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The Pandemic, Protests and a Test of Corporate Commitment

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The economic downturn is no excuse for shelving promises to employees, consumers and suppliers. A public health crisis and a focus on racism make it crucial to keep those pledges. General counsel should ask the board four questions to frame directors' thinking.

COVID-19 and a renewed spotlight on persistent racism are putting last year's high-profile corporate pledges to benefit society to the test. ¹ Even as executives move to keep their companies afloat by cutting costs during the downturn, critical stakeholders say they must keep their promises to serve workers, customers, suppliers and the greater good, in addition to shareholders.

Nearly 8 in 10 (78%) consumers worldwide expect businesses "to act to protect employees and the local community" during the pandemic, according to Edelman, the global communications firm. ² Investors in control of nearly 25% of the \$74.3 trillion in worldwide assets under management are taking similar stands. ³ BlackRock, which had \$6.5 trillion in assets as of March, and State Street Global Advisors, which had \$2.7 trillion, have made high-profile recommitments to sustainable investing. ⁴ In addition, a group of more than 300 other long-term investors who manage more than \$9.2 trillion urged companies to provide emergency paid leave to workers and prioritize staff health and safety. ⁵ And no wonder: even during the crisis, investing in environment/social/governance (ESG) issues has paid off. Funds that focus on sustainability outperformed traditional funds in the first four months of the year. ⁶

In the past two weeks, mass protests against police brutality, set off by the death of George Floyd, expanded into a national and global discussion of the daily discrimination faced by people of color. The debate adds new urgency to employee and public demands for more diversity and inclusion in the workplace. Employees are looking for companies to uphold their stated values, such as Best Buy's announcement of a task force representing varied demographics and seniority levels to recommend ways the leadership and the board could address injustice. ⁷

The call to companies on these issues, the muscle behind it and the strategic import are clear. "The question is, will they do it — and how will they do it?" Ioannis Ioannou, associate professor of strategy and entrepreneurship at London Business School, said during an interview with us.

The GC Has the Opportunity and the Duty to Keep ESG on the Board's Radar

The general counsel has a critical role to play in the answer. First, the GC has ample opportunity right now. Legal leaders tell us they are communicating with the board more frequently since the

coronavirus outbreak so their latest risk analysis gets to corporate directors quickly. In some cases, briefings occur weekly or twice a week – either at the committee level or with individual board members – and over multiple channels, including teleconference, email and ad hoc meetings.

As an advisor to the board, it's imperative to help its members consider ESG implications – even as they grapple with thorny issues involving cash flow and debt. The GC should help frame their thinking on how to keep sustainability in front of decision makers facing tough choices.

“Every moment in a crisis, there are a thousand micro decisions you have to make,” Davia Temin, president and CEO of management consultancy Temin and Company, told us. “You can make them with generosity, and generosity for your stakeholders, or you can make them parsimoniously.”

Four Questions and Some Pump-Priming Examples for Board Discussion

These four questions will help GCs guide corporate directors:

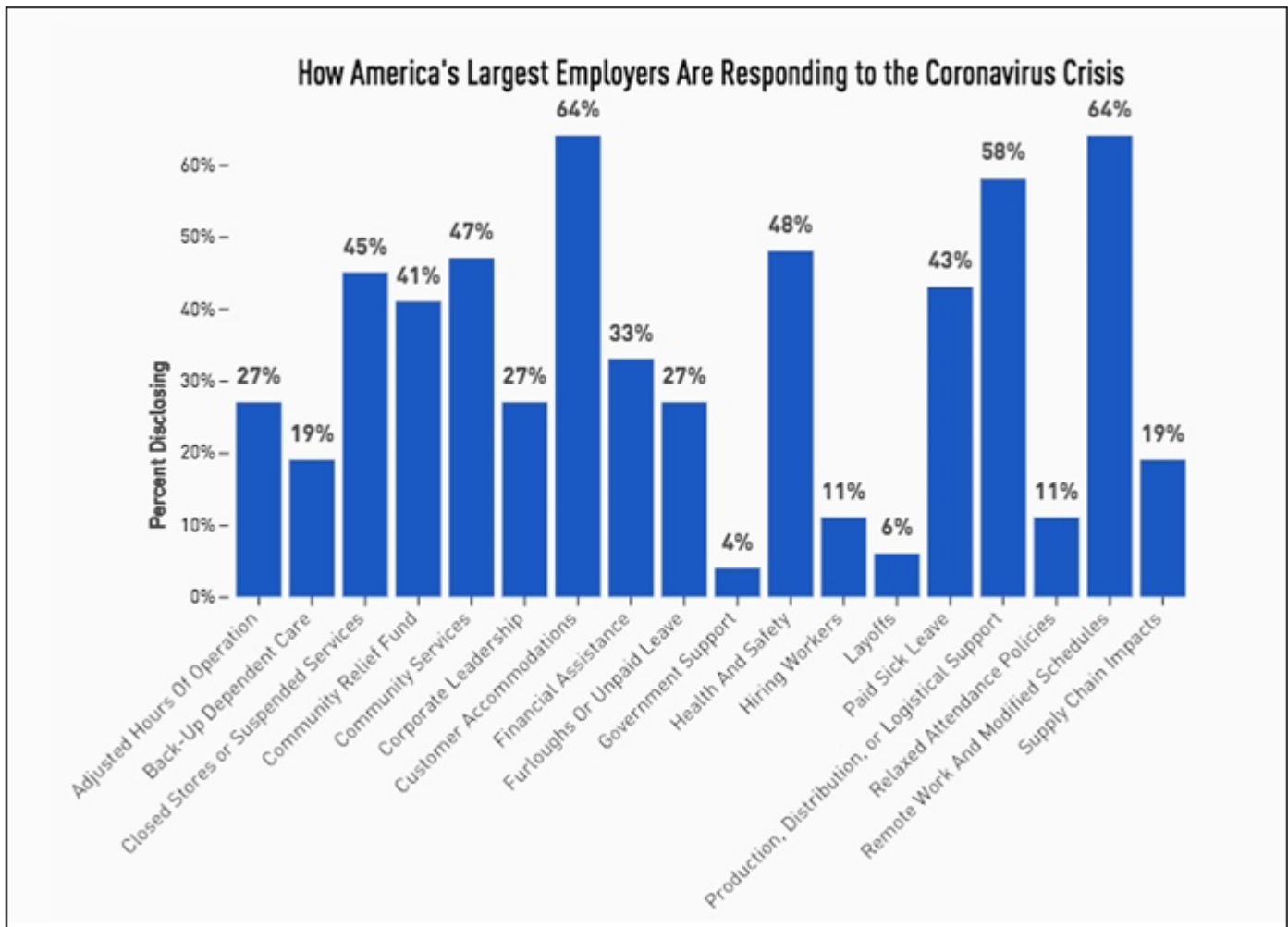
- What can our company do to protect our employees, customers and suppliers during a crisis?
- How can we tie shifts in our corporate strategy that result from the crisis to our sustainability efforts? Should we be reporting metrics that we're not?
- How can we use our company's resources and capabilities to address the urgent needs of our community and respond to the social environment?
- How can we make sure that crisis management efforts do not interfere with what we intend to do for our stakeholders in the long term?

What can our company do to protect our employees, customers and suppliers during a crisis?

Unsurprisingly, big companies are best equipped to both manage their own survival and stay true to their ESG commitments. The cash position of large-enterprise companies increased over the past year. The average non-financial company in the S&P 500 held \$3.9 billion in total cash and short-term investments in the first quarter of this year, according to S&P Global Market Intelligence. That's a 22% jump from \$3.2 billion in the first quarter of 2019.

As of 24 April, 64% of the largest 100 U.S. employers had cut prices and/or allowed customers to defer payments; 64% of them have allowed employees to work remotely with modified schedules; 48% have instituted health and safety measures for customers and workers; and 41% have contributed to community relief funds, according to JUST Capital, a non-profit research organization that tracks how companies treat external and internal stakeholders. More than a quarter (27%) cut executive pay, a sign that leadership is willing to shoulder some of the burden (see Figure 1).

Figure 1: The Response of Large U.S. Companies to COVID-19



Source: JUST Capital

Revelations of insensitive treatment of employees could damage an employer's brand for years to come. Conversely, those that excel during this time period and demonstrate their commitment to employees will be viewed as top-tier employers for the future.

"It starts with fair wages and benefits and goes to safety, opportunities for inclusion," Alison Omens, JUST Capital's chief strategy officer, told us. "At its core, it's how a company treats its workers."

Some organizations are redeploying employees whose work has slowed down rather than resorting to layoffs. For example, internal audit teams are pivoting when travel restrictions delay fieldwork. At The Heineken Company, Global Audit Manager Paul Hamaker assigned auditors to help the business with short-term pressing projects. And at Mars, Kenny Zheng, the company's global internal audit senior manager, is using the extra time to build his team's data analytics skills.

Similar shifts can support the supply chain as well as protect staff jobs: Procurement leaders tell us they have asked communications and marketing employees to reach out to vendors in their portfolio that could benefit from regular contact during the crisis but are not on procurement's

priority list. And they've asked finance departments to work directly with distressed suppliers to avoid the need to pass documents back and forth.

Even organizations that must cut or furlough workers can take steps to soften the blow. For instance, U.S. companies in the entertainment and hospitality industries that have furloughed workers pledged to continue to provide health benefits to their staff for several months, sometimes longer.⁸

And when offices reopen, companies have communicated to set expectations and show empathy about the risks of returning. Take the morning commute. This could be a dangerous moment in an employee's day, particularly for those who take public transit. To make it easier, companies could provide private transportation, discounts for ride-sharing apps, or flexible hours that allow employees to travel during non-peak times and more easily maintain social distancing.

How can we tie shifts in our corporate strategy that result from the COVID-19 crisis to our sustainability efforts? Should we be reporting metrics that we're not?

Strategists tell us they are revisiting underlying assumptions, developing scenarios and re-prioritizing initiatives to make their long-term plans more flexible at a time of heightened health, social and economic pressure.

As companies work to make supply chains more resilient and production more efficient, it is an opportunity to lock in long-term ESG goals at a moment of negotiating leverage. If you need ideas on new areas of sustainability to focus on or metrics to report, check this [list of standards](#).

How can we use our company's resources and capabilities to address the urgent needs of the community and respond to the social environment?

Some companies have reconfigured manufacturing operations to produce hand sanitizer instead of beer — or face masks instead of apparel.^{9,10}

Others have donated medical supplies to hard-hit areas such as New York City. Executives should ask if their companies can afford to donate money to help local organizations provide critical services. In Michigan, the Detroit Pistons partnered with Wayne County and other organizations to donate \$375,000 to Forgotten Harvest, a local food bank that has seen increased demand during the crisis.¹¹

If you're reducing staff, take care not to undermine progress you may have made on your diversity efforts. And protect your outside parties. It's critical to make sure each stakeholder, whether it's an employee or a vendor, has "an equitable opportunity to succeed," Jean Lee, president and CEO of the Minority Corporate Counsel Association, told us. "Those are the kinds of things that GCs can really drive."

It's important to listen to and fund employee resource groups, which represent segments of the workforce such as women, veterans or racial and ethnic minorities. These groups offer help achieving diversity and inclusion goals.

Employee groups can also provide tips for supporting supplier diversity. Another resource the company might have overlooked to bring more minority firms into its network: Tier 1 vendors with owners from under-represented groups who may know of others. Minority suppliers tell us companies should also ask them for insight into diverse segments of the consumer base.

How can we make sure that crisis management efforts do not interfere with what we intend to do for our stakeholders in the long term?

Most importantly, think about how your actions will look to others. For instance, public companies that used the U.S. Treasury's \$350 billion bailout fund for small businesses faced a backlash from both Congress and the public since they had other routes to access capital. ¹²

If you're not sure about a certain crisis management strategy, check with a trusted advisor such as a particular board member, outside counsel or someone that the CEO relies on, Temin, the consultant, told us.

She also recommends applying what she calls the "karmic cockroach test." It goes like this: Ask yourself, will this action or statement lead to reincarnation as a bug that incites disgust in others? "Somewhere deep inside," she said, "no matter what religious tradition you come from, you know you will come back as a cockroach if you do it."

by Laura Cohn

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[Contact Laura Cohn](#) with any questions or comments.

Recommended by the Authors

[How to Select the Right ESG Reporting Framework](#)

Amid rising demand from investors, customers and the public, companies need a strategy for environmental, social and governance (ESG) reporting. General counsel struggle to select a framework and effectively communicate their ESG stories because of different reporting standards.

[Revamping ESG Strategy With Investor Input: An Interview With Travelers' Yafit Cohn](#)

With investors clamoring for more information on corporate sustainability efforts, legal and IR at Travelers met with half the company's shareholder base to find out what, precisely, they want. Functional leaders can learn from their findings and subsequent decision to create a new leadership role.

[A Legal Department Lens on Vendor and In-House Diversity](#)

Three talent outcomes get a jump-start from a workforce with a mix of values, backgrounds and behaviors, where all feel treated fairly: discretionary effort, intent to stay and collaboration. Yet

corporations still don't do diversity well. Law departments can play a role on many levels.

[Unconscious Bias: It's Hard to Change People, So Change Workplace Processes](#)

Studies show unconscious bias at work in legal settings — among law firm partners and in-house counsel alike. Training on this topic is trendy, but it's best for raising awareness, not changing behavior. So, rethink performance assessments and work assignments; review retention and promotions.

Endnotes

¹ ["Shareholder Value Is No Longer Everything, Top C.E.O.s Say,"](#) The New York Times.

² ["Edelman Trust Barometer Special Report on COVID-19 Demonstrates Essential Role of the Private Sector,"](#) Edelman.

³ ["2018 Marked Uncertainty in Asset Management — Boston Consulting Group,"](#) Pensions & Investments.

⁴ ["Stewardship Engagement Guidance to Companies in Response to COVID-19,"](#) State Street Global Advisors.

⁵ ["Investor Statement on Coronavirus Response,"](#) New York City Comptroller.

⁶ ["ESG Investing Shines in Market Turmoil, With Help From Big Tech,"](#) The Wall Street Journal (subscription required).

⁷ ["Best Buy's Corie Barry on the Aftermath of George Floyd's Killing: 'We will do better,'"](#) Minneapolis/St. Paul Business Journal.

⁸ ["These 21 Prominent U.S. Businesses Are Among Those Temporarily Laying Off the Most People,"](#) USA Today.

⁹ ["Distilleries and Breweries Pivot to Producing Hand Sanitizer,"](#) Bloomberg.

¹⁰ ["Brooks Brothers General Counsel Seeks Solutions in COVID-19 Era,"](#) Bloomberg Law.

¹¹ ["Pistons Owner Tom Gores Announces \\$375,000 Grant for Forgotten Harvest,"](#) Detroit Free Press.

¹² ["Scores of U.S. Public Companies Take Small Business Rescue Funds,"](#) Financial Times (subscription required).

Also Recommended For Gartner Clients

[Ignition Guide to Running a Root Cause Session](#)

[How Legal Should Respond to the Coronavirus: 3 Conversations to Have Right Now](#)

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