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2022 Human Capital Disclosure Report: Moving Forward While Still Waiting

Seyfarth Shaw LLP

ESG (environmental, social, and governance) is safely part of the business lexicon and continues its march from a "nice to have" to a way of doing business. Companies are carefully assessing and calibrating their ESG strategies, actions, and statements as they navigate looming political threats (actual and perceived) of anti-woke/anti-ESG capitalism, a sharp focus on ESG across the Biden administration and globally, SEC enforcement actions, heightened active investor and consumer scrutiny, and a rising tide of ESG-related shareholder proposals (to name a few). All of this is set against the backdrop of anxieties regarding US and global economic conditions and recessionary concerns. One thing is certain, however, throughout it all: ESG will continue to evolve, and is not going away.

Increasingly it seems that every element of a business has an ESG touchpoint. This is arguably true given that the ESG umbrella of topics is vast. Climate and the environment remain central to the discussion. As an equally dynamic and crucial touchpoint, the business community has focused on human capital management—how must businesses *attract*, *manage*, *engage*, and *retain* the talented workforces that comprise what is among their most important and valuable intangible assets.

This is not surprising. For years, the SEC has taken notice of this asset's importance as a disclosure topic, finally issuing its long awaited human capital management (HCM) rule in 2020 (see our update here). Soon after, the 2021 proxy season saw the first round of human capital disclosures which we reported on here, and the 2022 proxy season brought the next evolution of disclosures.

Even as companies' disclosures continue to evolve, the HCM rule only gives generalized information that publicly listed companies must provide in their annual report. The rule requires:

> (ii) A description of the registrant's human capital resources, including the number of persons employed by the registrant, and any human capital measures or objectives that the registrant focuses on in managing the business (such as, depending on the nature of the registrant's business and workforce, measures or objectives that address the development, attraction and retention of personnel).

More prescriptive SEC proposed rules are anticipated on the horizon for 2023. We expect, given the SEC's appetite for detailed disclosures, that those updated rules will move the HCM disclosure guidance from general to more specific. For now, we embark into the 2023 proxy season with the same general guidance issued in 2020.

In that light, one might reasonably expect a company's HCM disclosure reports to satisfy the SEC's rule, but to go no farther. Not so. We have, in fact, observed a marked increase in HCM disclosures outside of SEC filings with an apparent willingness to include data that is not also included in SEC filings.

While Seyfarth's 2022 report focuses on the scope of information and topics that publicly listed companies make in their SEC filings, it is important to acknowledge that what those filings contain is often only a snippet of what appears more broadly in other public statements, such as formal voluntary ESG reports, and on company websites. While the SEC disclosure might be the primary source for investor consideration, other disclosures, which can be more detailed, are equally important to a multitude of audiences. And while investors—particularly activist investors—are looking at the ESG reports, so too, it must be assumed, are potential and current employees *and* other stakeholders in a company's value chain. The motivation for broader disclosures outside SEC filings are not always facially evident.

Not only must one consider the audience for whom a company's disclosures (whether required or voluntary) are directed, but one must also consider the lens through which the disclosures are conveyed for that audience's viewing. For instance, some disclosures are made to either fend off or respond to shareholder proposals seeking more information, with the presentation of data and information accordingly curated. Others are made as a means to keep up with competitors that have made similar disclosures. Some are made for the strict purpose of controlling a narrative. In this report, we attempt to distill beyond these filtering motivations and influences.

Regardless, it is vividly apparent from the 2022 reports, that companies understand talent is the seat of opportunity and, as a consequence, competition for talent across markets is fierce. Further, the reports accentuate the fact that companies—on the whole—understand the need to mitigate employee loss and resource mismanagement risk by aligning the investments in and approach to talent management with changing social norms and client and customer demands. Simply put, ESG programs, including best-in-class programs directed at managing and optimizing the ability to rely on crucial human resources, can no longer be underestimated as a retention tool.

Seyfarth's 2022 Human Capital Management Report offers general and specific industry insights on the evolving landscape of SEC-required HCM disclosures. We also provide an "Employers' Perspective" that benchmarks some of the most pressing human capital management concerns on which companies anticipate a need for attention. We close with a look ahead at what those companies might expect to confront in the coming year.

Year Two Human Capital Disclosures: Seyfarth Insights

Following our inaugural report, Seyfarth doubled its second annual review of HCM disclosures across industries.

Using Lexis® Securities Mosaic® industry categories, we reviewed the HCM disclosures of 200 companies across the following industries:

- Agriculture & Food
- Construction & Real Estate
- Energy & Natural Resources (including Utilities)
- Financial & Insurance
- Healthcare & Pharmaceuticals
- Industrial & Manufacturing
- Retail
- Services
- Technology & Telecommunications
- Transportation

This analysis covers 20 S&P 500 companies in each industry with revenue between approximately $650M-$575B. We reviewed the Human Capital Management sections of the companies' most recent 10-Ks, filed during the 2022 proxy season.

General Insights

As they did in 2021, publicly traded companies' 2022 HCM disclosures reflected a wide spectrum in the level of detail included. We've included a chart at the end of the document reflecting the number of HCM disclosures in various categories by industry. Once assessed on the whole, though, the following points are among the most important to note.

- **COVID References Down:** Perhaps not surprisingly, the number of references to COVID throughout the disclosures decreased as the pandemic numbers have ebbed and flowed and employers have become more experienced in handling these issues.
- **Board Oversight Up:** The number of references to board level oversight of human capital issues across all industries, however, increased, with an average of 35% reporting board oversight in this area in 2021 and to an average of 42% in 2022.
- **Safety First:** Some companies included more safety data driven reports, with some even reporting declines. For example, one company disclosed that it experienced a decline in safety issues and attributed it to implementation of a new training program to reinforce safety protocols. This type of transparent disclosure is always tough to make. In a market environment where green- and blue- washing is top of mind from any stakeholder angle, such disclosures strike the right balance between fostering trust and acknowledging areas requiring attention/efforts to address them. These types of disclosures should also be helpful in strengthening investor confidence.
- **DEI Still Key:** While nearly all the HCM disclosures we reviewed expressed a commitment to diversity, equity, and inclusion (DEI) principles, the level of detail of these disclosures continued to vary. The number of companies providing more detailed statistics related to diversity and year-over-year comparisons increased with the number of companies that included demographics reporting increasing from 44% in 2021 to 59% in 2022.

The number of references to board level oversight of human capital issues across all industries, increased with an average of 35% reporting board oversight in this area in 2021 and to an average of 42% in 2022.

In addition to typical and expected race and gender demographics, some companies disclosed veteran status, disability status, and age. Companies continued to primarily report human capital statistics which made them unique or otherwise placed them in a favorable light, some even reporting advanced degree status when it's perceived as important in their industry.

Endeavors to tie ESG efforts to incentive compensation continue to expand despite challenges in setting appropriate metrics and measures. We saw this in the disclosures as well as with companies linking incentive compensation to DEI efforts (including DEI engagement and participation in DEI-related training). Other prominent DEI efforts included partnerships with external organizations targeting underrepresented groups to highlight various ESG touchpoints—whether it be for recruiting, community outreach, or third-party vendor initiatives to increase diversity and gender parity.

- **Recruiting and Retention Focus:** Companies reported efforts to address the "great resignation" and "quiet quitting" through a number of approaches focused on keeping a diverse talent pool engaged and developing talent from within. The disclosures included references to engagement surveys, career development and internal mobility initiatives, flexible hour and work-from-home programs (some that included stipends for home office supplies), and a variety of wellness programs, including lifestyle coaches, wellbeing speakers, and ergonomic programs.

  Some HCM disclosures also described new innovation in the types of safety measures being engaged, including investment in technologies to prevent distracted driving when a company employed a number of drivers.

- **Benefits:** Many companies went beyond the more typical benefit offerings of retirement and medical benefits and noted new or unique benefit offerings, such as onsite health clinics, telemedicine, caregiver leave, mental health and mindfulness programming, virtual courses, English as a Second Language courses, and financial and digital literacy training.

Specific Industry Group Insights

Seyfarth's review also reveals trends in HCM disclosures within particular industry groups.

- **Agriculture & Food:** Most of the HCM disclosures we reviewed for agricultural and food companies, especially those with a number of employees in a relatively high-risk environment, made a point of emphasizing their commitment to safety, including discussion of their safety training programs or safety policies. Many also touted favorable statistics such as low OSHA Recordable Incident Rates, a percentage reduction in "serious injuries," and/or safety measures undertaken in response to the COVID-19 pandemic.

- **Construction & Real Estate:** Nearly all of the HCM disclosures we reviewed for this industry generally referenced DEI and three-quarters of the disclosures included specific descriptions of ongoing company initiatives, including goals to increase employee diversity to certain percentages, recruitment efforts at local schools, donations to diversity-related charities, employee networks and resource groups, and incorporating diversity metrics into incentive compensation packages. Approximately one-third of the statements included statistics related to race and gender in the workforce. The HCM disclosures for this industry also focused on labor practices—almost all disclosures explained the types of benefit programs available to employees and training development programs. However, the disclosures offered little information on other topics, such as employee health and safety, company policies, labor conditions, or human rights.

- **Energy & Natural Resources (including Utilities):** Again this year, the HCM disclosures we reviewed in this category put safety front-and-center in their disclosures and many included detailed statistics on workplace injuries and fatalities. Employee health and safety disclosures emphasized physical safety, approximately half of which disclosed the company's OSHA Recordable Incident Rates. Notably, in only a few cases, Recordable Incident Rates were disclosed alongside some version of an industry standard or the company's historical rates. As detailed above, some companies in this group did provide data against prior years even when it was not favorable. This candor also provided an opportunity for the company to explain how it was addressing the issue with additional training.

The number of companies that included demographics reporting increased from 44% in 2021 to 59% in 2022.

- **Financial & Insurance:** The finance and insurance industry highlighted robust employee benefits and talent development programs. Relative to other industries, we found that the finance and insurance companies we reviewed were more transparent about their diversity and inclusion metrics, some of which extend their disclosures to generational representation and include programs for employees with disabilities.
- **Healthcare & Pharmaceuticals:** The HCM disclosures we reviewed in these industries outlined companywide missions and values as a framework to discuss each subcategory related to human capital. Within that narrative, almost all the disclosures covered company culture and in particular, diverse talent (both the pursuit and support thereof). Several disclosures also mentioned company ethics and codes of conduct in characterizing culture. Nearly all companies relied on statistics, and several used graphs and tables, in addressing the composition of employees, including full-time versus part-time, geographic location, and demographics. This category of companies had the highest percentage of references to pay equity of the HCM disclosures we reviewed with 50% mentioning this topic. While these companies are in the health space, again this year we saw few detailed disclosures discussing health and wellness programs for employees, instead we saw a focus around COVID-19 and measures taken to ensure a safe workplace, as well as access to vaccinations. Some disclosures, however, listed mental health and mindfulness programming as a part of their employee benefits offerings.
- **Industrial & Manufacturing:** The majority of the HCM disclosures we reviewed for this industry included specific details related to employee benefits, wellness, and health and safety efforts, including awards given to divisions achieving strong safety metrics, ongoing COVID-19 monitoring, targets for reductions in OSHA Recordable Incident Rates, and detailed and general statements about the companies' safety programs. These statements reflect an important industry focus on worker health, safety, and well- being. Some statements also included descriptions of employee recruitment and retention efforts, as well as talent development. As was a theme across most industries, all of the HCM disclosures we reviewed for this industry expressed a general commitment to DEI, and approximately 70% included specific descriptions of company DEI initiatives. However, less than half of the reports included any demographic breakdowns for their work force and, when they did, the demographics were generally limited to race and/or gender. These reports generally did not provide any information on other topics, such as human rights, child labor and other company policies or supply chain conditions.
- **Retail:** Almost all HCM disclosures we reviewed in this industry underscored that employees, referred to as the "team," "associates," "members," "our people," and other choice diction, are integral to their business and therefore the companies invest in their retention and growth through various initiatives. In emphasizing the value of their employees, the disclosures addressed employee benefits at length. These included retirement plans and leave options, as well as training opportunities, including mentorship and leadership programming, with some offering their own academies or apprenticeships for continued learning. Several disclosures also mentioned enhanced family resources, such as financial planning, child care, and tuition reimbursement for children. To further illustrate their commitment to employees, many companies disclosed various employer awards earned, including those related to supporting veterans, individuals with disabilities, and minority populations. Most of the disclosures we reviewed discussed how their employee base reflects the communities they serve. To help foster this development, many disclosures mentioned dedicated diversity and inclusion plans and initiatives to improve partnerships with their communities. Finally, of note, the majority of the disclosures we reviewed in this category continued to discuss safety measures taken in light of COVID-19 and general workplace safety.
- **Services:** While nearly all the HCM disclosures we reviewed in this category expressed a commitment to DEI principles, a substantial minority did not provide any meaningful breakdown of their current

demographic statistics. Companies did, however, tout human capital statistics which made them unique or otherwise placed them in a favorable light. For example, one company in the scientific services space provided statistics as to how many of its employees had PhDs or other advanced degrees. While at least one company heavily utilized pie charts and other visual aids showing demographic breakdowns and other statistics, most did not. Furthermore, while several companies disclosed their response to the COVID-19 pandemic in detail, other safety measures or specific statistics (e.g. OSHA Recordable Incident Rates) generally were not included. Most of the disclosures we reviewed in this category revolved around talent recruitment and development, with several companies disclosing detailed initiatives, descriptions of their company's culture and values, and the use of employee engagement surveys.

- **Technology & Telecommunications:** Overall, the HCM disclosures for companies in the technology industry seemed comparably informative. Specific board and leadership committees, and key executives, were often named as having responsibility or oversight of the company's HCM activities (namely DEI and talent development). Disclosures of management responsibility was coupled with broader board committee oversight on talent development or compensation. The disclosures we reviewed in this category often cited to publicly released, external reports for specific workforce demographics. Where workforce demographics were disclosed expressly in these disclosures, however, statistics on race and (in all but one case) gender, often accompanied by statistics on sexual orientation, disability status, veteran status, and/or age were included. The references to DEI efforts usually included a focus on increasing DEI within the company's leadership. While not all of the disclosures we reviewed in this category included details about employee benefits, those that did often highlighted telecommuting and flexible work schedules, along with employee stock purchase plans.

- **Transportation:** Relative to its comparator industries, transportation focused on matters arising out of their unique operations implicating extensive use of air and ground transport, use of heavy machinery, and the corresponding higher rate of carbon emissions than other industries. In turn, the HCM disclosures centered on workplace health and safety measures, environmental sustainability, and rates of unionization. Many organizations identify personal injury and occupational rates as barometers of success or areas for improvement. Discussion of opportunities for internal training and upward mobility for employees within these organizations was also prominent. Career advancement channels are characterized as one avenue for rewarding successful employees, creating lifelong careers for employees at every level. Further, multiple companies emphasized that the inherently national and global reach of transportation services necessitates leveraging of diverse perspectives, backgrounds, and experiences to operate fluidly. Finally, technological innovation remained a priority in the industry, exploring ways to facilitate transportation with less waste and greater efficiency.

The Employers' Perspective

While enjoying some sense of a return to normalcy following the challenges of 2020 and 2021, including a global pandemic, social unrest, and a shifting political climate, employers continued to grapple with a tumultuous workforce environment in 2022. That environment gave rise to various difficult questions regarding employees' physical presence in the workplace; remote workforce management; employee engagement; the importance of fostering and maintaining diversity, equity, inclusivity, *and* belonging; and the cultivation of a positive workplace culture that has been influenced by the confluence of this year's and prior years' important social developments.

The 2022 political election cycle—a politicized retrospective lingering over the last presidential election—and surges in an increasing (and sometimes discomforting and volatile) use of social media platforms, only complicated an already complex worker-employer dynamic. This was evident in the HCM disclosures across industries, and is indicative of what employers might expect and should be considering in 2023.

As we continue to experience the lingering effects of the last few years of global disruption, and look ahead to the talent management challenges and opportunities ahead, we offer the following perspectives.

- **In-Person Versus Remote Work:** Employers in industries whose employees were able to work from home during the most trying months of the pandemic (and beyond) continue to face significant challenges as they decide whether to encourage or require employees to return to the physical workplace.

  With more employees returning to the workplace in 2022, the past year provided employers with the opportunity to fully appreciate the influence of in-person work on collaboration, productivity, employee engagement, and corporate culture. At the same time, there is no denying the benefits of remote work for employers and employees alike. These benefits—talent attraction and retention, and flexibility to attend to both work and non-work matters—balance heavily against the arguments for bringing talent "back to the workplace." (Indeed, some companies committed that they would no longer require "in-office" work at all.) For those balancing the pros and cons of workplace work, the dichotomy compelled employers in the US, and globally, to devote considerable time and resources in 2022 to strategizing and developing return-to-work plans that would incentivize employees to want to work in-person while continuing to take advantage of remote work capabilities.

Employers have yet to find any perfect solution, and it is undoubtedly safe to say that, in most industries, remote or hybrid work is here to stay and employers will need to continue to evaluate and re-evaluate their remote and in-person work expectations, in 2023 and beyond, to meet business and cultural needs, support employee health and wellness, and attract and retain talent.

- **Employee Engagement:** In early 2021, in the wake of the pandemic, employers saw the "great resignation," with employees voluntarily resigning *en masse*, citing reasons such as low wages amid the rising cost of living, limited opportunities for career advancement, and general job dissatisfaction. Employers struggled, realizing that old ways of motivating employees to stay employed would not work in the midst of a pandemic.

  In 2022, employers saw a reduction in departures, but experienced something new: "quiet quitting"—defined as a new phenomenon where employees remain employed, but perform only the minimum requirements of their jobs, putting no more time, effort, or enthusiasm into their work than is absolutely necessary. In essence, they disengage from their work (and the work environment) to such a degree that they are effectively not working, while continuing to collect a salary.

  The quiet quitting phenomenon has been largely attributed to burnout and lack of meaningful opportunities for engagement. The HCM disclosures demonstrate that employers are acutely aware of the issue and are working to enhance engagement and employee satisfaction by conducting engagement surveys, offering career development opportunities such as coaching and mentorship programs, focusing more on employee well-being and mental health, and offering creative remote/hybrid work policies. This will continue to be a focus for 2023.

- **Diversity, Equity, Inclusion, and Belonging**: The importance of diversity, equity, inclusion, and belonging in the workplace will remain a key focus for employers in 2023, as it was in 2022. Policies, practices, and initiatives intended to foster, improve, and maintain diverse and inclusive workplaces continue to be a priority for employers, not only for talent attraction and retention, but for employee engagement and satisfaction. With ESG taking a multi-stakeholder approach and organizations looking to their value-chain partners to create impact, DEI and belonging are table stakes for success. Employers expecting to share in those successes will be wise to evaluate the source and structure of their DEI strategy and the team empowered to execute on it by connecting with other areas of the organization, such as supply chain/procurement, to assess symmetry in their ethos and goals. The investment and commitment of executive leadership, and sponsorship by boards of directors, will be mission critical in the coming year.

  In this regard, DEI and belonging typically are thought of in regards to the four walls of an organization. With a focus on supply chain and human rights, the dialogue around DEI will expand into the larger dialogue of human rights across the value chain—both upstream and downstream.

- **Socially and Politically Motivated Workforces:** Due to the events and challenges of the past few years, and in particular the pandemic and increased social and political unrest experienced in the last two years, as well as the influx of Gen Z workers in the workforce, employers have seen more labor unionizing activity and demands for pay equity, fair treatment, and corporate transparency. This is likely to continue into 2023 given the continuance of significant social-political issues, such as the Supreme Court overruling the *Roe v. Wade* decision and reproductive health laws, being at the forefront of employees' collective conscience. Employees are also, in this context, demanding meaningful responses from and actions taken by their employers on issues that traditionally have not involved private employer participation. And in light of the flurry of new and aggressive state pay transparency laws that require disclosure of pay ranges and other pay related data, pay equity and transparency will continue to be a central issue for employers to address and disclose in the coming year. From stakeholder feedback and shareholder proposals, the headwinds are in favor of understanding the unadjusted pay equity gaps.

- **Evolving Workforce-Related Technologies:** The evolution of workforce-related technologies has kept pace, if not outpaced, other issues concerning HCM. The use of videoconferencing platforms and technologies has become commonplace, when only years ago it was an exception. Internal collaboration platforms, biometric timekeeping solutions, and pay-on-demand applications are, similarly, common in today's workplace. Employers' reliance on artificial intelligence to supplement, if not supplant, decision-making processes in recruiting, hiring, and other important matters has proliferated to the point that federal agencies—the EEOC included—have promulgated guidance on its lawful use. Employers should be mindful in 2023 of the landmines that these technologies might create as the state and federal legislatures and agencies rush to guard employees from inadvertent harms potentially inherent to them.

Looking Ahead in 2023...

While our report focused on SEC-required HCM disclosures, a company's full story really needs to be pieced together with any voluntary external *and* internal disclosures made in separate ESG, impact, or sustainability reports and company websites.

The greenwashing risk is real and the stakeholder push for credible and meaningful data to understand an organization's success against its commitments and goals is becoming crucial.

Further, as companies continue to hone their HCM story to create their competitive advantage, they must not only look at the story being told but balance that against developing solid controls and audit processes that mitigate inconsistencies in data and statements while integrating the risks and opportunities with the broader corporate strategy. HCM is an enterprise risk; and organizations would be wise to leverage its enterprise risk program to provide structure without losing sight of the opportunities.

In this regard, while the social unrest of 2020 and the COVID-19 pandemic brought ESG into the mainstream as an opportunity, the geopolitical and challenging economic environment of 2022 and 2023 are testing organizations' ESG commitments and plans—especially as it relates to talent. The opportunity for organizations will lie in fine tuning their ESG strategies in ways that prioritize key ESG concerns, while integrating them into longer term corporate strategies. Ensuring continued investments in talent and culture will be critical.

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[1] SEC, *Final Rule: Modernization of Regulation S-K Items* 101, 103 and 105 (August 26, 2020) at 125, available here: www.sec.gov/rules/final/2020/33-10825.pdf.

[2] According to a recent IBM study, approximately 70% of potential employees prioritize employers they view as sustainable and/or socially responsible (synonyms ESG).

[3] The risk of being caught with public commitments or statements that do not align with actions.

Human Capital Management Report Mentions

	Agriculture & Food	Construction & Real Estate	Energy & Natural Resources (incl Utilities)	Financial & Insurance	Healthcare & Pharma	Industrial & Manufacturing	Retail	Services	Technology & Telecom	Transportation
COVID-19	75%	60%	80%	60%	80%	75%	70%	60%	65%	55%
Culture	95%	70%	75%	55%	90%	75%	80%	100%	85%	55%
Demographics	70%	40%	65%	75%	80%	50%	30%	50%	60%	70%
Diversity and Inclusion	100%	85%	100%	95%	100%	95%	95%	95%	95%	85%
Employee Health and Safety	95%	80%	100%	65%	100%	75%	80%	85%	75%	85%
Initiatives	90%	85%	65%	80%	100%	90%	70%	90%	80%	75%
Pay Equity	30%	15%	25%	40%	50%	25%	25%	25%	40%	10%
Recruiting and Retention	60%	75%	90%	90%	95%	90%	65%	100%	75%	85%
Talent Development and Management	90%	85%	90%	90%	100%	90%	85%	100%	95%	95%
Did it mention the Board or a Board committee as having oversight of human capital?	65%	35%	60%	40%	30%	40%	40%	35%	40%	35%

Meet the Authors

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