

Navigating employee activism in the new norm



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The world is changing at a breakneck pace. Employees expect their organisations to address key social issues. Savvy organisations will engage with employee activism and harness this to integrate a range of views and voices to deliver on strategy and policy. Engaging with employee activism allows employers to go beyond surveys and really consider multiple points of view in a more robust manner. However, engagement needs to be thought out carefully and always approached with empathy. Not engaging with the pressing issues of our times is no longer an option.

The world is changing at a breakneck pace in unforeseen ways

2020 was a year of unprecedented disruption and loss and where many yearned to ‘get back to normal’. The Covid-19 pandemic, environmental, and socio-economic crisis impacted everyone in different ways, and the fallout continues to reverberate around the world. 2021 has started off with a mixed outlook – on the one hand, the Covid-19 vaccine roll-out in many countries offers some hope, but on the other hand, instability and uncertainty reign with the economic impact of the pandemic persisting globally and fundamental political shifts occurring, like Brexit and the supremacist insurrection in the United States.

These challenges tested the commitments of both the public and private sector organisations to support the most vulnerable and confront systemic bias in healthcare, employment, policing and access to justice. Many organisations have fundamentally shifted to address these macroeconomic challenges, including sending whole workforces to work from home, and with it shifting who we designate as ‘essential’ (ie, not the ‘suited and booted’). We are recognising that concerted action could bring about quick (desirable) results like reducing air pollution and making more services accessible through digitisation. However, we are also still coming to terms with what we deem ‘normal’ and some of that may need rethinking and reshaping as what seemed ‘normal’ to some prior to the pandemic did not actually suit or support significant constituencies as institutional racism and other inequities stood out.

In the same way that work-life balance has been reconceived as *work-life integration* or just *balance*, and that the ‘office’ has been reconceptualised for many professional office workers as anywhere you can obtain a stable internet connection and enough quiet to think for at least short periods at a time, organisations are wrestling with how they navigate employee activism related to political, economic and social issues inside and outside of the workspace. We are at a reckoning point where many employees, especially younger generations in the workforce, expect the organisations they work for to take public, normative and strategically substantive actions on these issues as key actors in society. It would not only be remiss for management to ignore

or underestimate this but it could also be detrimental – among other things – to an organisation’s reputation, productivity and company culture.

The rise of employee activism

The issues underlying the environmental, economic and social crises of 2020 and 2021 and employee desire for organisations to address them meaningfully are not new phenomena. The last few years have seen a rise in institutional shareholder pressure and non-governmental organisation activism, including taking legal action and advocating for changing government regulations and policies regarding climate change and gender and racial equity. The objective of such actions is to better manage risks and improve governance standards and accountability on the critical justice, equity, diversity and inclusion (JEDI) and environmental, social and governance (ESG) issues of our time.

In fact, executive compensation consulting firm Pearl Meyer has noted how high-profile global organisations like Uber and Microsoft are beginning to connect JEDI and ESG goals to executive compensation. Despite the increased societal pressures and formal hard compliance requirements, progress on these JEDI and ESG issues has been slow and the repercussions from #MeToo, the Covid-19 pandemic and Black Lives Matter movement indicate that more is required – especially from our organisations – to make fundamental societal transformation to better support those that are most vulnerable and redress for past wrongs. A big part of achieving substantive change will be driven by employees who expect the organisations they work for to live their values and will advocate individually and collectively to spur meaningful action.

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Employee activists (defined herein as employees who advocate that their employers address controversial issues which affect society) are critical catalysts for challenging old norms and shaping new ones. Employee activists are not just employees protesting outside their company's headquarters with placards and bullhorns. This individual or collective activism can occur through many means including employee resource groups, donating to or volunteering on campaigns (including those sponsored by the employer), attending demonstrations or expressing views on social media. This activism is mainly internally focused with a view to bringing about a change in practice or policy impacting employees themselves or external stakeholders (eg, addressing racial inequities in management or stopping the sale of certain products, like arms or

facial recognition technology, to customers who may use them unethically). Employee activism is on the rise. Employees increasingly feel empowered to speak up and share their personal values, aspirations and passions once

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reserved for private life. Employee resource groups have shifted gears in the last few years from social support groups to strategic vehicles that may provide a ready focus group for organisational initiatives and who advocate for issues common among them. Research shows that Millennial and Generation Z talent in particular believe organisations should answer the moral imperative to meet the pressing JEDI and ESG issues of our time and will evaluate an organisation as an employer or may choose to find another employer when an organisation does not rise to the occasion. These workers seek a role in contributing to or facilitating an organisation's JEDI and ESG solutions and policies. In fact, as of 2016, three-quarters of Millennials surveyed in one study would be willing to take a pay cut if their organisations aligned with their values on JEDI and ESG issues.

The sentiment driving employee activism isn't limited to Millennials and Generation Z: irrespective of generational cohort, workers often personally identify with their company, its values and the role it plays and have urgency around the organisation taking a position – or no position – in alignment with their beliefs. In 2019, global public relations firm Weber Shandwick found that 38% of the employees surveyed reported they had spoken up to support or criticise their employers' actions or policies related to controversial social issues in what they call the "era of the employee activist". Another report found similar results: nearly 40% of US workers reported speaking up to support or criticise their employers' actions regarding a controversial issue affecting society either to gain the attention of their top leaders, other employees or both.

Organisations can benefit from being open to employee activism that is both internal (eg, substantive policy change and increased employee engagement) to hearing about issues prior to them causing brand tarnishment (reputation risk of a deficient or unethical or unsavoury practices and policies going viral). The advocate employees often do so at the risk of potential reprimand and termination, sometimes adding legitimacy to their efforts. Although most of the publicly available reports focus on the US or European employee experience, our experience in global organisations is that the willingness of employees to demand change within their institutions is evident all over the world from Hong Kong to South Africa, Mexico to Beirut.

Increasingly, management models seek to flatten hierarchy and operate in more transparent and inclusive means to become more lean and efficient as well as to better engage employees, attract and retain talent (increasingly Millennials, but not exclusively), and differentiate in increasingly competitive markets. Employees are devoting increasing time to their work and additionally, with the rise of social media, every person has a publicly identifiable brand that they hone and cultivate, that becomes a part of their identity. Given these dynamics, it is inevitable that employees would want to live their authentic selves in the workspace and to work to ensure that authenticity is not undercut by policies, practices or positions they view to be adverse to their values.

And especially not at a time when the stakes are so high with lives, livelihoods and quality of lives (including future generations) hanging in the balance.

Engaging employee activism as an opportunity

Employee activism is considered a trend, and it is likely here to stay. There is a unique opportunity for those in the C-suite, leadership teams, diversity and inclusion professionals, and legal counsel to heed, harness and manage that activism. This can offer benefits to an organisation through increased engagement by mitigating distraction and values dissonance, and providing increased opportunity to identify internal and external issues that the business can capitalise on to stay current with their external stakeholders and potentially limit liability.

Missing the opportunity to cultivate and harness employee activism may not just be a lost opportunity, but it may also risk reputational or legal challenges if such sentiment is misread or miscalculated. While some regions and regulators are moving faster than others, laws and policies are emerging in the JEDI and ESG space primarily focused on climate change risks, human rights (ie, anti-modern slavery/human trafficking) and anti-discrimination. Historically, it has been shareholders, institutional investors, media, non-governmental organisations, and other activists who have raised legal challenges or galvanised public scrutiny when organisations are not living up to expected values. Given the rising voices of employees, it is not difficult to imagine that employees will increasingly be the stakeholders bringing or aiding legal actions or revealing real or perceived organisational deficiencies in public forums that can cause reputational, financial or other challenges. These employees could be empowered and emboldened by clients, customers and the communities they serve that are expecting organisations to be more engaged in addressing critical JEDI and ESG issues, in particular since the advent of the pandemic. In addition to the opportunities to strengthen the business, this is an area that management, human resources personnel, and legal counsel would be wise to consider in internal risk mitigation strategies.

Harnessing employee activism – approaches and rewards

There are some approaches your organisation can take to increase the chance of reaping the benefits of employee engagement in JEDI and ESG policy making and impact:

Integrate voices to develop and deliver policies.

Management are tasked with establishing the organisation’s culture and setting the tone from the top by clearly articulating the values, drivers and commitments on the pressing social and environmental concerns relevant to the business and context. The aim of

this is not only to address a company’s moral standing but to comply with laws and regulations.

In addition to seeking input from its diversity and inclusion, responsible business, human resources and legal professionals, on JEDI and ESG concerns, gaps and risks, a wider set of internal stakeholders should be incorporated into the vetting process ensuring those stakeholders are representative of employees at large, including different demographic backgrounds, identities, roles, geographic regions and perspectives.

This engagement can take many forms, beginning with an information campaign asserting the organisation’s intentions and efforts around JEDI and ESG issues. Being clear about the current state is the best way for employees to understand the progress that the organisation has already made and the potential opportunities for improvement. Unfortunately, in most of our organisations, those in leadership tend to be relatively homogenous with respect to their viewpoints – in fact, often our organisations validate specific types of perspectives and

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experiences and promote the individuals who have them. Employees not in leadership are often more junior with a stronger willingness to absorb change and may give credence to the ways issues are being explored outside of their own workspace.

Going beyond surveys. A look at the organisation's strategic business priorities, vision, mission and values can help the organisation determine

which JEDI and ESG issues they should prioritise,

with employee input. The employee perspective is critical here and can be obtained in many ways.

Historically, employee engagement has been driven by annual

(or less frequent) surveys that gauge general employee happiness over time and their thoughts on the general administration of the business (eg, communication practices, job satisfaction and benefits) rather than substantive issues, like engagement around JEDI and ESG issues.

Organisations ought to consider moving beyond those formal surveys or online feedback forms to deploying other methods of soliciting meaningful input, like reverse mentoring, focus groups, strike teams, town-halls and other forums (including web calls) where ideas can be wrestled with and meaningful conversation can occur. Employee resource groups and training are important to enable employees to have a structured outlet to both share and receive information and express their activism. This can lead to greater investment and commitment which can impact productivity and retention but also bring out ideas to improve on said strategies and projects. One author's experience at Standard Chartered has shown this kind of engagement to be fruitful – internally and

externally – for both employees and management. Failing to have meaningful and structured communication and engagement outlets for employee activism may lead to periodic, unplanned exhibitions of frustration by employees that will need to be addressed in a reactionary, rather than strategic, way. Dealing with crises inevitably takes more effort and wastes more resources than having a comprehensive plan with sufficient employee buy-in.

Utilising data effectively to gauge and adjust strategies. Organisations tend to be opaque with their employees on the metrics they use to gauge progress on issues, with the exception sometimes being financial targets. A data-driven approach should be taken with respect to JEDI and ESG issues. Transparency about progress (whether monumental or nil) is key to gaining and maintaining employee trust on the strength of the organisation's commitments to its professed values. This will also help with reporting to external stakeholders as may be required or desired. Leadership tends to assume that employees have a deeper understanding of how the organisation executes its key priorities, and providing data offers a clearer communication mechanism. Without the data, employees will fill in the gaps with their own understandings and stories about what is happening – a story that can often be more abysmal than the actual state. An organisation with a clear commitment they intend to act on with results – and not just efforts – would want to know the employee view and allow meaningful data to help clarify that view from time to time.

Multinational organisations will see the most benefit from these engagement efforts, as a top down or one-size-fits-all approach may not serve or address local trends, opportunities, demands and risks.

Harnessing employee activism – challenges and risks

Addressing workplace JEDI and ESG challenges is difficult work that requires strategy, skill,

accountability and thoughtfulness. As with all meaningful endeavours, there are potential pitfalls that those engaging employee activism with aplomb will want to anticipate and manoeuvre around to be successful.

Balancing strategic considerations. For organisations whose central *raison-d'être* is not JEDI nor ESG, ensuring that the JEDI and ESG strategies are aligned with the key strategic priorities of the organisation is important. Every important JEDI and ESG issue cannot be a priority nor pursued vigorously – pragmatic organisations will have to choose where to invest their resources and appropriately direct employee attention while giving alternative views on issues not deemed to be the priority consideration.

Often, most employees want to understand viscerally that their views have at least been heard and meaningfully considered. Additionally, leaders sometimes overblow the extent of what employees are asking for, imagining that employees expect a complete overthrow of the existing policy and practice. Listening to employee concerns and their ideas for resolution, while respecting employees as professionals to explain the rationale behind decision-making, may allow for win-win solutions rather than being stuck in a zero-sum game.

Balancing stakeholder considerations. We have been discussing the employee view as if it is monolithic, and that could not be further from the truth. Deciding how to incorporate dissonant employee perspectives on charged issues can be a minefield. Additionally, employees are not the only individuals connected to organisations that have an important impact – other stakeholders, like customers and clients, may have wildly different views on JEDI and ESG issues. Historically, organisations have avoided these conflicts by staying out of the fray – by not making statements or taking positions and by not implementing policies that have a broader impact. Today's workforce cannot separate what happens inside and outside of the workspace,

and having a defensible vision for when and how decisions are made on the basis of employee engagement and input is critical both in responding to JEDI and ESG crises and in establishing and revamping policies and processes. JEDI and responsible business professionals and legal counsels, including Hogan Lovells' JEDI and ESG consulting practice, can help you figure out some guidelines to help navigate those decisions.

We can't overplay the complexities of this – employees will likely have competing value systems and promoting certain values may undercut inclusion. For instance, for those who are religious and may not value LGBT+ equality, it can be challenging to support the rights of all constituencies equally and contemporaneously or in the way each constituency desires. There are some who may feel, in this example, that religious rights are silenced where LGBT+ rights begin. These are the

challenges of living in our world today and we as lawyers encounter almost impossible challenges every day. As some have said, it is our job to make the impossible difficult. Finding a way to leverage inclusion, coaching tools, and instilling tolerance and civility practices can help everyone feel that they belong. Continuing to offer tools to facilitate courageous conversations and bridge building can help ensure that regardless of the positions taken, every member of the organisation can feel that they belong at that organisation as their authentic self without undermining their fundamental humanity. Promoting singular views without supporting everyone could backfire on JEDI and ESG initiatives in the long term.

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Working effectively with the JEDI and responsible business teams. While there are significant benefits to leveraging employee views and there can be power in those individuals coming together with a singular voice, there should be some coordination to determine the best strategy to address issues with the JEDI and responsible business teams. Often the individuals tasked with ensuring that JEDI and responsible business are executed successfully at your organisation have a strategy and understand the various tradeoffs that can be made and the levers available to pull. Given that we are all on the same team and often have the same goals, ensuring those teams are aware of the efforts, are coordinated, and are not blindsided can increase efficacy. The members of these teams are professional advocates that may either have advice to allow employee activists to advance their issues in a more effective way or in a way that protects the organisation and employees themselves depending on how controversial the issues are. Every organisation has its own politics and coordinating with those who navigate those dynamics daily can lead to additional progress while mitigating risks.

Leveraging members of underrepresented groups. Representation is incredibly important. For organisations to effectively incorporate the views of employee activists, they need to make sure that the views they are seeking and receiving are representative of people with many different backgrounds and perspectives. Utilising affinity groups for their views is one way to provide an additional view on JEDI and ESG policies and initiatives and also widely applicable policies and initiatives that may have an unintended, disparate impact on underrepresented employees. It is critical, however, that we do not only seek the views of underrepresented colleagues when there is a JEDI issue. In fact, many organisations inappropriately leveraged Black people, in particular in the United States and United Kingdom in the context of the Black Lives Matter protests and their institutional aftermaths to the extent of tokenisation, causing a disproportionate impact on already fatigued

Black people to educate others and be used in ways they had never been used before. Our underrepresented colleagues should be approached with caution, courtesy and common sense.

The most important thing is to engage with empathy

With all of the potential challenges and pitfalls of employee activism, it is tempting for organisations to stay on the sidelines while important societal events are happening that impact employees and their ability to fully engage at work. The separation between work and life is a fiction. Recognising this as a reality of the world by supporting employee activism will ensure that employees will be more engaged and supported in their identities allowing them to achieve better performance. Employees also have the capacity to identify potential risks in the business and unique opportunities that the organisation ought to capitalise on to improve its reputational and financial positions. This is especially the case for multinational organisations spread across various regions and countries. There are so many ways organisations can broaden their sights – for instance, if we know that the justice system disparately sanctions underrepresented people, perhaps our organisations can offer more grace and empathy to individuals that have identified criminal backgrounds. Knowing someone has a criminal record does not tell us everything we need to know about them as a potential colleague. What is clear is that regardless of organisation type, not engaging with the pressing issues of our time will eventually lead to adverse consequences and being viewed as out of step with clients, customers and other constituents – including regulators/policy makers. In a world where brand alignment is almost as important as the service or product being offered, this lack of engagement or silence will speak volumes.



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