Exiting senior executives to calm a media storm

By Caroline Baker - 30 November 2018

In the age of the internet and social media, news spreads fast and momentum can quickly get behind a bad news story. Reputational damage can be significant if the story relates to senior executive transgressions and swift action often needs to be taken.

The last few weeks has seen numerous news reports that have whipped up a media storm for various high-profile companies. For example, the Waitrose magazine editor’s comment on murdering vegans (unfortunately made at the time Waitrose was launching a new vegan range), Deciem’s CEO going entirely rogue on Twitter and the media backlash against Persimmon’s CEO getting a £100m reward package.

Regardless of whether or not there is any malice or fault on the part of the senior executive, consistent bad press can quickly make their position untenable. Many companies realise that the only way to calm these storms, and move the company forward, is termination.

Dealing with significant, negative press is almost always a matter of crisis management involving a team of people from PR, HR and the board more generally. There are certain key steps that should be followed in every situation:

1. When faced with a substantial senior executive issue, a fast, confidential investigation should be carried out to get to the bottom of what has happened. The most important thing is to act quickly and decisively;
2. If the decision is made that the executive needs to leave the organisation, then it is key to understand their contractual entitlements. Look at the executive’s rights under long term incentive plans and pensions;
3. Agree exit terms which include a joint statement and a handover period. If it is key that restrictive covenants remain in force, then ensure that the exit is carried out in accordance with the contract. Otherwise, have restrictions restated in a settlement agreement with a sum set aside as consideration for the new covenants;
4. If the company is listed or in a regulated sector, then there may be additional requirements to consider including time critical notifications

to the regulator or market.

Unless the executive's behaviour clearly amounts to gross misconduct, such exits are rarely cheap. Dismissals in these circumstances may well be unfair which leaves an exposure to, at best, an unfair dismissal claim.

However, this is usually small fry compared to their contractual entitlements which generally remain payable. In particular, senior executives will often have long notice periods. Invariably these notice periods are not worked and either the executive will be left on garden leave or paid in lieu of salary.

In addition, executives often have awards under long term incentive plans. The drafting of these plans may well result in the executive being a good leaver (and therefore retaining unvested awards despite the termination). By way of example, in the Persimmon case, the CEO was exited, but was still entitled to his multi-million pound bonus package.

Of course, prevention is always better than cure. Yet whilst it is possible to reduce the risk of issues arising in certain areas (for example, minimising embarrassing Twitter gaffs by having a trained social media desk), so long as we have people leading our companies we will also have the possibility of issues arising from human error. There will always be a need for a quick reaction from those managing the aftermath to minimise the impact.

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