



Shifting from HR to Human Capital: A Strategic Imperative for Legal Departments

Compliance and Ethics

Employment and Labor

Law Department Management



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Cheat Sheet

- **From HR to HC.** Legal departments can partner with our HR colleagues to expand the conversation beyond administrative and compliance aspects to a holistic HC strategy, focused on all aspects of human talent.
- **New disclosures.** The SEC implemented new HC disclosures for public companies in 2020, and the trends revealed by those filings shed light on how far HC strategies have already come — and how far they have yet to go.
- **Best practices for reporting.** Transparency, consistency, and benchmarking are all key to effective HC reporting. Conducting regular materiality assessments can help determine which HC metrics are most relevant to internal stakeholders.
- **Synergy with ESG.** Effective HC approaches work hand-in-glove with ESG strategies at companies, empowering the employees who are strongest advocates and enablers of ESG initiatives and aligning business performance to sustainability.

As digital transformation reshapes industries, legal leaders must recognize the evolving landscape and reframe their approach to managing talent. The transition from traditional human resources (HR) to human capital (HC) is not just semantic — it's strategic. To both HR and legal departments, helping the company leverage its talent, its most critical and expensive asset, is imperative. Legal leaders are

well-positioned to take a greater leadership role in these conversations.

The imperative of human capital

Human capital encompasses a broader and more strategic view of talent management. While HR has traditionally been asked to focus more on administrative and compliance aspects, HC recognizes the holistic value that employees bring to the organization. It integrates workforce analytics, strategic workforce planning, and a focus on optimizing the return on investment (ROI) in human talent. This shift is crucial in the digital age, where innovation and agility are paramount.

SEC trends in HC disclosure

The Securities and Exchange Commission (SEC) has [recognized the importance of HC](#) and introduced [new disclosure requirements in 2020](#). These regulations mandate public companies to provide more detailed information on their HC resources, including metrics related to employee development, attraction, safety, engagement, and retention.

1. Qualitative and quantitative metrics

89 percent of companies included both. Nearly nine out of ten companies have adopted a comprehensive approach to HC reporting by including both qualitative and quantitative metrics. This dual approach ensures a holistic view of HC management, capturing both numerical data and contextual insights.

2. Diversity, equity, and inclusion (DEI)

66 percent disclosed DEI information. Two-thirds of companies have begun to include detailed information about their DEI initiatives. This trend reflects growing recognition of the importance of creating an inclusive and equitable workplace, which can drive innovation and enhance organizational reputation.

3. Workforce analytics and productivity

Focus on workforce productivity. Many companies are now reporting metrics related to workforce productivity, such as revenue per employee, which underscores the value of HC in driving business outcomes. This trend highlights the shift towards viewing employees as critical assets whose performance directly impacts the bottom line.



While this is a good start in reframing the narrative of employees as assets, it is a bit reductive, and there is more work to be done. Capturing revenue per employee is attractive because it is easily quantifiable as a data point. However, it only captures one dimension (revenue generation) and does not yet fully account for contributions outside of revenue. This could be problematic for departments that hold a supporting role to the commercial engine that are not, themselves, revenue-generating (e.g., general and administration function or pure cost centers).

4. Employee development and training

Increased reporting on training programs. Companies are increasingly disclosing information about their employee development and training initiatives. Metrics such as training hours per employee and development program participation rates are becoming common, reflecting the emphasis on continuous learning and skill enhancement.

5. Talent acquisition and retention

Detailed metrics on recruitment and retention. There is a notable trend toward providing detailed metrics on talent acquisition and retention, including recruitment rates, turnover rates, and employee engagement scores. These disclosures help stakeholders understand the effectiveness of a company's talent management strategies and its ability to attract and retain top talent.

But each of these data points is probably insufficient on its own. There should still be a healthy

degree of skepticism about employee engagement scores — whether the survey is asking the right question, whether the responses are truly anonymized and thus encourage candor, whether the results are skewed for fear of retaliation, and whether it's been correctly curated to capture industry nuances.

6. Employee health and safety

Focus on safety metrics. Reporting on employee health and safety has gained prominence, with companies disclosing metrics related to workplace injuries, safety incidents, and well-being programs. This trend reflects a broader commitment to creating a safe, healthy, and supportive work environment.

7. Integration of HC and financial performance

Linking HC to business outcomes. Companies are increasingly integrating HC metrics with financial performance indicators. This approach helps illustrate the direct impact of HC on business success, reinforcing the strategic importance of investing in employees.

For example, when companies publicly announce a reduction in force (RIF), there is a focus on controlling costs, ensuring that the right talent is in the right role, and removing bloat from an organization. This exercise signals to the investor community that the company is managing its reduced HC assets to achieve the same or better ROI.

Similarly, in acquisition transactions, employees are treated as assets (not liabilities) in the company's ledgers. This categorization of the workforce as assets is in line with this shift in perspective.

That said, while employees are treated as assets during specific exercises around growth or reduction strategies, this is often limited to a singular point in time. How can companies maintain and foster an evolution to consistently treat employees as assets, even outside those singular events?

Best practices in HC reporting

- **Transparency and consistency.** Ensuring transparency and consistency in reporting is crucial. Companies should establish clear processes and controls over the preparation and reporting of HC measures to maintain reliability and comparability over time. Furthermore, this builds trust with employees and other business stakeholders over time.
- **Materiality assessment.** Conducting regular materiality assessments helps determine which HC metrics are most relevant and significant to stakeholders. This practice ensures that the disclosures remain focused on the areas that matter most to investors and other stakeholders.
- **Benchmarking against industry standards.** Utilizing industry benchmarks and frameworks, such as those provided by the Sustainability Accounting Standards Board (SASB) and the International Organization for Standardization (ISO), can enhance the relevance and credibility of HC disclosures.

By adopting these best practices and keeping abreast of evolving trends, legal departments can partner with human resources to ensure that their HC reporting not only complies with regulatory requirements and provides valuable insights to stakeholders, demonstrating the strategic role of HC

in driving organizational success.

ESG and HC: A synergistic approach for sustainable success

When reviewing the compilation of best practices supporting HC strategies, it's clear that a holistic approach to HC management further supports the environmental, social, and governance (ESG) strategy for companies.

Employees are often the strongest advocates and enablers of ESG initiatives; their engagement and commitment can drive the success of these strategies. Companies with strong ESG commitments also tend to attract and retain top talent and more diverse talent, and many employees consider a company's social and environmental commitments when deciding where to work.

We know that investing in a diverse and inclusive workforce can lead to better business outcomes. As noted above, a strong focus on HC can help transform organizational culture, and this same transformation can help the culture to align with ESG goals — it is a virtuous circle that includes redefining work objectives, empowering workforce accountability, and integrating sustainability into the workplace culture.

In turn, from a legal and ethical perspective, by integrating HC strategy into ESG efforts, long-term business performance can be better aligned to sustainability by both mitigating risks and creating value. Demonstrating value can be done by using metrics to reward employees across the business, including rewarding executives with sustainability goals.

Leveraging data and technology to track HC metrics can also elevate ESG outcomes. This includes using analytics to measure progress and to make informed decisions. By focusing on these aspects, you can effectively describe how HC impacts ESG strategies and contributes to sustainable business practices

When you focus on employee well-being and the sustainability of your employee base, it leads to a more engaged, thoughtful employee base that is committed to demonstrating the strategic role of HC in driving organizational success.

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Ultimately, employees connect to and will help to drive the most important elements for the company

and its shareholders when it comes to ESG.

Explaining HC to the CEO and board

When presenting the concept of HC to the CEO and board, it is crucial to emphasize its strategic value: HC is a key driver of long-term value creation within the organization.

Highlighting metrics such as employee productivity, innovation rates, and the impact of training and development on performance can effectively illustrate this point. Presenting case studies or examples from within the industry where strategic human capital management has led to significant business outcomes can provide concrete evidence of its benefits.

Additionally, it is important to align HC strategies with the company's overall objectives. Showcase how investing in legal talent can mitigate risks and enhance compliance, thereby contributing to the company's bottom line. Utilize data and analytics to demonstrate the ROI of HC investments, such as improved employee retention rates and reduced turnover costs. These metrics can help illustrate how HC initiatives support and advance the company's strategic goals.

Focusing on compliance and transparency is also essential. Explain the SEC's HC disclosure requirements and how adhering to these can enhance investor confidence and corporate reputation. Discuss the importance of transparency in HC practices and its positive impact on stakeholder trust. By providing clear and comprehensive disclosures, the company can demonstrate its commitment to effective HC management and build greater credibility with investors and other stakeholders.

By emphasizing the strategic value of HC, aligning it with organizational goals, and focusing on compliance and transparency, legal leaders can effectively communicate its importance to the CEO and board. This approach not only highlights the tangible benefits of HC investments, but also reinforces the company's commitment to sustainable and ethical business practices.



Leading by example in the legal department

Legal departments are uniquely positioned to lead by example in adopting HC strategies, setting a benchmark for the rest of the organization and supporting the human resources strategy through the legal lens. This is a critical message in reminding all members of the legal team that as professionals of high integrity, the goal is not always to advise — to tell, to provide FAQs — but to lead by example — to be an influencer.

Be the kind of leader that others admire because of your leadership capabilities, because of how you enhance the business, and because of how you help others meet their objectives.

A practical first step is to implement comprehensive talent development programs. Developing and implementing training programs that enhance the skills and capabilities of the legal team — often beyond what has been recognized as traditional legal duties — is essential. Focus areas should include digital literacy, compliance, and risk management. Promoting continuous learning and professional development ensures that the legal team remains adept and responsive to the evolving legal landscape.

Fostering a culture of diversity and inclusion is another critical step. Implementing policies and practices that promote DEI within the legal department can significantly enhance its effectiveness. Tracking and reporting on diversity and equity metrics not only demonstrates a commitment to these values but also provides measurable progress. Creating an inclusive environment where diverse perspectives are valued and leveraged leads to better decision-making and a more cohesive team. And ensuring performance evaluations include metrics that reflect the full employee experience, such

as aspects of inclusion and belonging, that may have far-reaching effects beyond simply ROI.

Leveraging technology for HC management can greatly optimize the performance and potential of the legal department. Advanced analytics and HC technology platforms can be used to track employee performance, identify skills gaps, and forecast future talent needs. Adopting collaborative tools and platforms that facilitate remote work and enhance productivity can make the legal department more agile and efficient.

Above all, it is crucial to communicate the value of HC regularly. Keeping stakeholders informed about HC initiatives and their impact on the department's performance and the organization's goals reinforces the importance of these strategies. Engaging with employees to gather feedback and insights ensures that HC strategies are aligned with their needs and aspirations, fostering a sense of involvement and commitment across the department. By taking these steps, legal departments can lead by example and partner to drive the organization's HC strategy forward.

Embracing the future of HC

The shift from traditional HR to forward-thinking HC is a strategic evolution essential for legal departments in the digital age. Recognizing employees as critical assets, legal leaders must adopt a holistic approach to HC management, emphasizing workforce analytics, strategic alignment with organizational goals, and compliance with SEC disclosure requirements.

This comprehensive view highlights key trends such as DEI, employee development, and the integration of HC metrics with business outcomes. By implementing robust talent development programs, fostering a culture of inclusion, leveraging technology for managing HC, and maintaining transparent communication, legal departments can lead by example, demonstrating the strategic importance of human capital in driving long-term value.

By changing — or tailoring — performance evaluations to expansively include HC metrics, organizations can properly incentivize employees' continued growth and development, helping the company itself improve. If you measure an employee in only one dimension, you will only get one-dimensional returns. Conversely, if you measure an employee on a holistic scale, you'll get richer, more fulsome, more strategically-aligned performance.

This approach not only enhances the performance of the legal team but also builds credibility with stakeholders, positioning the organization for sustainable success.

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as a legal opinion on specific facts, and should not be considered representing the views of its authors, its sponsors, and/or ACC. These resources are not intended as a definitive statement on the subject addressed. Rather, they are intended to serve as a tool providing practical guidance and references for the busy in-house practitioner and other readers.

[Minh Hoang Merchant](#)



General Counsel and Secretary

Genome Medical, Inc.

Minh Hoang Merchant joined Genome Medical, Inc. as its General Counsel and Secretary in March 2020. Genome Medical is a leading telegenomics technology and services company committed to precision medicine and democratizing access to genomic-based medicine. Prior to her current role, Ms. Merchant was Associate General Counsel at Myriad Genetics, Inc., which acquired Counsyl, Inc., where Ms. Merchant served as Associate General Counsel. Before that, Ms. Merchant was also Chief Counsel at McKesson Corporation, a Fortune 5 company and the largest pharmaceutical distributor in the nation. Ms. Merchant has been practicing law for over two decades, graduating from UCLA School of Law, and has spent the entirety of her in-house career in life sciences. Ms. Merchant has served on various minority bar association boards as well.

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Chief Legal Officer and Corporate Secretary

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Carolyn Herzog is a C-Suite executive with over 25 years of broad technology experience in multinational companies, having worked across the United States and other countries. Currently, Herzog is Chief Legal Officer and Company Secretary of Elastic (ESTC), the Search AI Company. For Elastic, Herzog is responsible globally for all legal, regulatory, compliance and public affairs matters and provides strategic counsel to the CEO, Board and leadership team on a broad range of corporate, commercial and regulatory issues. Elastic is headquartered in The Netherlands and is

traded on the NYSE.

Prior to Elastic, Herzog was the EVP, General Counsel, Corporate Secretary and Chief Compliance Officer for Arm Ltd., the world's leading semiconductor IP company, which was headquartered in the U.K. and owned by SoftBank Group Corp. (SFTBY), a Japanese multinational conglomerate holding company headquartered in Tokyo that focuses on investment management. Before joining Arm, Herzog was the VP, Deputy GC and CCO at Symantec Corporation (SYMC), the world's largest cybersecurity company. Prior roles included acting as Head of Legal for EMEA, based in the U.K. Herzog joined Symantec through the acquisition of AXENT Technologies, Inc. (AXNT) where she led the transaction as GC. Prior to her legal career, Herzog worked in the Africa Department of The World Bank in Washington, D.C.

Herzog currently serves on the Board of the Association of Corporate Counsel, the Business Software Alliance, and the Hispanic Foundation of Silicon Valley. She has served on the Advisory Board for The ACC Foundation Cybersecurity Summit and on the Host Committee for Ms. JD LaddHerUp, an organization dedicated to General Counsels supporting early career law firm associates in their career development. Herzog previously served on the board of ACC Europe, as an Advisory Board member to IPWatch Systems Corporation and on the Board for the National Cyber Security Alliance.

Herzog has been recognized by OnCon Icon Awards as a *Top 50 Global Corporate Counsel*, by the Silicon Valley Business Journal *C-Suite Awards*, as a *Distinguished GC* by the Director's Roundtable and as an *Attorney That Matters* by Ethisphere. Herzog has been recognized for her *Leadership in Innovation and Positive Human Impact* in 2020 by the American Legal Technology Awards. She has been a thought leader in the legal industry in areas such as AI Ethics, elevating the role of lawyers as business partners, and driving operational excellence within the legal department. Both within the companies where Herzog has worked, and externally, she has been a leading advocate for equality and diversity, inclusion, and belonging initiatives.

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Olga V. Mack is a fellow at CodeX, The Stanford Center for Legal Informatics, and a Generative AI Editor at law.MIT. Mack shares her views in her columns on ACC Docket, Newsweek, Bloomberg, VentureBeat, Above the Law, and many other publications.

Mack is also an award-winning (such as the prestigious ACC 2018 Top 10 30-Somethings and ABA 2022 Women of Legal Tech) general counsel, operations professional, startup advisor, public speaker, adjunct professor, and entrepreneur. She co-founded SunLaw, an organization dedicated to preparing women in-house attorneys to become general counsels and legal leaders, and WISE to help female law firm partners become rainmakers.

She has authored numerous books, including *Get on Board: Earning Your Ticket to a Corporate Board Seat*, *Fundamentals of Smart Contract Security and Blockchain Value: Transforming Business Models, Society, and Communities*. She is working on her next books: *Visual IQ for Lawyers* (ABA 2024), *The Rise of Product Lawyers: An Analytical Framework to Systematically Advise Your Clients Throughout the Product Lifecycle* (Globe Law and Business 2024), and *Legal Operations in the Age of AI and Data* (Globe Law and Business 2024).