

Boards and #MeToo

July 18, 2018

#MeToo may no longer dominate daily headlines but its indelible impression remains. Corporate boards' mandate to act in their shareholders' best interest includes not only overseeing strong financial performance, but also recognizing the ways that corporate culture impacts shareholder value. Reputational harm can cost a company in multiple ways, literally, and produce lasting damage.

Claims regarding sexual misconduct should be treated with proper diligence, and while it may warrant more sensitivity due to the nature of the grievance, boards should reinforce that employee misconduct is not tolerated. In our view, the care that boards exercise in reviewing their companies' existing procedures and controls governing corporate conduct already provides sufficient incentives for management to consider whether appropriate action is taken when misconduct complaints are received.

Through understanding these processes, boards may have already assured themselves that accusations of wrongful behavior and similar grievances are handled with meaningful seriousness and follow-through. The attention boards pay to these matters can mitigate associated risks, and perhaps even lessen, or at least better manage, crisis situations that may develop.

However, while ensuring that compliance systems function as designed is important, there is an opportunity for boards to improve corporate reputation through greater engagement in the root cause of the #MeToo problem, the lack of women in business leadership positions.

Without engaging in debates about causal correlation, there is no question that the recruitment of women and minorities at all levels in a company, and the employment of a diverse population with women and minorities represented at all ranks, including as senior executives, would support creating a culture where women are more willingly accepted as colleagues, different viewpoints are welcomed and power dynamics do not create risks. Boards can play a role in shaping such a culture, by becoming involved in not just CEO succession planning, or even executive officer successions, but also the enhancement of female and minority recruitment, hiring, compensation, retention and promotion.

Recognizing the need for a broader, proactive approach to the shifts that #MeToo may engender, rather than simply assuring themselves that the right response will be deployed once the need arises, is the right answer for boards as they continually evaluate changing corporate risks. In this environment of tight labor markets, 24/7 news and incidents going viral immediately, a company's employment culture is a clear indication of how it manages its most important asset, its reputation.

If you have any questions regarding the matters covered in this publication, please contact any of the lawyers listed below or your regular Davis Polk contact.

Martine M. Beamon	212 450 4262	martine.beamon@davispolk.com
Angela T. Burgess	212 450 4885	angela.burgess@davispolk.com
Ning Chiu	212 450 4908	ning.chiu@davispolk.com
Kyoko Takahashi Lin	212 450 4706	kyoko.lin@davispolk.com
Veronica M. Wissel	212 450 4794	veronica.wissel@davispolk.com

© 2018 Davis Polk & Wardwell LLP | 450 Lexington Avenue | New York, NY 10017

This communication, which we believe may be of interest to our clients and friends of the firm, is for general information only. It is not a full analysis of the matters presented and should not be relied upon as legal advice. This may be considered attorney advertising in some jurisdictions. Please refer to the firm's [privacy policy](#) for further details.