
Are Your HR Policies Up to the Challenge in the #MeToo Era?

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One thing is clear in the #MeToo era: policies meant to prevent and address sexual misconduct in the workplace can fail and potentially expose companies to crippling reputational damage that can in turn impact shareholder value.

The litany of recent high-profile cases demonstrates that the issue and risks of sexual harassment can be pervasive. According to the Equal Employment Opportunity Commission (EEOC), one in four women in US workplaces experiences sexual harassment. Other research and recent polls indicate that figure may be closer to one in two.

When highly paid, trusted leaders are caught abusing power and exploiting vulnerable employees, the financial, structural, and social consequences can be far-reaching. Not only do such incidents impact morale negatively, but productivity may decline and valuable customers and sponsors may flee. There is also the costly and damaging likelihood of legal action from victims, employees, shareholders, and regulators.

To protect stakeholders and address the underlying problem, boards and C-suites can't afford to wait until a scandal occurs.

Governance, Risk Management, and Compliance—and Culture

A strong program that addresses sexual misconduct takes a top-down approach, where everyone from the CEO to top salespeople to top managers understands boundaries and how the company will respond when they are crossed. It starts at the board, but must fully engage every manager. On a foundational level, this is all about creating a zero-tolerance culture built on openness. It's important that employees know they have mechanisms to speak up (e.g., hotlines that employees actually use or have accessed), that their concerns will be heard and addressed, and that managers regularly voice the company's values.

Organizations can also conduct a governance gap analysis that includes a review of the harassment reporting procedures to determine if the system is sufficiently robust, adequately documented, and thoroughly implemented. Such an analysis would examine whether all applicable regulatory or statutory requirements are met.

The governance gap analysis would also examine the board and C-suite's liability exposure, reviewing how director and officer insurance policies handle liabilities for misconduct as well as negligence. Further, it would analyze matters that could be construed as organizational bias, such as equity in compensation, hiring, and professional advancement.

Conducting a Comprehensive HR Gap Analysis in the Post-#MeToo World

Indeed, organizations should consider going a step further with what we'll call a "#MeToo gap analysis"—a comprehensive internal review of sexual misconduct allegations, examining policies, procedures, and alleged incidents. Such an analysis, if well executed, can help provide a complete picture of potential sexual misconduct, if any, within a company's walls: how prevalent it is, how it is handled, and where vulnerabilities lie. It is a first step in updating a company's programs to curtail sexual misconduct, prepare the organization to respond appropriately in the event allegations arise, and help protect the company from legal liabilities and reputational damage. Additionally, a #MeToo gap analysis examines both the reactive and proactive processes.

The Reactive HR Gap Analysis Process

This part of the gap analysis helps ensure that systems are in place to address allegations when they arise. The following should be scrutinized to determine whether:

- **The investigation process** includes sufficient data discovery and analysis capabilities and procedures for employee interviews and incident reports
- **Incident response teams** are adequately staffed with officials from legal, human resources, and corporate communications; and that the teams are fully prepared to execute their responsibilities
- **Litigation and dispute preparedness** includes a response process that considers the potential for a future appearance in court before a jury

Being Proactive by Adding a Gap Analysis to the Human Resource Planning Process

This is more comprehensive, and arguably more important, given the problems that being proactive can forestall. It involves all efforts that a company undertakes to prevent sexual misconduct.

To be adequately prepared for #MeToo allegations, a company must master its own culture. This means understanding how employees interact and taking measures to promote positive behaviors (like transparency and respect) and root out potential problems, whether by discouraging certain behavior or eliminating bad actors.

A gap analysis may include reviewing:

- Previous incidents, if any, to get a sense of what problems may exist and how allegations were handled.
- The state of diversity within the organization, investigating such factors as gender gaps in opportunity and pay and among leadership/executive ranks.
- Training programs to determine where appropriate policies should be reinforced. Training programs should communicate that harassment does not need to be physical; it may involve an awkward remark or an email that is offensive to coworkers, male or female.

Finally, a critical part of the cultural gap analysis would entail conducting a survey, usually led by a third party, of rank-and-file employees. This is a key tool enabling executives and boards to get a clearer picture of the organization's culture and employee sentiment.

To reiterate: a strong culture and #MeToo preparedness through gap analysis have become critical for organizations. Well-prepared companies built on a solid foundation are better able to prevent sexual misconduct and remediate claims when they arise.

About the Authors

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Angel L. Rodriguez has over twenty years of corporate executive experience as a respected senior business and human resources leader. Most recently, he served as the chief HR officer for WorldVentures, a travel and direct selling company, with over 250,000 representatives and headquarters staff. Before this, he served as the senior HR leader for Kellogg Co.'s international business, specifically for Asia, Latin America, and Europe, and was a key leader in the integration of the Pringles acquisition by Kellogg.

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