Atlanta Public School cheating scandal. The Georgia Professional Standards Commission for educators has a “code of ethics,” (instead of the usual “code of conduct”). It requires “legal compliance”; specifies acts to be avoided with children (physical and verbal abuse, child endangerment, sexual conduct, etc.); requires refraining from drugs and alcohol at school; and specifies “honesty and integrity in the course of professional practice” such as falsifying reports, and demonstrating “conduct that follows generally recognized professional standards and preserves the dignity and integrity of the teaching profession.” http://www.gapsc.com/Ethics/CodeOfEthics.asp. These rules – hardly amounting to any form of ethics – did not stop so many teachers and principals from changing students’ answers on tests.

The other example is Annie Dookham, a former chemist in the Massachusetts Department of Public Services who admitted to faking lab results on drug tests affecting thousands of criminal defendants. Caught forging a colleague’s initials, she has pled guilty to 27 counts including obstruction of justice, perjury and tampering with evidence, and is now sentenced to three to five years in prison. The consequence is that innocent people went to jail, criminals have been set free to commit more crimes, and every case worked on is being re-evaluated at a cost of perhaps $100 million. The Department had a code of conduct, mostly pertaining to conflicts of interest and misuse of public office for personal gain. http://www.mass.gov/ethics/laws-and-regula-
The Massachusetts Code says nothing about falsifying evidence, or acting with honesty and integrity, as the Georgia educational professional code does. But would it matter? Does one need a code of conduct or code of ethics to say forging test results is wrong? Would Ms. Dookhan have stopped herself if she had the APS code of ethics? It didn’t stop the Atlanta teachers.

Ethics is What We Do

A code of ethics is not like a fire extinguisher stored for the day it’s needed, with the instructions for use read only at the time of purchase. Reading a code of ethics, or even one ethics book, will not make one ethical. Thus codes of conduct are at best an administrative manual, sometimes a rulebook, sometimes legal protection, occasionally a few bits of guidance for better conduct. But nothing really on how to be ethical, how to make ethical decisions, or even how to recognize an ethical situation.

A quandary. Can employees be ethical without a code of ethics in place? Can employees be ethical without being trained in elevated ethical decision systems?

Yes, if we develop habits of good conduct, virtue and practical judgment. Can we determine when one situation is like another, or how they differ? Do we know how to act with integrity for ourselves and for the integrity of others, and recognize the hard choices? It takes character to decide something in everyone's interest or in the greater interest. The CPCU creed, simple as it is, embodies a lot about principles and character, such as placing a client’s or principal’s interest above your own. That is like the golden rule, if you want to use that, or the classical idea of human flourishing. In legal terminology, it is a fiduciary duty.

Will we know when to put our interest for development and integrity ahead of the company’s interest, when to put the company’s interest ahead of our own, and to put the public’s interest ahead of the company’s interest?

The CPCU creed also specifies that one should “only engage in practices which reflect well on the Society and the business of insurance and risk management.” That is like reputation based on character, something Adam Smith said.

To learn ethics, one must either be a learned ethicist or develop habits of conduct that lead to good character. Such character leads to consistency and adaptability in judgment. A recent study (“Executives’ ‘Off-the-Job’ Behavior, Corporate Culture and Financial Reporting Risk”) found that CEOs and CFOs who have several personal criminal infractions are more likely to commit fraud at their firms, and CEOs and CFOs who acquire luxury goods are more likely to spend the firm’s money unnecessarily. Thus people who act ethically in their private lives will likely act ethically in their business lives.

“That’s the right thing to do” might be the product of examining situations and acquiring good judgment. “That’s just wrong” might, on the other hand, be the product of a habit of unexamined judgment, or bias.

Think about consequences of actions, and how those decisions will be viewed by others, especially if disclosed in tomorrow’s newspaper. Can we determine: Is this the right decision or maybe the best decision under the circumstances? Or is it only an “arguably right” decision? Or the decision we hope will not come to light? If you can tell the difference between these questions, you are ahead on doing ethics.

No one gets the ethical calls right all the time. That’s why they are hard choices. It’s when we do not even know there is an ethical call that we are in greatest trouble. A code of conduct, even if crafted to guide on ethics with a balance of principles and rules, cannot possibly be the siren to tell when trouble is near, nor be the right size (neither too few nor too many principles and rules) to sort out the particular trouble.