



Allegations of sexual harassment are clearly increasing, and impacts of allegations are swift. Organizations and brands can see their long-established reputations altered overnight. Customers or donors can quickly turn elsewhere. Internal culture, external communities and the bottom line all can suffer irreparably.

Boards of Directors can no longer reasonably rely on outdated policies and procedures to quickly and appropriately respond to accusers, staff and the public. Moving decisively is key to giving these accusations the serious consideration they deserve, while also protecting those involved, the organization, management and even the Board itself.

BOARD ACTIONS TO HELP THWART MAJOR INCIDENTS OF SEXUAL OR OTHER DISCRIMINATORY HARASSMENT

Whether a public company, large private company or nonprofit, steps should be taken to ensure that employees at all levels of the company will feel comfortable coming forward with a complaint of harassment, regardless of the position of the offender, before it gets to the point of a long-term egregious situation that makes front page headlines.

Companies may want to take the following steps to increase the likelihood that a complaint will be brought forward at an early stage:

1. Update harassment policies. Policies should be updated to include specific examples of unacceptable conduct, even if each example is not unlawful in and of itself; ensure that they provide for multiple lines of reporting; make clear that no employee, manager or officer of the company is above the policy mandates; emphasize that retaliation will not be tolerated; and specify that appropriate remedial action should be taken. While most of the recent attention has focused on sexual harassment, policies must address other kinds of harassment, such as race, religion and disability.
2. Provide meaningful training to Board members, managers, supervisors and employees that emphasizes the points noted in item 1 above, and that provide clear examples relevant to the business in issues of unacceptable conduct. Training must be customized and interactive, among other things, for it to be effective.
3. Send a message loud and clear to all employees, managers and officers that sexually harassing or other discriminatory harassing behavior (even if not unlawful) will not be tolerated at any level – no exceptions.

OTHER STEPS ORGANIZATIONS SHOULD TAKE TO BE READY FOR ANY ALLEGATION OF HARASSMENT (OR OTHER ALLEGED LEGAL WRONG)

1. Train HR and others in the organization on how to conduct a prompt, thorough and impartial investigation.
2. Identify external investigators who can conduct the investigation if appropriate, such as if the claim is about a senior executive.
3. Have template memos ready to be customized so that it can be made clear to the complainant how seriously the organization takes her or his concerns and the accused understands there can be no retaliation.

BOARD RESPONSIBILITY AND RESPONSES

Further, when claims of sexual harassment surface, it's important the Board ensure the following steps take place:

1. Immediately acknowledge the allegation, thank the claimant or person advising the organization about the issue for coming forward, and advise them that the organization will promptly address the claim or issue raised.
2. Immediately assemble a team to conduct an independent and fair investigation to determine if the matter should be investigated in-house or by an outside lawyer or consultant based on the seriousness of the allegations and the position of the accused.
3. Decide the scope of investigation relative to allegations.
4. Advise the claimant, accused and all participants in the investigation that retaliation will not be tolerated.
5. Conduct the investigation expeditiously, but thoroughly.
6. Keep an open mind and ensure that all relevant evidence is considered before a decision is made.
7. Take appropriate remedial action (prompt and proportionate) based on findings and do not tolerate a culture of improper conduct regardless of whom the harasser may be.
8. Advise both parties of findings and the claimant of remedial action taken, if applicable (degree of specificity will depend on facts and circumstances).

9. Take this opportunity to underscore the importance of and the organization's commitment to a workplace free of discrimination and harassment by recirculating the harassment policy, stressing its importance to the organization and conducting harassment training to educate the workforce.
10. Monitor for retaliation and take decisive remedial action if there is any retaliation.
11. Have a media statement ready in the event the complaint goes public. Of course, it will need to be customized.
12. Have statements ready to go to workforce and other stakeholders. Of course, these too will need to be customized.



ABOUT DUANE MORRIS

Duane Morris attorneys for many years have provided EEO training for management, updated EEO and related policies, and counseled clients on the implementation and communication of these standards and policies. The firm has frequently led or assisted with investigations of complaints and provided advice on related issues – and, unlike purely self-conducted investigations, our findings can be protected under attorney-client privilege, depending on our role in the investigation.

PROGRAM FOR DIRECTORS AND BOARDS

With the proliferation of sexual harassment allegations, Duane Morris is providing a program to educate Boards on their specific responsibilities, how best to work with management, the roles of Human Resources and Compliance teams, and other developing issues. (Examples: Boards of public companies may be obligated to disclose sexual harassment claims in some circumstances, or else risk shareholder suits or a federal inquiry. Stakeholders in a wide range of organizations often want to know who knew what and when, and how it was handled, particularly when impactful resignations or terminations occur. And the increasing instances of these allegations being made in public, or quickly becoming public knowledge, makes quick action all the more important.) Whether at a Board meeting or a special session, Duane Morris attorneys can share insights and best practices specific to directors and Boards.

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