



New Human Capital Disclosure Requirements; Inconsistent 10-K Disclosures

Posted by Melissa Pfeuffer, Mayer Brown LLP, on [Sunday, May 23, 2021](#)

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Prior to 2020, the last significant revisions to Regulation S-K were over 30 years ago. As modernization of the human capital disclosure requirements have caught up with the times, companies are faced with setting reporting precedents. See our [previous post](#) that provides an explanation of the Regulation S-K amendments.

How did companies respond to the SEC's new human capital disclosure requirement? To answer this question, a [new report](#) published by Intelligize discusses the differences in hundreds of Forms 10-K filed by S&P 500 companies. With no two filings alike, analysis shows that companies seemed to build on each other as time progressed; earlier filings were shorter, and less-inclusive in their disclosures, while later filings were longer and more descriptive. The study sample in the report specifically focuses on Form 10-K filings made from November 2020 through March 2021. Varying in style and content, the filings examined were bucketed into three wide-ranging groups:

1. *General, largely unchanged from previous filings*

- Unstructured paragraphs
- Less inclusive of past data (plus omissions)
- More inclusive of aspirations going forward

2. *Middle-of-the-road*

- Less inclusive of past data (plus omissions)
- More inclusive of disclosures on specific topics

3. *Most comprehensive (the smallest group of filings)*

- Thorough disclosures
- More inclusive/detailed data, especially in the form of charts and tables

These categories are a result of the rule offering very little guidance on the specific information to be included by registrants. The only direction provided tells registrants to incorporate "the number of persons employed by the registrant" and "any human capital measures of objectives that the registrant focuses on in managing business." Across the board, filers included particular examples of "measures and objectives," such as development, attraction, and retention of personnel. In addition, likely as a result of the COVID-19 pandemic, filings highlighted issues of turnover in their descriptions.

Out of 427 Form 10-K filings, 424 covered Diversity and Inclusion (D&I); in fact, more than half included D&I as its very own section. Oddly enough, however, only 16 filers disclosed a breakdown of personnel by race, gender, and other EEO-reporting characteristics. This may be because some S&P 500 companies already report this information separately.

The majority, but surprisingly not all, incorporated company data on safety and health responsiveness of their employees, especially related to COVID-19, for instance. Benefits were another topic some touched on. The Intelligize report highlights that although compensation may have been mentioned, filers emphasized less-quantifiable aspects of payment programs, such as time off, enhanced workplace culture, and an increase in volunteer opportunities.

Although many found it puzzling that the SEC was not more explicit in its reporting expectations, a foundation has now been set for future filings to build on.

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