



A NAVEX Global eBook

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# You Can't Delegate Ethics on the Issue of Sexual Harassment

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*A Call to Action for Board Members | #YCDEthics*



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# OVERVIEW

“In the current environment, [the] stakeholders are demanding that companies exercise leadership on a broader range of issues. And they are right to: a company’s ability to manage environmental, social, and governance matters demonstrate the leadership and good governance that is so essential to sustainable growth, which is why we are increasingly integrating these issues into our investment process.”

*Larry Fink, the Founder, Chairman and Chief Executive Officer of BlackRock, wrote these words in his annual letter to CEOs.*

BlackRock is the world’s largest asset management company, with \$6.3 trillion in investments. Mr. Fink’s letter speaks to the changing face of investor’s focus – not simply from quarterly returns and financial performance – but to governance and the long-term profitability of corporations that focus on ethical behavior and corporate culture.

Investors and asset managers care increasingly about corporate culture for good reason: it drives profitability. For example, before the firing of one CEO in a high-profile case last year, it was reported that staff turnover in the organization was 30-40 percent per year. When employee churn is that high, the cost of recruitment and business management goes up substantially, draining profitability, which can lead to unrelenting pressure on sales and tolerance of misbehaviour of high-financially-performing leaders.

In an article titled, “Sexual Harassment is Becoming a Serious Investor Risk,” *Barron’s* cover story noted, “Companies that tolerate or cover up sexual harassment, perpetuate a culture that fosters it, or fail to provide proper avenues for employees to report concerns and offenses, could pay in multiple ways, from difficulties in attracting, retaining, and motivating talented workers to customer defections, ruined business deals, and lost revenue and profit.”

*Barron’s* reported that Eve Ellis, a portfolio manager with Morgan Stanley’s Matterhorn Group, generally avoids investing in companies facing class action or individual lawsuits dealing with gender. “They might cost a company money, and lead to reputational risk,” she says.

Concerns about sexual harassment, bullying and corporate culture should be top-of-mind of every CEO, C-suite executive and board member. Corporate ethics and culture can’t be delegated to the HR and Compliance functions. It is the responsibility of the leaders to own it, not just for the good of their employees, but for the good of their shareholders and stakeholders. As Larry Fink said, “To prosper over time, every company must not only deliver financial performance, but also show how it makes a positive contribution to society.”

- By Kristy Grant-Hart CEO, Spark Compliance Consulting



# 1 DIRECTORS NEED TO STEP OUTSIDE THE BOARDROOM ON THE ISSUE OF SEXUAL HARASSMENT

By Shanti Atkins, Founder, NAVEX Global

Sexual harassment is not a compliance issue, it is an abuse of power issue. It can also be a neglect of power issue. It's what happens when good people in power stand by rather than intervene. And for corporate leaders, intervention is a job requirement.

Neglect of power is a very real issue when it comes to career executives. Rising to the level of the C-suite or board means you have been in a position of power for a long time. This can lead to environments in which good and well-intending people forget what it is like to be powerless. It results in a lack of empathy. And as board members, we can't delegate empathy the same way we can't delegate ethics.

Empathy is what allows board members to preempt crises, and to understand the subtle cultural cues that truly drive and prevent bad behavior. This requires going beyond the boardroom and gaining proximity to the issue and the people involved.

According to the National Association of Corporate Directors (NACD) [Public Governance Survey](#), "Only 35 percent of directors say they have a good understanding of the mood in the middle, and just 18 percent of them indicate they have a good grasp of the health of the culture at lower levels of the organization."

These numbers need to go up for instances of harassment to go down. Boards should not manage the day-to-day cultural operations of organizations, but processes should be in place for them to have insight and influence on those operations. A first step is to

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ensure these issues command undiluted time on the board agenda.

## Make "People" a Non-Negotiable Issue in Board Meetings

Board meetings are the main access point directors have to understand an organization's relationship with issues like sexual harassment. However, the NACD [states](#):

*"...92% of [boards of directors] rely on reporting from the CEO about the health of organizational culture. Fewer boards also hear directly from specialist functions, such as internal audit (39%), compliance and ethics (30%), and enterprise risk management (20%), which possess a much deeper and perhaps more independent perspective on the strength of the corporate culture than the CEO does."*

The lack of specialist insights can be traced back to the arrangement of board meetings. "People" updates are usually included, but often relegated to the back end of meetings after Finance, Sales, Marketing, etc. This approach in theory provides ample time for discussion, but in practice, things often take longer than planned.

We need to reconsider the structure of board meetings to accommodate the time needed to effectively deal with issues like sexual harassment in the workplace. Boards, of course, cannot forgo their fiduciary duties to review critical finances and functions, but people issues cannot continue to take a backseat only to surface when they become full-blown crises. In the case of lawsuits, this is our stakeholder obligation; in the case of employee harm – including harm that may not rise yet to the level of legal transgression – this is our moral obligation.

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As a director on a number of boards, I have seen this achieved a couple ways. First, each meeting's quarterly agenda can highlight a few departmental updates that require the most attention. One of those should be a deeper dive from HR or Compliance at least once a year. Second, all board members should be required to take the same harassment prevention training as the executives at the company. A discussion around the efficacy of that training, as well as trends and recent high-profile news stories around harassment, should take place in some way, shape or form – even if not part of a formal board agenda. I have seen this done well at a board dinner, or during an off-cycle board call. Finally, a director's one-on-one communications with the CEO should periodically touch on issues surrounding people and culture.

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In other words, the issue needs to be attacked on all fronts – the formal board agenda, informal board communications, and one-on-one discussions. This is how directors become active participants in the organization's ethics and compliance program, especially training and policies.

## Good Power at the Top Needs to Be Visible at All Levels of the Organization

Empathy requires exposure; trust requires visibility. For directors to truly understand what an organization's culture looks like, they need to step outside the boardroom and get to know a company through exposure beyond PowerPoint.

This approach helps garner trust throughout the organization by proving authenticity. If employees only get training, policies or emails about an issue, they see the buck being passed down the line. Instead, seeing the board members who actually champion the messages behind these tactics reinforces the support from the top and cuts employee cynicism.

How this plays out in your organizations can vary. It could be mentioning the board in town halls or newsletter updates, all the way to having board members onsite during annual kickoffs or social events. Also consider adding quotes from board members in your policies, and including images or video of board members in your harassment prevention training programs. The tone at the top needs a face, name and authenticity for it to permeate throughout an organization.

Empathy is not a term often used in regard to boards of directors, but it needs to be. It cannot continue to be a trait that corporate leaders shed as they climb the ranks. Leaders need to think outside the boardroom and own their role in eliminating sexual harassment in the workplace.

# 2 YOUNGER GENERATIONS IN THE WORKFORCE ARE MAKING DISCRIMINATION & SEXUAL HARASSMENT A BOARD ISSUE

By Ron Carucci, Co-Founder and Managing Partner at Navalent

If eliminating sexual harassment and discrimination in the workplace is not already on the list of board action items, our two youngest generations of employees plan to put it there – and quickly.

Much has been written about how millennials will [affect the modern workplace](#). The now famous memos, blogs and video testimonies are likely just the tip of the iceberg. Just years ago, many of these forms of communications had little sway, and now they are toppling corporations.

Members of the post-millennial generation aren't far behind and might make an even larger impact. These young people have been told that they can change the world, and they believe it and are acting on it. When those in regulatory and organizational authority fail to demonstrate an appropriate response, young people appear unlikely to simply go away quietly. And for that, we should be grateful.

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This generational inflection point surrounding sexual harassment makes it more important than ever for boards of directors to understand that they can't delegate ethics on the issue. Given the clear activism we're seeing in young people, directors need to think

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even bigger and include matters related to diversity, inclusion and corporate culture. These aren't just social justice issues, akin to corporate social responsibility. These are fiduciary responsibilities with very real consequences for shareholders.

The question of "when to disclose misconduct" is far from the right question. For boards, it should be finding ways to prevent it.

## Soft Skills Are Part of Today's Fiduciary Responsibilities

Let's set aside, for a moment, any arguments about doing the right thing for its own sake. We're well past the point where companies can ignore the financial burdens of a huge reputational hit. And members of boards have a fiduciary duty to prevent financial setbacks.



With that in mind, board members need to know the answers to the following four questions about their organizations:

1. Do our employees feel safe, and able to speak their minds?
2. Do our employees feel heard?
3. Do our employees feel decisions are made fairly?
4. Do our employees feel that the decision-making process is transparent?

Some of these matters revolve around whether employees are aware of a policy that would lead to the firing of a perpetrator in a sexual harassment matter (as just one applicable example).

To be able to answer these questions and to see problems before they can wreck a company, directors should make sure they're getting all the information they need. Too often the compliance-related reports they receive are limited to the volume of reports from employee hotlines. Those numbers are essential, but that data on its own isn't enough. Boards need to understand, with help from their compliance leaders, how compliance program data integrates with other

data points such as employee retention, employee engagement and employee experience, and other metrics indicating organizational health, and tracks back to the questions above.

## The Right Decisions Need the Right Information

Program data need to be supplemented with content from reports, synopses of employee attitudes, rehashing of off-the-cuff remarks and an overview of the general sentiment imbuing the organization. The new generation of "employee engagement" is now "employee experience" and with the onslaught of AI tools scouring social media and websites like Glassdoor, data about employee attitudes can be public before anyone inside knows. Given this, when it comes to getting the full picture or an organization's culture regarding discrimination and sexual harassment, board members need to ask for more information, and sooner.

If I were a board member, I'd ask that a team from ethics and compliance, finance, strategy and human resources work together to create a robust report delivered regularly to directors, noting cultural risks and integrating insights from across the organization. By connecting the dots from all of those pieces of information, the board should be able to see broad patterns to make proactive decisions when it comes to company culture. My experience is that very few companies do this – though those with HR committees are more likely to at least be in the ballpark.

Without the necessary information, boards could be unknowingly allowing the creation of cultures that are in effect petri dishes for scandals down the road. And if boards are worried about the fallout of those kinds of problems now, just wait until the next generation of workers charges in and turns it activist tendencies on the corporate status quo.

# 3 ANOTHER WAY SEXUAL HARASSMENT IS PERNICIOUS

By Troy Paredes, Former SEC Commissioner; Founder, Paredes Strategies LLC; Board Member, NAVEX Global

We shouldn't mince words: sexual harassment is morally repugnant. I wish that's all we had to say to make it end. However, in life, there are times when what is morally right doesn't win out and people behave wrongly, sometimes profoundly so. So with that in mind, I'd like to explain how sexual harassment – indeed, discrimination of all sorts – is pernicious in another way.

I've been studying decision making since my days as a law professor, through my time in government and now in the private sector, with a particular focus on business decisions. What decision-making processes, structures, and practices tend to yield the best business decisions? What group dynamics and exchange should we encourage if we want the group to perform at its highest level?

I'm convinced that inclusiveness is essential. In my experience, a group's efficacy springs from its heterogeneity.

There's a reason we routinely have multiple people participate in a decision instead of depending on one individual to do it alone. A case in point is an executive who seeks input from the rest of the management team and outside advisors. The executive may make the final call, but the varied reasoning, recommendations, and cautions of others will inform what's decided.

When deciding something – especially if it's a big decision – we usually want diverse ideas, experiences, and perspectives brought to bear. I benefit when I hear from individuals who have different worldviews than me, different career paths than me, and different upbringings than me. As part of the decision-making mix, these and

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other differences spur incisive questions, creativity, and textured assessments of risks and rewards, so long as the individuals in the group are respectful of each other and bring a collaborative attitude. When it works, the end result is a better decision.

So what makes it work? A lynchpin is ensuring that people are empowered to share their independent views regarding what's being considered. If I throw out an idea in a meeting and no one has a reaction – good or bad – I worry that people are holding back and that I'll be denied the benefit of what they're thinking. I especially worry if people hold back why they think I'm wrong because I very well may be wrong but don't realize it.

This is about more than avoiding groupthink. It's also about embracing differences as the best way to reach the best result. Even if diverse views are represented, the decision won't benefit if people aren't actively included in the discussion and if people don't really listen and take seriously what others have to say.

Stated differently, not only should the composition of the group be diverse, but people also should be affirmatively encouraged to participate. And people's contributions should be valued based on their substantive merit. This means seeking out contrary takes from individuals to challenge your own views and treating others collegially so they are comfortable weighing in even when they disagree. Stifling or shutting down those who come at things differently or making people feel unwelcome sets the stage for bad decisions because you lose valuable input.

This is just a way of saying that you should be inclusive.

Which takes us back to sexual harassment. Sexual harassment – at whatever level it occurs in an organization – is antithetical to genuine inclusiveness, in addition to being ethically offensive. The same can be said of discrimination generally. The inescapable takeaway is that zero tolerance for harassment not only is morally right, but it also fosters an environment and culture that welcomes and promotes the differences and behaviors that yield better decisions for a business overall. This is distinct from the clear-cut reality that

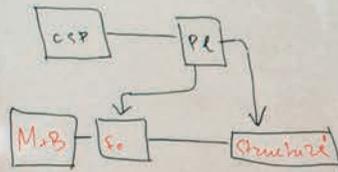
zero tolerance safeguards a company from compliance problems and reputational risks that can undercut its success. Beyond all of that, when people are encouraged to fully engage and don't face a hostile workplace, you get less employee turnover, higher morale, a workforce that is more committed to the business, and greater productivity. In short, you get a better company.

You also get something personal out of it. When you reject harassment and other types of discrimination, there's a healthy sense of self knowing that you've treated others as you'd like to be treated and that you've contributed to your company's integrity. That's a good day's work.

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# Goals & Achievements



$$1100 + 300 + 700 + 1230$$



# ABOUT THIS RESOURCE

This NAVEX Global eBook is a compilation of content originally appearing on the NAVEX Global blog, Ethics & Compliance Matters™. The blog strives to go beyond the “what” and educate, inform and inspire compliance professionals on “why” things matters, and “how” it applies to them.

## ABOUT THE #YCDETHICS CAMPAIGN

The You Can't Delegate Ethics (#YCDEthics) campaign supports the conversation driven by movements like #MeToo and #TIMESUP, and intends to elevate the need for action up to the level of the C-suite and board of directors. Systemic change will occur only when good people in power take responsibility for the issue of sexual harassment and create workplaces that do not tolerate it. You can't delegate ethics on the issue of sexual harassment.

## ADDITIONAL RESOURCES

### » **Awareness Videos**

Series of awareness videos to initiate a more thoughtful conversation about sexual harassment's effect on workplace culture – and culture's central role is stopping it.

[Watch and Download the Videos](#)

### » **Sample Harassment Policy**

This zero-tolerance sample policy focuses on maintaining a work environment free from harassment including racial, color, religious, national origin, sexual, age, disability, genetic information, military status, or other harassment based on a legally-protected status.

[Get Free Sample Policy](#)

### » **When Sexual Harassment Impacts Corporate Culture eBook**

Get the latest insights and best practices on how to proactively address your company's expectations for employee behavior, identify gaps in a speak-up culture, and properly respond to allegations of misconduct.

[Download eBook](#)

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