

How S&P 100 Cos.' Human Capital Disclosures Are Evolving

By **Mike Titera** and **Meghan Sherley**

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Human capital resource disclosures by public companies have continued to be a focus since the U.S. Securities and Exchange Commission adopted new rules in 2020 — not only for companies making the disclosures but also for employees, investors and other stakeholders reading them.

This article reviews disclosure trends among S&P 100 companies, each of which has now included human capital disclosures in their past two annual reports on Form 10-K, and provides practical considerations for companies moving forward.

The overall takeaway from our survey was that companies are generally expanding the length of their disclosures, covering more topics and including slightly more quantitative information in some areas.

We note the following six trends regarding the S&P 100 companies' disclosures in 2022 compared to the previous year:

1. Seventy-nine companies increased the length of their disclosures, though the increases were generally modest.
2. Sixty-six companies increased the number of topics covered.
3. The prevalence of 16 topics surveyed increased and one remained the same:
 - The most significant year-over-year increases in frequency involved the following topics: talent attraction and retention (67% to 91%), employee compensation (68% to 85%), quantitative diversity statistics on race/ethnicity (43% to 59%) and gender (47% to 61%), workplace health and safety (51% to 65%), and pay equity (30% to 41%).
 - The only topic that did not see an increase in frequency was succession planning, which remained at 17%.
4. Eighty-five companies included more qualitative details in their disclosures compared to the previous year, including information relating to diversity, equity and inclusion initiatives and programs, and the



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board's role in overseeing human capital initiatives, although the depth of the additional detail provided varied greatly between companies.

- In this most recent year, DEI was discussed by 96% of companies (89% in the previous year), and 37% of companies (22% in the previous year) specifically disclosed quantitative data regarding the breakdown of DEI statistics by job type or level, i.e., executive level.
- Disclosures regarding the role of the board — or a human capital-focused committee — in overseeing human capital jumped to 44% of companies this most recent year from 26% the previous year.

5. The topics most commonly discussed this most recent year generally remained consistent with the previous year. For example, DEI, talent development, talent attraction and retention, COVID-19, and employee compensation and benefits remained the five most frequently discussed topics.

6. Within each industry, the trends from the previous year regarding the frequency of topics disclosed generally remained the same.

Background on the Requirements

On Aug. 26, 2020, the SEC voted 3-2 to approve amendments to Items 101, 103 and 105 of Regulation S-K, including the principles-based requirement to discuss a registrant's human capital resources "to the extent material to an understanding of the registrant's business taken as a whole."^[1]

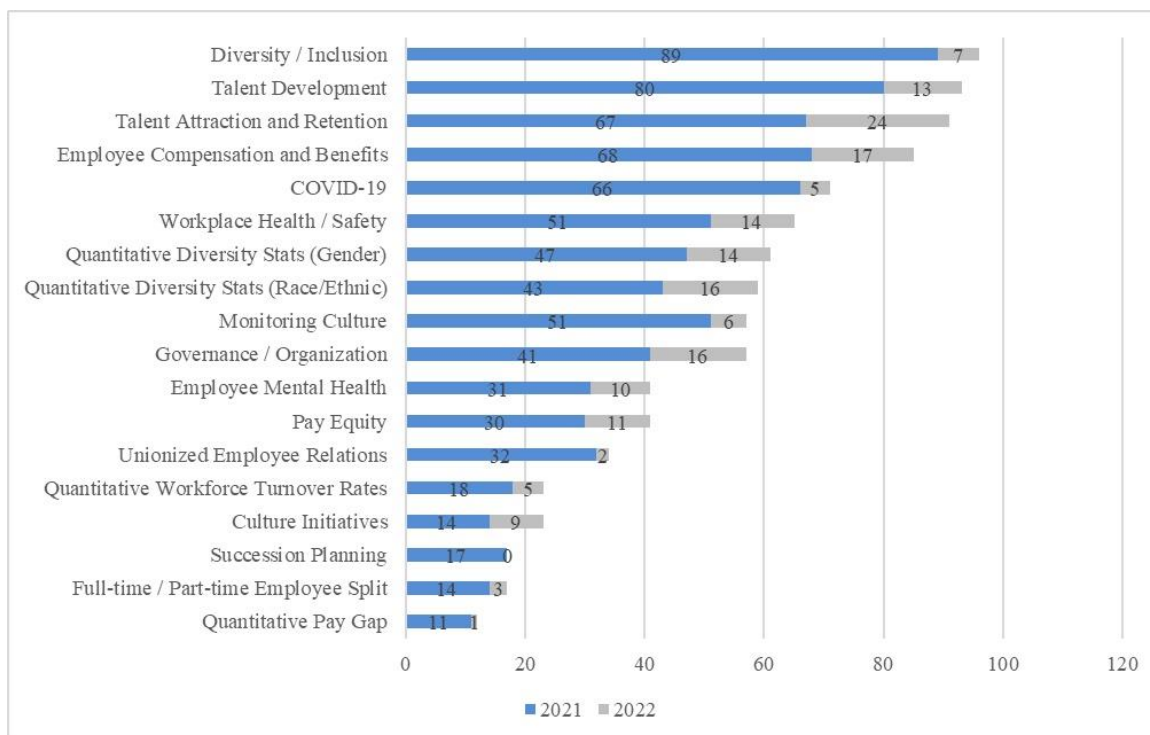
Specifically, public companies' human capital disclosure must include "the number of persons employed by the registrant, and any human capital measures or objectives that the registrant focuses on in managing the business (such as, depending on the nature of the registrant's business and workforce, measures or objectives that address the development, attraction and retention of personnel)."

The rules were criticized by many for failing to require the disclosure of commonly kept metrics, such as turnover, diversity and workforce expenses. Indeed, the current commission has announced that a more prescriptive human capital disclosure rule will be forthcoming.

While companies' disclosures under the principles-based rules varied widely, our survey was able to introduce some comparability. The next two sections show the relevant data from our survey.^[2]

Disclosure Topics

Our survey classifies human capital disclosures into 17 topics, each of which is listed in the following chart, along with the number of companies that discussed the topic in 2021 and the number of additional companies that discussed the topic in 2022.



Workforce Composition and Demographics

Of the 100 companies surveyed, 99 included disclosures relating to workforce composition and demographics in one or more of the following categories:

Diversity and Inclusion

This was the most common type of disclosure, with 96% of companies including a qualitative discussion regarding the company's commitment to diversity, equity and inclusion, up slightly from 89% the previous year.

The depth of these disclosures varied, ranging from generic statements expressing the company's support of diversity in the workforce to detailed examples of actions taken to support underrepresented groups and increase the diversity of the company's workforce.

Many companies also included a quantitative breakdown of the gender or racial representation of the company's workforce: 61% included statistics on gender and 59% included statistics on race, compared to 47% and 43% in the previous year, respectively.

Most companies provided these statistics in relation to their workforce as a whole; however, an increased subset — 37% in the most recent year compared to 22% in the previous year — included separate statistics for different classes of employees — e.g., managerial, vice president and above, etc. — and/or for their boards of directors.

Some companies also included numerical goals for gender or racial representation, either in terms of overall representation, promotions or hiring, even if they did not provide current workforce diversity statistics.

Full-Time and Part-Time Employee Split

While most companies provided the total number of full-time employees, only 17% of the companies surveyed included a quantitative breakdown of the number of full-time versus part-time employees that the company employed, up only slightly from 14% the previous year.

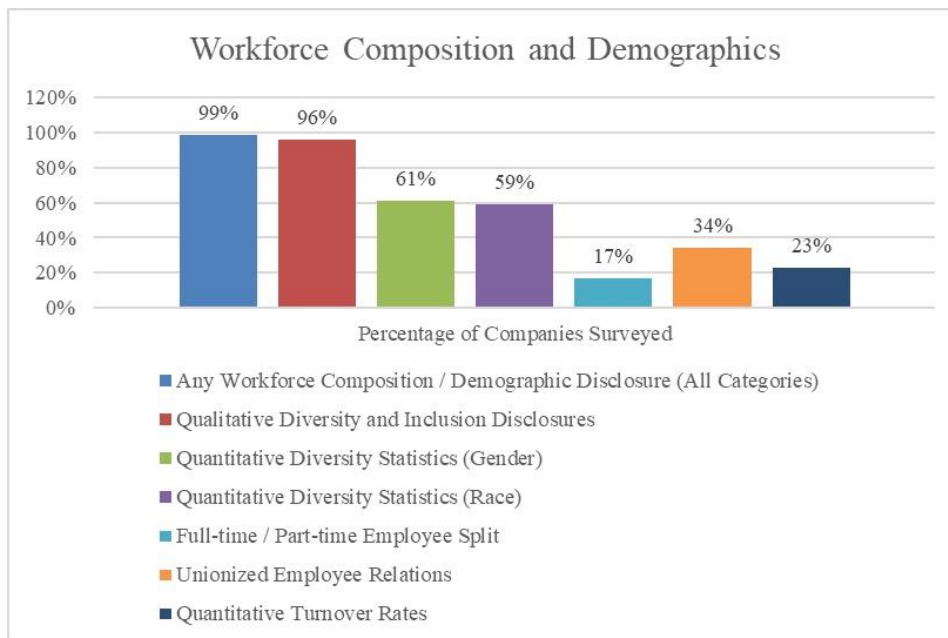
Similarly, a number of companies provided statistics on the number of seasonal employees and independent contractors, or a breakdown of employees by geographical location.

Unionized Employee Relations

Of the companies surveyed, 34% stated that some portion of their workforce was part of a union, works council or similar collective bargaining agreement — up slightly from 32% the previous year. These disclosures generally included a statement providing the company's opinion on the quality of labor relations, and in many cases, disclosed the number of unionized employees.

Quantitative Workforce Turnover Rates

Although a majority of companies discussed employee turnover and the related topics of talent attraction and retention in a qualitative way, only 23% of companies surveyed provided specific employee turnover rates, whether voluntary or involuntary, up slightly from 18% the previous year.



Recruiting, Training, Succession

Of the companies surveyed, 96% included disclosures relating to talent and succession planning in one or more of the following categories:

Talent Attraction and Retention

These disclosures were generally qualitative and focused on efforts to recruit and retain qualified individuals. General statements regarding recruiting and retaining talent were relatively common, with

91% of companies including this type of disclosure, compared to 67% in 2021.

Talent Development

The most common type of disclosure in this area was related to talent development, with 93% of companies including a qualitative discussion regarding employee training, learning and development opportunities, up from 80% the previous year.

This disclosure tended to focus on the workforce as a whole rather than specifically on senior management.

Companies generally discussed training programs such as in-person and online courses, leadership development programs, mentoring opportunities, tuition assistance and conferences, and a minority also disclosed the number of hours employees spent on learning and development.

Succession Planning

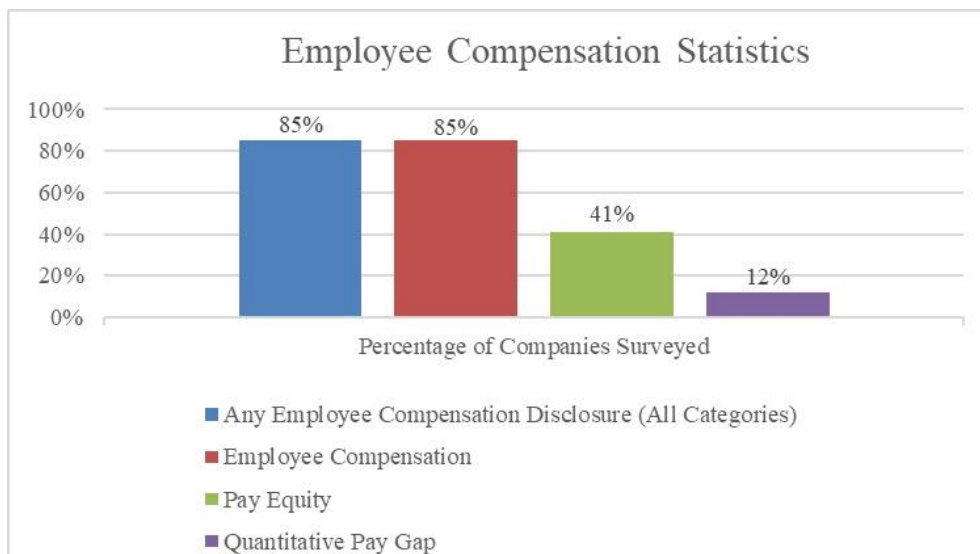
Only 17% of companies surveyed addressed their succession planning efforts — unchanged from 2021 — which may be a function of succession being a focus area primarily for executives rather than the human capital resources of a company more broadly.

Employee Compensation

Of the companies surveyed, 85% included disclosures relating to employee compensation, up from 68% the previous year.

All of those companies included a qualitative description of the compensation and benefits program offered to employees.

Of the companies surveyed, 41% addressed pay equity practices or assessments (compared to 30% in 2021), and substantially fewer companies (12% of companies surveyed in 2022 and 11% in 2021) included quantitative measures of the pay gap between diverse and nondiverse employees or male and female employees.



Health and Safety

Of the companies surveyed, 78% included disclosures relating to health and safety in one or both of the following categories:

Workplace Health and Safety

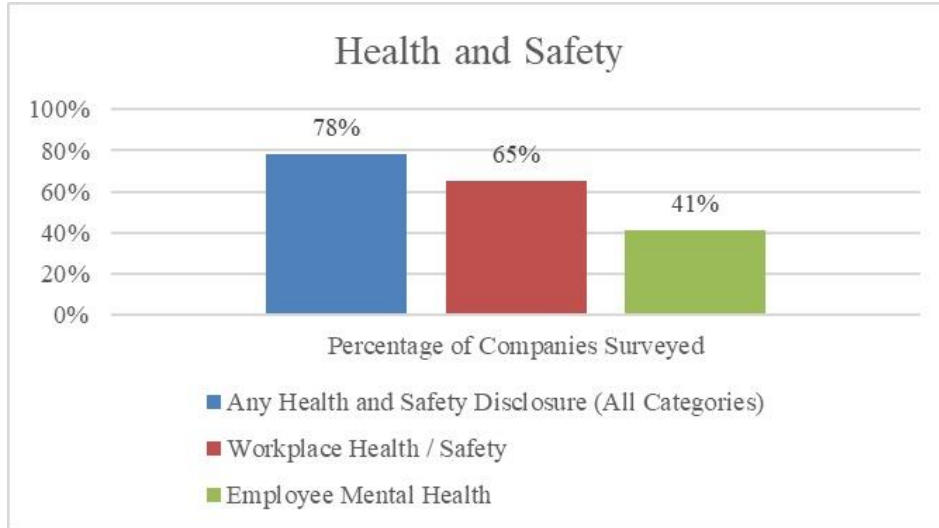
Sixty-five percent of the surveyed companies included qualitative disclosures relating to workplace health and safety, up from 51% in the previous year, typically with statements around the company's commitment to safety in the workplace generally and compliance with applicable regulatory and legal requirements.

However, 10% of companies surveyed provided quantitative disclosures in this category, generally focusing on historical and/or target incidents or safety rates, or investments in safety programs.

These disclosures tended to be more prevalent among industrial and manufacturing companies. Many companies also provided disclosures on safety initiatives undertaken in connection with COVID-19.

Employee Mental Health

In connection with disclosures about standard benefits provided to employees or additional benefits provided as a result of the pandemic, 41% of companies disclosed initiatives taken to support employees' mental or emotional health and well-being, up from 31% the prior year.



Culture and Engagement

In addition to the many instances where companies mentioned a general commitment to culture and values, 62% of the companies surveyed discussed specific initiatives that they were undertaking related to culture and engagement in one or both of the following categories:

Culture and Engagement Initiatives

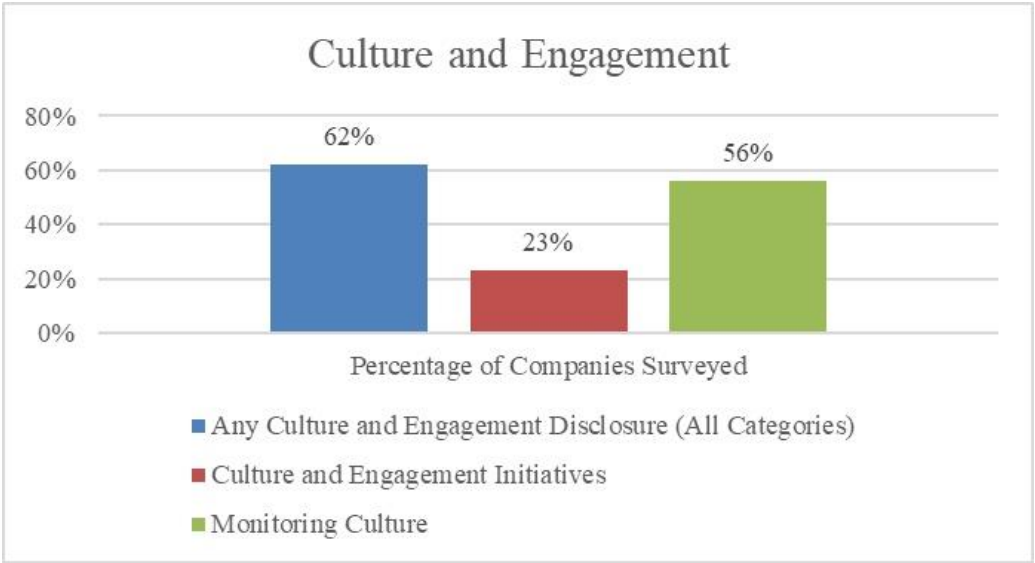
Of the companies surveyed, 23% included specific disclosures relating to practices and initiatives

undertaken to build and maintain their culture and values, up from 14% in the previous year, including efforts to communicate with employees — e.g., through town halls, CEO outreach, trainings or conferences and presentations — and to recognize employee contributions via awards programs and individualized feedback, as well as diversity-related initiatives to help foster an inclusive culture.

Monitoring Culture

Disclosures about the ways that companies monitor culture and employee engagement were much more common, with 56% of companies providing such disclosures, up from 51% the previous year.

Companies generally disclosed the frequency of employee surveys used to track employee engagement and satisfaction, with some reporting on the results of these surveys, sometimes measured against prior year results or industry benchmarks.



Human Capital Management Governance and Organizational Practices

Over half of the companies — 57% of those surveyed, compared to 41% in 2021 — addressed their governance and organizational practices, such as oversight by the board of directors or a committee and the organization of the human resources function.

Industry Trends

One of the main rationales underlying the adoption of principles-based — rather than prescriptive — requirements for human capital disclosures is that the relative significance of various human capital measures and objectives varies by industry.

This is reflected in the following industry trends that we observed:[3]

Technology Industries

Of the 20 companies in the technology industries — such as those in e-commerce, internet media and services, hardware, software and IT services, and semiconductors — 90% discussed talent development

and training opportunities, talent attraction, recruitment and retention, employee compensation and diversity.

Relatively uncommon disclosures among this group included part-time and full-time employee statistics (10%), culture initiatives (15%), succession planning (10%) and the quantitative pay gap (10%).

Finance Industries

Of the 13 companies in the finance industries — such as those in asset management and custody activities, consumer finance, commercial banks and investment banking, and brokerage — a large majority included quantitative diversity statistics regarding race (85%) and gender (85%).

The same number of companies also included qualitative disclosures regarding employee compensation (85%) and, compared to the S&P 100 as a whole, a relatively higher number discussed pay equity (62%) and quantified their pay gap (38%).

Conclusion

During the most recent year, companies generally expanded the length of their human capital disclosures, covering more topics and including slightly more quantitative information in some areas.

However, the principles-based nature of the disclosure requirements has continued to result in companies providing a wide variety of disclosures, with significant differences in depth and breadth.

Given how high the human capital management disclosure rulemaking appears on the SEC's Fall 2022 Reg Flex Agenda, appearing as an action item for the first quarter of 2023, it seems unlikely that we will see another year pass without more prescriptive rules being proposed and possibly adopted.[4]

There has been no shortage of investors, politicians and activists chiming in with input on the forthcoming rules.

For example, early in 2022, several members of Congress wrote a letter asking the SEC to resist requests for more specific and quantitative disclosures on human capital, which expressed particular concerns about requiring metrics on full-time employees, part-time employees, independent contractors, subcontractors or contingent employees.[5]

In June 2022, the Working Group on Human Capital Accounting Disclosure, a group composed of academics and former SEC officials, submitted a rulemaking petition requesting the commission to require more financial information about human capital in companies' disclosures.[6]

Until the SEC proposes and adopts new rules governing the disclosure of human capital management, the wide variance in Form 10-K human capital disclosures is expected to continue.

Moving forward, companies should consider confirming — or reconfirming — that their disclosure controls and procedures support the statements made in human capital disclosures and that those included in Form 10-K remain appropriate and relevant.

In this regard, companies may want to compare their own disclosures against what their industry peers did these past two years, including specifically any notable additional disclosures made in the past year.

As shown by the measurable increase in disclosure in the second year of reporting, companies should expect to develop their disclosures over the course of the next couple of annual reports in response to peer practices, regulatory changes and investor expectations, as appropriate.

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[1] See 17 C.F.R. § 229.101(c)(2)(ii).

[2] Note that companies often include additional human capital management-related disclosures in their ESG/sustainability/social responsibility reports and websites and sometimes in the proxy statement, but these disclosures are outside the scope of the survey.

[3] For purposes of our survey, we grouped companies in similar industries based on both their four-digit Standard Industrial Classification code and their designated industry within the Sustainable Industry Classification System. The industry groups discussed in this section cover 33% of the companies included in our survey.

[4] Commission Chair Gary Gensler's Fall 2022 Unified Agenda of Regulatory and Deregulatory Actions (the "Fall 2022 Reg Flex Agenda") shows "Human Capital Management Disclosure" as being in the proposed rule stage. Available at https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST&tPub=true&agencyCode&showStage=active&agencyCd=3235.

[5] Available at <https://www.warner.senate.gov/public/index.cfm/2022/2/warner-brown-call-on-sec-to-update-human-capital-disclosures-so-that-companies-report-the-number-of-employees-who-are-not-full-time-workers>.

[6] Available at <https://www.sec.gov/rules/petitions/2022/petn4-787.pdf>.