

## Maximize Your Law Department's Value by Leading ESG

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The term ESG has gotten much attention lately, but many aren't even sure what it means. "ESG" stands for "Environmental, Social, and Governance" and is a framework to evaluate a company's business as it relates to meeting its environmental, social, and governance strategic objectives. Investors, regulators, employees, and customers express increasing concern that the companies they deal with are concentrating on and improving their ESG metrics. It is without a doubt an area of focus that is here to stay.

Law departments can elevate their value within their company by assuming a leadership role in creating and leading the company's development of its ESG metrics. As the 2021 [BarkerGilmore General Counsel Pay Trends Report](#) states: "ESG matters... will continue to become a core function of, and a required competency for, the GC role." While most organizations already assign the "corporate governance" section of ESG to the law department, a more expansive approach enables the General Counsel and team to shine.

In this article, we discuss examples of how General Counsel and law departments can burnish their profile while doing good and helping their employers with ESG matters.

### Environmental

How, you may ask, can a law department be responsible for the "E" in ESG unless the corporation is directly involved in environmental, manufacturing, travel, or transport industries? Indeed, in some companies, environmental improvement is the responsibility of a Chief Sustainability Officer. If a company is too small for a full-time Chief Sustainability Officer, the GC can lead the sustainability efforts by focusing on ways to protect the environment and reduce the company's carbon footprint. Consider whether the company can implement specific measures from the ground up that do not need to be overly managed by the leadership team but are organic to the operations of the business. The law department can, for instance, assure that all company leases and real estate contracts guarantee measurable, reduced environmental impact. Imagine an organization in which the GC pushes for some remote work to save commuting ecological impact.

Some industries are directly in the environmental space. Renewables operations and maintenance service providers can implement environmentally friendly solutions to meet needs central to the company's core business and purpose, such as grazing animals for vegetation management on customer sites. Travel companies need to continue reducing carbon footprints and water usage. Envision the day when all hotels in the Western United States have native plants, shrubs, and rocks on their grounds rather than grass and other water-demanding plants. The law departments in these spaces should help their businesses get out in front of the competition by suggesting these improvements and incorporating them into contracts.

### Social

Social is a massive opportunity for GCs and lawyers. GCs should be leaders of DEI&J by examining company numbers, processes, and practices and then setting clear goals for the law and other departments. Instead of giving lip service to the "We don't hire law firms that aren't diverse" mantra, GCs could truly implement that practice. If the company's favorite law firms aren't sufficiently diverse, and there is a reluctance to drop those

firms, the law department can insist that minority-owned firms partner with the legacy firms for particular aspects of the work or stipulate that diverse lawyers sit on critical firm committees.

Within the law department, adopt practices that require all panels of candidates to have a high percentage of diversity. GCs can mandate that diverse teams interview all new hires. Bring on and train diverse law students as clerks, with the expectation that they will work for your company when licensed. Seriously applying process improvement tools can be of enormous assistance to make DEI&J stick.

### **Governance**

GCs are already duty-bound to advise the board and CEO of the legal and reputational risks associated with implementing or not implementing an ESG program relevant to the company's industry. In addition, GCs can push to improve components of governance, such as diversity of corporate boards, director training on compliance and fiduciary duties, and unification of compliance practices and oversight. The GC is in the perfect position to drive governance best practices.

### **Finding the time**

Pressing business and legal matters frequently cause ESG to be put on the back burner. The General Counsel who wants to excel and lead ESG efforts can select one area of concentration rather than attempting to boil the ocean. GCs can also put together ESG task forces within their companies to obtain more buy-in and achieve better solutions for all stakeholders.

For example, GCs should confirm that their companies do not do business with any entities listed by the US Customs and Border Protection in withhold release orders or companies listed on the Department of Commerce's Bureau of Industry and Security's Entity List on forced labor.

Suppose there is a claim against a particular company or supplier that forced labor is used as a part of their supply chain process, and the US government has not reacted or issued any orders concerning the accused company. In that case, the General Counsel can arm the supply chain group with questions, asking the particular company for the diligence they conducted in investigating these claims within their company and how they ensure that the use of forced labor does not taint their products and manufacturing.

General Counsel and their departments should think as creative business people to demonstrate their highest value and focus on creating corporate ESG policies central to the company's business and purpose. The need to show ESG improvement is growing, and law departments should jump in and lead this critical area.