

## August 2010 in this issue

*A monthly "best practices" alert for multinationals confronting the challenges of the global workplace.*

### This Month's Challenge

In July, we reported on the new UK anti-bribery law. This month, we're taking a look at anti-bribery requirements elsewhere in the EU, with a special focus on France.

### Best Practices Tip of the Month

Corruption is drawing attention around the world, and multinational employers act at their peril if they choose to ignore it. At a minimum, employers should look at their policies and training programs.

## Tip of the Month

### Fight Against Corruption in The EU and in France

Ethics in the conduct of international business has become a priority issue in a globalized context. The fight against corruption has been addressed by various international organizations including the United Nations Organization and the Organization for Economic Co-operation and Development (OECD). On the European scene, the Council of Europe and the European Union have adopted various texts to require their member states to adopt specific measures to combat and penalize corruption, including the 1999 "Criminal Law Convention on Corruption" of the Council of Europe, and the 2003 "Framework Decision of the Council of the European Union on combating corruption in the private sector."

EU member states have been required to penalize acts of direct or indirect corruption whether these acts involve officials in the public sector, or individuals working in the private sector. Both the Criminal Law Convention on Corruption and the Framework Decision of the Council of the European Union provide that the scope of liability must cover not only the individuals who are directly responsible for the corrupt acts but also corporate entities that employ them and benefit from their actions.

In France, this movement has led to the introduction of specific provisions in the Criminal Code to prevent and punish corruption, both by public officials and private individuals and entities. Under the Code, both "active" corruption (giving a bribe) and "passive" corruption (soliciting a bribe) are prohibited:

- > In the public sector, it is unlawful for any person or entity to make or give offers, promises, gifts, presents or any other advantages, to a public official or a person charged with a public mission, to induce him to carry out or abstain from carrying out an act pertaining to his office, duty or mandate or facilitated by his office, duty or mandate; or to abuse his real or alleged influence in order to obtain distinctions, employment, contracts or any other favorable decisions from a public authority or the government.
- > It is also unlawful for any public official to solicit or accept promises, gifts, presents or any advantages in order to carry out or abstain from carrying any of the actions specified above.

- > In the private sector, the prohibitions on active and passive corruption are extended to individuals who hold a managerial position or occupation and are thus in a position to take any of the actions described above on behalf of any person or legal entity.

Companies with operations in France may not ignore these provisions, as they may be held liable for acts of corruption committed by their employees. If convicted, they may be disqualified from the practice of commercial activities and subjected to fines of up to €750,000 for corruption in the private sector and €375,000 for corruption in the public sector.

On the labor and employment side, the French legislature has introduced measures in the Labor Code to provide a measure of whistleblower protection, prohibiting retaliation against employees (as well as interns and applicants) who witnessed and reported in good faith corrupt practices. These individuals may not be disciplined or otherwise discriminated against or adversely affected in their careers, or in their access to jobs or training, for having made such reports.

In this environment, employers operating in France must, to avoid criminal liability and the resulting fines and damage to the company's reputation, take steps to prevent practices that could be characterized as corruption.

At a minimum, they should review the areas of risk with regard to corruption, and the existing procedures in place to prevent it. Then, various actions may be considered from an HR standpoint:

- > Provide specific language in the company's code of conduct to underline the prohibition of corruption and define the applicable procedures to report and prevent it. If, as is likely, the code of conduct provides for disciplinary actions to be taken against individuals found guilty of corruption, the applicable works council must be informed and consulted before the code may enter into force.
- > Organize training sessions to implement good business practices and identify sensitive situations.
- > Designate an advisor to provide information and insight concerning ethical issues and corruption matters.
- > Define appropriate delegations of power to protect executives from criminal liability for acts of corruption committed by lower level agents. Under French law, the delegation of power allows companies to protect from criminal liability the executives who gave authority to lower level agents.

So far, French companies have not been very active on the front of combating corruption. A recent study showed that 74% of the French companies surveyed have not implemented an anti-corruption policy. Given the importance of the sanctions and the risks involved, French based companies that have not yet given consideration to the anti-corruption laws should take appropriate measures soon.

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