

TRENDLINES

The Employers' Association monthly whitepaper on essential Business/Human Resources practices

The Employers' Association (TEA) delivers reports for businesses that contain relevant and up-to-date information based on our work with hundreds of employers each month. TEA is known to produce a number of essential benchmark survey reports every year and we also compile data and observations that provide organizations practical perspectives on important business trends.

Board Governance

What you should know

West Michigan has an inordinately high number of family-owned companies and many non-profit businesses that have been successful, profitable and / or contributed strategically to the community for many years. During today's changing times there are many new issues that come up and often regulations that must be complied with that were not previously considered let alone legislated. While doing things the way they have always been done may have resulted in the same positive outcome in the past, times are changing and business is seeking different (sometimes fresh and untested) perspectives from trusted advisors in order to determine their own destiny. Boards of Directors, Advisory Boards and outside Management Committees are being formed at a pace we have not previously seen so this white paper is designed to identify why closely held companies are seeking outside advice, non-profits are strategically adding to their Boards and small organizations are formalizing their volunteer and/or management committee structures so as to maximize the talents of interested stakeholders.

What we know

Companies establish Boards of Directors to help provide outside perspectives to their operations (For Profit Boards) or to fulfill fiduciary responsibilities for stakeholders (Non-Profit Boards). There are many types of Boards and their composition should reflect the role they are designed to play. Boards can be one of several types (from <https://getonboardaustralia.com.au/>):

1. A Board of Directors consists of people elected by the company shareholders to represent and advance and represent their interests. A Board of Directors is responsible for the sound and prudent corporate governance of the organization ensuring the system of structures, rights, duties and obligations by which the company is directed and controlled and to meet legal and ethical requirements.
2. A Board of Trustees is similar to a Board of Directors but is basically responsible for holding "in-trust" the funds, assets or property that belongs to others with a fiduciary duty to protect them.
3. A Management Committee or Board of Management is often called a "council" or simply "a committee" is a group of people elected by stakeholders (usually from a small organization with minimal staff) having similar responsibilities as a Board of Directors but having a greater role in day-to-day activities as defined through committee or bylaws-established structure.
4. An Advisory Board is a group of skilled professionals who have been selected to help a business owner by advising and supporting him/her on any number of business matters. Advisory Boards are usually "unofficial" and do not generally have authority to vote on corporate matters or carry any legal fiduciary responsibilities.

5. Board Committees/Sub-Committees is a group of the Board that has been delegated responsibility by the Board for a specific role. Such Committees typically research, review and make recommendations to the Board using expertise and/or experience to advise the Board on specific matters.

Common to ALL Boards is the delineation of duties from staff. ANY Board must fulfill three main duties:

1. **The Duty of Care** describes the level of competence that is expected of a Board Member and is commonly known as “the care that an ordinary prudent person would exercise in a like position and under similar circumstances” when making decisions as a steward of the Organization.
2. **The Duty of Obedience** requires Board Members to be faithful to the organization’s mission and rules/laws of the State and Federal Government (rather than to seek the advancement of a personal objective or vendetta).
3. **The Duty of Loyalty** is a standard of faithfulness – a Board Member must give undivided allegiance to the Organization when making decisions and must never use information obtained as a member for personal gain (from [*“The Crucial Difference Between Governance and Management”*](#)).

These Duties should be carried out through all Directors performing several key responsibilities which include (from ***Board Responsibilities: The Basics***):

1. Hiring and managing the Organization’s top executive
2. Developing the Mission, Vision, Goals and Strategic Plan for the Organization
3. Approving the Budget (and through that approval, granting the top executive management ability to operationally carry out budgeted activities)
4. Assure compliance with financial and regulatory requirements
5. Establish Investment Policies and monitor performance
6. Manage the Board to ensure engagement, competence, a knowledge of any Conflicts of Interest, and support for the Organization
7. Provide support to the Organization’s top executive as needed (but NOT to manage the Organization)
8. Monitor financial performance and progress made by the Organization in fulfilling its goals and mission
9. Regularly review policies, practices and operational procedures from an oversight and fiduciary role
10. Maintain records of meetings, decisions and activities
11. Review and approve:
 - Plans of reorganization, growth and contraction
 - Plans for major asset sales, acquisitions or un-budgeted capital expenses
 - The organization’s plans to do major borrowing
 - Major changes in retirement, benefits and compensation programs for all employees with a focus on reasonableness for the top executive
 - Amendments to the bylaws
12. Establish guidelines that allow for the handling of complaints and allegations of wrongdoing that affect the senior staff – its omission or commission, including conflicts of interest.

We know that many organizations could benefit from the advice, oversight and council of a Board but that many steer away from the idea because of a fear that a Board will “take away ownership control” or “seek to gain personally from being on the Board” rather than advancing the Organization’s interests or supporting Management as it carries out the company’s mission. While some individuals may step beyond the boundaries and responsibilities assigned to a Board and attempt to manage staff and/or make daily operational decisions for the Organization (which can be detrimental to the organization’s internal operations and within the community, can create internal conflicts and minimize the authority of Leadership), a Board that is set up based on the responsibilities detailed herein and self-managed through the Duties listed above can provide invaluable support to Leadership and unique perspectives that can enhance or ensure success.

What it means

A well run Board can help to build upon an organization’s success by providing proven experiences, outside thoughts (not knowing what will not work and being unafraid to offer alternatives to Leadership) and a trusted resource for Leadership. Most Boards are made up of 5 to 9 experienced professionals (less for small organizations but usually an odd number and less than ownership representation so that the ultimate decision-making responsibility is not threatened) that represent Human Resources, Finance, Operations, Legal, Sales or some other specialty that is required to ensure strong organizational growth. The composition of Boards can also change based on what might be needed at any one point in time. If an organization is expanding by purchasing competitors, individuals having Merger & Acquisition, Human Resources, Legal and Financial expertise might be needed to help in making informed decisions. If a company is seeking to grow organically an individual having Sales/Marketing Experience (or Human Resources or Compensation Administration) experience might be beneficial. Establishing a Board of Directors (Trustees, a Management Committee or a Board of Advisors) should be seen as beneficial to the Company as it introduces “outside” ideas into an “internal” culture. Boards can be paid (as many for-profit Boards are) or unpaid (as most non-profit Boards) and there is not one “right” amount of compensation. Director Compensation is usually driven by company size, number of meetings required and level of knowledge being leveraged. TEA can help to determine appropriate compensation for your Board or assist in the establishment of required or desired skillsets based on what your Organization wishes to accomplish. While organizations can benefit exponentially from having the “right” type of outside advise and support from a Board, individuals must make sure they understand the role they are to play when considering being on a Board. A good Board can provide growth and help guide an organization through the land mines that are often planted in the road that leads from where a company is to where it wants to be. A self-serving Director or one seeking to manage the organization rather than supporting Leadership can become more detrimental to growth than any of the landmines that may lay in its path. Having a Board can be a great benefit – establishing a Board without clearly defining its roles and responsibilities can create internal friction, interfere with corporate growth and create leadership turnover.

What you can do

Organizations thinking about establishing a Board of Directors (OR individuals considering joining a Board) should carefully consider WHY they are looking to initiate (or join) a Board. Before putting a Board together a company should look at its recent past history to see if growth, success, profitability or some other measurable “want” is being met within the current management structure. Could confidential outside perspective help to advance any of the company’s “wants” into accomplishments? If considering joining a Board, what are your motivations? Is it a belief in an organization’s mission, a desire to leverage your abilities to help Leadership grow its company, a need to advance a community service organization to better meet the needs of the community or a wish to earn Board compensation and be recognized by the Community for your role (if the first three reasons, you might make a good Board member...if the last you may want to wait until you can truly “not care” who gets the credit for the suggestions or input you might make). Effective Boards can be a blessing to companies – ineffective or improperly trained Boards can be a curse. TEA has worked with many Boards (and organizations seeking to establish Boards) and has found that the difference between a Board being an effective resource and a troublesome detrimental force is usually defined by the training and expectations that Board members receive. The best things that any organization can do to ensure that a Board is an effective resource would be to identify:

1. WHY an outside body of advisors is wanted (or needed)
2. WHAT the roles, responsibilities and expectations of Board Members should be BEFORE actively recruiting them

3. HOW you want a Board to function (example – perhaps outside Directors should make up your Compensation Committee or Governance Committee if you run a family-owned business)
4. The skillsets that you wish to have present based on your current business plans
5. Whether or not you plan to compensate your Directors

If you are seeking to contribute to a Board, identify and summarize:

1. What do you “bring to the party?”
2. Why do you want to contribute (are you seeking to advance the organization or yourself?)
3. Do you understand that your role is fiduciary, support and a resource NOT management or operational leadership?

The thought and groundwork that you lay BEFORE either forming or joining a Board is critical to the outcomes that you achieve. It is Management’s responsibility to accomplish the goals and objectives established by the Board within the budgetary parameters it has approved through the efforts and contributions of staff. It IS NOT the Board’s responsibility to run operations, accomplish staff duties or undermine Management by trying to get too close to employees performing their assigned duties. Give us a call and we can help to identify what kind of oversight Board might be best for you AND to help design a Board Orientation Program that can establish expectations, responsibilities and appropriate controls so that you Board does not “evolve” from an intention of critical support to a reality of detrimental obstruction.

GOVERNANCE AND MANAGEMENT ROLES AND RESPONSIBILITIES

