

## In-House Counsel's Role in Bridging the Generation 'We' Gap

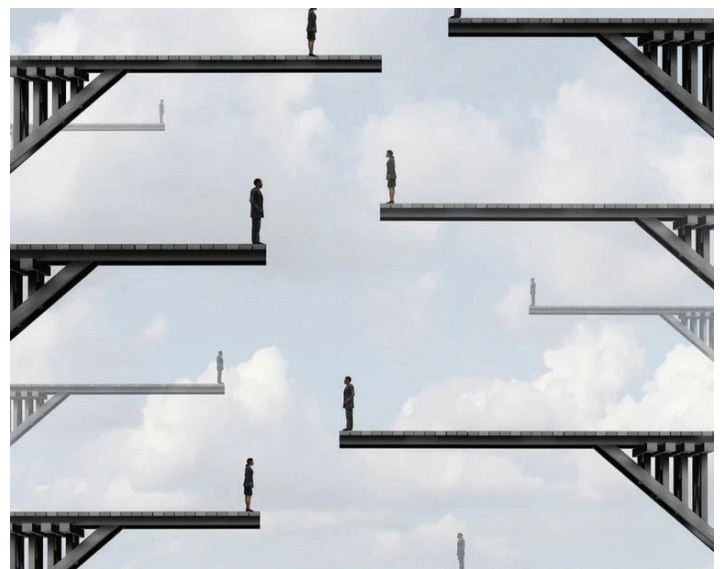
**A new generation of tech savvy, social justice-focused and environmentally aware employee stakeholders are creating recruitment, retention and other employment challenges.**

*By Jen Rubin*

A new generation of tech savvy, social justice-focused and environmentally aware employee stakeholders are creating recruitment, retention and other employment challenges. Unlike their predecessors, the "Generation We" cohort of employees (which loosely encompasses Gens Y and Z and even the new "Alphas") tend to view employment as experimental rather than a long-term commitment. Managing employees with a transactional approach to work and who demand purpose-driven employment creates significant human capital risk. Corporate counsel can play a key role in managing and mitigating that risk, not only in response to the growing ESG disclosure and regulation trends, but as part of the need to design future-proof legal frameworks for the workplace.

### **The Framework for Generation-Conscious Policies**

Good compliance practice begins with a forward-looking framework for employment policies. The pandemic has razed traditional office life and if the prediction that 37% of office desks will remain empty in 2022 comes true, the technology supporting remote work and the policies governing it are mission critical. Generation We embraces technology as a life tool, not just a work tool. The primacy of technology requires a second look at policies that regulate it. Examples of leading-edge policies include those addressing AI infrastructure in the workplace (as applied to, for example, applicant tracking systems) and policies addressing anti-bias in technology. Social media and communication policies also demand a generationally-aware review. These



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policies, which are needed for brand protection and communication consistency, may need modernization in light of the platforms Generation We inhabit. One of legal's (many) jobs is to construct that compliance framework. This may mean more than an annual review of human resources policies which is tough enough in this frenetic environment. But that policy review should include second look at all employment policies to ensure they are generationally adept, consistent with technology changes, and meet what the new workforce demands.

### **Who Participates and How**

The Zoom room may have been new at the pandemic's inception, but is mundane now. In-person teams have been displaced by fully remote or hybrid collaboration and a host of legal issues the virtual world

creates. Some employment policies may not account for virtual world inclusiveness or rules of engagement. Microaggressions could be amplified in the virtual environment as employees who feel left out may lack the typical platforms to make those feeling known – resulting in the public broadcast of employment disputes or job abandonment. It is hard to pick up on social cues from an inch square web-box. It may even be harder to identify when someone feels sidelined because of gender, race or other underrepresented status. Legal should play a role in championing people on the sidelines. This means empowering managers to shut down grandstanders who grab the virtual floor. It also means taking note of those who don't virtually raise their hands, and ensuring that all employees are heard. Rules of engagement regarding the use of video (all on? all off?) and the discouragement of side-chats and other digital unpleasantness not only express inclusiveness but role models best practices. Generation We demands inclusiveness in their work and personal lives; they are unforgiving of employers who lack sensitivity to these issues and are quick to publicize their contrary views.

### **Learning, not Training**

Mandatory training may not speak to socially aware employees who reject stereotypical gender roles and labels and embrace racial justice. Employers cannot legally abandon statutorily-mandated training, but they can modernize it. Structured meetings with a core educational focus is meaningful because it imparts information and drives behavior. Counsel should consider helping their human resource partners to update traditional training to reflect learning about unconscious bias. Similarly, new subjects like mindfulness, wellness, mental health issues and how the workplace impacts people might also be included in learning tools. Are the corporation's core messages embedded in the training or is it an off-the-shelf program lacking relevance to the business? Training is an important part of counsel's compliance obligations but incorporating the corporation's core mission into that programming in a custom-

ized way is an effective learning tool. Corporate counsel plays a key role in driving change in these learning systems and these changes could positively mitigate human capital and business risk.

### **Performance with Purpose**

Corporate counsel's role is becoming less transactional (get the deal done) and more transformational (recruiting and retaining the workforce and implementing the ceaseless legal developments that have altered how we work). Performance in this context may be more than returning value to shareholders or a fulfilling a non-profit's philanthropic aim. Performance may instead encompass achieving a group aim. The Great Resignation anecdotally informs us that Generation We is in search of meaning and personal growth, and not always money (though they are keenly interested in equitable compensation). Purpose-driven organizations can lead to a sense of community. Because community is important to this generation, the identification and amplification of the corporate mission becomes even more important. A recently released Goldman Sachs Asset management report concludes that a growing percentage of younger workers are already planning to retire earlier than their predecessors. If that movement is real, retaining the next generation of workers becomes even more important.

Generation We is driving the primacy of the employee stakeholder and underlies the addition of the "E" to ESG. This generation fearlessly exercises their workplace voice and are quick to abandon work when a business cannot articulate or veers off a cohesive a mission. Counsel can play a key role in bridging the intergenerational divide. That role and its impact begins with the compliance framework being built in a manner that adapts to the ever-growing expectations of the next generation of the workforce.

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