



# Crisis Management: Is Your Company Prepared?

Samuel Estreicher and James Philbin write: *Recent disclosures that key employees have engaged in sexually abusive practices towards coworkers and job aspirants raises to the fore serious practical questions for corporate executives and in-house counsel. What should the company do to prepare for and manage crises?*

By **Samuel Estreicher and James Philbin** | N.Y.L.J. December 01, 2017

Recent disclosures that key employees have engaged in sexually abusive practices towards coworkers and job aspirants raises to the fore serious practical questions for corporate executives and in-house counsel. What should the company do to prepare for and manage crises?

A corporate crisis can come in many forms: In addition to a Harvey Weinstein-type scandal, a significant class action litigation has been filed, a government enforcement agency has begun an investigation or a prosecution that could jeopardize your standing as an approved federal contractor,

criminal charges have been filed against the company or employee, something has gone wrong with a core company product or service, there has been a cyberattack targeting your company.

Any of these events can trigger undesirable publicity and other consequences that can adversely impact the brand of the company, company revenues and profits, customer relationships,

shareholder interests, and employee interests. Indeed, some crises can threaten the viability of the company—see Enron, WorldCom, Arthur Andersen, Lehman Brothers, Bear Stearns, etc.

Many companies make significant mistakes in the early stages of a crisis, when emotions can run high, even at the top levels of an organization. Due to lack of preparation, we often see companies take premature and erroneous positions or make erroneous statements to the media. These initial missteps can often significantly inflame the crisis or, at the least, place the company in less advantageous position than it could have been in. Nevertheless, there are proactive steps and planning that companies should engage in to be prepared and react in the event a crisis emerges.

First, a crisis management team should be identified and assigned in the company. This may include for example, the CEO, CFO, COO, general counsel, compliance officer, communications director and HR Leader. Other team members can be added or dropped from the team depending of the facts of the matter.

Second, even if a crisis has yet to fully develop, the team should convene and begin the management strategy and perform a crisis risk analysis of the company. What are the material risks to business operations that could spell crisis? What are the compliance and governance risks of the business? What operations, products or service failures could create a crisis? Does your company operate in areas of the globe known for corruption? Consider a crisis event and your response.

Third, once a crisis had begun, the team should follow the following steps:

- Identify the stakeholders in the crisis: who may be adversely impacted?

Directors, managers, employees, customers, shareholders/investors, vendors, business partners, affiliates and subsidiaries?

- Determine the need and scope of investigation to assess the facts of the crisis. Who will conduct the investigation? Internal legal department? External Lawyers and/or auditors? Subject matter experts? Other team members? While attorney client privilege may be important to protect the deliberation and strategic process, recognize that the facts (and reports summarizing data) will be discoverable. If the government is involved, recognize that the privilege may have to be waived.
- Does the company need to retain additional support or expertise? For example, are there security needs, public relations and/or lobbying needs, cybercrime expertise.
- Assess a communications strategy. Is the media involved or is it internal at this time? If a significant matter, assume it will eventually hit the media. Assign a person exclusively responsible for communications and interface with the media.
- Prepare a company position or holding statement. The company's credibility is critical, and truth is imperative; however, brevity is usually the best choice. If facts are unknown, do not state any. In addition, different but consistent holding statements/communications may be necessary considering the particular stakeholders and audience. In addition, holding statements may change over time as the matter proceeds.
- If media interviews are deemed necessary, the spokesperson must be properly prepared. Misstatements of fact or position can be very damaging to companies and alter the course of events.
- Continuously monitor the media coverage and consider need for additional responses or modifications to the holding statement. If multi-national in scope, the nature of media interaction may vary by region.
- Determine a team information exchange mechanism so team members can be contacted 24/7.

Fourth, complete a thorough investigation as soon as feasible and determine next steps or responses. It may be advisable that the response strategy be developed and decided by a subset of the crisis management team. Be cognizant of potential leaks and privilege issues during the response strategy process.

Fifth, once response strategy is complete, reconvene the crisis management team and assign response tasks to responsible parties with timetables for completion.

Sixth, the crisis response team should convene as often as necessary, constantly reassess the steps and strategy outlined above and respond as appropriate. Be prepared and open to strategic changes, sometimes drastic, as the matter and facts develops.

While some crisis may be unavoidable and even devastating to a company, proper crisis management preparation can avoid mistakes that can unduly exacerbate the situation. Remember, hope for the best and prepare for the worst!

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