

Boards Must Lead by Example to Prevent Sexual and Other Harassment

By Jon Vegosen

When it comes to preventing sexual and other harassment, the board of directors of a corporation, association or other organization must set an appropriate tone for the culture and conduct meaningful oversight. The board also must be willing to hold both executives and fellow directors accountable for inappropriate behavior.

As recent corporate scandals have shown, a lack of board oversight can result in both top executives and board members being the most problematic perpetrators of harassment. It is critical that boards make clear to executives and board members that their organizations will not tolerate sexual or other harassment by anyone – including executives and directors of the organization.

Below is an unfortunate hypothetical example where both the board and executives failed an employee and the organization. Following the example is a checklist of the kinds of steps that a board may want to consider undertaking to ensure that board members and executives take harassment prevention seriously and that they hold those who do not accountable.

An Unfortunate Hypothetical Example

The entirely white male board of directors of a trade association and its managerial staff attend a three-day conference. On the first evening, several of them gather at the hotel bar for a few drinks after dinner. One of the directors, Joe Jones, has a few too many, and he starts telling inappropriate jokes. Some are of a sexual nature, while others degrade various ethnic groups. No one – not the managers or Joe's fellow board members – ask Joe to stop. Instead, the group encourages Joe by laughing at his jokes. A little later, Joe puts his hand on the knee of one of the female employees, Kim Murakami, who happens to be Japanese-American. Joe then touches Kim's face and tells her, in front of the others, that she is "the prettiest Japanese girl I've ever seen." Kim rolls her eyes in disgust and moves away from Joe. Joe then edges closer to Kim and asks her whom she is dating. Kim ignores him. After some more swigs of his drink, Joe laughingly bellows to Kim, "I'd love to see you take off a kimono!" Kim is horrified. She stands up to leave and says to Joe, "You're not very funny. Leave me alone."

The next morning at breakfast, Joe runs into Kim. Kim tells Joe that his conduct the previ-

ous evening offended her and made her feel very uncomfortable. Joe says that he was just kidding and that she is overreacting. Kim responds that Joe was out of line. Instead of apologizing, Joe, grabbing Kim's arm, replies, "You aren't going to make a stink about this, are you? I can have your job if you do." Kim, now fearful for her job, says nothing.

Shortly thereafter, Kim seeks out the CEO of the association and complains to him about Joe's behavior the previous evening and his threat at breakfast. The CEO, who was not present at the bar, dismisses Joe's behavior as "good old boy stuff." He tries to excuse Joe's inappropriate, rude, and lewd behavior, saying that Joe was probably drunk. The CEO then says, "Just put this behind you, Kim. Besides, there is nothing I can do. Joe is a member of the Board of Directors."

A week later, the CEO promotes Bill Smith, a relatively new employee, to a position that Kim had been in line to receive due to her excellent work and her long tenure with the association. Kim promptly files a charge of discrimination with the Illinois Department of Human Rights and the Equal Employment Opportunity Commission. She alleges that she was (1) harassed based on her sex and her national origin, (2) the victim of retaliation for having complained about the unlawful activity, and (3) discriminated against on the basis of her sex and national origin in not receiving the promotion. There is, of course, nothing preventing the press from getting wind of the incidents and running a story about them and the association's lack of leadership.

Checklist for Boards of Directors with Respect to the Prevention and Investigation of Sexual and Other Harassment


Below is a checklist of the kinds of steps that a board of directors can undertake to prevent and investigate sexual and other harassment. Indeed, had the above-referenced association board engaged in the following pro-active steps,

it is highly likely that the unfortunate incidents described above could have been avoided.

1. A board and the executive leadership team should be varied when feasible and include men, women, diverse individuals, and individuals from different backgrounds, as well as individuals with diversity of thought and experience. There should also be independent directors on the board.
2. A board should engage in meaningful oversight by setting the proper tone for the organization's culture, by diligently ensuring that the working environment is professional, welcoming, and harassment-free, and by holding executives accountable for that environment.
3. A board must make clear to all executives and employees that the board will not tolerate sexual or other harassment or retaliation by anyone—especially executives of the organization.
4. To ensure that item # 3 is observed, a board should use employment agreements, performance reviews, and compensation (especially bonuses) as incentives and deterrents to hold executives accountable for creating a professional, harassment-free working environment and for being responsive to harassment and retaliation complaints. If executives understand that their jobs and compensation are on the line when it comes to preventing and properly addressing claims of harassment and retaliation, they will have ample motivation to inspire a professional, harassment-free working environment.
5. The board should ensure that both managers and rank-and-file employees receive significant anti-harassment training, preferably on an annual basis.
6. To lead by example, and to make sure that the board is well informed, a board should receive its own meaningful anti-harassment training, preferably on an annual basis. Moreover, the organization's bylaws should contain provisions permitting the removal of a board member who engages in harassment, discrimination, or retaliation.
7. The board should proactively review, or engage legal counsel to review, the organization's anti-harassment policy and investigative procedures to make sure that they are effective and followed. The board should make sure there is clear guidance about romantic relationships between individuals in a reporting relationship and, at the very least, require that such relationships be reported to the board or other appropriate organizational group (e.g., Human Resources or specific executives).

8. The board should make sure that the organization supplements its anti-harassment policy with separate non-discrimination, diversity and inclusion, and anti-bullying policies, as well as an EEOC statement, in its employee handbook and publicize such policies to the entire organization.
9. The board should ensure that the organization has the proper resources and tools in place to manage and keep track of complaints, performance management and reviews, promotion selection criteria, and personnel records, and to document fully and appropriately employment discussions and decisions concerning employees.
10. There should be multiple avenues for employees to address harassing and retaliatory behavior. The board should consider installing a "hotline" whereby employees have the option to register harassment and retaliation complaints directly with the board if they do not believe that management is being responsive to them or if management is causing the issue at hand.

Conclusion

Had the board of directors followed the guidelines above, it would have prevented not only the lawsuit but also, and more importantly, the unfortunate, corrosive, and unnecessary incidents themselves. The Board's lack of leadership foreclosed that possibility. To prevent sexual and other harassment, it is essential that a board of directors set an appropriate tone and engage in meaningful oversight. In addition, a board must be willing to hold both executives and follow directors responsible for unsuitable conduct. By following the suggestions outlined above, corporations, associations, and other organizations can go a long way to promoting a professional and safe working environment. 

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