



Sharpening risk oversight in the #MeToo era

By Jose R. Rodriguez and Susan M. Angele



The statistics are sobering, and the business impact can be significant. More than 700 executives and senior-level employees have been publicly accused of sexual misconduct since December 2015, according to research by Temin and Company. Indeed, the likelihood of an organization of any significant size having a #MeToo issue is very real. Boards need to redouble their oversight of this issue, and audit committees can help sharpen the focus. We offer these suggestions.

Focus on the effectiveness of reporting channels and investigation processes through a #MeToo lens.

The audit committee should add a #MeToo lens to its role in assisting the board in monitoring compliance by taking a deep dive into how the company's policies work in practice. Is there a strong process for management to review and update the company's policies on sexual harassment to ensure that they remain appropriate and relevant? How well are the avenues for raising sexual misconduct complaints communicated throughout the organization? Do employees truly feel comfortable raising concerns? Has internal audit, as the eyes and ears of the audit committee, been asked to weigh in through this lens? When complaints are reported, what is the escalation process? Does the audit committee or the board know about a sexual misconduct complaint against an executive as soon as it is reported, or only when it hits the media? And what about complaints deeper into the organization? While the committee may not need to see every individual complaint, working with the chief compliance officer to develop a protocol for reporting on sexual misconduct complaint trends can help the board stay ahead of the issues.

The audit committee should set and expect a tone of transparency and respect, and assess whether management is providing sufficient clarity in policies and training.

Monitor for accountability, fairness, transparency and a tone of respect.

First and foremost, the committee and board should send a strong message that intentional misconduct and predatory sexual behavior will not be tolerated under any circumstances by any individual affiliated with the company, should expect company leadership to send and enforce the same message, and should assess whether training, employment practices, and compensation incentives align with this directive. The audit committee should set and expect a tone of transparency and respect, and assess whether management is providing sufficient clarity in policies and training. In addition, the committee and board should monitor for unintended consequences. Are young professional women losing opportunities for informal mentoring or projects requiring travel due to concerns of male managers that they may be wrongfully accused? Are employees who raise complaints being retaliated against overtly or in subtle yet potentially career-damaging ways? Is management handling complex issues fairly and minimizing the risk of backlash? And is the company positioned to respond quickly and appropriately in the event that an incident becomes public? Given the importance of corporate culture to attracting and retaining the right talent, these issues should be on the board's radar and monitored either by the audit committee or another appropriate designated committee.

Include sexual harassment issues in due diligence reviews.

Given the potential impact of #MeToo issues, companies are digging deeper into the backgrounds of aspiring executives and board members, a practice referred to as “social due diligence.” In addition, a new provision has begun to appear in acquisition agreements—the “#MeToo rep.” In this provision, the seller represents that with respect to a certain subset of executives/senior managers/board members, no allegations of sexual harassment have been made

within an agreed-upon number of years (currently ranging from 3 to 10). As these practices become more commonplace, audit committees and boards should have them on their radar as they consider succession planning, acquisitions, and divestitures.

#MeToo issues present potentially significant risks, and the audit committee can play a critical role in setting the right tone and monitoring compliance.

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