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# Making GC Head of Human Resources Could Have Helped Uber, Attorneys Say

In the 13-page Covington & Burling [report](https://drive.google.com/file/d/0B1s08BdVqCgrUVM4UHBpTGROLXM/view) (<https://drive.google.com/file/d/0B1s08BdVqCgrUVM4UHBpTGROLXM/view>) released last week by Uber Technologies Inc. in response to claims of harassment and bias at the company, one theme kept popping up: gaps in the human resources department's communication with in-house counsel. Three of the 47 recommendations made by Covington partners Tammy Albarrán and former U.S. Attorney General Eric Holder following their investigation of the company's culture and practices suggested Uber's human resources department should have been better trained at spotting legal issues and knowing when to involve in-house counsel on complaints and employee terminations.

One recommendation was for the company to hire or identify an "owner" of human resources policy, someone responsible for "drafting new policies and updating existing policies, through whom all updates to the policies flow, and who also serves as a repository of critical information relating to Uber's policies and practices."

At many companies, that could be the chief human resources officer. But at others it's also the general counsel. This dual structure, which puts the GC at the helm of both legal and human resources, is more common at smaller companies, but can be found at larger companies with over 1,000 employees as well.

Current and former general counsel who have had dual roles or worked very closely with HR, and are unaffiliated with Uber, told Corporate Counsel the dual structure is great for quickly reviewing human resources and employment law issues and that training an HR department on legal problems is much easier when a lawyer is doing the teaching.

While some of the lawyers interviewed agreed that having such a dual structure at Uber, which did not reply to request for comment, could have prevented some of the problems the company faces, they said the structure itself isn't a cure-all.

## **Wearing Both Hats**

Blending the role of HR and legal chief depends on company size, the lawyer's expertise and the willingness of executive management to empower both departments, the attorneys said.

"I kind of fell into it," Deanna Johnston, general counsel and vice president of compliance and human resources at San Francisco-based insurance technology company Embroker Inc., said of her dual role. Johnston said she had extensive labor and employment experience at her prior company, Fireman's Fund Insurance Co., handling onboarding, mentoring, performance reviews, compensation, termination and employment litigation. She said Embroker's chief operating officer, Julie Zimmer, previously had HR responsibilities, but she eventually needed to give that role to someone else.

"She said: 'You know, I'd like to hand this off to you, are you agreeable to that?'" Johnston recalled. "I said: 'Sure, I'm happy to do anything to help the organization.' And that's been it going forward."

Johnston said her dual role at Embroker speeds up legal reviews of human resources-related employment work, such as checking for compliance on California state wage requirements, San Francisco wage requirements, paid leave requirements, family leave requirements and updating the employee handbook.

Lynn Herrick, general counsel, chief human resources officer and corporate secretary at San Diego-based GreatCall Inc., which provides cell phones and mobile messaging devices to seniors and caregivers, said her dual role allows her to train her human resources team on how to appropriately spot potential legal issues.

"Because I lead this group, my HR team is highly sensitized to all legal issue spotting, and we're very thorough any time we do a termination or a change of employment," Herrick said.

The Covington report called on Uber's HR team to be trained specifically on employee terminations. The report said the legal department needs to review any employee terminated who previously alleged harassment, discrimination or retaliation. Randall Cook, the former general counsel to Advent Software Inc. and former assistant GC at iXL Inc., said that while he didn't have a human resources title, he worked closely with his past companies' human resources departments on training. He said the collaboration helped both departments, freeing up lawyers and employees working in HR to take charge.

"We tried to set up models for [HR] to follow where they didn't need legal input [on] employee agreements getting revised, record keeping, that kind of stuff," said Cook, who, though not affiliated with Uber, was a federal prosecutor at the U.S. Attorney's Office in Washington D.C., when Holder was U.S attorney.

Record keeping, too, is a direct recommendation for Uber's HR team from the Covington report . The report said Uber's HR department should install "appropriate tools, including complaint tracking software, to keep better track of complaints, personnel records and employee data." It recommended consequences for employees that fail to adhere to record keeping requirements.

For all the recommendations about HR training, management and record keeping, the Covington report only mentions Uber's HR chief once. Liane Hornsey, who joined Uber at the start of 2017, is commended in the report for improving Uber's internal employee performance review process. It is not clear from the report whether Hornsey has control over policy creation or enforcement, and Uber, which currently has a chief legal officer but no GC, did not respond to questions about a new general counsel's potential HR responsibilities.

## Will the Double Role Work at Uber?

Despite the benefits, attorneys agreed that setting up a dual GC-and-HR role at Uber would not be a cure-all. The structure could prevent some of the issues spotted in the Holder report, the lawyers said, but there's more to changing a company than merging roles.

"Yes, I think [the structure] could help prevent some of those scenarios, but I don't think that's the only way you can do it," said Embroker's Johnston. She said having a "dedicated partner" in the legal department who meets regularly with one of the heads of HR is a possible alternative. And GreatCall's Herrick said it's also important that the senior management actually heed the advice of both the human resources chief and the legal lead.

“They need to have the ability to influence the outcome of the company,” Herrick said. “That’s more important than structure.”

At Uber, that seemed to be a problem, said Duffy & Sweeney senior counsel Sara Wilkinson, who focuses on employment, intellectual property, business and real estate law and who has spent more than a dozen years in-house at several companies.

“From what I’ve read about Uber, the human resources folks weren’t empowered,” Wilkinson said.

She said blending the responsibilities of a human resources director and an in-house lawyer also depends on the individual: Do they have the background in both areas? And, as companies mature, Wilkinson said, HR and legal need to be cooperative, but independent.

The best, and most foundational advice, she said, is to simply get both departments working together.

“Working together—there’s no other option,” Wilkinson said, “unless you’d like a 13-page report issued from Eric Holder.”

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