

Shifts in the Purpose of a Corporation Signal New Obligations and Uncharted Territory in Employment Law

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Chris Kwok, JAMS mediator and arbitrator, discusses the shift in policy and what companies, employees and employment attorneys need to know about the changing landscape of employment disputes.

In August 2019, the Business Roundtable published its “Statement on the Purpose of a Corporation,” which was signed by 181 CEOs of the world’s biggest companies. It notes that a company’s purpose has moved from being shareholder centered to being stakeholder centered. This document reorients the purpose of a corporation to benefit multiple stakeholders:

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customers, employees, suppliers, communities and shareholders. This shift in principle was met with some skepticism, with critics seeing lofty rhetoric but no real mechanism to guarantee change.

The document mentions fair compensation and important benefits for employees, including training and education. Values of diversity and inclusion, dignity and respect are to be fostered. Given these goals, we are in a transitional time between the announced shift in principle and creation of the programmatic and legal structures that will put things in motion, and employment lawyers have an important role to play here. As novel claims and conflicts arise, it will be increasingly important to seek paths to dispute resolution—like mediation—that are



flexible and prioritize not only subject matter expertise, but also a deeper understanding of the field of developing rights and responsibilities.

The McKinsey Global Institute estimates that by 2030, up to 375 million workers worldwide (14% of the workforce) will need to switch occupations in order to remain employed in a shifting labor market. Much of the concern about the transformation

(and elimination) of jobs is due to automation. This has sparked support for bold solutions like universal basic income, which would benefit, among others, those undergoing job retraining.

In the early 2000s, it was common for companies to provide outplacement counseling to laid-off employees. Though the usefulness of outplacement services may be debatable, they do offer a sense of community, resume review and job search assistance. Nonetheless, outplacement programs are due for a reinvention. Government, nonprofits and corporations will all be part of this process. How will we reinvent our systems to prepare American workers for the labor market of the future?

Other countries have created new training systems: French and Singaporean workers can accrue training hours in personal and portable accounts. These accounts can be accessed by the individual, employer or government, and they remain active throughout workers' careers. Any training hours that workers may earn can be applied to professional certifications or language education.

In the United States, innovators in the nonprofit sector are leading the way. New York City-based Pursuit has built a unique model

to address workforce training. The organization focuses on workers who earn on average \$18,000 per year and trains/mentors them for three years, with graduates averaging an \$85,000 annual salary upon completing the program. The program is free, but participants agree to pay back 12% of their income for three years if they make more than \$65,000 a year.

The labor and employment bar, judges, arbitrators and mediators will also help to shape the future. Employment lawyers and those who do policy work have an important role to play during this inflection point. Government lawyers and legislators can create new programs that will equip workers with the skills they need to be productive citizens. The new corporate purpose signals a commitment to a higher standard than current workplace statutes require. This new commitment, however, may cause legal claims to arise.

Management lawyers can help their clients realize their new goals by guiding corporate institutional change and encouraging their clients to invest in transferable training and certification. They also face heightened litigation risks because plaintiff's lawyers now have a powerful corporate statement to point to when

litigating against corporations. Judges should take guidance from the stakeholder-centered model. Mediators should also take their cues from this model and help shape the emerging relationship between employees and corporations.

