When sexual harassment impacts corporate culture

INSIDE THIS PUBLICATION:
- Using metrics to gauge corporate culture
- Sexual harassment must become a compliance issue
- NAVEX Global: Permissive cultures make training a scapegoat
- Sexual misconduct vs. speaking up
- How board members can prepare for a #MeToo moment
- Preventing sexual misconduct at work
About us

**COMPLIANCE WEEK**

Compliance Week, published by Wilmington plc, is an information service on corporate governance, risk, and compliance that features a weekly electronic newsletter, a monthly print magazine, proprietary databases, industry-leading events, and a variety of interactive features and forums.

Founded in 2002, Compliance Week has become the go to resource for public company risk, compliance, and audit executives; Compliance Week now reaches more than 60,000 financial, legal, audit, risk, and compliance executives. http://www.complianceweek.com

**NAVEX GLOBAL**

NAVEX Global’s comprehensive suite of ethics and compliance software, content and services helps organizations protect their people, reputation and bottom line. Trusted by 95 of the FORTUNE 100 and more than 12,500 clients, its solutions are informed by the largest ethics and compliance community in the world. For more information, visit www.navexglobal.com.
Inside this e-Book

Using metrics to gauge corporate culture 4
Sexual harassment must become a compliance issue 7
NAVEX Global: Permissive cultures make training a scapegoat 9
Sexual misconduct vs. speaking up 10
How board members can prepare for a #MeToo moment 12
Preventing sexual misconduct at work 14
Finding useful metrics to measure corporate culture is not always an easy task for ethics and compliance officers—but once unearthed, such data can be a gold mine for an ethics and compliance program.

Without metrics, chief ethics and compliance officers have no way to gauge the effectiveness of corporate culture. A single metric by itself has limited value until it can be correlated with other metrics to provide actionable context; something that helps to facilitate insight and decision making.

The more data that can be mined, the easier it becomes for ethics and compliance teams to unearth where a problem may be brewing or where cultural weaknesses lurk. Best of all, most compliance metrics are universal; they can be used by any company—public or private, large or small, and no matter the industry.

At NAVEX Global’s 2017 Ethics and Compliance Virtual Conference, ethics officers shared their approaches toward cultivating a speak-up culture and measuring effectiveness within their organizations. Fundamentally, an effective speak-up culture is one in which employees feel comfortable coming...
forward with a question or to raise a concern, without fear of retaliation.

Two common metrics that most companies traditionally have tracked to measure culture are the number of reports per 100 employees and the anonymous report rate. “What’s very important for organizations to do is also break your total data down by business unit,” said Carrie Penman, chief compliance officer at NAVEX Global.

Penman cited a real-world example of reporting data provided by a chief ethics officer showing that the anonymous report rate by business unit in that company ranged between 33 percent and 81 percent. A high rate of anonymous reports may indicate that there are some issues worth looking at, she said.

What this data set further revealed is that 77 percent of reports coming into the corporate center were anonymous, which was troubling because that’s the one group that should be leading and managing ethics and compliance initiatives and culture, Penman said. “It was an opportunity for this organization to do some further analysis as to what was driving this set of data,” she said. “They found that they did, in fact, have a culture of fear and concern about retaliation—in particular, at the corporate center.”

Aerospace and defense company L3 Technologies is another example of a company that compares the reports of each business unit to make sense of the data. Lawrence Wasnock, vice president and corporate ethics officer at L3 Technologies, said he also looks at each business unit’s data individually over time “to get a historical feel of whether reporting is going up or down.” Moreover, Wasnock said he also looks to external benchmarks from the aerospace and defense industry in which L3 operates, as well as to general benchmark data to use as a comparison tool.

When cultivating a speak-up culture, collaboration is key. “Instilling a speak-up culture is not just the responsibility of the ethics program alone; it’s an enterprise-wide responsibility,” Wasnock said.

By partnering with HR, legal, security, internal audit, and environmental health and safety, resources and data can be leveraged, and alignment achieved. HR reports, especially, can be a valuable source of data, but may often be overlooked by ethics and compliance teams.

For example, for many years, Duke Energy reported only on those cases it received through the company’s hotline before it started to incorporate data from HR, said Allen Stewart, Duke Energy’s director of ethics. In fact, Duke Energy “recently started paying much more attention to all types of HR reports,” Stewart said, including both specific allegations and general reports it receives from HR. “Those are also turning out to be a very rich source of data,” he said.

It’s important to keep an eye out for certain themes and trends in both HR reports and hotline data. Red flags to watch for include a spike in the volume of HR reports or hotline calls coming from a specific business unit, geographic location, or even concerning a specific supervisor; or a high volume of complaints concerning a specific type of allegation—such as labor violations or sexual harassment.

Also, pay attention not only to individual cases, but also the aggregate number of cases coming from a specific location or division. A high number of cases could be an indication that employees don’t feel comfortable raising concerns to a certain supervisor, and so they turn to HR or the hotline instead. That suggests a culture that could use some adjustment, Stewart said.

Moreover, ethics and compliance should partner with HR during the exit-interview process, Penman said. That’s a good opportunity to ask employees who are leaving if they have ever witnessed wrongdoing. If so, did they report it? If not, why not?

“The exit interview is a very critical process and can be compared with the hotline data,” Penman said.

Outside of HR, ethics and compliance teams should think creatively about what other departments may hold data that can be captured internally to gauge culture. Take, for example, a pilot program
that Duke Energy just recently launched to track information coming through its customer call centers. The idea is to capture information received as it relates to employee behavior, Stewart said, like if a technician’s behavior violated one of Duke Energy’s core values.

Internal investigations provide yet another opportunity to foster a speak-up culture. One thing L3 does, for example, is “at the conclusion of an investigation, when we close out with the reporter (the individual who raised the concern), we will actually ask the individual, ‘were they satisfied with the process?’ Hear what I said: the process, not necessarily the conclusion,” Wasnock said.

Even if it turns out that the allegations were unsubstantiated, it’s still important that employees feel that their concerns were heard, and that the process was fair, Wasnock said, “so the satisfaction rate is very important at L3.”

Above all else, throughout the process of seeking key metrics and measuring culture, it’s important not to lose sight of the end goal: “One of the most important goals of an ethics program,” Wasnock said, “is to identify the root cause.” What factors are contributing to the issues that the company is seeing? What can be done to improve the situation?

Accumulating data to mine for rare gems of insight is just one part of cultivating a speak-up culture. The other part, Stewart said, is “offering actionable recommendations that will materially impact our organizational culture.”

Having a clear communication strategy is a vital component of getting long-term value from the data that the ethics and compliance team gathers, “meaning, we need to do more than just present accurate information,” Stewart continued. “We must explore the data, translating it into key strategic insights. The end game here is to identify organizational trends or significant issues that are most likely to create ethical risk for the company.”

“Instilling a speak-up culture is not just the responsibility of the ethics program alone; it’s an enterprise-wide responsibility.”

Lawrence Wasnock, Corporate Ethics Officer, L3 Technologies

---

NAVEX Global CCO Carrie Penman warns of red flags

- A spike in volume of HR reports at a location
- Ignoring or trivializing HR reports
- Management either not wanting to see data, or not wanting data reported up the chain
- Spikes in reports that are out of the norm for the company or location
- Changes in substantiation rates
- Change in patterns of anonymous reporting
- No, or few, reports or leadership pride in lack of reports
- Long case closure times in certain locations or for certain investigators
- Departmental requests to forward reports and then close without further information
- Reports from organizations that have compliance responsibilities—and particularly if those reports are anonymous in nature

Source: NAVEX Global
Sexual harassment must become a compliance issue

The recent spate of sexual harassment claims surfacing in Hollywood enforce a broader corporate implication: No longer can sexual harassment claims be shuffled off to HR, writes Joe Mont.

Sexual harassment in the workplace is certainly nothing new or unheard of. What is new is the growing trend of victim empowerment, with men and women striking back against the powerful creeps who have been strutting above the law and beyond proper ethical behavior.

Among the figures brought down by recent charges: actor Kevin Spacey; Fox hosts Bill O’Reilly and Eric Bolling; media giant Roger Ailes; NPR news executive Mike Oreske; and Hollywood mogul Harvey Weinstein. In the short time between writing this and your reading it, there is a strong likelihood that more victims will come forward and more abusers will face justice in some form or forum.

The wave of accusers elevates a problem that has long been a matter for human resources departments...
Uber, the popular ride-sharing service, makes the case for CCO intervention. More than 20 employees were fired amid 215 human resources reports regarding harassment. Revelations that Uber executives tolerated a culture of harassment were a factor in the ouster of CEO and co-founder Travis Kalanick.

The episode underscores two emerging business realities: that shareholders care more about the bottom line and what constitutes “materiality” is a shifting benchmark.

Harassment settlements are becoming multi-million dollar deals. Even if a company subsidizes a settlement concerning an executive or figurehead, it is unlikely the price tag would move the needle on what regulators and shareholders would consider as materiality for public company disclosure purposes. That may be changing.

One can argue, quite easily, that a shareholder revolt and CEO ouster certainly has an effect on the bottom line. The ill effects of reputation risk are spotlighted like never before.

The strong association of organizations to their “public faces” is also a trend to consider. For example, Steve Jobs’ health issues were arguably a material concern for Apple investors. So, why wouldn’t the loss of the man who made Uber the powerhouse it is, be similarly considered? How much money has Fox lost with its loss of talent and leadership?

It seems difficult to argue that the Fox network’s ratings decrease isn’t statistically significant.

Also, like it or not the disclosure regime has drifted beyond purely financial matters to issues related to social activism. Reputation risk looms large and, yes, it will affect stock price. What if, hypothetically, Uber or Miramax were in the midst of M&A discussions? The scandal might very well have scuttled any deal.

For CCOs, harassment allegations also indicate that broader programs have failed. Take pride in your helpline/hotline? Well, widespread reports of harassment are a darn good metric that you shouldn’t and your faith is misplaced.

The lack of trust in reporting mechanisms by employees should serve as a scary warning that your desired “speak-out culture” is instead a “keep your head down” environment and other issues are hidden and suppressed.

As companies try to insulate themselves, especially by assisting with settlements or purchasing “employment practices liability insurance,” a message is sent that it is willing to buy its way out of trouble and subsidize bad behavior. Kiss efforts to foster an ethical culture and “tone at the top” good-bye.

Recent surveys tell us that sexual harassment matters are rarely discussed by directors, at least not until a situation explodes onto newspaper headlines and fosters social media-waved torches and pitchforks. CCOs need to change this. Just as they should escalate any fundamental matter to the board, harassment cannot be siloed away with human resources.

Reporting must be encouraged, employees must feel safe, and corporate resolution and follow-up is a necessity. Averting your gaze can no longer be tolerated, because shareholders are no longer looking the other way.

The lack of trust in reporting mechanisms by employees should serve as a scary warning that your desired “speak-out culture” is instead a “keep your head down” environment and other issues are hidden and suppressed.
Permissive cultures make training a scapegoat, rather than a competitive advantage

By Ingrid Fredeen, VP, Online Learning Content, NAVEX Global.

Thanks to the onslaught of digital tools available to us today, primarily social media, we are getting a glimpse behind the curtain at a lot of companies. Employees are freely commenting on their employers, and the missteps they make in handling their concerns about workplace culture. When companies allow harassers to stay employed, blame the victim, or retaliate against those with the courage to speak up, we often hear about it first via a viral, social media post.

Permissive cultures are those cultures that turn a blind eye—those cultures that know something is going on but don’t deal with it properly, or look the other way because it is financially beneficial in the short term.

In order to build a culture that is respectful and inclusive and where harassment isn’t tolerated, an organization must fundamentally have its house in order.

This has resulted in the seemingly ubiquitous reports of sexual harassment and workplace discrimination, and begs the question: Is harassment training really working?

How we answer that question depends on how we define working as well as the context in which we view training (i.e., a company’s culture). If we just define working as simply providing a legal defense for anticipated reports of misconduct within a permissive culture, we turn training into a Band-Aid on a much larger wound.

Employees will never believe that your organization really cares if your culture (and leaders) sends a contradictory message. If we instead define working as reinforcing the ethical behaviors and values set in place by senior leaders (and of course fundamentally adopted by and espoused by these same leaders), well, then we have a success metric to work toward.

In order to build a culture that is respectful and inclusive and where harassment isn’t tolerated, an organization must fundamentally have its house in order—executive leadership must fully, and openly, live the value that harassment will not be tolerated, and those who speak up will not be victimized or retaliated against. Period. You can’t delegate ethics.

This is the foundation upon which training can generate the greatest ROI. When this foundation is laid and stable, high-quality training becomes an agent of change (rather than a potential waste of time and money that can make cynical employees even more so). High-quality training has the power to impact employees in profound ways—a great training in the right environment can change the world for an employee who is empowered to speak up.

Ingrid Fredeen, VP, Online Learning Content, NAVEX Global, has been specializing in ethics and legal compliance training for more than 10 years. She is the principal design and content developer for NAVEX Global’s online training course initiatives utilizing her more than 20 years of specialization in employment law and legal compliance. Prior to joining NAVEX Global, Ingrid worked both as a litigator with Littler Mendelson, the world’s largest employment law firm, and as in-house corporate counsel for General Mills, Inc., a premier Fortune 500 food manufacturing company.
In the end, the destruction of Hollywood mogul Harvey Weinstein’s career took only a few newspaper articles and three days of whispermongering. But in reality, Weinstein set the stage for his downfall decades earlier, when he began an extensive pattern of sexual misconduct and workplace predation that made him one of the worst-kept secrets in Tinseltown: If you are a woman, and you are meeting with Harvey Weinstein, make sure you have somebody with you. Otherwise, very bad things will happen.

Women in all industries continue to face a wide array of sexual discrimination and misbehavior today, ranging from glass ceilings to hostile environments, to outright sexual assault. And even among this standard, Weinstein’s behavior, recently documented by some ace reporting by the New York Times, finally tore the roof off of it and exposed it to the full light of day.

What seems especially strange about this story is how seamy it is, even by Hollywood standards, where there are few saints, and where many who build their careers there often find themselves in compromising positions not of their own making. Weinstein made a habit of constantly targeting female employees at his own company as well as a legion of actresses to whom he took a fancy. He would badger and hound them with blatant sexual advances; in one well-publicized account, actress Ashley Judd recounts how she went to a breakfast meeting with Weinstein, which turned into his propositioning himself to her, leaving Judd trying to figure out how to get out of the room without angering Weinstein.

Weinstein has been such a powerful figure in Hollywood—creating an endless string of critical and commercial successes over the last 25 years—that even A-list actresses have long been afraid of speaking out publicly against him for fear that he might retaliate against them in the market by dissuading others in the industry from hiring them. And that is to say nothing of the toxic environment at Weinstein’s own company, where he had a phalanx
of enablers who either covered up his behavior, or made up justifications for it, or pretended it didn’t exist. Weinstein had paid off numerous people over the years for his transgressions—some of which were as serious as rape—without ever admitting a shred of responsibility. He still denies these accusations, even in the face of contrary evidence, including audio files.

Still, even with his whole company (including his board), the bulk of Hollywood, and any female actress who had ever heard about him knowing what kind of a malicious creep he was, Weinstein remained untouchable. How untouchable, you ask? So untouchable that he managed to hire Lisa Bloom as his legal advisor for sexual harassment matters; Bloom is the daughter of Gloria Allred, the legendary women’s rights attorney. That is how far the compromise goes.

Or went, anyway. On Oct. 5, the Times broke its story. By Oct. 6, Weinstein was talking about taking a leave of absence as a third of his company’s all-male board resigned, and by Sunday, Bloom had resigned too, and Weinstein’s board terminated him. The phrase “better late than never” holds here, but one gets a bad taste in the mouth saying it. This should never have gone this far.

The Weinstein debacle—with its extensive corporate complicity and culture of fear among Hollywood’s extensive talent spectrum—is a classic example of how hard it can be to create any kind of speak-up culture when all of the power in an organization is stacked against it. Compliance officers often speak about how important it is to create a culture where employees are empowered to step up and speak out when they see signs of misconduct. But it is far, far easier said than done. It is one thing to stump for a system of anonymous reporting, whistleblower protections, serious codes of conduct with teeth and a board to make sure it all works as it should when the organization is not toxic or coming off a major compliance failure. But what the heck is a compliance department supposed to do at a company whose top talent is so out of control, and where the rank and file are living under such a culture of fear that even the most powerful talent in Hollywood can’t do anything about it without risking their careers?

Situations like that take incredibly brave people to sacrifice themselves, again and again, to build the case that needs building. And in Weinstein’s case, it took decades to build that case off of volumes of complaints too large to ignore and a slowly shifting cultural standard that in light of Bill Cosby, Roger Ailes, and Bill O’Reilly can no longer accept silent consent on behavior that no decent person would tolerate otherwise.

But it should never have taken that. And hopefully, what comes from this is a case study others can use to underscore how important it is to build a robust series of internal controls and the groundwork for a legitimate speak-up culture before it is needed. The time when it feels the least necessary is the time when it’s most important to build that culture and the procedures and traditions to stand it up. It takes so little toxin to poison the well at an organization. In compliance, we cannot afford to let even a single drop taint the water. So start today, and start not by building the tools and infrastructure that are needed for a strong speak-up culture. Heck, those things probably existed at Weinstein’s company. No, what is needed is the certainty that if people do speak up, they will be protected, they will be heard, and they will be taken seriously. You don’t need a fancy hotline or flashy code of conduct for that. Just the leadership to point at certain behaviors and say not here, not ever, no exceptions.
This October, dozens of women accused Hollywood mogul Harvey Weinstein of gross severe sexual misconduct, which kicked off a wave of similar allegations against dozens of high-profile individuals in various industries. It became part of the #MeToo movement, and one of the defining moments of 2017. On October 24, the Boardlist, together with Qualtrics, released a survey of some 400 board members to gauge their views on gender diversity and sexual misconduct. And the survey revealed that 77 percent of the directors surveyed had not discussed accusations of sexually inappropriate behavior and/or sexism in the workplace on their respective boards. More importantly, 88 percent of them had not implemented a plan of action, in light of recent allegations of sexual misconduct, to deal with such an accusation at the board level.

The points arose in context yet again when PwC recently released its 2017 Annual Corporate Directors Survey, which canvased 866 directors from a selection of companies spanning a dozen different industries, and most of which (75%) had annual revenues north of $1 billion. Men respondents outnumbered women by 84 percent to just 16 percent, underscoring how gender diversity issues have become a board priority too big to ignore.

The PwC survey further points out that director discontent is at an all-time high, with almost half...
of directors believing that one or more of their fellow board directors should be replaced, and with one-fifth of them saying that two or more of them should be replaced.

At the same time, the survey points out that while female directors tend to be more socially aware, there is still a significant gender skew among directors themselves, with only 35 percent of male directors seeing gender diversity as an important issue, versus 68 percent of female directors. Add to this a final point: that 68 percent of directors said their board made changes in 2017 as a result of their board/committee assessment process, compared to just 49 percent in 2016.

Taken together, it all adds up to what seems to be an unusually fragile situation for directors, especially if a Weinstein-level allegation lands among them. Paul DeNicola (Managing Director, PwC Governance Insights Center and co-author of the PwC 2017 Annual Corporate Directors Survey) agrees, but notes that this is all perhaps part of a larger issue.

"The discussion, or lack of it, in boardrooms on sexual harassment is part of a larger discussion that boards need to have to talk about corporate culture," DeNicola said in an interview with Compliance Week. "When it comes to the culture of an organization, it’s very easy to take the position that ‘it’s something I just know. I have a gut feeling that things are okay. Culture is qualitative. That’s a fallacy.’"

DeNicola says that there are qualitative metrics companies can use to gauge the state of an organization’s culture: employee engagement surveys, employee turnover statistics, attrition rates of high performers, 360-degree feedback, C-suite exit interviews, whistleblower complaints, social media posts, and traditional press coverage.

In addition, DeNicola says, boards need to spend more time interacting with employee groups beyond the C-suite to get a true sense of an organization’s culture, and where there might be an environment to give rise to a sexual misconduct allegation.

But boards also need to take their own self-assessments more seriously, DeNicola says, with institutional investors and directors themselves less willing than ever to tolerate an underperforming peer. "Self-assessments are not just a compliance exercise," DeNicola says. “You need the board leadership to get behind them and drive them, and you need to take action on those results. You can’t just do it once a year and then stick it in the bottom drawer.”

The PwC survey noted that 46 percent of the directors surveyed said that an ideal time to engage with shareholders is when there is a significant crisis at the company. A Weinstein event certainly fits that bill. And while there are still a fair number of directors who simply don’t believe it is appropriate to engage with shareholders, DeNicola says, for the most part companies have turned a corner on that.

"In today’s world, most companies have proactive engagement programs with their largest shareholders, and we would say that proactive engagement is a good thing,” DeNicola says. In the event of a crisis, boards are in a far better position to have those shareholder discussions if they have already established a solid working relationship with shareholders. "Picking up to the phone to call shareholders after the explosion, when there is no relationship beforehand, makes it much more difficult.”

The good news in all of this is that because of boards’ growing desire to talk about culture in general, chief compliance officers can gain board-level visibility. The expectation, DeNicola says, is that as boards dedicate more time to discuss culture, compliance will be a key part of that discussion.

“It’s critical for CCOs to be prepared for those discussions,” DeNicola says. “Presenting to the board is a different context than interacting inside of a company. Boards are looking at it from a strategic point of view. Compliance officers need to make sure their presentations and styles are not too granular. Make sure all the data is available, but be able to provide the insights to help the directors make their decisions.”
Although attention has focused heavily on individuals in the entertainment and media industries, of late—starting with the downfall of Hollywood mogul Harvey Weinstein—the lessons the sexual harassment allegations impart apply to every company across every industry. “This is one of the biggest trends in many, many years,” Ingrid Fredeen, vice president and senior product manager for NAVEX Engage, said during a recent Webinar on the biggest ethics and compliance trends in 2018.

For companies learning to operate in this new normal, many ethics and compliance teams are starting to reevaluate how to address sexual harassment in the workplace, including whether they need to revise their anti-harassment policies, procedures, and training. “More and more companies are coming to us, rethinking their approach on this topic,” Fredeen said.

For all other prudent ethics and compliance officers, senior leaders, and board members looking to avoid a sexual harassment public relations crisis, consider carefully the following preventative measures:

**Pre-screen employees before making any significant appointments, particularly of senior executives and board members.** “There is a rich amount of material in the public domain,” Daniel
Nardello, founder of investigations firm Nardello & Co., said during a Webinar, sponsored by law firm Morrison Foerster. Examples of materials that should be extensively reviewed include past criminal records, social media communications, and any previous litigation filed against the individual, Nardello said.

**Do not underestimate the power of training.** Conversations that cross the line between harassment and discrimination should not be allowed, but it’s on employers to help employees navigate through these difficult conversations: Have employees been educated about the difference between respectful and disrespectful conversations? Do they understand what behavior is allowed and not allowed?

Anti-harassment training should be conducted at least every other year. And sign-in sheets should be kept as documentation to show not only that anti-harassment training has been provided, but also who has received that training, said Janie Schullman, a Morrison Foerster partner.

Training on anti-harassment matters should also address the company’s policies on misconduct that occurs outside the four walls of the company, or after work hours. “Talk through those situations,” Fredeen of NAVEX Engage said. “Come up with guiding principles.”

According to the findings of a new study, provided exclusively to Compliance Week from Neighborhood Watch for Corporations and based on an online survey of 400 U.S.-based employees who personally experienced sexual harassment on the job, 35 percent of respondents said they were not aware of employer-provided training. Twenty-six percent said they either had no option available to report sexual harassment or were not aware of how to report it.

**Ensure that communication channels for employees to report concerns are both available and effective.** A vital aspect of addressing anti-harassment issues in the workplace is ensuring that employees are aware of and have readily available and effective channels to report incidents. Today more than ever before, social media channels are providing a voice and a support network to victims of sexual harassment. “What you’re seeing now is that people are feeling much more emboldened to come forward without the fear of retaliation,” said Morrison Foerster partner Carrie Cohen.

The bottom line is that employees no longer need to rely on their employers to get issues resolved. “They now have other platforms to express themselves,” Fredeen said.

In fact, the Neighborhood Watch for Corporations survey indicated that employees today are far more likely to report an incident of sexual harassment using a guided third-party app in which users have the choice to remain anonymous than they are to report an incident of sexual harassment to a hotline or directly to a manager.

The average employee has a multitude of reporting channels with which to report incidents, from hotlines to web forms or directly to a manager or supervisor, and any one of these reporting channels could serve as a deterrent to reporting misconduct—if an employee has concerns about anonymity, for example.

**Investigate allegations promptly.** Keep in mind, information that triggers an investigation can come from anywhere, including allegations made in the media or through other unconventional reporting methods like social media. “It is important to air on the side of caution and look at
these as credible allegations,” said Morrison Foerster partner Josh Hill.

An internal investigation should be conducted as promptly as possible. Determine whether to bring in outside help—forensic accountants or a reputable outside investigator, for example—and ensure that all appropriate witnesses are interviewed and that all relevant documents are reviewed and maintained.

---

**Issues of culture, gender equality, discrimination and harassment are now rightfully coming to the attention of company boards.**

When determining the scope of the investigation, consider the nature and gravity of the allegations; the source of the allegations; the circumstances under which allegations are received; and whether you’re able to corroborate the initial allegations. “Flexibility is key,” Hill said. “The scope that is set initially may not be the scope of the investigation as you continue.”

**Hold people accountable and monitor behavior.** Have a system in place in which supervisors and management understand and know how to handle different types of accusations. For example, what is the organization’s policy for handling a “he-said-she-said” scenario that doesn’t necessarily amount to illegal misconduct but that may be making an employee feel uncomfortable—a dirty joke, an inappropriate comment, a playful tap on the rear?

“The bottom line is that an investigation isn’t always going to yield a clear answer,” Schulman said. In these circumstances, employees should be refreshed on the company’s anti-harassment policy, and the employee coming forward with the allegations should be reminded of his or her anti-retaliation rights.

It is important to keep in mind that the accused also has rights, Schulman added. Be careful that the investigation doesn’t become a witch hunt, and that the employee isn’t fired without substantiated allegations, because that could backfire on the company by turning into a wrongful termination claim, she said.

**Have “the talk.”** As uncomfortable as a conversation can be for everybody, sex needs to be addressed in the workplace. A survey conducted last year by the Boardlist found that 77 percent of 400 board members at public and private companies had not discussed accusations of sexually inappropriate behavior and/or sexism in the workplace. Moreover, 88 percent said they had not implemented a plan of action following revelations in the media, and 83 percent said they had not re-evaluated the company’s risks regarding sexual harassment or sexist behavior at the workplace.

Common reasons cited in the Boardlist survey for not having discussed issues of sexually inappropriate behavior and/or sexism in the workplace included a perception that it was “not an issue,” “not a focus area,” or “not a concern for the company.” Other reasons included that the issue “just hasn’t come up;” “board members are men;” or it wouldn’t be “well-received.” Each of these reasons underscore the need for more discussions on anti-harassment at the board and senior-management level.

“For every company—public and private—issues of culture, gender equality, discrimination and harassment are now rightfully coming to the attention of company boards,” the Boardlist founder Sukhinder Singh Cassidy said. “Addressing these issues needs to become a standard practice, not an afterthought.”

**Learn from past experiences.** Prudent ethics and compliance officers should have a second look at any previously addressed harassment allegations, ideally with the help of counsel, Fredeen said. “We can all learn from how we did, or did not, properly address things in the past.”
MASTER CLASS SERIES

ECVC2018 Master Class is a new educational series brought to you by the NAVEX Global Ethics & Compliance Virtual Conference. Each quarter, dive into the most pressing compliance issues with a team of industry specialists, and participate in a highly concentrated, instructive virtual event.

Listen to thought leaders. Learn from experts. Lead better.