

Companies Grapple with How—or Whether—to Address the Supreme Court's Ruling on Abortion

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A handful of employees at Findem Inc. who began criticizing the Supreme Court decision to overturn *Roe v. Wade* were shut down during a companywide conference call about the ruling.

Hariharan Kolam, Findem's CEO and co-founder, was explaining that the software company will cover employees' travel costs to secure an abortion if they live in a state where the procedure is banned or tightly restricted. Although Findem is based in Redwood, Calif., it has employees all over the country, so Kolam believed the policy was necessary. Yet, he was determined to have an apolitical discussion.

"I perceived [abortion access] purely as a medical benefit," Kolam says. "I think [covering it] is the right thing to do. I think part of the challenge [of talking about abortion] has been to not look at the entire thing politically, but as a meritorious benefit."

At Valimail, a San Francisco-based software company, diversity, equity and inclusion was at the heart of the company's message to its employees about the decision. The e-mail said, "We know that there is one element central to the advancement of people underrepresented in our company and in business in general: Power. ... All people must continue to hold the power to make their own health and reproductive decisions."

Thirty percent of the company's employees reside in states where abortion is either illegal or restricted. Valimail's chief people officer, Elaine Mak, says the company is committed to ensuring all its employees can access legal abortions, though it's still working on the details.



Time to Speak Out?

Fewer than 30 percent of companies are taking any action to address the U.S. Supreme Court's opinion in *Dobbs v. Jackson Women's Health Organization*, which overturned the federal constitutional right to obtain an abortion, according to a Society for Human Resource Management (SHRM) survey.

Half of companies either don't believe they need to make any statement about *Dobbs* or aren't sure if they should, according to a survey by Gartner Inc. Some very prominent business leaders publicly castigated the decision, such as Microsoft co-founder Bill Gates, who called

it "unjust and an unacceptable step back." Others took a more measured approach, focusing on how the ruling could impact health care or diversity efforts.

Companies' reluctance to address the hot-button issue of abortion is hardly surprising, says Brian Kropp, chief of research for Gartner's HR practice. "Part of the reason is that for some people, this is not just a political issue," Kropp says. "This is a religious issue. It's a moral issue. It's a philosophical issue. What's really hard about navigating this particular issue—agree or disagree with the decision—is that unlike some of the other issues, it's hard to consistently identify what is the moral high ground."

Some religions forbid LGBTQ people from joining their congregations, and there are individuals who may not agree with the Black Lives Matter movement. But companies can't legally discriminate against people based on gender, sexual identity, ethnicity or race, so there is no ambiguity on those issues in the workplace. Abortion has never been, and likely never will be, that cut and dried. Businesses that take a stand risk alienating employees, customers, suppliers and other stakeholders.

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Proceed with Caution

Companies may also be tight-lipped because they're still working out what they can legally provide to their employees who live in states where abortion is banned or restricted. Attorneys are deciphering the multitude of state and federal regulations to determine what is allowed, and experts predict some corporate actions will lead to lawsuits.

Beyond that, companies that couch their decision to provide abortion benefits as part of their commitment to women run the risk of having all their policies regarding women and families put under a microscope.

"Women may ask, 'Why will you give me 4,000 bucks to get an abortion, but I can't get paid maternity leave?' " says Leslie Crutchfield, executive director of Business for Impact at Georgetown University's McDonough School of Business in Washington, D.C. "It may be another reason why companies right now are being mute and slow. Once you start saying the company is for women's rights, then [people will ask], 'Why aren't you doing anything about equal pay or giving family leave?'"

Silence may not be a viable strategy, either. Employees, especially younger ones, expect their employers to take a stand on social issues. Indeed, nearly 80 percent of Generation Z (those age 25 and under) and 71 percent of Millennials (those ages 26 to 41) hold such expectations, according to a poll of nearly 3,500 college-educated individuals who are either employed or looking for jobs, conducted by PerryUndem, a Bethesda, Md.-based research firm. The study was commissioned by Tara Health Foundation with support from the Charles and Lynn Schusterman Family Philanthropies.

The survey found that states with abortion bans and strict limitations may face difficulties attracting employees—and perhaps keeping the ones they have. Nearly 70 percent of women of all ages said they would be discouraged from taking a job in a state that either bans or restricts abortion access. The same is true for roughly 67 percent of Millennials. Meanwhile, 66 percent of Generation Z respondents said they would be discouraged from moving to a state that bans abortions, and 61 percent feel the same way about states that restrict the procedure.

Forty-five percent of the women in Ohio and 41 percent of those in Texas say abortion bans and restrictions may cause them to consider moving out of state. The same is true for 46 percent of women in Michigan and 32 percent of those in Georgia. These states have some of the most restrictive abortion laws in the country. The survey was taken last August, right before the Texas law that bans abortions after six weeks went into effect.

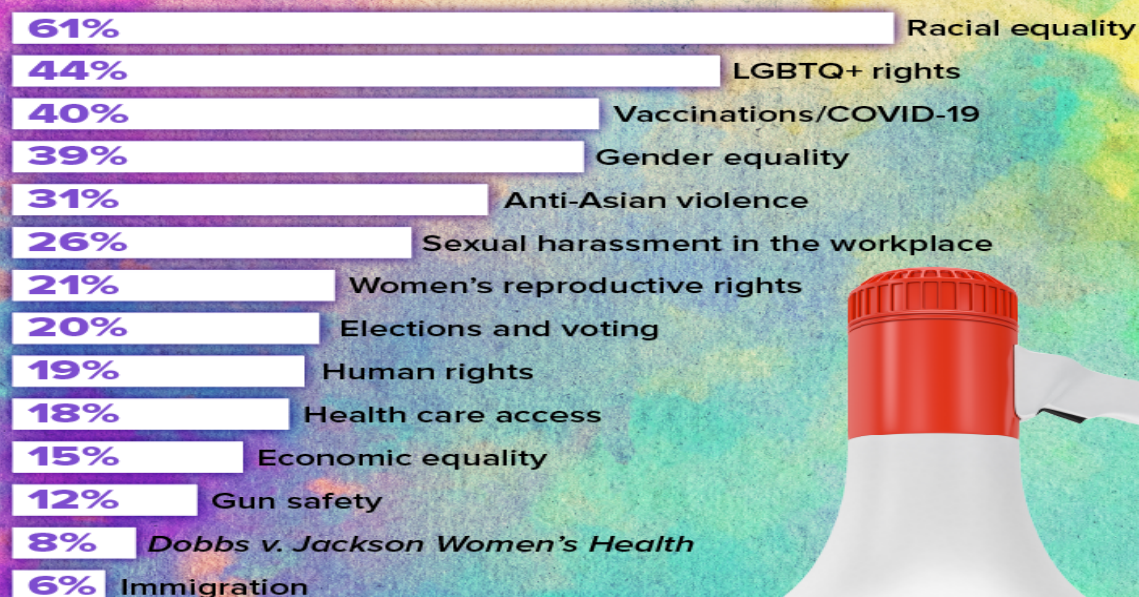
"This is something that companies are going to have to grapple with," says Andrea Hagelgans, managing director of social issues engagement at Edelman, a Chicago-based public relations firm. "There's a risk around action, absolutely. But there's also a risk around inaction if you can't recruit people to work for your company and you're losing talent to other companies."

Hagelgans cautions clients to follow through on any promises. "I think the scrutiny on companies is increasing since the murder of George Floyd," Hagelgans says. "There were reputational hits that companies took in the years after they made big promises around racial justice and, in some cases, did not back them up."

BUSINESSES ARE QUIET ON ABORTION RIGHTS

Only 10 percent of companies have made, or plan to make, a public statement about the Supreme Court's reversal of *Roe v. Wade*, according to a recent survey by the Conference Board. While businesses have increasingly taken stands on social issues, abortion is proving too controversial. Internally, though, the situation is different: The survey found that 51 percent of companies either have addressed reproductive rights with their employees or plan to do so.

Share of Companies That Have Taken a Public Stance on Social Issues Since 2020



Source: The Conference Board survey of at least 274 U.S. companies conducted June 30 to July 8, 2022.

Good for Business?

When Mak joined Valimail 18 months ago, the leadership team was comprised of 11 men. Now there are five women on the team of 13 including her, and there is a priority to fill the one open spot with a woman or member of an under-represented group. Valimail offers paid parental leave and hired a new HR executive to determine what other benefits need to be added to foster more diversity and inclusion.

"We are expecting to talk to our people around the changes that they want to see," Mak says. "Our priority for the second half of the year is to assess and update our programs and policies."

Kolam decided to post Findem's position on abortion access on its LinkedIn page, in part to "attract the requisite talent" for the company's planned expansion. Yet at the same time, he wanted to be careful that conversations didn't get heated because "people come from different walks of life and different vantage points." Still, he says he received only positive feedback from employees about the policy.

Other companies that have made similar promises have attracted the ire of conservative politicians. In April, Lyft CEO and co-founder Logan Green tweeted that the company would cover transportation costs for any employee needing to travel more than 100 miles to

access an abortion. He also said the company would cover the legal costs for any Lyft driver in Texas or Oklahoma sued under those states' restrictive laws. Lyft is also developing a program to cover the transportation costs of women from those states who must leave to have an abortion.

Twelve Texas state representatives wrote Green a letter threatening to introduce legislation that would ban companies that paid for abortions or reimbursed costs of the procedure from doing business in the state. Other pieces of threatened legislation included holding directors and board members criminally responsible for funding abortions unless they got unanimous shareholder support and allowing Texas residents to sue the executives and directors for paying for abortions. They also noted that it is a crime in Texas to knowingly pay for someone's abortion.

Despite such rhetoric, larger companies in Texas are thinking about whether they should provide benefits to people who seek out-of-state abortions, says Mike Muskat, a partner at Muskat, Mahony & Devine, a Houston-based employment law firm that specializes in representing employers. Muskat says the representatives' threats are "probably having the intended deterrent effect" on small companies lacking resources to create policies or engage in expensive lawsuits.

"There are companies who are looking at potential legal risk and throwing up their hands and saying, 'This is too complicated, too dangerous and risky for us to even consider getting into it,' " Muskat says.

Such threats may hurt Texas' reputation as a business-friendly state, Muskat adds. "Some aspects of the Republican Party will wake up and realize this is not good for business," he says, adding that some of the proposals seem unlawful and that there is no guarantee any of them will pass.

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Battlegrounds

Business-minded Republicans opposed legislation during the COVID-19 pandemic that would have made it more difficult for employers to mandate vaccines because such regulations could have negatively impacted companies' operations. "I suspect they are discussing the [abortion] issue and we may hear from them," he adds.

There's no evidence that companies are planning to hightail it out of Texas, though. What remains to be seen is whether the state can continue to draw companies and workers. Texas' state capital, Austin, became a tech hub after young professionals flocked there because of its relatively low cost of living and lively music scene. But housing costs in Austin have skyrocketed, and it's no longer a bargain.

"I'm certainly hearing rumblings from friends and colleagues that are unhappy about this decision and are looking at their options," says Austin Kaplan, an Austin-based employment lawyer who specializes in representing workers.

Kaplan says the abortion ruling is too recent to see any kind of real trend. However, he says individuals may opt to leave if stories about people dying because they couldn't access proper medical care become common. "That may really affect people's decisions," Kaplan says.

In 2015, Angie's List pulled out of a deal to expand into Indianapolis days before it was set to break ground on an office complex there because the state passed a law that some believed would allow companies to discriminate against LGBTQ individuals. Bill Oesterle, co-founder and then-CEO of the Denver-based company, which is now called Angi, said he believed that the young tech employees he needed to attract wouldn't live in Indiana. "Angie's List is open to all and discriminates against none, and we are hugely disappointed in what this bill represents," Oesterle said at the time, according to *USA Today*.

"You could look into the future and say, 'Do companies want to be located or be doing business in states like Texas, like these 13 states that have different levels of bans going on around abortion?' " Crutchfield says.

But companies that have criticized state laws have been significantly penalized. Critics assailed Walt Disney Co. for not speaking out against Florida's so-called Don't Say Gay law, which bans the teaching of sexual orientation or gender identity from kindergarten through the third grade. When it finally voiced its opinion, though, the Burbank, Calif.-based company lost its special tax status for its Florida theme parks.

Additionally, Florida Gov. Ron DeSantis vetoed \$35 million for a new spring training facility for the Tampa Bay Rays after the baseball team tweeted about gun reform and pledged \$50,000 to the Everytown for Gun Safety Support Fund. The team made the promise in the wake of mass shootings in Buffalo, N.Y., and Uvalde, Texas. But the pro-gun governor denied there was any connection between the Rays' public stand and his veto of their funding.

Crutchfield believes the *Dodd* decision represents a reckoning for all businesses. "Half the employees and customers are female," she says. "It feels like there will be a turning point, because women's rights advocates are going strong, and employees are going to be pressuring businesses not just to take a stand but to make changes."

Theresa Agovino is the workplace editor for SHRM.

Explore Further

SHRM provides advice and resources to help business leaders better understand the impact and workplace implications of the Supreme Court's overturning of *Roe v. Wade*.

[Yelp CEO: Why Companies Need to Take a Stand on Reproductive Rights](#)

Now that the U.S. Supreme Court has overturned *Roe v. Wade*, Yelp co-founder and CEO Jeremy Stoppelman says it is up to Congress to codify *Roe* into law. In the meantime, it's also up to business leaders to make it clear they support the health and safety of their employees and step up to ensure they have access to the care they need.

[HR Q&A: FAQs on the Overturning of *Roe v. Wade*](#)

The Supreme Court decision overturning *Roe v. Wade* may bring about several compliance-based questions for the workplace. Employers should understand the issues that may present themselves and what legal developments should be monitored.

[HR Form: Memo to Employees Regarding the Overturning of *Roe v. Wade*](#)

This memo is offered as a template for employers to begin communication with employees regarding the reversal of *Roe v. Wade* and how the employer plans to respond. It is meant to be customized to be specific to the employer's organization and should reflect the message the company wants to portray, taking into consideration the culture of the organization.

[Employers Providing Abortion Benefits Should Address Compliance Questions](#)

More U.S. companies have said they will cover the costs for employees to travel out of state for abortions, when necessary, after the U.S. Supreme Court's ruling in *Dobbs v. Jackson Women's Health Organization* reversed the *Roe v. Wade* decision and allowed states to restrict or end access to abortions.

[Tax Considerations on Abortion-Related Travel Benefits](#)

Employers that are amending their health benefits plans to facilitate access to abortion will need to consider the tax treatment of abortion-related travel benefits, following the U.S. Supreme Court's ruling on state abortion restrictions.

[Navigating *Roe v. Wade* in the Workplace - \(<https://www.shrm.org/ResourcesAndTools/hr-topics/employee-relations/Pages/navigating-roe-v-wade-workplace.aspx> \)](https://www.shrm.org/ResourcesAndTools/hr-topics/employee-relations/Pages/navigating-roe-v-wade-workplace.aspx)

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