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Return to office: how company policy and culture can increase the risk of boardroom liability

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The pandemic forced employers to immediately adapt to remote working. This sudden shift in culture and business practice, particularly the employee/employer relationship dynamic, has presented new challenges to Boardroom decision making. Financial Institutions Underwriter, Lucy Hughes and Claims Manager, Kamal Chhibber investigate how company policy and culture can increase the risk of boardroom liability.

People and culture:

Social change and employee beliefs on their working environment have been irrevocably altered by the pandemic. As a result, directors face the challenge of developing the most effective working model, where productivity and performance are successfully balanced with employee attitudes and protecting the health and safety of staff. The new hybrid home/office working environment created by the pandemic gave employees the opportunity to schedule their working days around their domestic and personal circumstances. As a result requests that had never been considered before are now being made, for example, an employee request for permanent home working due to home caring responsibilities or a request for continuous parental flexibility.

Avoid bullying and discrimination claims

How directors' respond to these issues and form company policy may inadvertently create inequalities, increasing their exposure to discrimination claims. For example, employees who are parents that opt for remote working could suffer from a lack of visibility; so how can the business ensure they have the same opportunities for career progression?

A lack of sensitivity from managers, could result in perceived bullying and harassment. Notably, an employment tribunal in 2021 ruled that critical beliefs are protected as a philosophical belief under the Equality Act 2010* . Therefore, if an employee is harassed into a way of working or otherwise treated less favourably because of their belief, a discrimination claim has potential to be brought.

Develop a positive company culture

Company policy and governance consequentially forms company culture; unsuccessful implementation may cause low morale in certain teams, employee resentment, perceived disengagement from management and ultimately impact the ability to attract and retain talent.

One recent protest over return to work plans by employees at a well-known global tech manufacturer highlights how the board's approach to staffing can become a reputational risk. The protestors also praised the continued flexible working approach taken by their competitors and peers, demonstrating how these decisions can cause a potential loss of top talent in the post-pandemic landscape. It is not only employee satisfaction that is at stake however; similar issues have previously caused reputational issues, decreased investor confidence, negative share price impact and ultimately impacted profitability. The ongoing situation surrounding staff redundancies by a major transport company emphasises how board decisions on employment may cause severe reputational damage.

New normal: new risks

The "new normal" way of working has created fundamental corporate governance risk around employment. Culture and governance are intrinsic to the functioning of a company and new regulatory standards, including ESG regimes, continue to push D&I into the spotlight. Therefore, without building a positive diverse and inclusive workplace culture, directors are susceptible to discrimination and/or bullying claims. Ultimately, directors face the challenge of effectively balancing company performance and employee requirements. If not successfully managed they may be held liable for more harmful events, such as reputational damage, share price volatility and financial instability.

Now read our guest article by Clyde & Co that identifies 4 issues that businesses should carefully consider in order to reduce potential EPL claims.

* Top 5 recent workplace developments – January 2022 : Clyde & Co (clydeco.com)

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