

Risks Associated with Use of Concealment Clauses

Alphabet 2022

RESOLVED:

Shareholders of Alphabet Inc. (“Alphabet”) ask that the Board of Directors prepare a public report assessing the potential risks to the company associated with its use of concealment clauses in the context of harassment, discrimination and other unlawful acts. The report should be prepared at reasonable cost and omit proprietary and personal information.

SUPPORTING STATEMENT: Concealment clauses are defined as any employment or post-employment agreement, such as arbitration, non-disclosure or non-disparagement agreements, that Alphabet asks employees or contractors to sign which would limit their ability to discuss unlawful acts in the workplace, including harassment and discrimination.

WHEREAS: Alphabet wisely uses concealment clauses in employment agreements to protect corporate information, such as trade secrets. However, harassment and discrimination are not trade secrets, nor are they core to Alphabet’s operations or needed for competitive reasons. Yet, Alphabet’s employment agreements may prohibit their workers from speaking openly on these topics. Given this, investors cannot be confident in their knowledge of Alphabet’s workplace culture.

A healthy workplace culture is linked to strong returns. McKinsey found that companies in the top quartile for workplace culture post a return to shareholders 60 percent higher than median companies and 200 percent higher than organizations in the bottom quartile.^[1] A study by the *Wall Street Journal* found that over a five-year period, the 20 most diverse companies in the S&P 500 had an average annual stock return almost six percentage points higher than the 20 least diverse companies.^[2]

In contrast, a workplace that tolerates harassment invites legal, brand, financial and human capital risk. Companies may experience reduced morale, lost productivity, absenteeism and challenges in attracting and retaining talent.^[3] Employees who engage in harmful behavior may also be shielded from accountability.

Pinterest paid \$22.5 million to settle a gender discrimination lawsuit brought by a former executive after years of binding employees who settled discrimination claims to concealment agreements. Shareholders sued Pinterest executives alleging a breach of fiduciary duty by “perpetrating or knowingly ignoring the long-standing and systemic culture of discrimination and retaliation.”^[4] Similarly, in 2020, Alphabet agreed to limit confidentiality restrictions associated with harassment and discrimination cases in a \$300 million settlement of shareholder lawsuits alleging the company created a toxic work environment.^[5]

Yet, in 2021, reports suggested that at Alphabet's Google, employees who filed internal complaints about racism and sexism were offered counseling or medical leave^[6] and Google paid \$3.8 million to settle allegations of pay and hiring discrimination against women and Asian workers.^[7] Investors seek assurance that more missteps are not occurring at Alphabet, hidden from view because of concealment clauses.

California law prohibits concealment clauses in employment agreements involving recognized forms of discrimination and unlawful activity.^[8] Alphabet works under a patchwork of state laws related to the use of concealment clauses and may benefit from consistent practices across all employees and contractors.

[1] <https://www.mckinsey.com/business-functions/organization/our-insights/the-organization-blog/culture-4-keys-to-why-it-matters>

[2] <https://www.wsj.com/articles/the-business-case-for-more-diversity-11572091200>

[3] https://conference.iza.org/conference_files/LaborMarkets_2021/sockin_j28322.pdf

[4] <https://www.institutionalinvestor.com/article/b1phvnsffr2bp/Retirement-System-Sues-Pinterest-Board-and-Execs-Over-Discrimination>

[5] <https://www.nytimes.com/2020/09/25/technology/google-sexual-harassment-lawsuit-settlement.html>

[6] <https://www.nytimes.com/2021/07/28/us/google-workplace-complaints-counseling.html>

[7] <https://abcnews.go.com/Business/google-pay-38-million-alleged-discrimination-women-asians/story?id=75633080>

[8] <https://www.marketwatch.com/story/silenced-no-more-act-becomes-law-in-california-crippling-ndas-11633705395>