

IBM REPORT REGARDING “CONCEALMENT CLAUSES”

Executive Summary

IBM and its Board of Directors takes its annual meeting vote outcomes and stockholder feedback seriously. At the IBM 2022 Annual Meeting of Stockholders, Stockholder Proposal 6 passed by majority vote. The proposal requested a report assessing the potential risks to IBM from the use of “concealment clauses” in the context of harassment, discrimination, and other unlawful acts. This report is being published in response to the proposal and was prepared at the direction of the Board of Directors.

Approach and Findings

The potential risks to IBM were assessed using three factors:

1. Are there clear policies, procedures, and practices in place that protect employees from harassment, discrimination, and other unlawful acts?
2. Are concealment clauses a condition of employment?
3. Is there Board oversight of risk related to harassment, discrimination, and other unlawful acts?

As described below, the limited use of concealment clauses **does not pose an inappropriate risk to IBM**. IBM has a strong, decades long culture that does not tolerate discrimination or harassment, and has clear policies, procedures and practices in place to protect and support IBMers. IBM does not require concealment clauses and IBMers are free to discuss the terms and conditions of their employment. IBM uses arbitration, non-disclosure or non-disparagement clauses in post-employment agreements in limited circumstances only where mutually agreed by the parties and legally permitted. Further, IBM has strong Board oversight of risk related to harassment, discrimination, and other unlawful acts. As such, the limited use of these provisions does not pose an inappropriate risk to the Company and any risk is appropriately balanced with IBM’s culture of transparency and inclusiveness, as well as its deep commitment to fostering a healthy, safe and productive work environment for all IBMers.

Factor	Findings
Are there clear policies, procedures, and practices that protect employees from harassment, discrimination, and other unlawful acts?	<p>Yes, IBM has clear policies, procedures, and practices in place to protect and support IBMers</p> <ul style="list-style-type: none">• IBM has a <i>rich history of leadership</i> in diversity and inclusion.• IBM <i>does not</i> tolerate discrimination or harassment and has clear policies, procedures and practices relating to the prevention of harassment or bullying in the workplace• IBM <i>does</i> have extensive training, including mandatory training and recertification on Business Conduct Guidelines, anti-discrimination and anti-harassment• IBM <i>does</i> foster an inclusive workplace, where 9 out of 10 IBMers say they can be their authentic selves at work, supported by

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	<p>Allyship resources and over 200 Business Resource Groups globally</p> <ul style="list-style-type: none"> • IBM <i>does</i> have clear communication channels where employees may understand their options, discuss concerns, and take action • IBM <i>does</i> promptly and thoroughly review all reports of unlawful or unethical conduct, including non-inclusive behavior • IBM <i>does not</i> tolerate threats or acts of retaliation against employees for reporting non-inclusive behavior
<p>Are concealment clauses a condition of employment?</p>	<p>No, IBM does not require concealment clauses and IBMers are free to discuss the terms and conditions of their employment</p> <ul style="list-style-type: none"> • IBM <i>does not</i> require employees to agree to arbitration as a condition of employment in the U.S. • IBM <i>does not</i> preclude IBMers from discussing the terms and conditions of their employment or their own experiences with non-inclusive behavior • IBM uses confidentiality provisions in post-employment agreements in limited circumstances <i>only where mutually agreed</i> by the parties and legally permitted • IBM <i>does not</i> prevent IBMers from filing claims with or participating in investigations conducted by the Equal Employment Opportunity Commission or otherwise reporting to a government agency
<p>Is there Board oversight of risk related to harassment, discrimination, and other unlawful acts?</p>	<p>Yes, there is strong Board oversight of risk related to harassment, discrimination, and other unlawful acts</p> <ul style="list-style-type: none"> • The Executive Compensation and Management Resources Committee of the IBM Board of Directors oversees IBM’s human capital management and diversity and inclusion programs • The Directors and Corporate Governance Committee of the IBM Board of Directors reviews and considers IBM’s position and practices on significant public policy issues • The Audit Committee of the IBM Board of Directors oversees implementation of and compliance with the Business Conduct Guidelines through employee education and certification. The Audit Committee also receives and discusses reports from IBM’s Chief Trust and Compliance Officer (CTCO) relating to investigations, including any trends on employment-related matters such as harassment and discrimination • Employees may directly contact IBM’s independent directors through email or mail with concerns

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Factor 1: Are there clear policies, procedures, and practices that protect employees from harassment, discrimination, and other unlawful acts?

Findings: Yes, IBM has clear policies, procedures, and practices in place to protect and support IBMers.

IBM’s History of Leadership

IBM has a rich heritage in diversity and inclusion. Our history of progress in diversity and inclusion and supporting the IBMer includes, among many other actions, the following:

- Hired our first disabled employee 59 years before the passage of the Rehabilitation Act and 76 years before the Americans with Disabilities Act (1914)
- Established an equal pay policy almost a century ago (1935)
- Published the first written equal opportunity policy letter, before the Brown decision invalidating “separate but equal” in public education and 11 years before the Civil Rights Act (1953)
- Included non-discrimination on the basis of sexual orientation in IBM’s Equal Opportunity Policy (1984)
- Added gender, identity, orientation, and expression to IBM’s Equal Opportunity Policy (2002)
- Expanded work/life transition support for parents
- Led a grassroots coalition to successfully defeat discriminatory “bathroom bills” in Texas
- Advocated for hate crime laws across several U.S. states

In addition, IBM launched its Be Equal campaign in 2019, to expand, enable and ensure equality for everyone. Since its launch, Be Equal has engaged tens of thousands of IBMers worldwide to pledge their commitment to allyship and equal representation.

At IBM we are passionate about creating a culture where employees of all backgrounds can thrive, and our Board of Directors strongly believes that much of the future success of IBM depends on the caliber of its talent and the full engagement and inclusion of IBMers in the workplace. Our commitment to equity and inclusion, talent and culture, education and diversity has been recognized by JUST Capital.

IBM Does Not Tolerate Discrimination or Harassment and Has Clear Policies, Procedures and Practices to Protect and Support the IBMer

Safe and Productive Work Environment

IBM has long been recognized as one of the world’s most ethical companies. For more than one hundred years, we’ve repeatedly reinvented ourselves to meet new challenges. What always has remained unchanged is our unwavering commitment to integrity.

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IBM’s Business Conduct Guidelines, which apply to all IBM employees, speak directly to maintaining a safe and productive work environment. IBM strives to maintain for its employees a healthy, safe, and productive work environment free from discrimination and harassment, whether based on race, color, religion, gender, gender identity or expression, sexual orientation, pregnancy, national origin, genetics, disability, age or any other factors that are unrelated to IBM’s legitimate business interests.

IBM will not tolerate sexual advances or comments, racial or religious slurs or jokes, or any other conduct, such as bullying, that creates or encourages an offensive or intimidating work environment. To foster a diverse and inclusive culture that supports a healthy, safe, and productive work environment, IBM provides several learning opportunities related to preventing discrimination and harassment as well as several communication channels for employees to express concerns regarding non-inclusive behaviors.

Global Learning

IBM conducts global mandatory learning on the Business Conduct Guidelines, sexual harassment, discrimination, bullying and retaliation prevention as part of its annual certification process. IBM has also significantly bolstered employee education programs that strengthen IBMer advocacy for women and minorities by addressing inclusion, sexism, racism, bias mitigation, allyship, covering, leading with inclusivity, and other related topics. These offerings are regularly refreshed. Thousands of IBMers have completed training to become certified allies who actively promote and progress equity and inclusion for the advancement and benefit of people different from themselves.

Allyship

Allyship means creating a psychologically safe and supportive workplace where IBMers can be their authentic selves. It requires a culture that fosters a sense of inclusion and belonging for everyone. Allyship includes the intentional action of others so every voice is respected and heard. Fostering employee-centered allyship behaviors begins by co-creating learning experiences around topics not previously discussed in the workplace, such as racism, implicit bias, being an upstander, and covering. IBM has established an allyship intranet site where IBMers can promote their commitment to allyship, practice allyship behaviors, volunteer to engage and mentor new allies, or share their stories about brave allyship. IBM proudly recognizes IBM Be Equal Allies, who embody intentional and positive everyday efforts to advance and benefit people different from themselves. And finally, because allyship is an evolution, the Be Equal allyship portal shares resources so IBMers can engage in conversations about current events, lead through crises, and practice inclusive language through our Inclusive Language Guide.

IBMer Diverse Communities

IBM is committed to recruiting and developing employees from all backgrounds and fosters greater inclusion with our Business Resource Groups (BRGs), focused on specific IBMer

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communities. IBM also has a Senior Leader Council, co-chairs, and D&I Leadership Council leaders to support the objectives set in the annual strategy with the respective community.

We have three global communities: women; people with diverse abilities, including our neurodiverse community; and LGBTQ+. Additionally, we have four US racial/ethnic groups—Black, Hispanic, Pan-Asian, and Native American—as well as a group for our military veterans. Our eight D&I communities support over 200 BRGs globally across 52 countries with IBMers actively participating in programs, events, and other diversity and inclusion initiatives.

Communication Channels and Other Resources

IBM expects IBMers to report potential wrongdoing. IBM provides several communication channels for employees to express concerns regarding non-inclusive behaviors (such as retaliation, bullying, harassment, or discrimination). An employee is free to choose the communication channel that works best for them -- their manager, senior management, human resources, or they can utilize IBM’s Open-Door policy, the Talk It Over@IBM team, or Employee Concerns. Employees are also able to report their complaints externally to the U.S. Equal Employment Opportunity Commission or other government agencies. IBM also uses a company-wide instant messaging system, with several channels dedicated to diversity, inclusion, and workplace culture to facilitate communications. The goal of these channels is to foster engagement and encourage reporting of concern over non-inclusive behaviors.

IBM promptly and thoroughly reviews reports of unlawful or unethical conduct, including non-inclusive behavior, and will not tolerate threats or acts of retaliation against employees for any such report. Any IBMer who believes they have been retaliated against is encouraged to report it through one of the IBM communication channels, and IBM will take appropriate action.

IBM has robust processes in place to investigate alleged workplace misconduct. Allegations are reviewed upon receipt and routed to the appropriate investigatory function, staffed by subject matter experts. In the event workplace misconduct is found to have occurred, disciplinary action is taken, up to and including termination where appropriate. IBM Human Resources is responsible for all disciplinary action at IBM and ensures consistency of disciplinary action imposed regardless of location, role or seniority. For sensitive cases or those involving senior executives, disciplinary action is reviewed and approved by senior leaders in IBM Human Resources, IBM Legal and IBM Corporate Assurance and Advisory Services. Investigations can also result in the identification of process improvements that should be made to enhance IBM’s controls posture. Those process improvements are routed to the appropriate process owners for review and handling.

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Factor 2: Are concealment clauses a condition of employment?

Findings: No, IBM does not require concealment clauses and IBMers are free to discuss the terms and conditions of their employment.

IBMers are Free to Discuss the Terms and Conditions of Their Employment

IBM does not require employees to sign any documents agreeing to arbitration as a condition of employment in the United States. Outside of the United States, our agreements may vary based on relationships with works councils and other local requirements.

IBM also does not preclude employees from discussing the terms and conditions of their employment. While IBM does require its employees to enter into a confidentiality agreement to protect its proprietary and confidential information and intellectual property, this agreement is appropriately tailored and does not prevent employees from discussing their own experiences with non-inclusive behavior.

Limited Use of Confidentiality Provisions

Where mutually agreed by the parties and legally permitted, IBM may use *post-employment* agreements containing arbitration, non-disclosure or non-disparagement provisions in limited circumstances, such as in settlements of lawsuits, or as part of voluntary exit agreements. Notably, these provisions do not prevent employees from filing claims with or participating in investigations conducted by the Equal Employment Opportunity Commission or otherwise reporting to a government agency. Further, use of confidentiality provisions in the context of arbitration is consistent with accepted arbitration practices and does not prohibit an individual from discussing their allegations with others.

Factor 3: Is there Board oversight of risk related to harassment, discrimination, and other unlawful acts?

Findings: Yes, there is strong Board oversight of risk related to harassment, discrimination and other unlawful acts.

Strong Board Oversight

IBM’s Board of Directors is responsible for overseeing management in execution of its responsibilities and for assessing IBM’s approach to risk management. The Board exercises these responsibilities regularly as part of its meetings and also through the Board’s committees.

IBM’s Executive Compensation and Management Resources Committee oversees IBM’s human capital management and diversity and inclusion programs, including various communication channels, programs and practices, or learning and education focused on the prevention of harassment, discrimination, bullying or retaliation. IBM’s Directors and

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Corporate Governance Committee reviews and considers IBM’s position and practices on significant public policy issues.

IBM’s Audit Committee oversees implementation of and compliance with the Business Conduct Guidelines through employee education and certification. The Audit Committee also receives and discusses reports from IBM’s Chief Trust and Compliance Officer (CTCO) relating to investigations, including any trends on employment-related matters such as harassment and discrimination. The CTCO is responsible for ensuring that the company undertakes investigations involving potential violations of IBM ethics and compliance programs. The CTCO is also responsible for promptly reporting to the Audit Committee significant allegations received regarding an officer of IBM. The CTCO reports to the Senior Vice President, Legal and Regulatory Affairs, and General Counsel with dotted line reporting to the Audit Committee, and meets in private session at every meeting of the Audit Committee.

Finally, in addition to the communication channels described above, employees may directly contact IBM’s independent directors through email or mail.

Conclusion

As described above: (1) IBM has a strong, decades long culture that does not tolerate discrimination or harassment, and has clear policies, procedures and practices in place to protect and support IBMers; (2) IBM does not require concealment clauses as a condition of employment and IBMers are free to discuss the terms and conditions of their employment; and (3) IBM has strong Board oversight of risk related to harassment, discrimination, and other unlawful acts.

As such, the limited use of confidentiality clauses provisions does not pose an inappropriate risk and any risk is balanced with IBM’s culture of transparency and inclusiveness, as well as its deep commitment to fostering a healthy, safe and productive work environment for all IBMers.