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## **2020 Proxy Disclosure and 17th Annual Executive Compensation Conferences, hosted by TheCorporateCounsel.net and CompensationStandards.com**

### **Day 2**

### **Human Capital: The Compensation Committee's Role**

**Date: 09-22-20**

**Liz Dunshee:** Welcome back everyone. We now have our panel on The Compensation Committee's Role in Human Capital Management, which is a very hot topic right now. One housekeeping thing I want to mention before we get started, is for the CLE codes in the chat box to the right of the speaker view where you're watching everything, you do need to enter your name in there to enter the chat room-ish, so you can see those codes being posted. When they come up you can either enter the code via the link above the video player or you can copy and paste the link in the announcement to a separate tab on your browser. So just that one little item to note and I will let the panel dive right into things. We have Keir Gumbs of Uber, Blair Jones of Semler Brossy, and Maj Vaseghi of Freshfields. Thank you very much and I will let Maj kick things off with where the demand for Comp Committee involvement on this topic is coming from.

**Maj Vaseghi:** Great, thanks very much Liz. Great to be here and to see everybody. So largely, the demand for Comp Committee and Board involvement in human capital management is coming from investors. Investors have increasingly been asking companies to provide additional human capital management disclosure and have the Board and the Comp Committee have oversight over these issues. Investors initially started that with shareholder proposals. More recently, they put pressure on the SEC to adopt a disclosure rule on human capital management, which has been successful, so the SEC did adopt a human capital management rule, although the rule is not as prescriptive as some of the investors wanted. BlackRock stated earlier this year, and I quote, "Given most of the companies identify their employees as their greatest asset, we expect boards to oversee human capital management strategies." At the end of last month, State Street sent out an open letter pushing for companies to disclose risks, goals, and strategies regarding racial and ethnic diversity and the Board's oversight rule. They specifically mentioned that. That letter also requests disclosure of diversity metrics that apply not only to the Board of Directors but the Board workforce more broadly, and they want those metrics broken down by a seniority level.

So you can clearly see there's been a lot of push from investors to have the Board or the Comp Committee have oversight over human capital management issues. Separate or apart from investor pressures, and frankly more importantly, is the business governance and reputational reasons that boards are understanding and realizing how important it is. The companies' employees are an employee and are an important asset and effective

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human capital management increases value, while poor human capital management can result in significant liabilities and potentially even business scandals. Related to this and this is really the last point I'll make, is does the Board or the Comp Committee have a legal duty under federal or Delaware law that covers human capital management? And while we don't think that these fiduciary duties expressly relate to human capital management, they can certainly be issues that rise to the level where oversight would have provided a security and would've resulted in a better governance or results. And you can see that's largely where there are issues with poor workforce cultures or violations of law that can result in substantial losses or reputational harm.

**Blair Jones:** So I'm going to talk next about what we're seeing in the Compensation Committees themselves. So what Maj has been talking about has been slowly trickling into compensation committee agendas and will most likely be accelerated particularly with the SEC's most recent actions and the expected disclosure there. The Compensation Committee is a pretty natural place for a lot of these issues to reside, because as you're looking at compensation and you're making compensation decisions, you're thinking about the broader issues of who your talent is, who your high potentials are, you're thinking of the broader cultural issues and who are the cultural leaders, and it makes sense to start to combine these issues. Now practically speaking, not many clients that we work with have changed their charters yet. A number have changed their name, so you would see things like Human Resources and Comp Committee or Management Resources and Comp Committee or the Comp and Org Committee, the Comp and Leadership Development Committee.

All of those things are beginning to take place and we're beginning to see companies put the human capital topics on their agenda. So you would see most commonly discussions around pay equity for sure, because that's a pay issue and that started with gender pay equity and is increasingly becoming about other types of minority pay equity as well. Diversity and inclusion has become a really important issue for many comp committees. Discussions around engagement in culture.

Succession actually is the purview of some comp committees or some comp committees and nominating and governance committees jointly. However, for most of our clients, that resides at the Board level. But what many of our Comp Committees are doing is working on the next level and trying to look at who's the next generation of talent. So those are the kinds of issues that are making their way into the Comp Committee and the other things that are picked up are just the legal and compliance types of things in the wake of the Me Too era, the reporting on Me Too issues, the reporting on racial incidents. Some of that's handled by audit but increasingly it's making its way into the Comp Committees as well.

I think what is important at the end of the day is that boards have discussions about what the key human capital management topics are, and then look at where within the Board they are being covered, to make sure that all of them are being covered to some extent.

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Then you can ask the question about are they being covered in the right way. Some issues may elevate themselves to the board level for a period of time, such as culture and may diversity inclusion, but then work themselves back into the committees for more implementation-oriented types of things. But that's an important discussion to have to make sure they're all being covered and covered in the right places, and then you can talk about the frequency and then what the accountabilities of the Board are. So with that, maybe I'll turn it over to you Keir, because you can talk about how it's working in practice at Uber.

**Keir Gumbs:** Yeah and first, I just have to say I agree with everything that both of you have said. Both from the perspective of what investors are asking for and where kind of the source of demand is on these issues, but also the fact that employees very much care about these issues as well, and that they're bubbling up through executive management teams, to boards, and comp committees. You know, at Uber, these human capital issues- first of all, the definition of human capital is such a broad topic. Just listening to each of you I can probably name 20 categories of information that at least arguably fall into this category of human capital. That by itself is one of the challenges I think. We all may be using the phrase "human capital" but we are talking about very, very different things in the first instance. The second challenge is that these things ought to be tailored to this specific company and issue. So the top human capital issues at Company A might not be the same human capital issues you have at Company B.

There are some things that I think are pretty common, which is kind of this core concept of human capital is about the people. It's about the people within the organization both at the employee level, at the board level, but also for organizations like Uber that are involved in the gig economy, you're also thinking about the drivers and couriers that use our platform, that are both our customers, but from the perspective of the outside world, a key piece of our human capital equation.

For us, this human capital discussion is something that we've spent quite a bit of time on, both pre IPO and post IPO, and there are a couple of very key aspects of it from our perspective. One, going to the compensation aspect element, is that very early on in our life as a soon-to-be public company, there was a realization that we needed to really make some commitments around diversity. And from our perspective, one of the key ways to incent people to do the right thing with respect to diversity or any other topic is to tie that topic to compensation. So last year we tied the compensation of our senior executive officers to diversity metrics, which was very critical for us internally. At both from a messaging perspective of signaling that this was important, but also because it's something that we really needed to do in order to address very important concerns that we were getting from our investors and from employees.

The other thing that we've really been very focused on internally are issues around gender pay equity and overall equity, which is something that many companies are

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focused on. For us it was very critical, particularly because some of the cultural challenges that Uber has had in the past. And so that is also something that our management team and Comp Committee has talked about extensively.

The third thing that I'll highlight, and again, if you look at our proxy or our first ESG report which came out just last week actually. It feels like a year ago, but just last week, you'll see these and other metrics. The other thing is culture, which is how do you think about culture from the perspective of the Board, from the Comp Committee, how do you address culture through executive compensation? Is that even a thing? And if so, how do you do it? For us, one of the things that the Comp Committee looks at very closely-

**Blair Jones:** Oh goodness, it looks like we lost Keir. Maybe in the interim, until he can rejoin, I will- there he is.

**Keir Gumbs:** Sorry about that. My computer-

**Blair Jones:** You were at "one of the things the Comp Committee looks at very closely".

**Keir Gumbs:** So that is our cultural surveys- so we do these engagement surveys periodically at least once or twice a year, and then retention and attrition. Every Board Meeting we look at are our attrition numbers going up or are they stabilizing? Are we keeping the people that we want? And then how are we doing with respect to attracting the high caliber employees that we need as a company? And through looking at all of those things and having that regular dialog, it really helps to influence the cultural shifts that we think we need to make as a company.

**Blair Jones:** I think what you're talking about is really important, Keir, because you start to think about the data that comes before the Committee or the Board. That's how they get educated and that's how they're able to exercise their oversight. So I've seen management teams bring in a variety of internal and external sources into the committee room, so you can bring your own diversity and inclusion data as well as how you're doing against the goals that you've set and cutting it by the subsets of the population, because clearly it can differ across the organization and frankly across the world if you're global. But also comparing that increasingly to what others are saying in their sustainability reports and seeing how you're doing on a comparative basis. It seems like from a cultural standpoint, there's a lot to be said for regularly showing the engagement survey results that you were talking about. And I know, maybe you can comment in a minute, a number of my clients are pulse surveying more frequently, so every time they meet with the Committee, they're able to update what those pulse survey results were. They also can key in on a couple of the questions that might have broader cultural ramifications, maybe about the trust that people have in their managers, their sense of whether they're included, and it's an inclusive type of environment, and that their perspectives are valued. Those kinds of things become very, very important.

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Then, clearly on the health and safety front, there's all sorts of statistics you can bring on that front. I mean, increasingly, I found some of the external sources are really interesting though to bring and make the Committee aware of. So for instance, Glass Door will often be a source of data for analysts who might look at Glass Door ratings across companies and understating how your company compares, you know, is something I think a management team can really help a board look at, as well as some of the ratings that some of the more activist types of investors may be looking at, so that you understand where you're ranking on some of the key things that they're looking at. So there's all sorts of data that you can bring to bear but at a minimum, I think you want to help the Committee understand how you're doing on some baseline issues. I'm increasingly seeing companies do that in a dashboard type of format that they're bringing to the Committee. That dashboard might include exactly what you're talking about, Keir. It might include turnover data and turnover for different types of populations, whether it's high potentials, whether it's minority population, whether it's individuals who have joined in the last three years since that's all been a very vulnerable population. It'll give a highlight of these pulse survey results. It might give a sense of how the company is doing overall on its demographics, both racially and gender wise. It's just a quick way for the Committee to get a sense of what's going on.

I know there's a lot more to say on this front and particularly one of the things I did want to highlight before turning it over is that pay equity audits are becoming increasingly important. Not just for gender but for racial and ethnic minorities as well. The Corporate Counsel is going to do a whole session on that in November. I think it's November 19<sup>th</sup>, so stay tuned for that. It'll be one well worth attending. So Keir, maybe you can talk more about what you're bringing.

**Keir Gumbs:** I love all those topics and again this is something we can easily spend hours on, honestly. I want to go back to one thing that you mentioned. You mentioned kind of the dashboard idea and I personally love dashboards. I think they're a great way of presenting kind of critical information to decision makers in a format that's easily digestible. Often you find when you aggregate the information around things like attention, retention, the pulse survey results, acceptance rates, all of those things. A picture can emerge pretty quickly I think around how employees feel at a particular company and also how that company is perceived. I think that is a really useful thing, especially when you think about from the Board's perspective. They're not there every single day. They are only speaking to a relatively limited number of people from the company. So sometimes it's hard for them to get a good gauge for how the employees at that company are feeling. I think some of the data that you were just describing is a very critical way of doing that.

On the audit piece, you know, we just did our ESG report and one of the things that we did was we had all of the data included in our report reviewed both internally and externally. We had our internal audit function come in and do a review of the data, make sure that the data integrity was there, but also we had an external party come in. And I



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will say there were some numbers that changed. First and foremost you'd have people say, "No, I swear, stack of bibles, this is the right number." Then it gets audited and they're like, "Oh wait, you're right, I missed that factor." So there's that benefit. But I also think from the outside world, particularly where you've got plaintiff's lawyers and the media and all these other constituencies that are going to read your disclosures with a fine tooth comb, it's very, very helpful to know that you've had that assurance done so that the data that you're reporting is accurate. And so I just have to you know, as I say Uber plus one on that particular point because I think that's a really good point.

**Blair Jones:** That's excellent. That's excellent. What are the areas that are of the most interest to your Board, right now on these topics?

**Keir Gumbs:** One of the biggest areas for us of late, and this preceded the recent protests and racial unrest, was around diversity. Both in terms of gender diversity but also ethnic diversity. Tech is a very interesting place because on one hand, I think Uber is pretty close to being a majority minority company, when you think about all the engineers and folks that come from all different parts of the world. But then when you go a little bit deeper, you still see some pretty significant discrepancies with respect to gender and also with respect to some underrepresented groups including Black and Latinate professionals at the company. That's something that's been on our Board's radar and continues to be. I think culture will always be, at least for Uber, something that the Board is very interested in. Are we still toxic? Are we not toxic? How much progress have we made versus kind of the "bro culture" that Uber was perceived to have. So I think in that one, it's not just the Comp Committee. Our Audit Committee here is from our Chief Audit Executive and Chief Compliant Executive every single meeting, and one of the questions they ask every single meeting is, "Okay, tell us about the kinds of investigations that you're conducting. Do they involve senior executives? Do they involve the kind of misconduct that plagued the company in the past? And if so, how are we addressing it? And if not, are you comfortable that people are reporting the things that should be reported?" And I'd say that those are areas, among other things, that the Board is very interested in.

The last one unique to gig economy companies is our relationship with drivers and couriers, which is probably of all of the ESG issues, in my mind, that and safety are the number one and number two topics. Safety's less human capital than this one at least for a company like us. But the driver classification and we will live or die based on our relationship with drivers and the perception of our relationship with drivers and couriers and that's something that the Board is very, very interested in.

**Blair Jones:** I know one of the things my clients have struggled with as they've started to put this together, is what's the role of management is and what's the role of the Board? And how have you started to delineate those accountabilities and make sure that both are able to contribute in the ways they need to, but also not violate too much into the other's accountabilities?

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**Keir Gumbs:** I think for us, and I imagine this is the same as you see. It's a balance, first and foremost. I don't think there's any company that knows they've gotten it right because you have some instances where the Board is super involved and others where it's not. I think for us, we have what I think is a pretty balanced approach where the day-to-day decision making is absolutely made at the management level. But the Board wants to check pretty regularly. We can get a diversity update every single quarter, as I mentioned, the attention/retention, so they are monitoring. Then at least once a year we have a strategy session that's just focused on organizational health.

One of the things that the Board uses at that organizational health session, that I don't think we've talked about yet, is succession planning, and the role of succession planning in thinking about the pipeline with respect to diversity, again gender, ethnicity, every type of diversity, but also more broadly. Are you training? Are we developing our people? Are we making sure we have a good bench for our Executive Leadership Team and what we call the ELT plus ones? I think that that is the way that the Board views its roles. At least having this periodic check-in on these various human capital issues to make sure that they're working.

But I will say, on some issues, like driver classification, the Board, it's every single session we're talking about it, which makes sense, because it's a pretty critical issue for a company like Uber. I don't know if that's consistent or inconsistent with what you've seen with some of your clients.

**Blair Jones:** I think absolutely and you know, as you get into a more talent-driven economy, increasingly these issues- it's not drivers, but similar types of populations that can make or break the company. The Board needs to be thinking about those populations and needs to be thinking about all of these human capital management issues for them. So as we think about this, it clearly is going to only elevate in importance and it's important that both the Comp Committee and the Board are able to play a significant role in the conversation.

**Liz Dunshee:** Well said. Thank you both Blair and Keir, and thank you to Maj, although she's not here. I forgot to mention when I introduced you guys that she had to leave early. So that was not a technical problem. She was meaning to leave. Thank you both. I appreciate you being here. This is such a hot topic and this was informative and practical and I'm sure we'll be hearing more about it. We are now going to take a short break and then we will meet back for our last substantive panel of the day, which is the Big Kahuna and that is at 2:55 P.M. Eastern time. So go back to your agenda tab and go back to that one in about 15 minutes and I will see everybody there. Thank you again Blair and Keir.

**Keir Gumbs:** Thank you.

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**Blair Jones:** Thank you.

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