

Speaker 1: You are listening to The HR Bartender Show, a casual place to talk about all things work. Here's where you get practical advice about how to be a better employee, manager, and leader in today's workplace. So grab your favorite beverage, pull up a stool, and join us in the conversation. The bar is always open. Now, here's your host, Sharlyn Lauby.

Sharlyn Lauby: Hi everyone, and thanks for being here. I'm your host, Sharlyn Lauby, author of the blog HR Bartender. Before I introduce today's guest, I'd like to take a moment to thank this season sponsor, Case IQ.

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Sharlyn Lauby: Hi, everyone. As we know, season three of The HR Bartender Show is focused on ethics and I am thrilled to speak with today's guest. Meric Bloch is the strategic advisor for Winter Investigations. His experience includes roles as an ethics and compliance officer for three multinational Fortune 500 companies, as well as a healthcare system. He has designed, implemented, and managed each company's workplace investigations process worldwide. Meric has personally conducted over 800 internal investigations of fraud and serious workplace misconduct in the United States, Europe, and Asia. He developed the Winter Method for workplace investigations and has trained thousands of human resources and compliance professionals to conduct investigations.

He's also the author of three books, Workplace Investigations: Techniques and Strategies for Investigators and Compliance Officers, Investigative Interviewing, and I can't wait to get my hands on this last one, The first information is almost always wrong. He also wrote chapters in the Bribery and Corruption Casebook and The Complete Compliance and Ethics Manual. He's published numerous articles on investigation topics and is a frequent public speaker on the workplace investigations process.

Meric is a certified fraud examiner, a professional certified investigator, a certified information privacy professional in Europe, a certified financial crime specialist, and a certified compliance and ethics professional fellow. I am thrilled to be in a position to talk with Meric about investigations and ethics today. So let's go ahead and get started. Meric, welcome.

Meric Bloch: Thank you. Very happy to be here, and I'll try to come up with a smaller bio blurb next time. No wonder I'm so tired.

Sharlyn Lauby: As I mentioned, the theme for this season is ethics, and while I won't ask you to provide any specific situations, tell me one thing you do or you think about when you are faced with an ethical dilemma.

Meric Bloch: Well, I'd like to sort of answer this from the perspective of an investigator because when we think about ethics, it's more in the way we do our job, it's more in the way we conduct an investigation. So of course, we're employees of the company, we're compelled to the same standards as any employee, but I think it takes on a greater importance when you're dealing in investigation with someone who's been accused of misconduct, somebody who feels that they've been victimized by improper behavior. So what I think about when I think about ethics is fairness, respect, and dignity. The first two I think are the most relevant, fairness and respect.

In an investigation, you need to be tenacious, you need to get to the truth of what happened, regardless of whether there's been misconduct. And you need the cooperation of a person who makes a report to the hotline, I call it the reporter. The reporter has certain rights and responsibilities, and the organization has certain rights and responsibilities to that person, equally so, if not more, for the person who is accused of misconduct. So the way we think about ethics is, "How are my questions? Are they respectful? Are they intrusive? Do I respect people's privacy?"

When I say, "Am I doing it ethically?" I'm asking myself, "Am I using proper techniques? Am I thinking about a duty of care?" For example, if because of the questioning, that person has some emotional or physical reaction to the stress of the situation, ethically, I have a duty to intervene. I can't just say, "Here's a box of Kleenex, go on your way." I may have to make sure that person goes home, have to get home safely. It does happen. So if you combine ethics as part of the investigation process, the end result is a much better process, more credible process, more trusted process.

And organizations today are really focusing on protecting and improving a speak-up culture. If you incorporate ethics into the reactive phase of compliance, which is investigations, it actually strengthens the other place. But if you really said, "Okay, boil it all down for me," it's really fairness. Fairness to all concern.

Sharlyn Lauby: You mentioned a couple of times in your response, you were talking about the organization, who owns ethics in the organization?

Meric Bloch: It's actually a really good question because ethics is more, let's say abstract and ethereal than just saying compliance. So ethics and compliance, just for those listening, they are two separate things. Compliance is actually easy. This is what are the company's expectations usually expressed in a code of conduct or a company, your company policies, your HR handbook. When you violate any of those expectations, you are actually acting in a non-compliant way, not necessarily an ethical way. You could be violating a policy, but acting entirely ethically. So they're not the same thing.

Ethics goes more to the values and moral principles that lie beyond, I call them compliance standards, all those different rules I told you, so I just sweep them under an umbrella term. That's what buttresses, so you take something like a harassment policy, why do we have a harassment policy? There's a lot of very good reasons why we have a harassment policy, but if you really kind of peel that onion back a few layers, we really think about, one of the reasons we prohibit harassment is one of our ethical values in the company is respect. And this is one of the ways an organization maintains its expectation is by prohibiting certain conduct. So I think everybody owns ethics in the sense that I think you own it as an employee.

The thing I love about ethics is I always say everything you basically need to know about ethics, you learn from your mom or your kindergarten teacher because these are the fundamental ways we've always interacted with people if you were raised well, which was always treat everybody with respect, try to be fair to everybody, make decisions that are not selfish. When our parents, when we grow as kids, we're told, "Hey, don't be selfish." What are they really saying? They're saying, "Don't make decisions that are just solely in your own interest and ignoring the impact on other people."

The key I think for organizations is how you take ethical values that everybody can completely buy into and then bring them into the practicalities of adult life, professionally or personally, which is decisions are not always that clear. It's the same thing when we do investigations. We realize most of us make decisions with an imperfect amount of time, with an imperfect amount of information, sometimes with external pressures, and then we make a decision. So I think a lot of ethics has to do with a lot of thinking in advance, but not this kind of, "Let's treat everybody with respect."

Just as a quick aside, I deal with codes of conduct all the time in my work, and every one of them has that first page introduction from the CEO saying all the right things. And sometimes in my consulting I have clients will point to that or in my training and I'll say, "Well, what did you expect the CEO to say? Craig, the CEO said this. Was there really an alternative?" But the question is, I think with ethics is, "Well, what do I do? How do I translate that? When I'm on the horns of a dilemma, how do I negotiate that?" So that's what I try to focus on.

Sharlyn Lauby:

You mentioned practicality and being able to bring practicality when we're talking about ethics and values, and compliance with the organization. And the first thing that popped into my mind is when you do that, you have to train people on how to do that. So as an aside here, can you offer some pointers for organizations when they're trying to figure out, "Okay, when do I do training about these things?" You've got when people first come into the organization, so do you do it then and then you're done? Or to offer a little bit of something to consider for people listening in on when do you do training?

Meric Bloch: In the onboarding training, there's always kind of a detriment with onboard training is for that new person, A, it's like drinking out of a fire hose. Those first couple days are just jammed. The second thing is they're going to agree to everything because they just got hired, so no matter what they think, it's like, "Sure, sure, I'll sign here." The first question I would always ask is, "What's the goal of the training?" Now, I apologize in advance. I have a jaded view because I am at the end of the process when the training doesn't work.

And the other point is, when you do investigations, you are dealing in reality. This is what really happened. A lot of training that you see in companies is what I think is, I call it, it's like training in a bubble. It's developed by very well-intentioned people and it all sounds very high-minded, but it doesn't give practical guidance to what the company wants to happen. So they don't use realistic scenarios. So when I think about training would be, first of all, you have to translate ethics into compliance expectations. So this is the value, so this is what we want to see. But you have to deal with it, in my opinion, with teachable moments.

Now, that could be, and I've seen this happen after one of my investigations, they turn my investigation into a teachable moment. The information is anonymized, it's really stripped down for privacy, but the overall scenario is this. And one of the things that we've done in those situations is looked at both sides because it's a dilemma, the word means is two-sided. And really analyze what people were thinking and what they might not have been thinking.

So if I could just digress a little more down on an example, imagine you have a situation where you receive a hotline report because of somebody who acted improperly at a company party, so it's got connections to the workplace, it's obvious. When I've done those cases, the people who act this way didn't think it through, they didn't say, "What if?" As an investigator, the way you jam up people in those situations, you say, "Did you ever consider blah, blah, blah?" And of course you know the answer is no.

That's why I've used that for ethics training, and it's worked very well because it shows it's not black and white sometimes. It's actually what often happens when people make decisions without considering the bigger picture. The decision itself was rational. Just because it was rational didn't mean it was ethical. What do we mean by ethics, by ethical? An example is you might say it's ethical to give a bribe to get business. Of course it's unethical. What if you're giving a bribe to somebody out of your own pocket and it will benefit you and the company, a bribe in favor of getting business? Well, again, that's a little bit trickier, but I've had those situations where people didn't think they were doing anything wrong. So the key is to tie it to actual events, get people thinking.

That's what I do even in my investigations training is the goal is look, anybody can read a code of conduct, anybody can read training if it's all bullet points. In my world, for example, investigators only succeed if they're thinking people.

And I think the same has to do... The last thing I'd say about ethics training, because I've done it for ethics ambassadors, if you have to explain why it should be this way. I could give you an example, a couple little jobs ago, I was a compliance officer at Shriners Hospitals, which is headquartered here in Tampa.

Boy, it's a wonderful place. They really do the Lord's work, and I was happy to work there, but they once tasked me with doing compliance training, which was probably the most ironic thing in the world because I would go, "I don't like compliance training." But here you're dealing with doctors, healthcare providers, nurses, and all other kinds of wonderful people. Ethics is part of what they do in healthcare. So what did I do is I made it practical and I said, "Look, what is the consequence of acting unethically?" I made it really simple. It's a charity. And I said, "If we have a scandal because someone acted unethically, what will happen?" I said, "People will take their donations elsewhere."

And a number of years ago, the exact same thing happened to Wounded Warriors and kind-hearted people who wanted to help veterans, they just gave their money to someone else like the Disabled American Vets or someone like that. Well, the competitor in the marketplace of donations for Shriners is St. Jude's Hospital who also does the Lord's work. And that's what I said to them, "Look, why I want you to care about ethics is because if there were a scandal because somebody acted unethically, even if they acted legally, but they acted unethically, people will vote with their feet and the organization will fail because they're not going to put up with this. They're going to go, 'I'll just give my money to St. Jude's. I'll still feel good about helping a sick kid.'"

The point is, you've got to understand why is ethics important to the business and tie it into that. It's not my opinion, it is not a morality tale, it is because it makes for a healthy work environment. And guess what? If it's an unethical work environment, the people who will leave are the people who you really don't want to leave. Or you'll have a bad reputation in the community and in the marketplace. Now consumers are far more socially conscious than they were 20 years ago.

So what I try to do when I touch on ethics is get past the biblical ideas of ethics and really more towards, "Here's why it makes practical business sense." And it's not just about feeling very good about ourselves, it's really, "Here's what happens if we don't. And here's who leaves and guess what, if you get the kind of people who don't care about ethics, are they really the ones you want to work with?" That's how I've done it.

Sharlyn Lauby:

Let's explore this, the idea of helping the organization understand this connection between ethics and investigations, ethics and training and investigations. Because you're right, if an organization operates in an unethical way, in fact, some people could even say if they operate in a non-compliant way.

Meric Bloch: Right. Or even nowadays, they would say in a non-socially aware way, if you just say, "We don't care what happens in the outside world, we're just here to make money." I'm a baby boomer, that makes the world of sense to me, but in today's marketplace, absolutely not.

Sharlyn Lauby: What happens is people make decisions based upon that information.

Meric Bloch: Correct.

Sharlyn Lauby: From a human resources perspective, how can HR pros help the organization understand this? Where are their opportunities to remind the senior leadership team, the operations team, that this is how we should connect ourselves because we need to make that connection?

Meric Bloch: Right. Again, getting back to the why, getting back to the why you should want this. Getting back to the, "Listen, I'm here as an advisor to management, and it's my position, for example, that managers should care about respect and whatever." And one of the reasons you can say is, "Look, even if you're the most cynical person in the world and you think it's applied common sense," when I tell people, I'm like, when I say, "Well, read your company's code of conduct, if any of it comes to you as a surprise, come talk to me because you should be looking at it going, 'Sure, sure. I didn't need to be told that.'"

So in other words, when you're talking to management, you've got to put these very important ideas, but into terms that managers can relate to and can implement. Because again, if you're doing manager training on ethics or you're talking to them about it, you know they're going to agree with you. It's sort of like having an anti-harassment policy. Is anybody in favor of harassment? Of course not. The friction points are not in the, "Do I agree with this?" I would say to HR professionals, "Look at your training." I will bet you that most of their training is very high-minded messages. So in other words, people agree. Now what do you do?

Okay, is the goal of the training to get managers to sign that they attended? Is the goal for the training to say, "Thank you for sharing your high-minded messages?" Or is it, "Tell me what to do. Okay, guide me"? And I think a lot of training drops the ball because everything before that, here's what you do then is easy. And that's what I call speaking in the bubble. They go, "Hey, well, that looks nice. I think I said all the right things," but it's practically useless. And that's the great risk with training is as people go through the motions, they said, "I took it." But if you said to them, "Well, what are you going to do differently tomorrow?" As a result, you're going to get a blank stare.

Sharlyn Lauby: Speaking of doing things differently, in your bio, you mentioned conducting investigations outside of the United States. Do ethics conversations, investigations conversations change based upon the country that you're located in?

Meric Bloch: It's actually very interesting, and you know where it tends to change, it's not on, "Is bribery okay?" It's not like that. You especially see an interpersonal communication. So for example, it would be very unethical, Sharlyn, for me to say, "By the way, how old are you? Are you married? Hey, how are you feeling? How's your health?" In the US we know those are revolting, we know that would be unethical test, especially in an investigation, investigative interview. In other parts of the world, you might say like as you were going through my bio, it might say, "Meric is 61, and he lives with his wife and two children in Florida." And other parts. So ethics does change because ethics is based on communal values, and as communal values vary, well, of course the ethics vary.

If you think about in Europe, you may still give the double cheek, the double kiss, the two-cheek kiss to someone you're not intimately friends with, you'd never do that in the United States. So that's part of it. The key here, the key distinction on ethics is one of the things that investigators do is we enforce internal rules. So the workplace rules, in other words, "These are the rules of our company. This is what you sign off on when you work here." And that what we're saying is we know outside the office door, it might be different, certain parts of the world in different places, but when you're in this door, when you're inside the door, this is the workplace rule. So that's one of the things I think.

As an investigator, it's easy because in my world, I don't have authority to enforce the law. I only have the authority to enforce the company's workplace rules, the company's rules. So that's one of the things is you'd almost say I don't care because I've done say sexual harassment cases, and people will say, "Well, in this country," and I've done them around the world, you would say, "It's not a big deal here culturally." But you would say, "In our company it is. We just don't do it."

You may see that, for example, in bribery, you may see parts of the world where, "Okay, if I don't give \$20 to the guy at the port, our stuff is not getting through customs." You go, "Okay, that might be a problem. I know that may be accepted in your country, but in our workplace it ain't, just don't do it." So that's one of the things, or that's often how we balance. Now, where does it come in? When you're applying sort of a reasonable person standard. So one of the elements in a harassment beef would be, would a reasonable person be offended?

Now, the typical person might say the typical person of that age or that gender in this venue, but nonetheless, the company will still have bright-line rules and say, "Look, I know a reasonable person would be okay, but we're not okay with it. And if you're going to work here, these are the rules you sign on for."

Sharlyn Lauby: This has been a great conversation, and I have to admit, I could spend all day chatting with you about ethics and compliance and how these intersect, but one of the reasons that I wanted to ask you about the differences piece is because is it possible that ethics change over time? The first thing that comes to my mind



is like we are seeing laws change with regard to marijuana. Years ago, I'll put it in air quotes, we called it a drug and it was illegal to use. Now, in some places it's been legalized, whether it's been legalized for medical use or recreational use, or both. How do HR professionals who play a role in helping the organization stay focused on ethics and compliance, how do they help the organization pivot as these things happen?

Meric Bloch:

What we do, what I would suggest is that you look at it in the distinction that is made in the law. So if you look at criminal law, for example, there are two types of law, lawyers call it malum in se or malum prohibitum. So when I think about ethics and things not changing, these would be malum in se. In other words, things like stealing, homicide, attacking people, all the basic terrible things. They are prohibited because they're evil in themselves, that it's just in a moral society, this would not be allowed. These are immoral acts. So I think that part of the ethics equation, it's easy, that kind of is universal truth and they don't change.

The second part is there are laws that are what are called malum prohibitum. They're bad because the people have said they're bad, so we should think about outlawing gambling or things like prostitution. I mean, forgive the examples, but I'm just trying to make the point of, you might even think of people who, if you're under 18, you can't vote. If you're under 21, you can't drink. It's illegal to drink if you're under 21. Why? Because the law says it. Is it immoral to drink under 21? No, it is what it is because of the law. You think about women getting to vote a century ago, all those things.

So when I think about something like marijuana, you might say, "Look, the ethics on it doesn't change." But I think companies could say, "We don't care in our workplace, even though this might be allowed, we do not allow it." Just draw a quick contrast. Your company has a policy probably about alcohol in the workplace. You can't come into the office bringing liquor, you can't come into the office under the influence right now. If I'm outside the office on a weekend, I'm over 21, I can drink. If I want to get tipsy with my friends and have them drive home, it's perfectly okay. That'll get me fired at work. Why? Because it's wrong, because we say it is wrong in the workplace.

So I think that's the way marijuana goes, is that companies will say, "We prohibited in the workplace, even though it might be allowed." This might be new in the United States, but I used to work for a company with a big presence in Amsterdam, and you know of course the wonderful open lifestyles they have in Amsterdam. Beautiful people, great city. But nonetheless, some of what was considered okay was still even to an American going, "I can't believe you guys are doing this." The point is very simple is when you think about ethics, there are some things that are kind of a universal truth, and there are some things that we say are unethical because we have prohibited it.



Either way, getting back with just to wrap up, this is a thinking person's business. If you want to bring people to your way of thinking, bring them into your thinking, and if you're not presenting that way, well then, maybe there's an opportunity for improvement for those of us who do training in HR.

Sharlyn Lauby: Meric, thank you so much for being here. Listeners, please give Meric a big thanks and cheers for sharing his knowledge with us. If you want to connect with him, I'll be sure to drop his contact information in the show notes, including his website. And don't leave just yet, I'm looking forward to sharing with you my takeaways from our conversation after a quick break.

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Sharlyn Lauby: Thanks everyone for listening in on my conversation with Meric about the relationship between ethics and training, and investigations. One of my big takeaways from this conversation really focused on bringing that practicality component to our training efforts. I think Meric was spot on when he was talking about if we keep the conversation at a really high level, that a lot of our participants, a lot of our employees might just look at us and shake their heads and sign the form at the end and not enter into an engaging conversation about behavior within the organization.

And if we can find opportunities to bring in anonymized real-life examples or examples that people can relate to, it can create some opportunities to think. We can use it as a way to check our decision-making and make sure that everyone is on the same page about what is considered to be acceptable behavior within the organization.

Again, that was the takeaway for me. When you step back and you look at the training that you're conducting in your organization as it's related to things ethics, as it's related to behaviors within the company, are we giving employees those practical, real-life examples that give them the opportunity to stop and think, and talk through how they would make decisions where those things are concerned? Because if we do that and we do it well, while we have to know how to do investigations, would it reduce the number of investigations that we are conducting because everyone has had that opportunity to talk through real-life practical examples.

So something to consider as you're looking at your training programs, if you haven't examined your training programs lately, this might be an opportunity to

go through and review them and see, "Hey, the flow of our training is solid, but let's bring some new examples or some new discussions into the conversation." And if you're thinking about creating ethics, investigations-type training programs, do you want to think about introducing those as well?

Thank you so much for being here. Thank you for listening to HR Bartender. We appreciate you, and I'll see you soon. Cheers.

Speaker 1:

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