

# Memorandum

**Date:** November 11, 2022

**To:** Microsoft Corporation Board of Directors

**From:** Michael L. Stevens  
Linda M. Jackson

**Re:** Transparency Report on Shareholder  
Resolution Project

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## *Introduction and Scope of Work*

Microsoft Corporation (“Microsoft” or the “Company”) engaged ArentFox Schiff LLP in January 2022 to undertake this project with respect to the Shareholder Resolution that was approved by shareholders at the Company’s annual meeting on November 30, 2021 concerning a report on the effectiveness of workplace sexual harassment and gender discrimination policies (the “Project”). We were retained to undertake that Project, and more specifically to conduct an independent inquiry into the Scope of Work described below with the purpose of assessing any recommendations that might be made to the Company’s policies and practices on the issues of sexual harassment and gender discrimination in the workplace:

- Review and assess the effectiveness of sexual harassment and gender discrimination policies, practices, trainings, and measures from the beginning of 2019 forward;
- Review the results of the investigation into allegations raised against Bill Gates in 2019 and any sexual harassment allegations against any other directors and Senior Leadership Team (“SLT”) members from the beginning of 2019 forward;
- Review data regarding sexual harassment and gender discrimination complaints, their investigation, and resolution from 2019 forward;

- Review the 489 investigative reports for all of the U.S. gender discrimination and sexual harassment complaints from 2019–2021;
- Interview a sampling of recent sexual harassment and gender discrimination complainants (focused on FY 2021) to understand their experience with internal processes; and
- Benchmark best practices from other companies and recommend enhancements to policies and practices.

Following a May 25, 2022 article in *Business Insider* entitled “Microsoft’s Toxic Culture Persists Despite Pledge by CEO Satya Nadella,” the Company added to our scope by asking us to review the findings of the Company’s investigation into allegations of inappropriate conduct against two former Corporate Vice Presidents.

The Shareholder Resolution stated that this Report should omit information that is confidential or privileged. For that reason, the Report contains no private information or facts regarding underlying complaints that the Company has historically regarded as confidential. Likewise, we have not disclosed any information that is protected by the attorney-client privilege.

### ***Methodology***

In performing our work over the last nine (9) months, we reviewed a vast amount of information and documents from the Company, including policies, training videos, data, spreadsheets, Board materials, reports, PowerPoint presentations, investigative files, and other relevant documents.

We also interviewed numerous witnesses with pertinent knowledge, including a random sampling of twenty (20) complainants who submitted complaints in 2021, along with the following individuals:

Amy Coleman, Corporate VP, Human Resources & Corporate Functions

Ellen Dwyer, Partner, Crowell & Moring LLP

Ande Ferretti, Senior Director, Global Employee Relations

Kathleen Hogan, Chief People Officer & EVP, Human Resources

Becky Lenaburg, VP & Deputy General Counsel

Kim Meyers, Associate General Counsel, Workplace Investigations Team

Amy Pannoni, Deputy General Counsel, HR Legal

Lindsay-Rae McIntyre, Chief Diversity Officer

Joe Whittinghill, Corporate VP, Talent, Learning & Insights.

The Company accommodated all of our requests for information, materials, documents, and interviews.

### ***Executive Summary***

Microsoft has robust policies, trainings, and complaint and investigation procedures addressing the issues of gender discrimination and sexual harassment, and has made meaningful efforts to make improvements in these areas during the period covered by this Project. Our review revealed that the Company strives to follow best practices in these areas, and espouses a dedication to continual improvement.

Nevertheless, as discussed more fully below, we recommend that the Company consider implementing certain enhancements to their existing policies, procedures, and practices. These include the following:

1. Revise the Anti-Harassment and Anti-Discrimination Policies
2. Establish a Formal Procedure to Request Reconsideration of an Investigation's Findings
3. Require the Disclosure of Certain Consensual Relationships
4. Develop an Effective Tool to Remind Employees They Need to Take Required Trainings
5. Advise Employees of their Rights to Seek External Relief
6. Ask Complainants to Complete Surveys About Their Investigation Experience
7. Establish Credible Transparency Around Remediation
8. Take Steps to Minimize Perception that Senior Leaders Are Not Held Accountable
9. Coordinate Data Among Human Resources ("HR"), Workplace Investigations Team ("WIT"), Global Employee Relations ("GER"), and Corporate and External Legal Affairs ("CELA")
10. Make Improvements to the WIT Investigation Process

## 11. Continue Efforts to Increase the Percentage of Women in Leadership Positions

### **I. Review of Policies, Practices, Trainings, and Measures**

#### **A. Policies and Practices**

##### **1. Anti-Harassment and Anti-Discrimination Policy**

The Company has an Anti-Harassment and Anti-Discrimination Policy that was most recently amended on March 5, 2021. Previously, the policy had been revised on June 3, 2019 to update the complaint and investigation process and the provision against retaliation. On March 5, 2021, the policy's requirements were updated, examples of improper conduct were added, and manager obligations were clarified.

#### *Defining Sexual Harassment and Gender Discrimination*

The policy broadly prohibits sexual harassment and gender discrimination. With respect to sexual harassment, the policy provides several examples of improper conduct. However, it does not expressly include the definition of sexual harassment used by the Equal Employment Opportunity Commission (the "EEOC"), which we often see in policies of other employers. That definition is set forth below:

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

29 C.F.R. § 1604.11.

We understand the desire of many employers to simplify policies and use language that is more easily understandable, but in this case, we recommend that the Company consider inserting the above language from the EEOC regulations, with the recognition that the standard for proving a legal violation is higher than the standard for proving a policy violation.

With respect to gender discrimination, the policy neither expressly defines the phrase nor provides many examples of what it refers to. For that reason, we recommend that the Company consider including a slightly revised definition of discrimination taken largely from the EEOC's website:

“treating someone differently, or less favorably, with respect to recruitment, hiring, placement, compensation, benefits, advancement, promotion, evaluation, disciplinary action, termination or any other term, condition or privilege of employment because of a protected characteristic.” It also includes “making employment decisions based on stereotypes (unfair or untrue beliefs) about abilities and traits associated with a protected characteristic.”

### *Reporting Sexual Harassment and Gender Discrimination*

The policy is consistent with best practices in that it provides several options for a person to report alleged discrimination or harassment:

- Speak to your manager, your skip-level manager, or any Microsoft manager.
- Request to speak to an HR Manager through AskHR.
- Report to the Workplace Investigations Team (“WIT”), previously known as the Employee Relations Investigation Team (“ERIT”).
- File an anonymous report on the Microsoft Integrity site.

The policy also states that complaints of discrimination or harassment should be promptly reported in accordance with the Open Door Policy. The Open Door Policy expressly encourages employees to raise issues or concerns by using the same options listed above.

### *Managers’ Obligations*

The policy is consistent with best practices in that it imposes obligations on managers to “create, uphold, and promote a safe, respectful, and inclusive work environment,” and requires them, like all employees, to “comply with the standards of conduct set forth in this policy.” The policy also requires managers to report complaints they receive, or conduct they observe, through AskHR. The policy states that managers “may be subject to discipline, up to and including termination, if they fail to report concerns timely.”

### *Investigations*

The policy states that Microsoft investigates complaints of harassment and discrimination “in a fair, timely, and thorough manner.” It further provides that the Company “reviews relevant information and reaches reasonable conclusions based on the evidence.” The policy also states that investigations are conducted “as confidentially as possible.”

We believe the policy could be improved by adding more specifics about the investigation process so complainants have a better idea of what to expect during an investigation. In making this recommendation, we acknowledge that there is an informative, professionally produced video

entitled “Inside Investigations” that is 7 minutes and 13 seconds in duration. The video explains the process and, if it is viewed, should make complainants feel more comfortable about making a complaint and taking part in the investigation. Nonetheless, we recommend including additional details within the policy itself.

#### *Remedial Action*

The policy generally states that the Company “will take appropriate disciplinary and/or other appropriate action when it determines this policy has been violated.”

We think it would be helpful to add “up to and including termination of employment or any other relationship the violator has with the Company” because it better informs employees of the potential consequences for violating the policy.

#### *Retaliation*

The policy is consistent with best practices by providing that the Company “will not tolerate retaliation against any individual who in good faith raises a complaint of harassment or discrimination or participates in the investigation of a complaint of harassment or discrimination.”

It encourages employees to report complaints of retaliation promptly in the same manner as complaints of harassment and discrimination are reported.

The policy provides several helpful examples of retaliatory conduct and includes the same language on investigations and corrective action as it does with respect to harassment and discrimination.

#### *Role of GER*

Although it is not expressly mentioned in the policy, once a complaint is made, both the complainant and the respondent are assigned a member of the Global Employee Relations Team (“GER”) to act as a resource during the investigation process. In our experience, this goes beyond what most employers do with respect to such investigations. The GER representative also touches base with the complainant after the investigation is completed to determine if there are any concerns about retaliation or any other inappropriate conduct.

## 2. Conflicts of Interest Policy

The Company has a Conflicts of Interest Policy that, among other things, prohibits conflicts of interest arising out of an employee’s relationship with a family member, which includes a

“romantic partner.” The policy does not prohibit employees from being romantic partners; rather, it provides in pertinent part as follows:

Unless you have written approval from your manager, you must not:

- Direct business towards a supplier or partner in which you or a family member have a financial interest.
- Direct business towards a supplier or partner that employs a family member.
- Manage the work of a family member employed by a supplier or partner.
- Take part in a hiring decision regarding a family member.
- Supervise a family member.

You should not request approval for these situations unless there is a compelling business need that you clearly identify in your request.

If you have questions about any other situation, disclose the situation to your manager and determine if the situation requires approval from your manager.

The above portion of the Conflicts of Interest policy superseded a prior policy entitled “Family and Romantic Relationships—Avoiding Conflicts of Interest at Work” on December 1, 2015. That prior policy was similar in nature in that it required disclosure of romantic relationships in certain circumstances where a conflict of interest could develop. While this policy did not require the disclosure of romantic relationships in all circumstances, it ended with the following statement: “Employees are expected to adhere both to the letter and the spirit of this policy and report any relationship which, if known, could raise a concern about an actual or apparent conflict of interest.”

As discussed below, we believe the Company should consider revising its policies to require disclosure of romantic relationships between individuals in inherently unequal positions, and to make clear whether such relationships are in fact prohibited.

### 3. Required Learning Policy

The Company has a written Required Learning Policy, published in October 2019, that in our experience exceeds what most employers do with respect to such training. It addresses required training courses, such as those related to gender discrimination and sexual harassment, and makes it clear that: “Failure to complete required learning will result in consequences to the employee to

be determined by the endorsing organization. Such consequences may include disciplinary action up to and including termination, subject to compliance with local law.”

#### 4. Disciplinary Guidelines for Policy Violations

GER has published internal confidential Disciplinary Guidelines for founded and substantiated concerns following workplace investigations. The Guidelines adopt a “facts and circumstances” approach to discipline for inappropriate conduct:

When determining the appropriate Tier of substantiated concerns and discipline within the Tier, the decisionmakers should consider the facts and circumstances through the lens of Microsoft’s culture, commitment to diversity and inclusion, and growth mindset; seeking to actively create an inclusive environment and help the employee to learn and become a better colleague. The decisionmakers should also consider whether the conduct was consistent with Microsoft’s values. Through this review, the decisionmakers should identify the disciplinary actions that, they reasonably anticipate, will prevent the conduct from occurring again. The following factors may be relevant to the disciplinary determination:

- Duration (e.g. time span) and repetitiveness of the behavior that resulted in the finding, including consideration of the recency of the behavior;
- Whether the subject had a history of such behavior and/or received prior coaching, warning or other instruction from Microsoft about the behavior that resulted in the finding or any other behavior that resulted in a previous finding;
- Whether the subject attempted to conceal the behavior that resulted in the finding from discovery;
- The subject’s response to and cooperation with the investigation;
- The subject’s demonstration of a growth mindset through acceptance of responsibility for the past behavior and expressed willingness and commitment to examine behavior, reflect on its impact on others, and change future behavior;
- The subject’s embrace of Microsoft values during the course of the investigation;



- Whether the subject is or ever has been a people manager at Microsoft;
- The level, role and organization of the subject, including but not limited to whether the subject’s Microsoft role required additional behavioral expectations or duty of care;
- The difference in stock level between the subject and complainant;
- Whether the subject and complainant are in the same organization or are in a direct or indirect reporting relationship.

The Guidelines state that GER, the Employment Law Group, and HR Consulting “will align on the recommended disciplinary action using these guidelines.” Given the volume of complaints and the desired short timing of investigations, it is unclear to us whether representatives of these three units actually collaborate on every disciplinary action. We make a recommendation about this below.

## **B. Trainings and Other Measures**

### 1. Trainings

Our review revealed that Microsoft has professionally produced training videos that address gender discrimination and sexual harassment issues, and which all employees and SLT members were required to take from 2019 through 2021. Board members are required to take the Standards of Business Conduct training, which addresses gender discrimination and sexual harassment issues.

We reviewed the following training videos:

Preventing Workplace Harassment

Respect Me

Preventing Workplace Harassment

Preventing Workplace Harassment – State Trainings

Creating a Speak Up Culture

Empower a Team Speak-Up Culture

Required D & I Course 1: Understanding Unconscious Bias

Required D & I Course 2: Unconscious Bias and Team Effectiveness

Required D & I Course 3: Unconscious Bias and Decision-Making

Required D & I Course 4: Counteracting Unconscious Bias

Standards of Business Conduct FY 19

Standards of Business Conduct FY 20

Standards of Business Conduct FY 21

Trust Code: Standards of Business Conduct FY 22

Standards of Business Conduct for Managers FY 19

Standards of Business Conduct for Managers FY 20

Trust Code: Standards of Business Conduct for Managers FY 22

Based on our review of these training materials, we have concluded that the Company is consistent with best practices by providing employees with a number of required educational opportunities on gender discrimination and sexual harassment issues.

The Company maintains reports on how many employees in each organization completed the required trainings. Examples of these reports are set forth below:

### Reports To Drilldown

Reports To	Employee Count	Required Course #	Required Courses Incomplete	Required Course Completion %	Est Course & Study Hours per Learner
⊕ Amy Hood	4,984	4,984	14	100%	1.0
⊕ Brad Smith	1,654	1,654	11	99%	1.0
⊕ Charlie Bell	7,089	7,089	97	99%	1.0
⊕ Chris Capossela	4,833	4,833	128	97%	1.0
⊕ Chris Young	294	294	0	100%	1.0
⊕ Jason Graefe	17	17	0	100%	1.0
⊕ Jason Zander	5,272	5,272	30	99%	1.0
⊕ Jean-Philippe Courtois	9	9	0	100%	1.0
⊕ Judson Althoff	55,197	55,197	330	99%	1.0
⊕ Kathleen Hogan	2,311	2,311	38	98%	1.0
⊕ Kevin Scott	1,634	1,634	19	99%	1.0
⊕ Phil Spencer	3,018	3,018	130	96%	1.0
⊕ Rajesh Jha	33,374	33,374	528	98%	1.0
⊕ Scott Guthrie	43,109	43,109	524	99%	1.0
<b>Total</b>	<b>162,795</b>	<b>162,795</b>	<b>1,849</b>	<b>99%</b>	<b>1.0</b>

Reports To	Employee Count	Required Course #	Required Courses Incomplete	Required Course Completion %	Est Course & Study Hours per Learner
☒ Amy Hood	3,411	3,411	4	100%	1.0
☒ Brad Smith	1,545	1,545	13	99%	1.0
☒ Chris Capossela	6,292	6,292	48	99%	1.0
☒ Chris Young	231	231	0	100%	1.0
☒ Jason Graefe	13	13	1	92%	1.0
☒ Jean-Philippe Courtois	26,714	26,714	130	100%	1.0
☒ Judson Althoff	25,030	25,030	134	99%	1.0
☒ Kathleen Hogan	1,923	1,923	11	99%	1.0
☒ Kevin Scott	1,648	1,648	27	98%	1.0
☒ Kurt DelBene	5,752	5,752	54	99%	1.0
☒ Phil Spencer	2,871	2,871	35	99%	1.0
☒ Rajesh Jha	28,311	28,311	332	99%	1.0
☒ Scott Guthrie	37,681	37,681	300	99%	1.0
<b>Total</b>	<b>141,422</b>	<b>141,422</b>	<b>1,089</b>	<b>99%</b>	<b>1.0</b>

Row Labels	Fiscal Month Completion %	Fiscal Month Completed	Fiscal Month Targeted
☒ Satya Nadella - SATYAN	99%	122,487	122,758
☒ Amy Hood - AMYHOOD	99%	3,177	3,179
☒ Brad Smith - BRADSMI	99%	1,449	1,455
☒ Chris Capossela - CHRISCAP	99%	7,652	7,673
☒ Harry Shum - HSHUM	99%	6,621	6,622
☒ Jason Graefe - JGRAEFE	92%	13	14
☒ Jean-Philippe Courtois - JEANC	99%	21,307	21,371
☒ Judson Althoff - JUDSON	99%	24,918	24,959
☒ Kathleen Hogan - KHOGAN	99%	1,747	1,750
☒ Kevin Scott - KVNSCOTT	100%	46	46
☒ Kurt DelBene - KURTD	99%	5,143	5,151
☒ Peggy Johnson - PEGGY	99%	332	333
☒ Phil Spencer - PHILSP	99%	2,485	2,495
☒ Rajesh Jha - RAJESHJ	99%	16,891	16,941
☒ Scott Guthrie - SCOTTGU	99%	30,706	30,768
Grand Total	99%	122,487	122,758

We reviewed records of completed trainings and, in all but one case, the percentage of employees who completed the required trainings by the required completion date was either 99% or 100%. The one exception was a business unit that had 92% of its employees complete the required trainings by the required completion dates. This unit has 13 employees, one of whom did not complete the training on time, thus reducing the percentage to 92%.

The Corporate External and Legal Affairs Department (“CELA”) produces Standards of Business Conduct (“SBC”) videos for employees, managers, and SLT and Board members. It maintains records on the courses that need to be completed by each person and whether those courses were completed on a timely basis.

We understand that the majority of SLT and Board members completed their required SBC trainings from FY 2019 through FY 2021. In FY 2019, all of the SLT members completed their required trainings. In FY 2020, three of the fourteen SLT members did not complete their required trainings. In FY 2021, four of the fourteen SLT members did not complete their required trainings, (one of whom joined the Company late in the year).

During our review, the Company discovered that its tracking system for keeping SLT members apprised of their required trainings was insufficient, because at some point the required trainings in an SLT member’s queue would time out, after which the system would stop reminding them of their need to take required trainings. As a result, and as discussed above, three Executive Vice Presidents did not take one or more of the required trainings in 2020, and four of them did not take one or more of the required trainings in 2021, including the three who did not take all of their required trainings in 2020. None of these individuals are executive officers. The Company has notified the impacted SLT members and is developing an appropriate tool to remedy the problem going forward.

The Company advises its employees that there are consequences if an employee fails to complete required training by the deadline. As indicated previously, the Company has a Required Learnings Policy that in pertinent part states as follows:

Failure to complete required learning will result in consequences to the employee to be determined by the endorsing organization. Such consequences may include disciplinary action up to and including termination, subject to compliance with local law. Employees must be provided 1) notice that learning is required, 2) a definition of completion, 3) deadlines for completion and 4) explanation of consequences if they are directly related to the non-completion of the learning.

We are unaware of any disciplinary action or other consequences for the SLT members who did not complete their training by the required deadline or during the period in which they were receiving reminders.

## 2. WIT and GER Reports

The WIT and the GER regularly reported about their efforts to improve employee relations and investigation matters during the 2019–2021 period, through written highlights, acknowledgments, updates, presentations, infographics, dashboards, and reviews that were presented to management and/or the Board.

The Company made a number of changes in the investigation process between 2019 and 2021 that were reported in GER and WIT Highlights, and presented below as reported to us:

### *Investment in Resources and Training*

- Created Global Employee Relations Team with 12 senior ER resources; expanded scope in FY22 through the addition of 21 specialist resources
- Added 10 investigator resources to Workplace Investigations Team
- In Q2, FY22 centralized ER case management to create a COE to manage HR investigations, behavior and workplace conflict to a drive principled and consistent approach to the employee experience globally
- Continued learning on D&I issues involved in investigations including allyship, microaggressions, racial gaslighting and unconscious bias

### *Expedient Investigation Resolution*

Substantially increased the percentage of investigations closing within 30 calendar days

- FY19 – 15% (INOA Thread: April 2019)
- FY20 – 40%
- FY21 – 51%

Developed real-time dashboards for trend analysis and insights

- Shared and evolved tools for case management and initial joint reporting

*Expansion of Global Reach and Scope*

- Expanded WIT and GER globally to Asia, Canada, EMEA and LATAM
- Extended WIT investigations and GER support to OLC-retaliation cases

*Increased Investigation Transparency*

- Introduced WIT internal website detailing the investigation process, reporting channels and transparency regarding the #, types and outcomes of investigations
- Provided employees visibility to WIT and processes through the global Standards of Business Conduct training in 2020 and 2021

*Iterative and Innovative Investigation Practices*

- Developed new investigation outcomes intended to address unsubstantiated discrimination and harassment policy violations where the behavior at issue is otherwise inconsistent with Company policies and values
- Developed Disciplinary Guidelines intended to ensure consistency in addressing behavior found to be in conflict with policy, culture or values expectations.

*Partnership between WIT and GER Through Investigation Process*

- WIT and GER partnered on 432 investigations in FY21
- Substantiated Policy Violation: Overall: 18%
  - Sexual harassment: 53%; All harassment: 41%
  - Gender discrimination: 9%; All discrimination 9%
- GER provided support to 1,188 employees in FY21
- Engaged with current and former employees to understand their lived experiences and inform the evolution of the Company's model

Based on recent reporting, on May 3, 2022, WIT investigations in FY 2022 Q3 were up 64% from FY 2021 Q3, from 103 to 169 investigations. The Company is seeing a significant number of

allegations—of all types and from all organizations—as employees emerge from the pandemic. The WIT team is tracking whether the increase is related to a growing number of in-person interactions.

### 3. Work Plan Resulting from “In Need of Assistance” Email Discussion

In March of 2019, dozens of female employees engaged in an “In Need of Assistance” email discussion among themselves and various women-related affinity groups at Microsoft, comprising more than 50 pages, that raised concerns about a variety of gender-based issues, including disrespectful behavior, career growth, data transparency, equal pay, training, leadership accountability, investigations, maternity leave, and covering demands. In response, the Company gathered information through live streams, Q & A sessions, and Yammer, and developed a “culture work plan” that had the following five work streams as reported to us:

Behavior: We are each responsible for our relationships with each other. We will define a set of behaviors that we expect from every employee, and seek to extend these to our contractors, vendors, and partners. These expectations will align to our culture, values, and standards of conduct. We will engage broad audiences, drive process to ensure inputs, and get clarity on how we uphold these standards. As part of this work stream, the Company published a Code Book for all managers which included among other things a commitment to diversity and inclusion.

Manager Expectations: Given the critical role of managers in shaping our culture and employee experiences, we will create a required manager learning track with focus on both compliance and manager expectations. We will provide enhanced training offerings with focus on rewards and the inclusion core priority as well as other resources for overarching support and enablement.

Data Transparency: We will explore additional transparency in areas such as investigation data and outcomes, career progression and more detailed representation data. We will review what and how we share today and where to potentially enhance moving forward, globally and in-region.

Accountability: We will expand the review of performance around diversity and inclusion to reach all senior leaders at general manager and above. We will continue driving the CVP and above specific level of D&I accountability. We will provide more concrete assets for people to support the inclusion priority commitment and how to hold people accountable to it.



Investigations: We will make investments in evolving our investigation/employee relations model and process, improve SLAs in both HR and ERIT, establish a central employee advocacy team within HR and add investigators in CELA, establish governance on SLAs, support a stronger employee experience and increase transparency on disciplinary outcomes.

The Company assigned one or more senior executives to be responsible for each of the work streams and schedules to accomplish the various tasks within the work stream.

#### 4. Diversity and Inclusion

Although not expressly mentioned in the Shareholder Resolution or the Scope of Work, we thought it was appropriate to review the Company's Diversity & Inclusion ("D & I") efforts, to determine how they intersect with the policies and procedures against gender discrimination and sexual harassment.

We learned that the Company has an ambitious D & I program, the mission of which is to "[e]mpower every person and every organization on the planet to achieve more." Among many other recognitions, *Fortune* named Microsoft the number one Fortune 500 company for D & I in June 2021. In April 2021, *Comparably* rated Satya Nadella as the 9<sup>th</sup> best CEO for Women among large U.S. corporations.

The Company has an Employee Diversity & Inclusion Activation Guide which encourages employees to get involved in D & I and offers a number of resources for employees to explore.

In the 2021 Annual Report issued by the D & I team, it was noted that globally the number of female employees at Microsoft increased by 67.5%, and that women then represented 30.9% of the Company's global workforce. Representation of women at Microsoft has increased year over year for the last five years. Women at Microsoft appears to be an active Employee Resource Group in the Company's D & I program.

The below table illustrates the increases in the number of female employees at various stock levels from June 2014 to June 2022. Although clear progress has been made, there is still room for improvement.

Stock Level Group	Jun-14	Jun-22
L68+	13.0%	23.0%
Level 65-67	17.6%	23.2%
Level 63-64	21.0%	27.3%
Level 61-62	24.4%	32.6%
Level 59-60	27.0%	36.4%
Level 50-58	44.9%	53.2%
Level 30-45	37.5%	23.0%

Microsoft’s 2021 Inclusion Index, a measure of employee sentiment on topics of transparency, belonging, authenticity, team culture, and a belief in Microsoft’s commitment to diversity, found that 90% employees had positive sentiments about D & I at Microsoft, which was an increase from 88% in 2020.

The D & I team maintains a comprehensive web page entitled “Inclusion Journey,” which is publicly available.

On March 17, 2021, Microsoft hosted “Include,” a free, global, digital event focused on diversity and inclusion. Include is described as an opportunity to accelerate the D & I journey within Microsoft and to engage the Company’s ecosystem.

Since September 1, 2018, D & I has been a Core Priority for all Microsoft employees and is a pre-populated Core Priority on all Connect (performance review) forms. According to a Company document that addresses this issue, “[o]ur company-wide [D & I] Core Priority empowers everyone at Microsoft to personally commit to be an active and intentional participant in creating a diverse and inclusive Microsoft. As with all other core priorities, consider how you will contribute and drive impact and discuss as part of 1:1s and Connects.”

As part of the onboarding process for new Corporate Vice Presidents, there is training on the Anti-Harassment and Anti-Discrimination Policy, the Conflicts of Interest Policy, and D & I.

### 5. Affirmative Action Plan

As a federal contractor covered by Executive Order 11246, the Company maintains a comprehensive Affirmative Action Plan for Minorities and Women (the “Plan”) designed to attract, hire, and retain employees in those two groups. The Plan states that Microsoft’s Affirmative Action Officer is responsible for the following tasks:

- Assisting in the implementation of the Company’s EEO and affirmative action policies.

- Working with members of the Workforce Regulation and Policy Team who are responsible for preparing and updating Affirmative Action Plans on an annual basis.
- Conducting follow-up meetings with HR Managers and senior managers to provide advice and recommendations.
- Partnering with HR Leaders to ensure that managers and supervisors are aware that their work performance is evaluated on their ability to advance diversity and inclusion priorities in the workforce, as well as other criteria.
- Serving as liaison between the Company and organizations of or for women, minorities and other protected group members, and community-based organizations.
- Working with the EVP of Human Resources in the development of internal and external communications regarding equal employment opportunity activities of the Company.
- Working with the Human Resources staff to periodically review and ensure that:
  - facilities are desegregated (only locker rooms, lactation rooms, and restrooms may be maintained separately by gender); and
  - all employees are afforded a nondiscriminatory opportunity to participate in applicable Company-sponsored education, training, recreational, and social events.

The Plan also states that the Company complies with the Sex Discrimination Guidelines set forth in 41 C.F.R. Part 60-20 by doing the following:

1. Microsoft recruits employees for all jobs, without regard to gender.
2. Employment advertising does not express a sex preference, either explicit or implied.
3. Employees and applicants of both sexes have an equal opportunity for any available job that they are qualified to perform.
4. There are no distinctions based upon sex in employment opportunities, wages, hours, or other conditions of employment.
5. There are no job-related distinctions between married and unmarried persons.

6. Appropriate physical facilities are available to both sexes.
7. Women are not denied the right to any job for which they are qualified.
8. Women are not penalized because they require time away from work due to childbearing.
9. Maternity leave is granted on the same basis as other disability leave.
10. Microsoft does not specify any difference for male and female employees on the basis of sex in either mandatory or optional retirement age.
11. Microsoft does not discriminatorily restrict one sex to certain job classifications or maintain seniority lines and lists on the basis of sex.

6. Management Excellence Program

Citing a *Gallup* survey that managers account for 70% of an employee's work experience, the Company instituted a Management Excellence Program in FY 2020. The Company sought to provide clarity around the role of the manager: "to deliver success through empowerment and accountability."

In FY 2021, the Company introduced a new Manager Core Priority in all organizations. The core priority is based on the role of the manager and manager expectations (model, coach, and care), and clarifies some of the actions managers need to take in making their team and the Company successful. The Company bases annual rewards for managers on the impact of the manager's core priorities. Notably, D & I is one of each manager's core priorities, as it is with all other employees.

In that regard, the Company has a required learning path for managers that includes the following D & I trainings as reported to us:

Understanding Unconscious Bias

Unconscious Bias and Team Effectiveness

Unconscious Bias and Decision Making

Counteracting Unconscious Bias

Introduction to Covering at Microsoft

Introduction to Allyship at Microsoft

Introduction to Privilege

Required Learning Path for Managers.

## **II. Review the Results of Investigations of Board and SLT Members, and Two Corporate Vice Presidents**

There were two Board or SLT member investigations at issue involving allegations of sexual harassment and/or gender discrimination from 2019 to the date of this report: Bill Gates and Person B. We review the results of these two investigations, in addition to the investigations of two Corporate Vice-Presidents, below.

It is important to note in this regard that our charge was to review the results of these investigations, not to reinvestigate them or to editorialize about the manner in which the investigations were conducted.

### **A. The Bill Gates Investigation**

On July 7, 2019, Person A, a Microsoft employee, reported to Kathleen Hogan that Bill Gates had subjected her to inappropriate communications and conduct. In doing so, Person A made references to sexual harassment and the me too movement.

Person A reported that she first met Mr. Gates at Microsoft in 1999. At some point thereafter, Mr. Gates and Person A exchanged a number of communications and met in person intermittently for a period of time during Person A's employment with Microsoft.

The Company engaged Ellen Dwyer of Crowell & Moring LLP to investigate Person A's report regarding Mr. Gates. The investigation conducted by Ms. Dwyer confirmed that Mr. Gates and Person A engaged in the alleged communications and meetings.

Brad Smith, the Company's President, met with Mr. Gates about Person A's allegations. Mr. Gates admitted that he had engaged in the communications and conduct reported by Person A, but alleged that it was consensual.

Ms. Dwyer gave a confidential presentation about her investigation to date to the Board's Governance and Nominating Committee on November 27, 2019. Mr. Gates resigned from the Company's Board on March 13, 2020. Prior to resigning from the Board in March 2020, Mr. Gates was the Company's CEO until 2000, Chief Software Architect until 2006, and Chair of its Board until 2014. Person A has also since left the Company.

In the interests of protecting the privacy rights of Person A and consistent with our scope of work, we do not believe it is appropriate to disclose further details beyond the results of the investigation described above.

### **B. The Person B Investigation**

On April 25, 2019, the ERIT, which formerly had responsibility for conducting investigations of sexual harassment complaints, learned of workplace behavioral concerns regarding Person B raised during an Open Forum at a business meeting.

ERIT stated it was unable to identify the person who made the comments during the Open Forum. However, it did identify a person who heard the comments being made, but that person refused to identify any sources of information or to provide any details.

ERIT interviewed Person B about each of the concerns, and he denied each of the allegations.

ERIT concluded that Person B did not violate any Microsoft workplace policies, based on the lack of specific details and witnesses.

### **C. The May 25, 2022 *Business Insider* Article**

On May 25, 2022, *Business Insider* published an article entitled “Microsoft’s Toxic Culture Persists Despite Pledge By CEO Satya Nadella.” The article alleged that there were “golden boys” at Microsoft whose value shielded them from allegations of misconduct. It focused on three particular senior executives, who were an Executive Vice President and two Corporate Vice Presidents.

One of the executives announced his resignation from Microsoft on March 29, 2018, which precedes the time period covered by our review. Another executive’s resignation was announced on June 8, 2022, and the third executive’s resignation was announced on July 5, 2022.

The Company provided us with records it has about allegations of misconduct by the latter two Corporate Vice Presidents from WIT, GER, ERIT, HR, and CELA, some of them dating back prior to 2019 and others that were made in the 2019–2021 time period covered by our review.

Consistent with our scope of work, we did not reinvestigate the allegations, nor did we review the investigations themselves. Rather, our review was limited to the results of the investigations. Based on our review, we have three general observations that are relevant to this Report. First, that there is and has been a perception among some employees that the Company tolerates and to some degree protects high performing senior executives who may be engaging in inappropriate conduct. Second, due to the volume of complaints against these Corporate Vice Presidents, there was at least a perception and a degree of evidence that they were engaging in inappropriate conduct

toward female employees that could have been addressed earlier than it was. Third, although multiple people from HR, GER, ERIT, and WIT had knowledge of various allegations against these executives, it did not seem that any one of them had all of the knowledge of all of the allegations, which may have been useful in addressing the situation earlier. We have made some recommendations to address these observations below.

**III. Review of Data**

We reviewed data of all of the internal sexual harassment and gender discrimination complaints the Company received in the U.S. from 2019 through 2021. The data is analyzed in various manners below.

**A. Breakdown of Complaints**

The majority of complaints during the relevant period alleged gender discrimination:

<b>Complaint Type</b>	<b>#</b>	<b>%</b>
Discrimination – Sex/Gender	453	62.83%
Harassment – Sex/Gender	58	8.04%
Harassment – Sexual	210	29.13%
TOTAL	721	100.00%

**B. Findings**

The majority of investigations made findings that the allegations of a violation of the policies against gender discrimination and sexual harassment were unsubstantiated:

**OVERALL:**

<b>Allegation Resolution</b>	<b>#</b>	<b>%</b>
Substantiated Policy Violation	140	19.42%
Founded Concern: Behavior Not Aligned to Anti-Harassment & Anti-Discrimination Policy	6	0.83%
Founded Concern: Behavior Not Aligned to Respect, Integrity & Accountability	26	3.61%
Unsubstantiated	446	61.86%

Inconclusive	20	2.77%
Admin Closed	35	4.85%
No Resolution Listed	48	6.66%
<b>TOTAL</b>	<b>721</b>	<b>100%</b>

**BROKEN DOWN BY ALLEGATION:**

Allegation Resolution	Discrimination - Sex/Gender		Harassment - Sex/Gender		Harassment – Sexual	
	#	%	#	%	#	%
Substantiated Policy Violation	32	7.06%	14	24.14%	94	44.76%
Founded Concern: Behavior Not Aligned to Anti-Harassment & Anti-Discrimination Policy	0	0.00%	4	6.90%	2	0.95%
Founded Concern: Behavior Not Aligned to Respect, Integrity & Accountability	13	2.87%	12	20.69%	1	0.48%
Unsubstantiated	343	75.72%	18	31.03%	85	40.48%
Inconclusive	5	1.10%	2	3.45%	13	6.19%
Admin Closed	23	5.08%	4	6.90%	8	3.81%
No Resolution Listed	37	8.17%	4	6.90%	7	3.33%
<b>TOTAL</b>	<b>453</b>	<b>100%</b>	<b>58</b>	<b>100%</b>	<b>210</b>	<b>100%</b>

The EEOC publishes Data Visualizations reflecting charges of sexual harassment and sex-based discrimination for FY 2016–FY 2020. Below are the average resolutions for each type of charge over that five (5) year period:

Type of Charge	No Reasonable Cause	Meritorious	Admin. Closure
Sexual Harassment	54.44%	23.44%	22.16%
Sex Discrimination	64.92%	17.58%	17.48%



Although the categories used by Microsoft and the EEOC are not identical, it would appear that the percentage of substantiated complaints is slightly higher at Microsoft with respect to sexual harassment claims (44.76% v. 23.44%) and lower for discrimination based on gender (7.06% v. 17.58%).

**C. Complaints Brought By Men Compared to Complaints Brought By Women**

The vast majority of complaints were made by women:

Complainant	Discrimination - Sex/Gender		Harassment - Sex/Gender		Harassment – Sexual		TOTAL	
	#	%	#	%	#	%	#	%
Female	365	80.57%	37	63.79%	147	63.79%	549	76.14%
Male	58	12.80%	17	29.31%	37	29.31%	112	15.53%
Unknown	30	6.62%	4	6.90%	26	6.90%	60	8.32%
TOTAL	453	100%	58	100%	210	100%	721	100%

**D. Substantiation Rate for Male and Female Complainants**

The substantiation rates for female and male complainants are roughly equivalent, although the substantiation rate for gender discrimination complaints by males was almost 3% higher and the unsubstantiated rate was approximately 3% less:

**MALE COMPLAINANTS:**

Allegation Resolution	Discrimination - Sex/Gender		Harassment - Sex/Gender		Harassment - Sexual		TOTALS	
	#	%	#	%	#	%	#	%
Substantiated Policy Violation	3	5.17%	7	41.18%	13	35.14%	23	20.54%
Founded Concern: Behavior Not Aligned to Anti-Harassment & Anti-Discrimination Policy	0	0.00%	2	11.76%	1	2.70%	3	2.68%

Founded Concern: Behavior Not Aligned to Respect, Integrity & Accountability	0	0.00%	2	11.76%	0	0.00%	2	1.79%
Unsubstantiated	46	79.31%	3	17.65%	17	45.95%	66	58.93%
Inconclusive	1	1.72%	0	0.00%	5	13.51%	6	5.36%
Admin Closed	2	3.45%	2	11.76%	0	0.00%	4	3.57%
No Resolution Listed	6	10.34%	1	5.88%	1	2.70%	8	7.14%
<b>TOTAL</b>	<b>58</b>	<b>100%</b>	<b>17</b>	<b>100%</b>	<b>37</b>	<b>100%</b>	<b>112</b>	<b>100%</b>

**FEMALE COMPLAINANTS:**

Allegation Resolution	Discrimination - Sex/Gender		Harassment - Sex/Gender		Harassment – Sexual		TOTALS	
	#	%	#	%	#	%	#	%
Substantiated Policy Violation	29	7.95%	7	18.92%	75	51.02%	111	20.22 %
Founded Concern: Behavior Not Aligned to Anti-Harassment & Anti-Discrimination Policy	0	0.00%	1	2.70%	1	0.68%	2	0.36%
Founded Concern: Behavior Not Aligned to Respect, Integrity & Accountability	13	3.56%	9	24.32%	1	0.68%	23	4.19%
Unsubstantiated	272	74.52%	13	35.14%	54	36.73%	339	61.75 %
Inconclusive	4	1.10%	2	5.41%	7	4.76%	13	2.37%
Admin Closed	16	4.38%	2	5.41%	3	2.04%	21	3.83%
No Resolution Listed	31	8.49%	3	8.11%	6	4.08%	40	7.29%
<b>TOTAL</b>	<b>365</b>	<b>100%</b>	<b>37</b>	<b>100%</b>	<b>147</b>	<b>100%</b>	<b>549</b>	<b>100%</b>

**E. Business Unit Distribution**

Most of the complaints arose in the Engineering and Sales Groups:

**TOTAL CLAIMS BY BUSINESS GROUP OF COMPLAINANT:**

<b>Business Group</b>	<b>Discrimination - Sex/Gender</b>	<b>Harassment - Sex/Gender</b>	<b>Harassment – Sexual</b>	<b>TOTAL</b>	<b>%</b>
Corporate	36	6	18	60	8.32%
Sales	125	10	42	177	24.55%
Engineering	191	24	71	286	39.67%
Marketing	48	6	43	97	13.45%
Anonymous/ Unknown	53	12	36	101	14.01%
<b>TOTALS</b>	<b>453</b>	<b>58</b>	<b>210</b>	<b>721</b>	<b>100%</b>

**CORPORATE:**

<b>Complaint Type</b>	<b>#</b>	<b>%</b>
Discrimination - Sex/Gender	36	60.00%
Harassment - Sex/Gender	6	10.00%
Harassment – Sexual	18	30.00%
<b>TOTAL</b>	<b>60</b>	<b>100.00%</b>

<b>Allegation Resolution</b>	<b>Discrimination - Sex/Gender</b>		<b>Harassment - Sex/Gender</b>		<b>Harassment – Sexual</b>	
	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>
Substantiated Policy Violation	1	2.78%	0	0.00%	8	44.44%
Founded Concern: Behavior Not Aligned to Anti-Harassment & Anti-Discrimination Policy	0	0.00%	0	0.00%	0	0.00%

Founded Concern: Behavior Not Aligned to Respect, Integrity & Accountability	0	0.00%	1	16.67%	0	0.00%
Unsubstantiated	32	88.89%	3	50.00%	7	38.89%
Inconclusive	0	0.00%	0	0.00%	0	0.00%
Admin Closed	1	2.78%	0	0.00%	0	0.00%
No Resolution Listed	2	5.56%	2	33.33%	3	16.67%
<b>TOTAL</b>	<b>36</b>	<b>100%</b>	<b>6</b>	<b>100%</b>	<b>18</b>	<b>100%</b>

**SALES:**

<b>Complaint Type</b>	<b>#</b>	<b>%</b>
Discrimination - Sex/Gender	125	70.62%
Harassment - Sex/Gender	10	5.65%
Harassment – Sexual	42	23.73%
<b>TOTAL</b>	<b>177</b>	<b>100.00%</b>

<b>Allegation Resolution</b>	<b>Discrimination - Sex/Gender</b>		<b>Harassment - Sex/Gender</b>		<b>Harassment - Sexual</b>	
	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>
Substantiated Policy Violation	5	4.00%	2	20.00%	21	50.00%
Founded Concern: Behavior Not Aligned to Anti-Harassment & Anti-Discrimination Policy	0	0.00%	2	20.00%	1	2.38%
Founded Concern: Behavior Not Aligned to Respect, Integrity & Accountability	4	3.20%	1	10.00%		0.00%
Unsubstantiated	98	78.40%	2	20.00%	16	38.10%
Inconclusive	0	0.00%	0	0.00%		0.00%

Admin Closed	8	6.40%	3	30.00%	3	7.14%
No Resolution Listed	10	8.00%	0	0.00%	1	2.38%
TOTAL	125	100%	10	100%	42	100%

**ENGINEERING:**

Complaint Type	#	%
Discrimination - Sex/Gender	191	66.78%
Harassment - Sex/Gender	24	8.39%
Harassment – Sexual	71	24.83%
TOTAL	286	100.00%

Allegation Resolution	Discrimination - Sex/Gender		Harassment - Sex/Gender		Harassment – Sexual	
	#	%	#	%	#	%
Substantiated Policy Violation	17	8.90%	7	29.17%	34	47.89%
Founded Concern: Behavior Not Aligned to Anti-Harassment & Anti-Discrimination Policy	0	0.00%	0	0.00%	0	0.00%
Founded Concern: Behavior Not Aligned to Respect, Integrity & Accountability	5	2.62%	5	20.83%	1	1.41%
Unsubstantiated	141	73.82%	8	33.33%	25	35.21%
Inconclusive	5	2.62%	1	4.17%	6	8.45%
Admin Closed	10	5.24%	1	4.17%	2	2.82%
No Resolution Listed	13	6.81%	2	8.33%	3	4.23%
TOTAL	191	100%	24	100%	71	100%

**MARKETING:**

<b>Complaint Type</b>	<b>#</b>	<b>%</b>
Discrimination - Sex/Gender	48	49.48%
Harassment - Sex/Gender	6	6.19%
Harassment – Sexual	43	44.33%
<b>TOTAL</b>	<b>97</b>	<b>100.00%</b>

<b>Allegation Resolution</b>	<b>Discrimination - Sex/Gender</b>		<b>Harassment - Sex/Gender</b>		<b>Harassment - Sexual</b>	
	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>
Substantiated Policy Violation	9	18.75%	3	50.00%	24	55.81%
Founded Concern: Behavior Not Aligned to Anti-Harassment & Anti-Discrimination Policy	0	0.00%	0	0.00%	0	0.00%
Founded Concern: Behavior Not Aligned to Respect, Integrity & Accountability	2	4.17%	2	33.33%	0	0.00%
Unsubstantiated	35	72.92%	1	16.67%	17	39.53%
Inconclusive	0	0.00%	0	0.00%	2	4.65%
Admin Closed	0	0.00%	0	0.00%	0	0.00%
No Resolution Listed	2	4.17%	0	0.00%	0	0.00%
<b>TOTAL</b>	<b>48</b>	<b>100%</b>	<b>6</b>	<b>100%</b>	<b>43</b>	<b>100%</b>

**F. Employee Level Distribution of Claims**

The complaints came from all levels of employees, with the highest percentages in Levels 60–67, with a particular concentration at levels 63–65.

Employee Level of Complainant	Discrimination - Sex/Gender		Harassment - Sex/Gender		Harassment – Sexual		Total	
	#	%	#	%	#	%	#	%
0	14	3.09%	0	0%	11	5.24%	25	3.47%
34	3	0.66%	0	0%	19	9.05%	22	3.05%
35	1	0.22%	1	1.72%	3	1.43%	5	0.69%
36	6	1.32%	0	0%	4	1.90%	10	1.39%
37	5	1.10%	0	0%	2	0.95%	7	0.97%
38	4	0.88%	0	0%	4	1.90%	8	1.11%
39	2	0.44%	0	0%	0	0%	2	0.28%
40	2	0.44%	0	0%	1	0.48%	3	0.42%
41	1	0.22%	0	0%	4	1.90%	5	0.69%
53	1	0.22%	0	0%	2	0.95%	3	0.42%
54	1	0.22%	0	0%	1	0.48%	2	0.28%
56	2	0.44%	0	0%	2	0.95%	4	0.55%
57	2	0.44%	0	0%	1	0.48%	3	0.42%
59	14	3.09%	2	3.45%	7	3.33%	23	3.19%
60	20	4.42%	2	3.45%	15	7.14%	37	5.13%
61	42	9.27%	7	12.07%	14	6.67%	63	8.74%
62	33	7.28%	4	6.90%	20	9.52%	57	7.91%
63	48	10.60%	11	18.97%	19	9.05%	78	10.82%
64	72	15.89%	5	8.62%	19	9.05%	96	13.31%
65	71	15.67%	5	8.62%	19	9.05%	95	13.18%
66	31	6.84%	3	5.17%	3	1.43%	37	5.13%
67	23	5.08%	3	5.17%	5	2.38%	31	4.30%
68	3	0.66%	1	1.72%	0	0%	4	0.55%

69	7	1.55%	2	3.45%	0	0%	9	1.25%
70	1	0.22%	1	1.72%	0	0%	2	0.28%
80	2	0.44%	0	0%	0	0%	2	0.28%
Blank	42	9.27%	11	18.97%	35	16.67%	88	12.20%
Total	453	100.00%	58	100.00%	210	100.00%	721	100.00%

**Allegation Resolution by Employee Level:**

There does not seem to be a substantial correlation between employee level and complaint resolution:

<b>Employee Level of Complainant / Allegation Resolution</b>	<b>#</b>	<b>% Within Employee Level</b>
<b>0</b>	<b>25</b>	
Founded Concern: Behavior Not Aligned to Respect, Integrity & Accountability	2	8.00%
Substantiated Policy Violation	7	28.00%
Unsubstantiated	16	64.00%
<b>34</b>	<b>22</b>	
Inconclusive	2	9.09%
Substantiated Policy Violation	14	63.64%
Unsubstantiated	6	27.27%
<b>35</b>	<b>5</b>	
Substantiated Policy Violation	4	80.00%
Unsubstantiated	1	20.00%
<b>36</b>	<b>10</b>	
Substantiated Policy Violation	7	70.00%
Unsubstantiated	3	30.00%
<b>37</b>	<b>7</b>	
Substantiated Policy Violation	3	42.86%
Unsubstantiated	4	57.14%
<b>38</b>	<b>8</b>	
Substantiated Policy Violation	2	25.00%
Unsubstantiated	6	75.00%
<b>39</b>	<b>2</b>	



	Unsubstantiated	2	100.00%
<b>40</b>		<b>3</b>	
	Inconclusive	1	33.33%
	Unsubstantiated	2	66.67%
<b>41</b>		<b>5</b>	
	Inconclusive	1	20.00%
	Substantiated Policy Violation	2	40.00%
	Unsubstantiated	2	40.00%
<b>53</b>		<b>3</b>	
	Substantiated Policy Violation	2	66.67%
	Unsubstantiated	1	33.33%
<b>54</b>		<b>2</b>	
	Admin Closed	1	50.00%
	Substantiated Policy Violation	1	50.00%
<b>56</b>		<b>4</b>	
	Substantiated Policy Violation	1	25.00%
	Unsubstantiated	3	75.00%
<b>57</b>		<b>3</b>	
	Substantiated Policy Violation	1	33.33%
	No resolution listed	2	66.67%
<b>59</b>		<b>23</b>	
	Admin Closed	3	13.04%
	Founded Concern: Behavior Not Aligned to Respect, Integrity & Accountability	1	4.35%
	Inconclusive	2	8.70%
	Substantiated Policy Violation	4	17.39%
	Unsubstantiated	12	52.17%
	No resolution listed	1	4.35%
<b>60</b>		<b>37</b>	
	Admin Closed	1	2.70%
	Substantiated Policy Violation	9	24.32%
	Unsubstantiated	24	64.86%
	No resolution listed	3	8.11%
<b>61</b>		<b>63</b>	
	Admin Closed	1	1.59%
	Founded Concern: Behavior Not Aligned to Anti-Harassment & Anti-Discrimination Policy	1	1.59%

Founded Concern: Behavior Not Aligned to Respect, Integrity & Accountability	3	4.76%
Inconclusive	1	1.59%
Substantiated Policy Violation	19	30.16%
Unsubstantiated	31	49.21%
No resolution listed	7	11.11%
<b>62</b>	<b>57</b>	
Admin Closed	3	5.26%
Founded Concern: Behavior Not Aligned to Respect, Integrity & Accountability	2	3.51%
Substantiated Policy Violation	7	12.28%
Unsubstantiated	43	75.44%
No resolution listed	2	3.51%
<b>63</b>	<b>78</b>	
Admin Closed	3	3.85%
Founded Concern: Behavior Not Aligned to Anti-Harassment & Anti-Discrimination Policy	1	1.28%
Founded Concern: Behavior Not Aligned to Respect, Integrity & Accountability	6	7.69%
Inconclusive	5	6.41%
Substantiated Policy Violation	12	15.38%
Unsubstantiated	44	56.41%
No resolution listed	7	8.97%
<b>64</b>	<b>96</b>	
Admin Closed	4	4.17%
Founded Concern: Behavior Not Aligned to Respect, Integrity & Accountability	2	2.08%
Inconclusive	1	1.04%
Substantiated Policy Violation	14	14.58%
Unsubstantiated	71	73.96%
No resolution listed	4	4.17%
<b>65</b>	<b>95</b>	
Admin Closed	3	3.16%
Founded Concern: Behavior Not Aligned to Anti-Harassment & Anti-Discrimination Policy	1	1.05%
Founded Concern: Behavior Not Aligned to Respect, Integrity & Accountability	2	2.11%
Substantiated Policy Violation	16	16.84%

Unsubstantiated	64	67.37%
No resolution listed	9	9.47%
<b>66</b>	<b>37</b>	
Admin Closed	4	10.81%
Founded Concern: Behavior Not Aligned to Respect, Integrity & Accountability	2	5.41%
Substantiated Policy Violation	2	5.41%
Unsubstantiated	27	72.97%
No resolution listed	2	5.41%
<b>67</b>	<b>31</b>	
Admin Closed	4	12.90%
Inconclusive	2	6.45%
Substantiated Policy Violation	3	9.68%
Unsubstantiated	17	54.84%
No resolution listed	5	16.13%
<b>68</b>	<b>4</b>	
Substantiated Policy Violation	1	25.00%
Unsubstantiated	3	75.00%
<b>69</b>	<b>9</b>	
Admin Closed	1	11.11%
Unsubstantiated	5	55.56%
No resolution listed	3	33.33%
<b>70</b>	<b>2</b>	
Founded Concern: Behavior Not Aligned to Respect, Integrity & Accountability	1	50.00%
Unsubstantiated	1	50.00%
<b>80</b>	<b>2</b>	
Unsubstantiated	2	100.00%
<b>Blank</b>	<b>88</b>	
Admin Closed	7	7.96%
Founded Concern: Behavior Not Aligned to Anti-Harassment & Anti-Discrimination Policy	3	3.45%
Founded Concern: Behavior Not Aligned to Respect, Integrity & Accountability	5	5.75%
Inconclusive	5	5.75%
Substantiated Policy Violation	9	10.34%
Unsubstantiated	56	64.37%

No resolution listed	3	3.45%
<b>Total</b>	<b>721</b>	<b>100%</b>

**IV. Review of Investigative Reports**

We reviewed the investigative reports of all of the U.S. based complaints of gender discrimination and sexual harassment that were submitted internally from 2019 through 2021. There were a total of 489 reports<sup>1</sup> that were distributed across the years as follows:

Year	Number of Reports
2019	188
2020	148
2021	153

In general, we concluded that the reports demonstrated that most of the investigations were conducted in a “fair, timely and thorough manner” as required in the Anti-Harassment and Anti-Discrimination Policy. In several cases, primarily prior to 2021 and mostly in 2019, the investigations took more than 30 days to complete. We understand that there can be a variety of acceptable reasons why an investigation can take more than 30 days to complete. In many cases, the delay was caused by extended leaves of absence by the complainant or respondent.

Recent trends show that the time to close investigations has been impacted by the increased volume of complaints and time away from the office due to the pandemic and investigator turnover. In FY 2021 Q3, 50% of investigations were completed within 30 days, compared to only 32% in FY 2022 Q3. Similarly, in all of FY 2021, 51% of investigations were completed within 30 days, compared to 39% in FY 2022 to date.

Based on the reports, in 22 of the 489 of the cases (4.5%), we questioned the finding of the investigation. In most cases, we questioned the finding that there was not a substantiated policy violation but that there was instead a founded concern not aligned to the Anti-Harassment and Anti-Discrimination Policy or not aligned to the Company’s Respect, Integrity and Accountability Expectations.

**V. Interviews with a Sampling of Complainants**

We sent email communications to a random selection of 54 of the 155 individuals who raised gender discrimination and/or sexual harassment complaints with WIT in 2021, or for whom

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<sup>1</sup> In a limited number of cases, there were no formal internal reports, either because the case was administratively closed due to a settlement or some other reason or because the complaint was investigated by outside counsel on a privileged basis.

complaints were submitted on their behalf, and asked whether they would be willing to participate in interviews about their experience with the WIT process. Of that number, 20 agreed to be interviewed. This constitutes an approximately 37% positive response rate, which in our experience is generally higher than the response rate for most internal employee surveys. The number of interviewees also represents approximately 13% of the 2021 complainant population, which is a respectable sampling. After conducting the interviews, we feel we obtained a representative sampling of opinions about the WIT process.

Based on our interviews, we have the following observations:

- Almost none of the witnesses with whom we spoke remained in the same role they held at the time they raised concerns regarding gender discrimination or harassment. This is true of both complainants whose concerns were substantiated and those whose concerns were not. Many witnesses expressed concerns that their having made a complaint or participated in an investigation would harm their career trajectory or result in reputational damage—even if their complaints had been substantiated, and the alleged perpetrator disciplined. As such, many witnesses tried to transfer into different parts of the organization to avoid this.
- Several witnesses, including those whose discrimination complaints were substantiated, also said that they had suffered delayed promotions or compensation increases resulting from negative performance evaluations that had been influenced by the alleged discrimination or harassment; they also expressed frustration that HR had told them there was no way to address the impact of the negative performance evaluations on future promotion/compensation decisions. These were common concerns shared particularly by the witnesses with whom we spoke who were senior.
- Several witnesses expressed confusion and frustration in cases where they were told that no policy violation had occurred because the alleged perpetrator had engaged in bad behavior that was not based on their sex or other protected classification. To paraphrase one witness: “It makes no sense that they found a pattern of bad behavior but told me my complaint couldn’t be substantiated because he treated everyone that way instead of just some people.”
- In a number of cases where a witness’s complaints were not substantiated because the investigator did not conclude that the alleged behavior was based on a protected characteristic, the investigator nonetheless concluded that bad behavior did occur that the Company needed to address. In many such cases, the reports indicated a Founded Concern that should be referred to HR for appropriate follow-up. However, these witnesses indicated that the bad behavior had not changed, and thus the HR follow-up did not occur or was not effective.

- Several witnesses also expressed concern and/or frustration that their complaints were unfounded because the accused did not “intend” to harass or discriminate, as well as concern and frustration that their complaints were unfounded because the conduct was not “excessive” or severe enough to constitute a policy violation. Though the underlying reports did not state that the complaint was not substantiated because the accused did not “intend” to harass or discriminate, the reports did state that there was insufficient evidence to conclude that the respondent was "motivated by animus regarding sex or gender."
- Several witnesses with whom we spoke were upset that concerns they had communicated to a manager confidentially were then conveyed to HR and an investigation was opened against their will. Several witnesses also stated that their manager got HR involved without first telling them that they were going to do so.
- Our interviews also surfaced a concern that HR is engaging, to some extent, in “filtering” complaints or discouraging employees from making complaints that would need to be referred to WIT for investigation. This concern was particularly prevalent among senior women, and they suspected that HR was discouraging them from pursuing complaints because it would result in an investigation and they had concern regarding how that could impact their promotion potential or ability to advance to the most senior ranks.

## **VI. Best Practices and Recommended Enhancements**

As part of our benchmarking exercise, we relied on our firm’s substantial collective experience in this field, referred to studies on best practices on sexual harassment and gender discrimination policies, and reviewed the policies of dozens of Fortune 50 companies and government agencies.

In addition, the EEOC issued technical guidance entitled “Promising Practices for Preventing Harassment” on November 21, 2017, which discussed the 2016 Report of the Co-Chairs of the EEOC’s Select Task Force on the Study of Harassment in the Workplace. That Report identified five core principles that have generally proven effective in preventing and addressing harassment:

- Committed and engaged leadership;
- Consistent and demonstrated accountability;
- Strong and comprehensive harassment policies;
- Trusted and accessible complaint procedures; and

- Regular, interactive training tailored to the audience and the organization.

Our review indicates that the Company's practices are well-aligned with these core principles and with best practices generally. However, there are some enhancements that the Company could consider based on best practices we have observed at other organizations. These potential enhancements are set forth below. Because we do not have complete knowledge of all of the policies, practices, and operations of the Company, and the Company's ability to implement the changes discussed below, we are recommending that the Company "consider" making these changes. Ultimately, it is up to the Company to decide if and how some or all of these changes may be implemented.

#### **A. Revise the Anti-Harassment and Anti-Discrimination Policies**

As stated above, we believe that the Company's Anti-Harassment and Anti-Discrimination policies can be improved in the manners indicated below, and recommend that the Company consider making some or all of the proposed changes.

First, we recommend that the Company consider inserting the definition of sexual harassment that appears in the EEOC's regulations into its existing policy:

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

29 C.F.R. § 1604.11.

We also recommend that the Company consider including a slightly revised definition of discrimination taken largely from the EEOC's website: "treating someone differently, or less favorably, with respect to recruitment, hiring, placement, compensation, benefits, advancement, promotion, evaluation, disciplinary action, termination or any other term, condition or privilege of employment because of a protected characteristic." It also includes "making employment decisions based on stereotypes (unfair or untrue beliefs) about abilities and traits associated with a protected characteristic."

Furthermore, we believe the policy could be improved by adding some more specifics about the investigation process so complainants have a better idea of what to expect during an investigation.

The policy generally states that the Company “will take appropriate disciplinary and/or other appropriate action when it determines this policy has been violated.” We think it would be helpful to add “up to and including termination of employment or any other relationship the violator has with the Company” because it better informs employees of the potential consequences for violating the policy.

Furthermore, as stated above, the Disciplinary Guidelines state that GER, the Employment Law Group, and HR Consulting “will align on the recommended disciplinary action using these guidelines.” The Company should determine whether such collaboration is consistently occurring, and if it is, whether it makes sense for it to occur and whether it is practical in application. If such collaboration is not consistently occurring, the Company should consider revising the Guidelines to more accurately describe how such recommendations are being made and who should be making them.

Several other Fortune 50 companies have their CEOs sign these and other important policies, and/or plainly state that the policies express the views of the entire senior leadership team. Microsoft could consider this practice as well, to reinforce the important “tone at the top” principle.

It should be noted that the Company currently has language to this effect in its Standards of Business Conduct:

Microsoft’s Standards of Business Conduct (our “Trust Code”) and its Ethics and Compliance Program are endorsed by and have the full support of Microsoft’s Board of Directors. The Board of Directors and management are responsible for overseeing the Ethics and Compliance Program and compliance with these Standards. The Standards apply to Microsoft, its Board of Directors, and all employees, directors, executive officers of Microsoft. When we refer to “Microsoft” we mean Microsoft Corporation and all its subsidiaries and affiliates in which it directly or indirectly owns more than 50% of the voting controls. References to “employees” include the Board of Directors, employees, directors, and executive officers of Microsoft. These Standards are important to us. Violation of these Standards may result in disciplinary action, up to and including termination of employment. Only the Board of Directors may waive a provision of the Standards for a director or executive officer. Any waiver that is granted to a director or executive officer will be publicly disclosed as required by NASDAQ listing requirements and applicable laws, rules, and regulations.



Several Fortune 50 companies also have some version of the following in their policies:

It is important to understand that:

- Inappropriate conduct may involve individuals of the same or opposite sex and is prohibited regardless of sex, gender identity or whether the individual submits to it or rejects it.
- Harassment and/or inappropriate conduct are often defined by the impact to the recipient rather than by the intent of the person causing the offense.

Inappropriate behavior will not, therefore, be excused or justified by claiming that it was unintentional or humorous or because it occurred under the influence of alcohol or other substances.

We recommend that Microsoft consider including similar language in its policy.

We also recommend that the policy be revised to inform employees of the assignment of GER representatives to serve as a resource to complainants and respondents during and after the investigation process.

Finally, we recommend that the Company consider revising the Disciplinary Guidelines to include the severity of the behavior and/or the impact on the person subject to the conduct as factors in determining what discipline to impose.

**B. Adopt a Formal Procedure to Request Reconsideration of the Investigation's Findings**

We understand that some complainants and respondents who are unhappy with an investigation's findings sometimes escalate their concerns to management in an informal manner. Although in our experience it is unusual, we believe the Company should consider developing a reconsideration process for complainants and respondents who are unsatisfied with the results of their investigation and are able to produce new evidence or evidence that was not considered in the investigation, or if there are other compelling reasons why the findings should be reconsidered. The ability to request reconsideration of findings could build more due process into the system and may increase the likelihood that more employees will view the process as fair and thorough.

### **C. Require the Disclosure of Certain Consensual Relationships**

We think it is a best practice to require managers or executives at a certain level and higher, as well as Board members, to disclose consensual relationships they are having with other Microsoft employees, regardless of whether or not an actual or potential conflict of interest exists. By imposing a disclosure requirement, the parties acknowledge that the relationship is consensual, and the Company is on notice to look for signs that the relationship is creating a conflict of interest or that it is no longer consensual.

We understand that, currently, there are many Microsoft employees who are married to each other or are otherwise in a committed relationship with one another. If it decides to adopt a disclosure requirement, the Company will have to decide whether it requires employees to disclose existing relationships or whether the policy will only apply to relationships that form in the future.

Below are excerpts from a policy for the National Institutes of Health that the Company may want to consider implementing:

#### **Policy:**

Personal relationships (including romantic and/or sexual) between individuals in inherently unequal positions, where one party has real or perceived authority over the other in their professional roles, may be inappropriate in the workplace and are strongly discouraged. If such a relationship exists or develops, it must be disclosed. This applies to all individuals in the NIH community, including employees, contractors, students, trainees, and fellows and includes anyone who holds a position of authority or perceived authority over another individual from a scientific or administrative perspective.

#### **Definition of an Inappropriate Personal Relationship:**

- Relationships between persons in inherently unequal positions where one party has real or perceived authority, influence, or power over the other's conditions of employment or has the ability to directly impact the other's career progression, which includes formal and informal supervisory relationships.
- Such relationships are inappropriate if they have an actual, perceived, or potential for perceived influence over the professional relationship or workplace.

Efforts by either party to initiate or engage in these relationships is inappropriate. These relationships, even if consensual, may ultimately result in conflict or difficulties in the NIH workplace. This excludes relationships where one party **does not** have real or perceived authority or influence over the other's condition of employment or the ability to directly impact the other's career progression.

**Disclosure Requirement:**

Disclosure of such relationships creates a transparent environment that ensures the mission is met with mutual professional respect and accountability while also maintaining public trust and avoiding conflict of interest.

- If individuals of unequal authority are in this type of relationship, the party of greater power is prohibited from engaging in all official matters affecting or appearing to affect the other and both must immediately disclose it to their supervisor (or any supervisor in their chain of command).
- Disclosure reduces the risk to both parties, as measures can be taken immediately to mitigate real or perceived conflicts of interest and bias.
- A failure to disclose such a relationship may result in disciplinary action.

**Remediation:**

Upon such notification the responsible agency official must ensure that the Institute/Center manages, decreases, or eliminates potential risk as a result of the relationship. Appropriate action may include, but is not limited to:

- Reassignment of one party to sever the supervisory relationship
- Recusal of the supervisor or individual in the position of authority or perceived authority from all official matters affecting, or appearing to affect, the subordinate
- Administrative inquiry into the matter to determine if any inappropriate action(s) occurred as a result of the relationship, which could result in administrative action, including disciplinary action. Such findings may also be considered when making administrative decisions to include funding, staff, and resources.

**D. Develop an Effective Tool to Remind SLT Members That They Need to Take Required Trainings**

In FY 2020 and 2021, some SLT members did not take their required trainings on gender discrimination and sexual harassment issues. As discussed above, the Company discovered that its tool to remind SLT members of their need to take required trainings on such topics as gender discrimination and sexual harassment has flaws. For that reason, we recommend that the Company develop a tool that does not time out and that effectively reminds SLT members of their need to take required trainings. However, SLT members should not have to be reminded of their need to take these required trainings. They should be considered a priority and should be taken when they first appear in their queue.

In addition, SLT members who fail to take required trainings by their due dates should be held accountable in a meaningful way pursuant to the Required Learnings Policy.

**E. Advise Employees of their Rights to Seek External Relief**

In August 2019, the State of New York amended its human rights law so that every employer in the state is required to adopt a sexual harassment prevention policy. An employer that does not adopt the model policy developed by the state must ensure that the policy that they adopt meets or exceeds several minimum standards. The states of California and Massachusetts and the District of Columbia have similar requirements. The state of Washington has a similar requirement for the retail, hotel, motel, security, and property services industries. In particular, it requires employers in those industries to “[p]rovide a list of resources for the employer's employees to utilize. At a minimum, the resources must include contact information of the equal employment opportunity commission, the Washington state human rights commission, and local advocacy groups focused on preventing sexual harassment and sexual assault.”

Two of the New York minimum standards that the Company could consider adopting on a national basis are set forth below:

- include information concerning the federal and state statutory provisions concerning sexual harassment, remedies available to victims of sexual harassment, and a statement that there may be applicable local laws; and
- inform employees of their rights of redress and all available forums for adjudicating sexual harassment complaints administratively and judicially.<sup>2</sup>

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<sup>2</sup> Many other states have laws that require posting about the state’s equal employment opportunity law(s) and most of these posters provide applicants and employees with the names of the agencies they can contact if they want to file a complaint, but they do not require that this information be included in the employer’s actual policy.

This is how these standards are addressed in the state's model policy:

### Legal Protections And External Remedies

Sexual harassment is not only prohibited by [Employer Name] but is also prohibited by state, federal, and, where applicable, local law. Aside from the internal process at [Employer Name], employees may also choose to pursue legal remedies with the following governmental entities. While a private attorney is not required to file a complaint with a governmental agency, you may seek the legal advice of an attorney. In addition to those outlined below, employees in certain industries may have additional legal protections.

**State Human Rights Law (HRL)** The Human Rights Law (HRL), codified as N.Y. Executive Law, art. 15, § 290 et seq., applies to all employers in New York State with regard to sexual harassment, and protects employees, paid or unpaid interns and non-employees, regardless of immigration status. A complaint alleging violation of the Human Rights Law may be filed either with the Division of Human Rights (DHR) or in New York State Supreme Court. Complaints with DHR may be filed any time within one year (three years beginning Aug. 12, 2020) of the harassment. If an individual did not file at DHR, they can sue directly in state court under the HRL, within three years of the alleged sexual harassment. An individual may not file with DHR if they have already filed a HRL complaint in state court. Complaining internally to [Employer Name] does not extend your time to file with DHR or in court. The one year or three years is counted from date of the most recent incident of harassment. You do not need an attorney to file a complaint with DHR, and there is no cost to file with DHR. DHR will investigate your complaint and determine whether there is probable cause to believe that sexual harassment has occurred. Probable cause cases are forwarded to a public hearing before an administrative law judge. If sexual harassment is found after a hearing, DHR has the power to award relief, which varies but may include requiring your employer to take action to stop the harassment, or redress the damage caused, including paying of monetary damages, attorney's fees and civil fines. DHR's main office contact information is: NYS Division of Human Rights, One Fordham Plaza, Fourth Floor, Bronx, New York 10458. You may call (718) 741-8400 or visit: [www.dhr.ny.gov](http://www.dhr.ny.gov). Contact DHR at (888) 392-3644 or visit [dhr.ny.gov/complaint](http://dhr.ny.gov/complaint) for more information about filing a complaint. The website has a complaint form that can be downloaded, filled out, notarized and mailed to DHR. The website also contains contact information for DHR's regional offices across New York State.

### Civil Rights Act of 1964

The United States Equal Employment Opportunity Commission (EEOC) enforces federal anti-discrimination laws, including Title VII of the 1964 federal Civil Rights Act (codified as 42 U.S.C. § 2000e et seq.). An individual can file a complaint with the EEOC anytime within 300 days from the harassment. There is no cost to file a complaint with the EEOC. The EEOC will investigate the complaint, and determine whether there is reasonable cause to believe that discrimination has occurred, at which point the EEOC will issue a Right to Sue letter permitting the individual to file a complaint in federal court. The EEOC does not hold hearings or award relief, but may take other action including pursuing cases in federal court on behalf of complaining parties. Federal courts may award remedies if discrimination is found to have occurred. In general, private employers must have at least 15 employees to come within the jurisdiction of the EEOC. An employee alleging discrimination at work can file a “Charge of Discrimination.” The EEOC has district, area, and field offices where complaints can be filed. Contact the EEOC by calling 1-800-669- 4000 (TTY: 1-800-669-6820), visiting their website at [www.eeoc.gov](http://www.eeoc.gov) or via email at [info@eeoc.gov](mailto:info@eeoc.gov). If an individual filed an administrative complaint with DHR, DHR will file the complaint with the EEOC to preserve the right to proceed in federal court.

#### Local Protections

Many localities enforce laws protecting individuals from sexual harassment and discrimination. An individual should contact the county, city or town in which they live to find out if such a law exists. For example, employees who work in New York City may file complaints of sexual harassment with the New York City Commission on Human Rights. Contact their main office at Law Enforcement Bureau of the NYC Commission on Human Rights, 22 Reade Street, 1st Floor, New York, New York; call 311 or (212) 306-7450; or visit [www.nyc.gov/html/cchr/html/home/home.shtml](http://www.nyc.gov/html/cchr/html/home/home.shtml).

#### Contact the Local Police Department

If the harassment involves unwanted physical touching, coerced physical confinement or coerced sex acts, the conduct may constitute a crime. Contact the local police department.

#### **F. Ask Complainants to Complete Surveys About Their Investigation Experience**

Another best practice for employers to consider is to survey complainants who raised concerns and participated in the investigation process. We were prepared to make that recommendation in

this report but learned that a survey was already being developed and went live in March 2022. Below are the survey questions:

1. During the investigation process, I felt that I had the support and resources I needed.
  - a. If Answered Neutral-Unfavorable, follow up open text question: What support or resources would have been helpful?
  - b. If Favorably, follow up open text question: What support or resources were the most helpful?
2. I was treated with dignity and respect during the investigation process.
3. I was kept informed during the investigation process.
4. The investigator's finding was clearly communicated to me.
5. The investigation was handled in a timely manner.
6. I would feel comfortable participating in the investigation process if I were to have a workplace concern in the future.

If you would like to raise a concern about a specific situation or a possible violation of law or company policy, we ask that you visit the Report a Workplace Concern page on HRWeb for reporting options instead of using this survey to communicate that concern. To fully protect the confidentiality of your responses to open-ended questions, we suggest using language that does not identify you. Thank you for helping us continually improve so we can enable Microsoft's aspire to culture. If you have a workplace concern in the future, you may raise it through any of the following ways: [AskHR@microsoft.com](mailto:AskHR@microsoft.com); [WorkINV@microsoft.com](mailto:WorkINV@microsoft.com); [www.MicrosoftIntegrity.com](http://www.MicrosoftIntegrity.com); or speak to any Microsoft Manager for assistance.

We think the Company should consider adding the following two questions to the survey:

1. I agree with the findings of the investigation. If not, why not?
2. I do not think my standing in the Company has been negatively impacted by their participation in the investigation process. If not, why not?

### **G. Establish Credible Transparency Around Remediation**

For a variety of reasons, some employers are reluctant to tell complainants and other employees about specific remedial actions taken with respect to respondents who have been found to have violated a discrimination or harassment policy. However, if employees are unaware of corrective action that can be taken in these situations, they may wonder whether there is real accountability.

To address this, some employers have meetings with or disclose information to employees on a semi-regular basis in which they describe real life scenarios without using names or other identifiers. Such a practice could help affirm Microsoft's culture of intolerance toward gender discrimination and sexual harassment.

Thus, we recommend that Microsoft consider anonymously reporting and publishing statistics on the type of disciplinary actions taken where complaints have been substantiated or other concerns have been found.

### **H. Take Steps to Minimize Perception That Senior Leaders Are Not Held Accountable**

The *Business Insider* article alleged in essence that despite its policies and procedures, the Company tolerated inappropriate conduct by three high profile, high performing executives of the Company. Our review of the records relating to two of the executives suggests that some employees had a perception based on some degree of evidence that the Company tolerated their inappropriate conduct. Although we are unable to assess how widespread those perceptions may be, and whether they will persist after the resignations of these executives, we think it would be prudent for the Company to consider taking some actions that attempt to minimize that perception, such as making it clear in policies that the proscriptions apply to all levels of employees, up to and including the SLT.

### **I. Coordinate Data Among HR, WIT, GER, and CELA**

Our review of the files described above and our interviews with Company officials involved in investigations indicate that there is an opportunity to improve information sharing by connecting the data collected by HR, WIT, GER, and CELA so that all of the data about allegations of misconduct by individuals can be accessed in the same system, and the Company can make more informed decisions about whether action needs to be taken with respect to individuals.



## **J. Make Improvements to the WIT Investigation Process**

As described above, the Company's Anti-Harassment and Anti-Discrimination Policy and investigation procedures are well-aligned with best practices, with several areas of possible improvement. However, the themes from the interviews we conducted with complainants indicate that the Company's implementation of the Policy does not always fully effectuate its purpose, insulate complainants from negative consequences based on their having made a complaint, or generally instill trust in the investigation process. Accordingly:

- We recommend that Microsoft consider taking steps to follow up with complainants, or track the career trajectory of complainants, to ensure their careers have not suffered as a result of having made a complaint or participated in an investigation. We further recommend that the Company consider determining the appropriate follow-up period and whether efforts to track the career trajectory of complainants may be incorporated into existing systems or processes.
- We recommend that the Company consider providing some additional guidance or training on how to communicate that a policy violation may not have occurred, while validating that the complainant's concerns had merit and would be addressed.
- We recommend that Microsoft consider implementing more robust procedures to ensure that HR follow-up occurs where it is warranted and bad behavior is addressed even if it is not a policy violation.
- We recommend that the Company consider whether a "Founded Concern" might also be a violation of another policy, such as the Standards of Business Conduct, also known as the "Trust Code." Currently, if a policy violation is not substantiated but there is a finding of inappropriate conduct, WIT will determine there is a "Founded Concern" that the behavior was not aligned to the Anti-Harassment & Anti-Discrimination Policy or to Respect, Integrity & Accountability. To a lay person who feels like they have been mistreated, this could potentially be perceived as applying a narrow, hyper-technical, and/or legalistic interpretation of the Anti-Harassment & Anti-Discrimination Policy in an attempt to avoid finding a policy violation.
- We recommend the Company consider training managers that they should notify employees before they raise concerns on their behalf to HR.

**K. Continue Efforts to Increase the Percentage of Women in Leadership Positions**

Despite the Company’s efforts, according to its 2021 Diversity & Inclusion Report, women are underrepresented in all job groups:

Position	All Core MS	Technical Roles	Individual Contributor	Manager	Director	Partner + Executive	Executive
Percentage	29.7%	24.4%	30.2%	27.1%	22.0%	21.1%	25.0%

Nevertheless, it is worth noting that from 2014 until the present, the number of female Corporate Vice Presidents at the Company increased from 13 to 88, and they manage 47% of the headcount at the Company. From June 2014 until June 2022, the percentage of women in the workforce increased from 24.6% to 30.7%. We believe, however, that if there were more women in senior positions, female employees would have more role models and allies, and a greater sense that they can grow professionally and safely at the Company. This, in turn, could to some extent decrease the perception that there is gender discrimination and sexual harassment at the Company. According to a study by Global Strategy Group commissioned by The Rockefeller Foundation:

Having female leaders in positions of influence to serve as role models is not only critical to the career advancement of women, but stands to generate broader societal impacts on pay equity, changing workplace policies in ways that benefit both men and women, and attracting a more diverse workforce.

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