



Top 10 Topics for Directors in 2019: #MeToo Movement

Jan 22, 2019

Reading Time : **5 min**

By: Lauren Leyden

Further, unpreparedness by the board can help foster a workplace environment where sexual harassment is allowed to occur unchecked, which increases associated potential liability for the company. Therefore, a prudent and responsible board should take steps in advance to put a plan in place for responding to situations involving sexual harassment allegations against C-suite and other executives. Then, once a plan is in place, the board should follow certain best practices once it puts the plan into action.

The first step that the board should take to protect the company is to plan ahead. Having a “harassment allegation response plan” in place before a crisis involving a high-level executive occurs, allows for a quicker response, thereby leading to better solutions and reducing the risk of litigation.

Set Tone from the Top/Change the Culture if Needed

In addition to leading by example by not engaging in any inappropriate behavior, members of the board should use their positions to coach senior executives on how to avoid creating unintended liability. It is important that the board remind C-suite executives that reactionary behavior is discouraged and that they must remain inclusive with respect to all employees. For example, senior executives should not exclude women from business or mentorship opportunities out of a fear of being accused of harassment (e.g., an executive who only has one-on-one meetings with men, but refuses to do so with women, creates potential discrimination liability for the company). The board should also conduct an honest analysis of the culture at the company; if a workplace culture exists that allows harassment to occur

unchecked, the board should take steps to put training and policies in place and make any necessary improvements.

Review Committee Responsibilities and Written Policies

The board should decide in advance who will handle investigation decision-making when the time comes. For some boards, this will involve assigning the task to an existing committee, such as a governance committee or audit committee. For other boards, it may be appropriate to create a new committee specifically for responding to issues surrounding allegations of impropriety against high-level executives. It is also advisable to review board and company policies, and revise them as needed to ensure they outline investigation procedures in a clear and concise manner.

Develop Shortlist of Outside Counsel with Investigation Expertise

The board should develop a shortlist of pre-approved outside counsel with sexual harassment investigation expertise. If the board already has a shortlist of approved outside counsel, it should re-evaluate the list to identify which firms have this expertise. If a new firm has to be added to the list, they should run a conflicts check in advance, to the extent practicable, so that they can jump into action when the time comes.

Consider Extra Protections

In addition to having legally required policies and procedures in place, consider going beyond what the law requires. For example, some companies are engaging third-party service providers to maintain 24- hour employee complaint hotlines. When an allegation is brought to light, it is important to act swiftly and put the emergency response plan into action by taking the steps above. A first step should be to contact outside counsel and brief them on the facts so that they can start the investigation. The board should also consider whether a leave of absence for the accused, or change in reporting structure, is appropriate for the duration of the investigation.

Communicate with Those Involved, and Protect Potential Victims

From the start, when speaking with a potential victim of inappropriate behavior, or an individual reporting such conduct, demonstrate appreciation for bringing the claim to light and let them know that a prompt investigation is taking place. Also, remind the individual that board and company policy prohibits retaliation against anyone who raises these types of issues. When communicating with the accused executive, be direct concerning the fact that

the board takes the allegations seriously, but also emphasize that the investigation process was developed with due process rights in mind. After the investigation concludes, be sure to communicate the outcome to the individuals who were the subject of the investigation so that they are not left wondering what happened. Be sure to explain any steps being taken in response, and again remind the individuals about the company's policy prohibiting retaliation.

Maintain External Confidentiality

While it is important to communicate with the individuals who are part of the investigation, caution should be taken to avoid sharing details of the investigation, or investigation results, with anyone other than essential parties. For example, the board should not ask outside counsel to share copies of any report it develops with uninvolved company officials, as it may waive work-product or attorney-client privilege between outside counsel and the board. Additionally, it is important to respect and protect the privacy of the individuals involved in the investigation.

Remain Flexible as to Remedial Steps

Work closely with outside counsel to determine how to act on the information generated by the investigation. Keep in mind that termination is not the only outcome for employees accused of sexual impropriety. Obviously, if the results of the investigation clearly show that unwanted and improper conduct occurred, immediate action should be taken. Depending on the severity of the conduct, it may even be appropriate to contact law enforcement. If the investigation is inconclusive, it may still be safest to consider a change in reporting structure and to implement additional harassment prevention training. Even if the allegations are not sustained by the investigation, it is important that any response is not carried out in a way that undermines existing protections and policies, or discourages employees from reporting wrongful misconduct in the future.

Review Process and Outcome, Solicit Feedback and Seek to Improve

After each investigation, take time to evaluate how things went. Consider what went right that can be amplified and where any breakdowns occurred that can be improved. For example, if an allegation did not come to light through the reporting channels the company has in place (e.g., the victim only felt comfortable confiding the details to a friend, who then "leaked" the information to the board), steps should be taken to identify why the individual did not feel comfortable using the company's designated reporting channels to evaluate what can be done to remove that obstacle. Other sets of facts may suggest that workplace culture

can be improved by implementing new harassment prevention training or policies, or by developing better employee monitoring and feedback so that issues come to light in a more expedient manner.

All boards should be aware that allegations of sexual harassment against high-level executives are increasingly prevalent in the current-day workplace, and employees expect that the company at which they work will be ready to respond and remedy these situations. By having the right plans and procedures in place beforehand, and responding appropriately when the situation arises, the board can reduce potential liability for the company.

View the full report [here](#).

Categories

Labor

© 2025 Akin Gump Strauss Hauer & Feld LLP. All rights reserved. Attorney advertising. This document is distributed for informational use only; it does not constitute legal advice and should not be used as such. Prior results do not guarantee a similar outcome. Akin is the practicing name of Akin Gump LLP, a New York limited liability partnership authorized and regulated by the Solicitors Regulation Authority under number 267321. A list of the partners is available for inspection at Eighth Floor, Ten Bishops Square, London E1 6EG. For more information about Akin Gump LLP, Akin Gump Strauss Hauer & Feld LLP and other associated entities under which the Akin Gump network operates worldwide, please see our Legal Notices page.