

Business

Let's Stop Rewarding Sexual Harassers

Companies should hold firm on hiring contracts that set a lower threshold for withholding golden parachutes.

By [Kara Alaimo](#)

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No more golden parachutes for the bad guys. *Photographer: Luis Sinco/Los Angeles Times via Getty Images*

Many of the top executives who have been ousted amid allegations of sexual harassment and abuse have received, or could be eligible for, fat payouts. Les Moonves, the former CBS head who stepped down last month, could get \$120 million; the Chicago Tribune's parent company, Tronc, is paying out the remaining \$10 million on the contract of former Chairman Michael Ferro, who left in March. And, according to the New York Times, Fox News' parent company, 21st Century Fox, is paying the former host Bill O'Reilly up to \$25 million, while Roger Ailes, the network's former chairman, walked away with a cool \$40 million.

These golden parachutes for ethically suspect former executives aren't just hugely expensive for corporations. They also are harmful from a public-relations perspective. Companies need to revise their employment contracts to end the practice of remunerating staffers who have been accused of grotesque behavior.

Nicholas Fortuna, an employment law specialist and founder and managing partner of the law firm **Allyn & Fortuna LLP**, said corporations should include language in hiring contracts stipulating that they are not required to pay out contracts, bonuses or severance fees to an executive if evidence *suggests* that the executive has committed sexual abuse. This would set a lower standard for withholding payment than the one in place now at many companies, which allows them to prevent payouts to staffers who have been proven to have *committed* sexual misconduct. The problem is that many companies can't definitively prove claims are true and contracts don't typically indicate what standards of proof are necessary to allow them to refuse to pay out without being sued by fired executives.

Fortuna said companies should write clauses into contracts that allow them to fire executives without payouts if the preponderance of evidence — essentially a 51 percent threshold — suggests sexual abuse allegations are true. This is the standard of proof required to win a claim in civil court.

For example, some contracts now state that remuneration could be withheld if an executive is found to have committed sexual harassment or is convicted of a sexual crime. But, if the executive is accused by several colleagues but not convicted, he could argue that the claims were false and sue for breach of contract if his employer tried to withhold compensation.

But if the contract stated that remuneration could be withheld when the preponderance of evidence suggests the executive committed sexual misconduct, then his employer could use the results of a civil suit or internal investigation finding that he more than likely committed misconduct to justify not paying out.

Companies could also try to include even lower standards of proof than the preponderance of evidence by proscribing payouts to executives who are merely accused of sexual misconduct or who subject the company to a lawsuit, **Fortuna** said. "You could write anything you want into a contract and it would be legally enforceable," he added.

But **Fortuna** concedes that top talent might use their clout to balk at such clauses. "In most cases, if you didn't have a level of proof sufficient to warrant taking payments away, you would get pushback from an executive," he said. "Often you're talking about big-dollar employees with at least some leverage because you want them, since they're talented." He said top executives usually hire attorneys to help them negotiate their contracts, and language about lesser standards of proof would be perceived as escape clauses for companies that might simply be later looking for ways to get out of their contracts.

Of course, if all employers refused to back down from demanding stipulations about sexual misdeeds in contracts, even the most in-demand talent wouldn't be able to negotiate their way out of such clauses.

Executives who commit sexual abuse inflict enough damage on other employees and the reputations of their organizations. They shouldn't be rewarded for it.

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To contact the author of this story:

Kara Alaimo at

kara.s.alaimo@hofstra.edu

To contact the editor responsible for this story: Max Berley at mberley@bloomberg.net



Kara Alaimo is an assistant professor of public relations at Hofstra University and author of “Pitch, Tweet, or Engage on the Street: How to Practice Global Public Relations and Strategic Communication.” She previously served in the Obama administration.

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