

Bringing Lessons From #MeToo to the Boardroom

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Boards need to be proactive in shaping a corporate culture that does not tolerate sexual harassment.

Corporate sexual harassment scandals

[\(https://www.ajc.com/news/world/from-weinstein-lauer-timeline-2017-sexual-harassment-scandals/qBKJmUSZRJggOzeB9yN2JK/\)](https://www.ajc.com/news/world/from-weinstein-lauer-timeline-2017-sexual-harassment-scandals/qBKJmUSZRJggOzeB9yN2JK/) have abounded in recent headlines, with organizations such as The Weinstein Co., Fox News, Uber Technologies, Wynn Resorts, Lululemon Athletica, and others finding themselves under a harsh spotlight. In each case, the company emerged from scandal with its reputation significantly damaged.

Has your board reflected upon the #MeToo and #TimesUp social movements, and about the [continuing wave of CEO resignations](#)



[\(http://clsbluesky.law.columbia.edu/2018/04/09/sexual-harassment-and-corporate-law/\)](http://clsbluesky.law.columbia.edu/2018/04/09/sexual-harassment-and-corporate-law/) amid misconduct allegations? Whether you are a member of the board of a public, private, or nonprofit company, procedures for addressing and preventing sexual harassment must be on your board's agenda. Directors need to do the right thing for employees, for customers, and for all stakeholders. The time for boards to act is now.

As advisers to boards for a combined 40 years, we have had many discussions about the challenges facing companies. Understanding risk appetite and ensuring the company has a process in place for managing its risks is usually at the top of the list.

When we delve deeper into [how boards manage risk \(https://sloanreview.mit.edu/article/how-to-manage-risk-after-risk-management-has-failed/\)](https://sloanreview.mit.edu/article/how-to-manage-risk-after-risk-management-has-failed/), we often hear that different risks are monitored by different committees. For example, accounting risks come under the purview of the audit committee, and risks related to cash and stock incentive programs are monitored by the compensation committee.

But what about sexual harassment? Companies generally agree that while sexual harassment in the workplace is unacceptable behavior on the part of an individual, the ensuing silence or lack of consequences for the behavior reflects a problem with corporate culture (<https://sloanreview.mit.edu/article/the-trouble-with-corporate-compliance-programs/>) – and, ultimately, culture is the responsibility of the entire board.

This begs the question: How do we monitor culture and focus board attention on preventing sexual harassment and misconduct at their organizations? Our answer, based on experience helping boards increase effectiveness, is that directors must first implore their board chair to put this topic on the board agenda. Even though it may be an uncomfortable issue, boards must start the dialogue about this “new” risk. To begin, we suggest directors ask the following seven questions:

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1. How do our current policies measure up to best practices?

Too often, the board does not read company policies or require [human resources leadership](#) to review policies and procedures annually to gauge the effectiveness of the reporting process. Directors may think this level of review is “stepping on management’s toes.” However, the board must determine whether the company’s current policies and procedures related to preventing workplace sexual harassment and

discrimination are adequate. Asking HR how these policies are communicated and to define “best practices” is not crossing the management/board line. Directors should weigh in on whether the CEO and the management team are communicating the right message.

2. Do employees trust and use our procedures for reporting harassment?

While there are many methods and procedures organizations use for employees to report harassment or complaints, hotline calls to a company’s dedicated ethics line are a good example. Board directors sometimes utter a sigh of relief when they hear there have not been any hotline calls at their organization, but it’s a common misconception that few calls to the ethics line equates to a “good” company culture. In an open and trusting culture there are many calls — calls for how to handle a matter, calls for clarification, and, yes, some calls that report a potential problem. Informed directors ask how many calls are received in a given time period and require that calls be categorized.

The hotline is an early-warning system, and directors are looking for trends, not individual case details. Not only does this offer a chance for early intervention, it is also an indicator that employees trust the company will do the right thing. The more comfortable employees are raising issues, the lower the potential risk of the company mishandling a case of harassment. If an abuse or infraction of a policy happens, ensure it is treated fairly and consistently and that real penalties, rather than a slap on the wrist, are imposed.

3. When does the board get notified?

Keeping with our example of hotline reports, let’s now think about how and when the board should be notified. We’ve found that real-time sharing of reports varies in organizations, but regardless of reporting structure, it’s crucial that the full board be notified at least semiannually (though preferably more frequently) about trends and statistics of employee reports.

Directors should also understand the escalation protocols. For example, is there a mechanism to ensure that if a question is raised about the CEO’s behavior, it gets immediately reported to the board chair? Ask if the right manager oversees incoming hotline calls and talk through the reporting procedures.

4. What is company culture like at the mid-employee level?

Boards have regular interaction with the CEO and senior executives. They convene at board meetings, strategize at retreats, and enjoy dinner together. Most often, camaraderie is genuine, and it may lead directors to believe that company culture is similarly positive.

But what about the next level down, with managers who directors see once a year, if that often? And what is the culture like among employees these managers supervise, and with whom the board never engages — how do these employees view the company?

To better understand a company’s culture, directors might consider unstructured office tours. One director told us he learned more about company culture while walking around the operations floor than he did in the boardroom. Additionally, directors should ask to see the annual employee satisfaction survey results — and not just the cover page. Initiate a discussion with management about how a potential claim of sexual harassment might be handled in-house and how the board could better monitor culture.

5. Does the board composition need a refresh?

Companies are not static, and boards must evolve accordingly. A regular injection of new talent around the boardroom table will promote fresh ideas and a disciplined challenge to the status quo. Problems can fester when thinking becomes too insular and when no one takes a step back to deliberate on the culture

of the business. One board director told us that the mere presence of a new director in the boardroom causes the conversation to change, but when the new director is a woman, this change is magnified.

Gender diversity on boards is a high priority among institutional investors. Additionally, female board members we spoke with reflecting on the #TimesUp campaign felt that if there had been support at the top of the company and better gender diversity on boards, then they might have felt comfortable speaking up earlier.

5. What's our crisis response plan?

Boards must be proactive in their thinking and planning around the issue of sexual harassment. Even when following best practices and promoting healthy corporate cultures, bad behavior can (and will) still occur. California provides a good example: Since 2005, employers in the state with more than 50 employees have been required to conduct two hours of sexual harassment awareness training for supervisors and executives every other year. However, what about the boards of directors for these companies? They need to be included in at least some part of this training as well.

Part of any crisis response plan requires getting ahead of a potential crisis, discussing these issues and establishing a culture of zero tolerance starting at the board level and then messaged throughout the organization.

7. How do we vet our board members and CEO candidates?

Sexual misconduct can be prevented, and prevention must be promoted at the top of the organization. While this is often articulated to be the case, the truth is usually more nuanced. Clearly, recent revelations highlight that we have lived in a culture where sexual misbehavior has been ignored, tolerated, and overlooked. Diversity in the boardroom can provide some mitigation in that it tends to curtail groupthink and group complacency. We need strong directors who will not be afraid to speak up or question unacceptable behavior within the organization they serve. It is easy to assume that directors, by virtue of their title, have the fortitude and wherewithal to do the right thing in all situations. But this is not always the case, and boards have a responsibility to interview and reference for these characteristics.

Instances of sexual harassment and other forms of sexual misconduct boil down to bad behavior, power abuse, and poor judgment within the organization. Failing to implement proper protocols around sexual harassment in the organization can lead to many problems including decreased brand reputation, litigation, and a variety of other risks, as well as the associated decrease in shareholder value. Boards must take the lead in fostering a respectful work culture.

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Board directors should ensure their boards are connecting the dots among board governance, board culture and company culture, and empower the CEO and executive leadership team to set high standards for all employees. They must focus the CEO on ensuring a company culture that allows employees to responsibly

grow the business while fostering a safe environment. The board of directors must be proactive in setting the leadership tone by looking at its own composition — board makeup reflects the company’s values. The board should hold the CEO and other senior leaders accountable and challenge them to make sure that a culture of abuse does not exist at any level of the company, now or in the future.

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