

Investor Group Petitions SEC to Require Disclosure on Human Capital Management

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The Human Capital Management Coalition has submitted a [rulemaking petition to the SEC](#) to require all public companies to disclose information about its workforce. The petition is signed by Meredith Miller from the UAW Retiree Medical Benefits Trusts, and a list of members [is available here](#).

While the success of any efforts to mandate disclosure through the SEC seems fairly uncertain, the petition represents increasing demands on companies for ESG-related information. The requests, usually in the form of surveys to fill out, may come directly from investors or just as often if not more, from data providers that use whatever information they can gather to assess and rate companies for investors. The petition acknowledges as much by indicating that one benefit of consistent rulemaking would be to obviate the need for companies to respond to a multitude of different requests. It notes that many companies are overwhelmed with ESG disclosure requests, which is characterized as “sustainability survey fatigue” in one article cited.

Responses to surveys are also not uniform, posing a challenge for both companies and those who analyze the survey data. The petition states that investors have resorted to searching online social media sources such as Glassdoor for employee reviews about companies for details on human capital, but are concerned that it is “vulnerable to manipulation by companies” or has the same bias as other review sites in that unhappy employees are more motivated to share information.

The petition urges the Commission to solicit input to identify the appropriate disclosures but provides a lengthy list of areas that are deemed to be “fundamental” to an analysis of human capital. These include: demographics (number of full- and part-time workers, contingent workers and the policies on subcontracting and outsourcing); stability (voluntary and involuntary turnover and internal hire rates); composition (diversity and pay equity data); skills and capabilities (training, skill gaps and alignment with business strategy); culture and empowerment (employee engagement, union representation, work-life initiatives); health and safety (injuries and lost day rate); productivity (return on cost of workforce and profit or revenue per full-time employee); human rights commitments and their implementation; and employee compensation and incentives.

In terms of validating the investor demand for human capital information, the petition cites to a recent investor campaign by U.N. Principles for Responsible Investment (UNPRI) focused on enhancing human capital management at global retailers and understanding their employee practices, as well as the inclusion of human capital issues in SASB’s efforts to standardize sustainability disclosures. Other organizations with similar objectives and their related acronyms, all familiar to companies that have faced the challenges of sustainability disclosure and in some cases shareholder proposals seeking sustainability reports, include the International Integrated Reporting Council (IIRC) and the Global Reporting Initiatives (GRI).

Questions of materiality are addressed by citing to a variety of research findings that managing human capital well leads to better performing companies with superior returns. The petition anticipates that some investors will try to identify companies that appear to manage their human capital most effectively, and use this information as another input in their investment analysis. Others may view this information as another source of profit and cost measures, as a way to measure intangibles including company culture or avoiding and managing risks, such as human rights risks in a company’s supply chain, or alternatively as a screening mechanism to create social indexes or investment products.

Our memo on ESG reports and ratings is linked [here](#).

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

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