



Should Your Company Weigh In?

Five governance considerations for company positions on social and political issues

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Taking a company stance on divisive political or social issues is a complex and often time-sensitive challenge. Whether it involves geopolitical developments such as the war in Ukraine or societal issues such as voting rights legislation, controversial judicial decisions or racial tensions, there is a seemingly endless list of scenarios in which a company may consider taking a position publicly.

As boards and management navigate this terrain, pressure from different and sometimes cross-cutting constituencies elevates the stakes. Regardless of the path a company chooses, there should be a thoughtful and deliberate approach that ensures the board and management have a level of trust in the governance process.

We have outlined five governance considerations for assessing whether a company should respond, either in action or in words, to a sensitive issue or development.

1. Assess the issue's relationship to the business.

How does the particular political or social issue relate to the company's business?

A key consideration is the degree to which an issue is proximate to the company's core business and operations, or even its mission statement and values. The degree of closeness and alignment between a stance on a political or social issue and the company's operations or strategy will not only impact public reception, but may also create opportunities for, or require, parallel changes to operations. For example, in the aftermath of the 2018 Parkland, Florida, school shooting, DICK's Sporting Goods implemented changes to the types of firearms sold in its stores and the age of customers to which firearms could be sold. This change married the company's public stance with a meaningful shift in operations, including an anticipated revenue impact due to the new policy.¹ Not all issues, however, will be closely tied to a company's business, and the further attenuated they are, the less compelling the rationale for a company to take a position absent other factors.

2. Consider key stakeholders. Are the company's key constituencies uniquely affected by the issue?

Another critical consideration is whether any of the company's key constituencies are uniquely affected by the particular political or social issue. This is especially important when navigating issues with disproportionate regional impacts. For example, legislation in Georgia to restrict voting access or Florida's recent legislation regarding sexual orientation and gender identity in educational settings may elicit strong reactions nationwide, but most directly impact residents of that state. Companies that are headquartered in or that have strong ties to such states will feel the most pressure to take a stance. Such a relationship may have contributed to Delta Air Lines, Georgia's largest employer, taking a public stance in response to the voter restriction law in Georgia in 2021.²

Beyond informing the decision to take a stance, identifying the most impacted constituency could also determine the nature and scope of the response. Issues or developments that impact

a large number of a company's employees may create pressure on a company to take internal stances or actions. For example, changes in employees' ability to access certain forms of healthcare as a result of recent social or political developments may cause a company to reevaluate the benefits available to its employees, independent of whether the company chooses to take a public stance on the issue.

3. Determine the appropriate level of oversight.

What issues require the board's direct oversight?

It is important to consider which responses to political or social issues should be handled by management and which require input and oversight from the board. While it is uncommon for boards to be involved in day-to-day consideration of political and social issues impacting companies, certain issues may be of such significance and sensitivity that informing the board, at a minimum, may be the prudent governance approach. If a company's response involves significant changes in the business, it is essential to ensure the board is apprised of and supportive of the strategy. Additionally, involving the board helps ensure that directors are comfortable with the proposed response, and that the public position supports or furthers the company's best interests while accounting for all stakeholders (shareholders, customers, investors, employees and more). However, issues often can be addressed without direct board involvement. What is essential is that the board and management have a level of trust in the approach and the board ultimately is comfortable with its oversight role. To determine the best approach, boards and management may find it helpful to involve legal counsel and other advisors in this process from the outset.

4. Carefully evaluate the disclosure strategy.

What is the best disclosure strategy for making the statement?

It is of course critical for a company subject to public reporting and SEC disclosure obligations to consider the effect of a company-level response to a specific political or social issue.

In particular, the requirements of the SEC's Regulation FD need to be observed. While company positions on political or social issues are not necessarily "material" information from the perspective of the U.S. securities laws, it is possible that private communications of a company position to an investor or analyst could signal a corresponding

adjustment to the company's operations or business that could be material to the market. As with all forms of communications, companies should ensure that communications on positions or actions relating to political or social issues are handled consistently with the company's disclosure policy. Investor relations teams should also ensure that statements posted on social media or similar channels are consistent with statements or disclosures included in more widely circulated press releases, SEC filings and other company disclosure documents.

In addition, when choosing to take a public position on a sensitive issue, companies can benefit from seeking guidance from internal and external communications advisors, such as public relations and investor relations professionals. Leveraging such expertise may help ensure the communications or actions are properly messaged to minimize the risk of a negative impact on the company's business or reputation.

5. Ensure individuals do not make personal beliefs appear as company positions.

How can company policies and education help executives and employees avoid having their personal views mistaken for official company positions?

A company's code of conduct or disclosure and communications policies likely provide guidelines for executives and employees on communications related to the company. However, there may be heightened scrutiny for all communications by company representatives following a new public stance by a company on a political or social issue. In particular, statements made by the company's most senior officers may be more likely to be perceived as an extension of the company's communications, even in casual or non-work-related settings. For example, statements included in a speech, a press interview, a social media post or in other forums, while not official company statements, could be seen as such. While this kind of visibility is often helpful for the company's branding and reputation, it may be detrimental when it contradicts or challenges a company's public stance on a political or social issue. Moreover, if a company has not taken a public stance on such an issue, these communications risk being mischaracterized as company positions.

To help executives and employees avoid having their personal views mistaken for official company positions, companies should not only ensure that their existing policies are robust enough to address these more informal avenues of communication but also routinely engage with their executives and employees for training on these policies. **CS**

1 See *Harvard Business School Case, "DICK's Sporting Goods Followed Its Conscience on Guns—and It Paid Off"* (Apr. 18, 2022), available at <https://hbswk.hbs.edu/item/dicks-sporting-goods-followed-its-conscience-on-guns-and-it-paid-off>.

2 See "Ed Bastian Memo: Your Right to Vote" (Mar. 31, 2021) available at <https://news.delta.com/ed-bastian-memo-your-right-vote>.

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