

Workforce Culture Really Is Board's Responsibility; CLO Has Related Role to Play

In his monthly column, Michael W. Peregrine discusses new research that calls on boards to understand that their responsibility should also include objectives such as inclusion and diversity, health and safety, and workforce reduction plans.

By Michael W. Peregrine

The debates are over, the polls are closed and the decision is clear. The board does indeed have a fiduciary responsibility for oversight of workforce culture; it's not solely the province of management anymore. And that's a result which the CLO can comfortably report up the corporate ladder and take an active role as board advisor.

The question of board involvement in workforce culture matters has been a subject of dispute since the concept first arose with the advent of the #MeToo movement and greater focus on matters of employee bias and harassment. In 2017, the National Association of Corporate Directors issued a **groundbreaking whitepaper** that identified the oversight of culture as a key board responsibility, given its inextricable linkage with strategy, CEO selection, and risk oversight.

Yet while not discounting the legitimacy of the issue, some thoughtful CEOs and governance commentators nevertheless pushed back on the suggestion that the board had a role to play



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in the support and direction of workforce culture. It was a tough sell, even as many CLOs pointed to developments involving corporate exposure for culture deficiencies arising from multiple failures in corporate ethics, executive behavior and **workplace environment**. There was a view that, as important as these concerns were, they were properly the focus of the corporate human resources function. *Sorry, CLO, but just stay in your lane; this isn't a legal concern.*

But the tide has begun to turn with COVID-19 and related concerns about employee health and safety, employee morale, and the

pandemic's impact on gender workforce equality and inclusion. With this has come an increasing acceptance amongst the CEO "electorate" that a positive organizational culture is a meaningful corporate asset, worthy of board oversight. Yet some executives still seek a more concrete affirmation of significance before recommending the topic to the board for its attention; a provisional ballot, so to speak.

And that affirmation has emerged in the form of new research by the consulting firm Accenture, contained in its October 20 report, **Modern Boards:**

Why Workforce Strategy needs a seat at the Boardroom Table.

The report calls on boards to “understand and accept that fiduciary responsibility should also include addressing workforce challenges and strategic objectives such as inclusion and diversity, health and safety, and workforce reduction plans.” In other words, board engagement in workforce strategy “is no longer a choice—it’s critical.”

The Accenture report notes that raising the accountability of workforce strategy to the level of the board of directors reinforces to executive leadership that their workforce initiatives and strategies are important, and monitored by the highest levels of corporate governance. It further notes that boards who provide such oversight and monitor executive leadership’s efforts in this regard are significantly more likely to have a mature workforce strategy whose effectiveness is driven by metrics. This insight can be critical to advancing business strategy and mitigating risk, and can also help improve retention and culture, and prepare the workforce for the future.

The Accenture report thus provides the CLO with a legitimate and timely reason for re-approaching the leadership team about board oversight of workforce culture. But with that comes the need to demonstrate why the

CLO should be considered a primary advisor to the board when it is called to consider these oversight issues. For while leadership’s first reaction might be that the Chief Human Resources Officer should be the board’s workforce culture advisor, the CLO should absolutely be part of the process as well—for many reasons.

First and foremost is, of course, that the CLO is the board’s lead advisor on corporate governance and matters of fiduciary duty. The CLO is best positioned to advise the board on the scope and extent of its workforce culture oversight duties and its reliance on management in the exercise of those duties.

An additional reason is that the CLO is well positioned to advise the board on the various legal implications of workforce culture; e.g., application of labor and employment laws; liability exposure from employee claims; application of diversity laws and principles; the preparation, interpretation and enforcement of corporate codes of ethics and conduct; workplace health and safety regulations; and developing culture-related incentive goals of executive employment agreements.

And this is not a new concept. In its 2017 Report, the NACD referenced the value of having the CLO (and other officers) “well positioned within management

and in relationship to the board to support an appropriate culture.”

This is not to suggest that the CHRO or similar officer should be excluded from these conversations. Rather, it is to emphasize that board workforce culture oversight requires the support of at least two different executive functions: human resources and legal. Perhaps corporate compliance, too. Yes, it may complicate the administrative process, increase the paper flow, extend meetings and require additional intra-leadership team coordination. But the net result will be that the board is far better prepared to exercise this new fiduciary obligation.

There’s really no reason for a recount here; no need to question the validity of the process. The new Accenture report provides much welcomed affirmation of the principles that workforce culture is a valuable corporate asset; that it’s the board’s responsibility to exercise related oversight; and that it should have the input of the CLO, as well as the CHRO, when it does so.

Michael W. Peregrine, a partner at the law firm of McDermott Will & Emery, advises corporations, officers and directors on matters relating to corporate governance, fiduciary duties, and officer and director liability issues. His views do not necessarily reflect the views of the firm or its clients.