

Issue 02 | Winter 2019/20

# vault.

## THE ACTIVISM ISSUE

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*Protect your organization  
by protecting your people*





The abuse of human and civil rights is a phenomenon as old as humanity itself, yet it's bewildering to think that we're now heading into the second decade of the 21st century with so many recent infringements on both counts splashed across the headlines. The notion of protected rights can be traced back to the days of the Roman empire but it's really only in the last several decades – more specifically since the 1960s – that the world has seen prohibitions on discrimination on the basis of race, color, religion, sex or nationality. Sexual harassment only became recognized as a form of discrimination in the 1980s under the umbrella of gender discrimination. Some forty years later and it feels like we've only just lifted the rock on what turned out to be an epidemic of harassment, bullying, and discrimination in the workplace. But it's not a rock that was lifted by the implementation of legislation and the championing of these protections by the world's employers. Rather, it was a rock catapulted into the stratosphere of public consciousness by everyday people who unashamedly took their concerns to public forums where the world was forced to take notice as the most prolific violators were held to account.



# THE GLOBAL RISE OF EMPLOYEE ACTIVISM



Social media has become something in between a courtroom and gladiatorial arena for organizations and individuals accused of misbehavior. It's not much of an embellishment to suggest that a single accusatory tweet can wipe millions off a company's stock price and it's certainly true that mass walkouts organized on Twitter and Facebook can stop a company in its tracks, disrupting both productivity and the organizational hierarchy.

Although union membership is in steady decline globally - in the US alone less than 10% of the workforce holds membership - worker activism is on the rise, amplified and coordinated on an ad hoc basis through social media and consumer technologies.

It's a phenomenon that's set to grow and understandably has many organizations feeling nervous.

The Future of Work survey, released by law firm Herbert Smith Freehills at the end of 2019,

*95% of enterprises expect to see a rise in employees voicing their concerns over social media.*

*— Herbert Smith Freehills*

**80%**  
*of enterprises expect to see a rise in employee activism*

revealed that 80% of surveyed enterprises globally expect to see a rise in activism among both employees and casual workers in the future. Around 40% think they will see a significant increase.

The expectation is higher among large companies (those with annual revenue of \$1bn or more), where 86% say they are more likely to see a rise in activism than their smaller counterparts.

Social media will continue to play a key role as a tool for both coordinating and amplifying workforce activism. Some 95% of respondents to the law firm's survey said they expect to see an increase in their workforce making its voice heard through social media channels in the future.

What's more is that these channels are increasingly being protected. In the US, expansions to the National Labor Relations Act (Section 7), give employees the right to act together for their mutual benefit, even those who are not unionised. This makes public fora like social media a place where employees can air their grievances and benefit from safety in numbers.



# SPEAK UP PLATFORMS



# FOR HONEST INSIGHT

There is plenty of research that demonstrates the importance of providing employees with an effective platform to voice their concerns and plenty of academic studies that argue that traditional approaches, such as the annual anonymous survey, are ineffective and limited in scope. Moreover, a focus on organizational performance tends to skew the responses.

A recent research report from industry analyst Gartner noted that when CEOs ask leaders about the state of the organization's culture, they all want to look good. Yes, some senior leaders will be straightforward, but most will not and they don't want to reveal that perhaps they don't always know the real issues behind how work gets done.

"To get the unvarnished truth, conventional culture data, such as descriptive survey data, is inadequate. This data typically only focuses on employee satisfaction (for example, engagement and turnover metrics) and is only collected once a year," Gartner says. For CEOs to get an honest view of culture, they instead need unfiltered and actionable qualitative information.

This view is supported by UK body the Chartered Institute of Personnel and Development, which has long argued that traditional approaches such as workforce surveys are too limited in scope and the focus should be on the individual benefits of being heard.

Gartner suggests that CEOs should remove the stigma associated with reporting the negative aspects of culture and implement tools for employees to confidently share

unfiltered feedback on the organization's culture.

The danger for employers in not following this advice is that by failing to provide an effective forum or mechanism internally where issues concerning employees can be discussed, workers will take the discussion elsewhere. This is typically outside the organization's walls and their field of vision.

The same is true for organizations that are too slow to respond to employee requests for a reporting mechanism. Herbert Smith Freehills notes the case of logistics firm UPS, which was slow to introduce a speaking up platform for employees. When it finally did, employees were reluctant to migrate to the 'official' tool because they had already established their own channel outside of the organization's control.

The trend for employees to become their own agents of change is further influenced by a frustration with the processes of the official watchdogs. The Equal Employment Opportunity Commission (EEOC) was created to enforce and administer the law but half of all formal claims of sexual harassment in the US do not result in any charges. The EEOC notes that cases are hard to win, and the body is swamped with requests, reporting that the average wait time for a complaint to be addressed was 295 days in 2017.

This lack of support for official reporting channels both internally and externally is driving frustrated employees to other platforms where they can be vocal about their concerns, including the press and social media.





- A safe place for employees to speak up internally
- Identify problem areas and offender patterns
- Get to resolution faster

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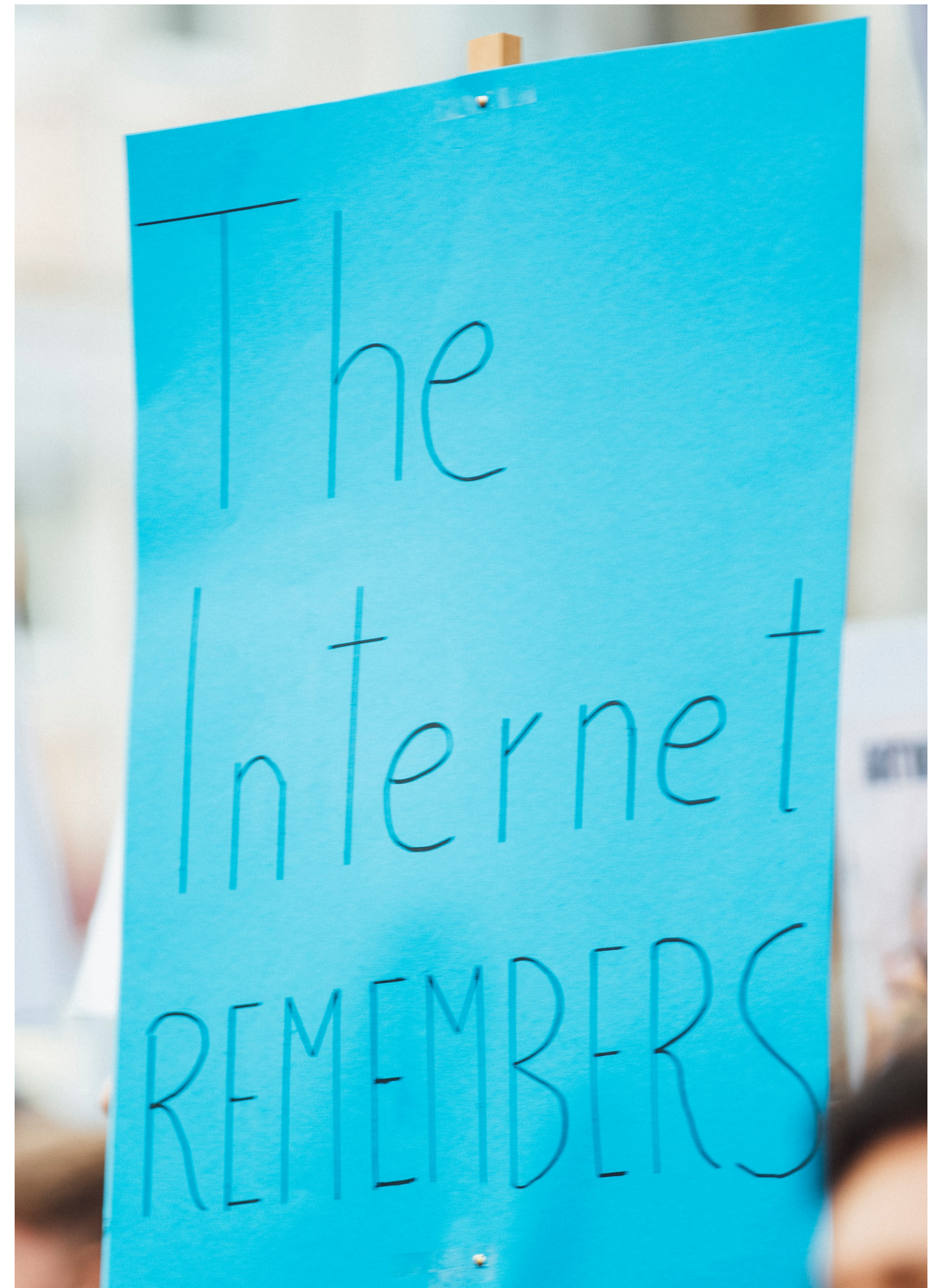
# RISK & REPUTATION

*“Social media is undoubtedly driving activism. Employees are using social media proactively and effectively, and this means that employment cases and campaigns are far more prominent.”*

*Emma Röhsler,  
Partner Herbert Smith Freehills*

**W**ith employees taking a grassroots approach, employers are losing control and visibility of reporting mechanisms, increasing the potential of reputational damage to the brand. In the Herbert Smith Freehills research, 55% of enterprise respondents identified workforce actions as a risk to reputation, exceeded only by cyber threats, and global economic slowdown.

There are financial implications too, with the law firm suggesting employee activism could cost as much as 25% of an organization's global revenue per year.







Clearly there is the potential damage to brand, reputation, and shareholder value, which then affects customers and clients. But this has a knock on effect for current workers and potential recruits. With employment at a record high there is a fight for talent that is difficult to win with a damaged employer brand.

In a 2018 survey by FTI Consulting and coaching and training firm Mine The Gap approximately 55% of the 4,700 plus professional women surveyed are less likely to apply for a job and 49% are less likely to buy products or stock from a company with a public #MeToo allegation.

The trend for employee activism is bringing more such allegations to light. For decades nondisclosure agreements and forced arbitration have cast a shroud of secrecy over interpersonal misconduct and perhaps helped perpetrators remain in positions of power by effectively silencing complaints.

It emerged that the Weinstein Company's habitual use of nondisclosure agreements to keep allegations under wraps was far from unusual. This has thrown a spotlight on the revelation that if organizations can buy employee silence, there is little incentive to improve workplace culture.

It took the #MeToo campaign and others such as Time's Up to blow the lid off this issue, forcing reconsiderations on the extent to which employers should be

allowed to use confidentiality provisions to prevent or discourage the exposure of harassment, discrimination, and other forms of misconduct.

As a result, employers such as Google and Facebook have dropped the practice and government reflections on whistleblower legislation are increasingly restricting the benefits of forced arbitration. The UK Government meanwhile, is following suit, but at a distance, giving organizations the opportunity to make their own reevaluations of NDAs.

## HIGH COSTS IN THE COURTROOM

In 2016, Fox News Channel agreed **\$20m** to settle a lawsuit filed by former broadcaster Gretchen Carlson against former Fox News CEO Roger Ailes

In 2012, a federal jury awarded surgical aid Ani Chopourian **\$168m** against Catholic Healthcare West when she alleged termination for filling harassment complaints.

In 2011, Ashley Alford, an employee at retail chain Aaron's Rents alleged sexual harassment by her manager and won a **\$95m** federal court verdict in an EEOC case.



# FROM

# TO LISTEN UP

In the UK at least, however, there is an increased focus on the root cause of cultures of silence. In mid-January UK Government body the Equality and Human Rights Commission (EHRC) released guidance for employers on dealing with harassment in the workplace. Vault Platform was one of the organisations invited to comment on the document during its production in 2019.

The EHRC identifies “a lack of appropriate reporting procedures” as a key factor in the under-reporting of workplace harassment and encourages companies to look at the implementation of more effective reporting tools.

Vault Platform’s own research carried out at the end of 2019 among 1,000 UK and US stakeholders of organisational culture - that is HR, D&I, Legal, and Compliance leads - supported the EHRC’s concerns. Our findings were that the vast majority of stakeholders (90%) believe their existing processes are effective at capturing misconduct and nearly 70% believe they already have a ‘speak up’ culture.

This points to a disconnect, but perhaps the remaining almost third are more aware of the reality. While almost 14% of our respondents were less sure about whether they have a speak-up culture, around 18% admitted that the vision and the reality are often different: ‘it depends on who you ask’, they said. So, saying you have a speak-up culture as part of your company values is not the same as living one.

One particularly encouraging revelation from Vault’s own research, however, was that 68% of respondents acknowledged that a culture of speaking up is the most effective way of tackling misconduct in the workplace. This outweighs training, process, and tools by some margin.

So, where do we go from here? It’s clear that ineffective internal reporting mechanisms are stimulating this trend for employees to seek their own platforms for speaking up and there is still a prevalent stigma around the acknowledgement of negative aspects of organizational culture. In fact, in its study: 3 Culture Conversations Every CEO Must Have With the Head of HR, Gartner encourages leaders to tackle this stigma and focus on giving employees a forum where they can confidently share their concerns.

A change in the generational makeup of many organizations may hold the key. It’s well noted that one of the characteristics of the Millennial generation is a drive to work for an employer whose values reflect their own. Indeed, Millennials are also the most willing to adopt an activist approach if they find their employer’s values wanting.

What sits in the balance is a requirement to protect their brand with that of delivering value to shareholders. But if an organization is to avoid public allegations of hypocrisy it must not only be forthright about its values but must also take care to uphold them.



#speakup

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