

## Key takeaways

# ESG and Human Capital Disclosure

At our Comp Talks session on November 8, 2023 – **ESG and Human Capital Disclosure** – Cooley partners Ali Murata, Beth Sasfai and Wendy Brenner, along with Verizon Vice President and Deputy General Counsel of SEC and ESG Reporting Dana Kahney, discussed various hot-button topics and challenges that have arisen as a result of the rapidly changing environmental, social, and governance (ESG) regulatory landscape. Below are some key takeaways summarized by Cooley associates Vince Flynn, Eileen Leman and Megan Taing.

**Current public reporting on human capital management topics varies widely, but the backdrop may soon change with potential new Securities and Exchange Commission rules in April 2024.** The SEC's current rule for human capital reporting on Form 10-K is a principles-based approach, giving companies significant leeway in determining what topics to report on. Workforce composition and demographics – including metrics related to diversity, equity and inclusion (DEI) – and talent management are especially common topics, with 99% and 96% of S&P 100 companies in the past two years reporting on each, respectively. The SEC has indicated its plan to propose new human capital rules in April 2024, and commentators expect a move from a principles-based approach to a more prescriptive approach, meaning that companies may be required to report certain workforce metrics broken down by detailed categories (such as worker status and compensation) and additional narrative disclosures on the company's labor practices and compensation initiatives. This echoes a larger global trend toward more rigorous ESG reporting regulations, particularly illustrated by the European Union's Corporate Sustainability Reporting Directive. Companies should anticipate needing to collect more data related to their workforce composition and pay practices, as well as begin thinking about how to craft a narrative explaining how their workforce plan fits within their broader company strategy.

**Establishing a cross-functional internal ESG team as early as possible is critical to keeping the ESG reporting process on track.** Preparing ESG disclosures often requires input from multiple business units within a company, and formally establishing an internal ESG team early is important for both securing executive support for ESG initiatives and ensuring that ownership of workstreams goes to the appropriate individuals. Building in accountability mechanisms and thoughtfully clarifying each person's role will help the process run more smoothly – and ensure that key action items are completed on a timeline that will alleviate time crunch and bandwidth issues that often occur before filing deadlines.

**Companies incorporating ESG metrics into executive compensation should ensure those metrics are aligned with their business strategy and informed by their key stakeholders' expectations.** While S&P 500 companies continue to significantly outpace other Russell 3000 companies in adopting ESG metrics into their executive compensation programs (69% to 10%, respectively, based on recent data), market and stakeholder pressures may motivate more companies to take similar action. When doing so, companies should consider their key stakeholders' views on the role, structure and types of ESG metrics in executive compensation, as well as whether:

- There is a clear business case for the ESG metric.

## Comp Talks

- The ESG metric is measurable.
- Required disclosure regarding the ESG metric could expose the company to litigation and/or public relations risks.

**Companies are reporting DEI-related metrics as part of their human capital disclosures with increasing frequency.** The SEC is expected to enhance disclosure requirements, and in the meantime, companies should plan for such reporting by revisiting pay equity practices, ESG scores and talent-related initiatives that may be useful as human capital disclosures in the future.

**[Alessandra Murata](#)**

Partner  
Palo Alto

**[Beth Sasfai](#)**

Partner  
New York

**[Wendy Brenner](#)**

Partner  
Palo Alto

**[Vince Flynn](#)**

Associate  
San Diego

**[Eileen Leman](#)**

Associate  
Los Angeles

**[Megan Taing](#)**

Associate  
New York

**[Janice Chan](#)**

Resource Attorney  
New York