



COVID-19 and the importance of corporate board diversity



Margo's Master Plan

By [Margo Wolf O'Donnell](#)

Margo Wolf O'Donnell is co-chair of Benesch's labor and employment practice group in Chicago. She is an experienced litigator who handles cases involving restrictive covenants, business torts, employment issues, intellectual property and class action defense. Her experience includes federal, state and administrative agency litigation involving allegations of sex, race, national origin, disability. She also helps employers prevent litigation through counseling and training sessions. She may be reached at modonnell@beneschlaw.com.

POSTED July 28, 2020 11:38 AM

Research shows time and again that businesses with diverse boards of directors tend to be more profitable. In particular, it has been noted that including women and people of color as corporate directors positively impacts board decision-making and governance.

Women and people of color make contributions related to their expertise, of course, but they may also bring different experiences and perspectives to the table.

Lawmakers around the country have realized how critical board diversity is to businesses' overall performance and are beginning to mandate standards for representation on corporate boards.

Facing these requirements, even in the best of times, many businesses report that they struggle to find qualified women and people of color to serve on their boards. And now, with a cascade of layoffs hitting even upper-level employees, there could be even fewer highly visible female and minority candidates to choose from when adding new directors.

This issue is of particular urgency here in Illinois, as well as in California, New York and Maryland, where board diversity laws are already on the books. Michigan and New Jersey have proposed legislation in the works.

In California, SB 826 mandated female representation on boards by Dec. 31, 2019. As part of the law, the required number of female board members is being increased incrementally. By Dec. 31, 2021, boards of six or more directors must have at least three female directors; boards of five directors must have at least two female directors and boards of four or fewer directors must have at least one female director. The potential fines for not adhering to the new law start at \$100,000.

Meanwhile, Illinois has adopted a state law that requires reporting on board diversity. H.B. 3394 requires that by Jan. 1, 2021, any Illinois-headquartered, publicly listed corporation must include information regarding its directors in its annual report filed with the secretary of state.

The Illinois law goes further. Corporations must list data on specific qualifications for board members; the skills and experience considered; the self-identified gender of each director; the



available on the Illinois secretary of state's website.

So, while there are no monetary penalties associated with the Illinois law, there is a significant public relations risk for companies that fail to achieve at least some level of diversity on their boards.

And, whether or not a business' home state has yet put diversity requirements into law, the economic impact of including a diverse set of perspectives on a board is clear.

In a recent Benesch study, "[Corporate Governance 2020: Practices and Trends at Middle Market Public and Private Companies](#)," our research documented that in M&A deals, companies with 30% or more female representation on their boards tended to see better returns on their acquisitions than companies with fewer women on their boards.

In these challenging economic times, every bit of improved financial performance counts. So now, more than ever, a fuller and more comprehensive set viewpoints at the leadership level are needed to find a path forward.

Businesses will have to look to non-traditional sources, including the nonprofit and start-up worlds, to find the innovative leadership they need to take a seat at the table at their next board of directors meeting. Search and recruiting practices will likely have to change from the traditional networks and relationships of old to include newer, more inclusive sources of board candidates.

Fortunately, there are plenty of qualified women and people of color who could bring their insights and expertise to corporate boards. Now, more than ever, the onus is on corporate leadership to find them.