

The Board's Role in REVAMPING WORKPLACE CULTURE TO PREVENT HARASSMENT

In October 2018, the U.S. Equal Employment Opportunity Commission (EEOC) released [preliminary fiscal year 2018 data](#) reporting increases in harassment charges and litigation, and hits on the EEOC's harassment webpage have doubled since the start of the #MeToo movement in late 2017.



In the [Co-Chairs' 2016 Report](#) of the Select Task Force on the Study of Harassment in the Workplace, the EEOC issued recommendations to employers on the key components for changing an organization's culture and preventing harassment — leadership, accountability, policies, procedures, and training.

On Wednesday, October 31, 2018, Anne Wallestad, BoardSource president & CEO, presented testimony at a public meeting of the EEOC focused on these components and how they can be used to foster civil, respectful, and harassment-free workplaces. She was one of seven panelists invited to share their thoughts and recommendations. Due to the importance of this topic and its applicability to boards throughout the U.S., we have created a resource for you based on Anne's statement featuring questions every board should be asking itself about the issue. We encourage your board to use this resource to help gain a deeper understanding of its responsibility, ensure your organization treats its employees fairly and appropriately, comply with all relevant laws, and address all issues of harassment.

ORGANIZATION-WIDE POLICY SETTING AND PRACTICES

A fundamental board role is to ensure that there are strong policies and practices related to reporting and addressing harassment. Boards should proactively ask the following questions:

Whistleblower policy

- Do we have a formalized whistleblower policy that enables staff to report issues of abuse or wrongdoing at any time?
- Does it include a direct reporting line to the board of directors so that reports related to the CEO's own leadership cannot be suppressed by the CEO?
- Does it include a protocol that alerts the board of any reports made at the staff level and how they are being addressed?

Hiring and references

Criminal background checks:

- Based on the work that we do, are we required to conduct criminal background checks on all potential employees (and/or volunteers)?
- Even if it's not legally required, should we adopt that practice?
- What other mechanisms do we have in place to vet potential employees and volunteers?

Reference checks:

- What are our policies related to reference checks?
- Do we have a mechanism for preventing a current employee from providing a positive reference for a former employee who was involved in sexual misconduct at our organization?

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Staff demographics:

- Does the demographic makeup of our staff or leadership create any “red flags” as it relates to the hiring practices of the organization?
- Is there any evidence that women, or any other subgroup, are being overlooked for positions, whether in initial hiring or advancement opportunities?

Reporting, investigation, and consequences

- Are there reporting mechanisms that encourage victims of harassment or assault to come forward, regardless of who the perpetrator was?
- What expectation should be set about when and how the board will be notified about allegations and/or investigations?
- Is there an expectation that every reported incident will be investigated?
- In which scenarios should that be an external – versus internal – investigation?
- When should allegations be reported to law enforcement?
- What general guidelines should be set about the consequences for harassment?
- How should those guidelines apply to non-staff stakeholders, such as volunteers, donors, or even board members themselves?

Communications and accountability

- If faced with a situation of sexual misconduct by someone affiliated with our organization, how will we demonstrate accountability?
- Do we have clear policies about who is empowered to serve as a spokesperson for our organization?
- In what circumstances would we err on the side of more (or less) transparency in our communications?

CHIEF EXECUTIVE OVERSIGHT

The board is responsible for chief executive oversight, which plays an essential role in preventing and addressing workplace harassment. The board is responsible for ensuring that the CEO is providing strong leadership to the organization and its staff as well as ensuring that the CEO's power doesn't go unchecked if there are issues of abuse or mistreatment. In the case of a CEO who is condoning – or is at the center of – an organization's harm of its employees, board-level action may be the only recourse.

To effectively leverage CEO oversight as a mechanism for preventing and addressing workplace harassment, boards must work to get a well-rounded view of the chief executive's performance, while simultaneously respecting the distinct roles of the board and CEO. Beyond the whistleblower policy, the best and primary way to do this is through a thoughtful annual evaluation process that incorporates feedback from staff.

- Does the board conduct an annual, written evaluation of the CEO?
- Does the review include confidential feedback from – at a minimum – those employees who report directly to the CEO?
- Does the organization conduct staff surveys to provide a helpful window into the CEO's leadership?
- Does the board monitor spikes in attrition or significant variances within demographic categories of staff?
- Is the board attentive to publicly available commentary on sites such as [Glassdoor.com](https://www.glassdoor.com) (which enable employees and former employees to share candid feedback about an organization's work environment)?

Boards that fail to invite team feedback as a part of these annual reviews (including the 40 percent of boards that do not do annual CEO evaluations at all according to [Leading with Intent 2017](#)) are missing an important opportunity to better understand the CEO's leadership, which may be putting their organizations at risk.

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Additionally, boards should pay attention to subtler signals that may be illuminating in terms of the CEO's leadership style and orientation to staff and be indicative of underlying challenges, whether as a part of the formal review process or more generally.

- Is the CEO willing to engage senior staff leaders with the board?
- How do employees act in the CEO's presence?
- How does the CEO talk to or about the staff team?
- Is the organization successfully recruiting and retaining talented people of color and women?

Remember, context matters. What is happening within an organization and its operating environment can have a significant impact on the staff experience and its feedback about a CEO's leadership. Focus on broad themes; explore those with the chief executive.

BOARD HARASSMENT & COMPLICITY

Finally, the board must be willing to contemplate how its members might be contributing to a culture that enables sexual misconduct or harassment, whether directly or indirectly.

- Does the board have a mechanism for reporting and addressing sexual misconduct by a board member?
- Are there protections in place to assure a CEO and other staff members that they won't face retaliation if they report a board member's bad behavior?
- Are there other behaviors that would be considered misconduct by a board member (e.g., dating or having an intimate relationship with a staff member) and how would they be handled if they arose?
- Are any performance metrics, such as fundraising performance or staff retention, creating perverse incentives to ignore or silence allegations of harassment?

Finally, the board's own composition may work against its ability to prevent, detect, and address harassment.

- Does the board's composition create blind spots or vulnerabilities as it relates to addressing sexual harassment and assault? (For example, a female victim may be less likely to report a male chief executive's harassment to an all-male board.)
- Are the board's definitions of what is — or isn't — sexual misconduct in step with current social mores and expectations?

CONCLUSION

There is no question that it is an abdication of responsibility for a board to ignore allegations or instances of harassment or assault, particularly when the perpetrator is the chief executive. But it is not enough for boards to passively commit the organization to addressing allegations when they arise. Boards need to proactively examine how their organization's own culture may be contributing to an environment where harassment and abuse goes unchecked. And if they don't like what they see, they have a responsibility to do something about it.