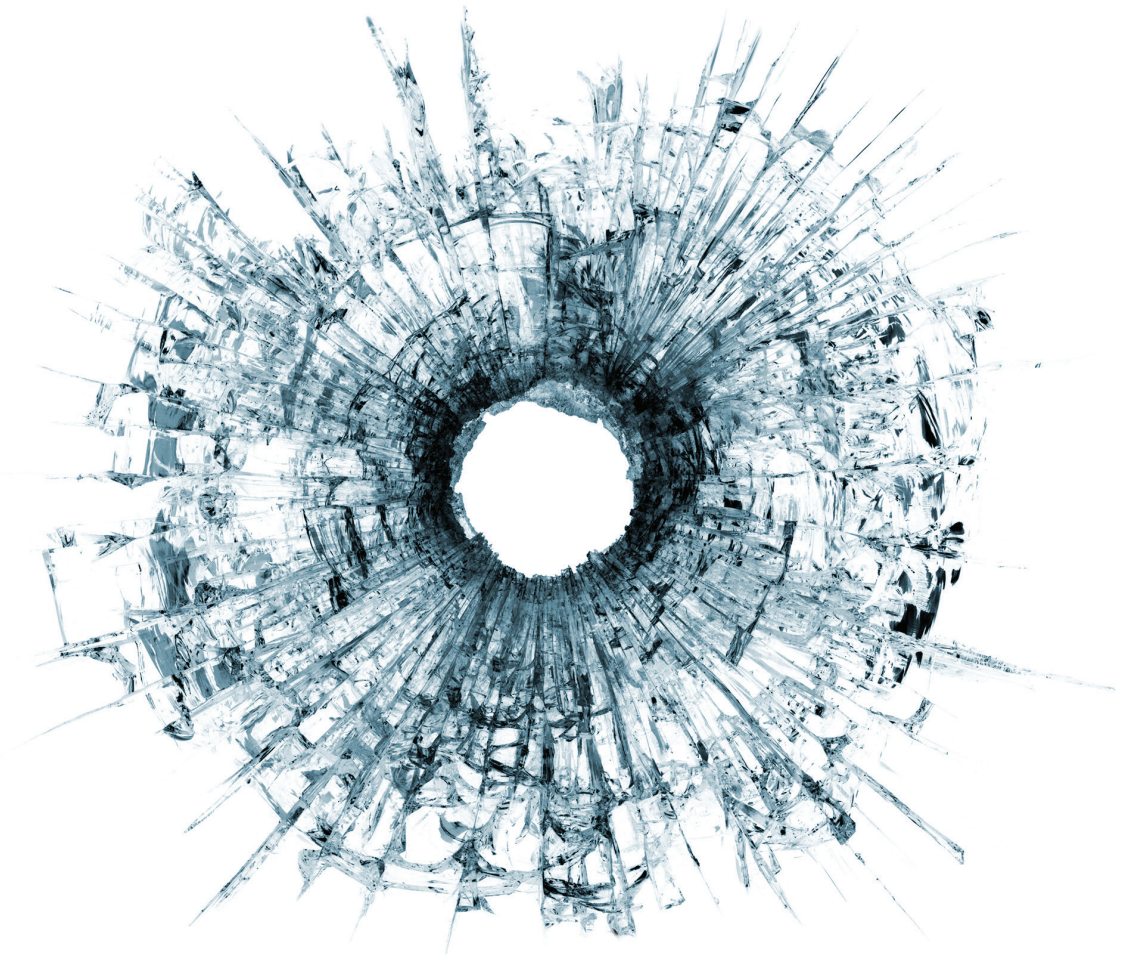


Brand attack

How to avoid becoming the target of a corporate campaign and what actions to take if you do



Brand attack

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Today's playing field

When you mention the words “unionization campaign,” most people think of picket lines, strikes and collective bargaining tables. Although they sometimes make headlines, labor disputes have traditionally been somewhat private affairs between companies and their employees about internal issues like better wages, benefits, hours and overall working conditions.

Not anymore.

Today's unionization campaigns are more appropriately called “corporate campaigns” because they are orchestrated not just by trade unions, but NGOs, community leaders, politicians and religious groups. They attack the brand, not just the company; they target top executives and shareholders; and they focus on human rights violations — issues like child labor, human trafficking and unsafe working conditions that are more likely to garner public attention and damage the company's reputation among consumers, business partners and investors.

The purpose of a corporate campaign is still primarily to increase union membership and expand union power and influence on corporate management. The need for new members has become increasingly urgent as unions have been losing their stronghold in industrialized markets like the US, Canada and Europe as more of the historically unionized jobs are moved offshore. This decline has led to a shift in focus. Instead of organizing workers from the bottom up, unions are exerting pressure from the top down, attacking the company's reputation and advancing public policy positions through the use of corporate campaigns.

On this front, unions have partnered with NGOs to increase the strength and legitimacy of their attacks. As union membership has fallen dramatically over the past 20 years, there's been a huge rise in the number of NGOs, organizations like Human Rights Watch, Oxfam and Save the Children that have focused much of their attention and resources on pushing their corporate citizenship standards on multinational companies. Together with trade unions, they launch corporate campaigns to turn customers against companies they believe are engaged in unsafe or unethical practices and to pressure governments to take action against those that don't change their ways.

As a result, governments around the world have been imposing stricter regulations on corporate behavior, turning social responsibility issues that used to be voluntary into law. Under a provision of the 2010 Dodd-Frank Act, for example, US-listed companies must publicly disclose whether any of their products contain “conflict minerals” sourced from mines run by warlords in the Congo, a region known for human rights violations. The California Transparency in Supply Chains Act, which took effect in January 2012, requires retailers and manufacturers doing business in California to investigate and disclose what they are doing to end human trafficking and forced labor within their supply chains.

“There’s a fundamental shift taking place in the types of labor risk that companies face,” says Kevin Coon, an employment partner in Baker & McKenzie’s Toronto office. “Trade unions are a piece, and an important piece, but they’re not the whole story. Governments around the world are placing new expectations on companies to address human rights issues within their own operations and throughout their supply chains.”

Compounding the pressure, today’s corporate campaigns are more global, coordinated and sophisticated than ever before. Labor unions have become more adept at identifying and exploiting vulnerabilities in a company’s relationships with its key stakeholders, including shareholders, regulators, politicians and customers, as well as employing a variety of tactics to advance their objectives.

Organizers, for example, may send thousands of emails to a company’s shareholders asking, “Are you aware that you are investing in a human rights violator?” They challenge companies’ permit applications to open new facilities by threatening to withhold support for local politicians’ re-election bids if they approve the permits. And in one well-publicized incident in the healthcare industry, organizers tried to pressure a California hospital system into supporting the unionization of its laundry services workers by sending postcards to maternity patients suggesting that the hospitals used soiled and contaminated linens.

To gain entrée into multinationals, unions such as the United Auto Workers and SEIU in the US, employ teams of researchers who pour through SEC reports, lawsuits, government agency charges and other public filings looking for anything they can use to exploit their targets. They also research the personal backgrounds and business affairs of directors, interview former employees and review media coverage of the company looking for vulnerabilities — an exercise that with the internet, has become much faster, easier and cheaper.

Unions use this information to encourage government regulatory agencies like OSHA, the EPA and the Department of Labor to conduct investigations and audits of the target company for safety, environmental and wage and hour violations. They file, encourage and support shareholder lawsuits and other class action suits alleging sex, gender and race discrimination. They also publicize their findings on their websites and use social media like Twitter and Facebook for instant, widespread distribution to pressure the company into agreeing to their demands.

Labor unions have become more adept at exploiting vulnerabilities in a company’s key relationships.

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Unions have become increasingly agile and creative in how they approach gaining entrée into multinationals. They're looking for low-hanging fruit and they've been good about looking at areas of vulnerability by sector. The challenge is that we have to be just as agile and forward-thinking.

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Charlene Tsang-Kao
Former Deputy General Counsel
Solvay America

In Europe, a rising number of global union federations have been pressuring multinationals to sign international framework agreements. These IFAs commit signatory companies to uphold a set of minimum labor standards everywhere they operate, such as complying with minimum wage requirements, upholding health and safety standards, banning child and forced labor and allowing workers to organize and engage in collective bargaining.

Many of these IFAs include neutrality clauses that require company management to remain silent if employees in any of its operations decide to organize. Under these neutrality clauses, companies are not allowed to speak up or take any action that could discourage employees from joining the union, giving the union a decided advantage in an election. Since 2000, more than 100 multinationals have signed IFAs, including Carrefour, Chiquita, Volkswagen, Ikea and Club Med.

Many companies make the mistake of believing that as long as they maintain good relationships with their existing unions or works councils, they're immune. That's one part of the equation, but not the whole story anymore, as labor relations has grown beyond the employer-employee relationship to encompass issues like human rights, sustainability and general corporate compliance. Faced with these pressures, multinationals should develop strategies to avoid becoming the target of corporate campaigns and action plans in the event that they do.



The tangled web they weave

Trade unions are no longer standalone organizations fighting for workers' rights. Unions have increasingly joined forces with an ever-expanding list of human rights groups, legal organizations, think tanks, public policy groups, religious organizations and civil rights groups to increase union membership and advance public policy positions.



Who's at risk?

Most corporate campaigns target US and European multinationals, typically household names that are highly incentivized to protect the integrity and public image of their brand. The more concerned a company is with maintaining its reputation, the more sensitive it is to the negative publicity at the heart of corporate campaigns. Because of this vulnerability, the prominence and sheer size of multinationals make them a desirable target.

This is not to say that smaller, mid-size and lesser known companies won't find themselves in organizers' crosshairs. With the power of the internet and the growing use of social media, corporate campaigns can escalate quickly. A seemingly small labor incident in Turkey or Tunisia can suddenly blow up into international news. Union organizers know the power of these tools and use them to spread their messages in an instant, giving them the time and resources to diversify their targets.

"For the next five to 10 years, many companies will continue to fly under the radar because the unions have to be selective," says Guenther Heckelmann, an employment partner in Baker & McKenzie's Frankfurt office. "But more companies will come into the limelight than they think. The problem is that we can't determine who they are, which is why more companies need to be thinking about how they will respond if they are hit."

One major area of vulnerability, particularly for multinationals, is their operations in developing countries, where labor laws are often underdeveloped, anti-worker and poorly enforced. In fact, one reason trade unions frequently pressure US and European multinationals to sign IFAs is to enable them to organize workers in developing countries where the laws may not recognize the freedom of association and the right to collective bargaining. It's a way of coming through the back door to rebuild membership as more manufacturing and industrial jobs are offshored to countries like Bangladesh, China, Thailand and Vietnam.

In addition, because of the less developed nature of labor laws in these countries, it is often easier for unions to find labor and human rights violations to exploit. Local management may be less sophisticated in their practices and more likely to lack the knowledge and resources to comply with basic labor standards now commonplace in the industrialized world, which puts the US or EU parent company at greater risk.

"In the big developed countries, companies typically have good human resources managers and strong legal teams so the labor issues are more under control," Frankfurt Partner Guenther Heckelmann says. "It's the smaller, developing countries where there is weaker in-house staff that creates a potentially difficult mix."



How to avoid becoming a target

Most large companies have enterprise risk management systems to help their leadership assess and gauge their progress on labor relations issues. These programs, however, tend to be internally focused on traditional employment issues like whether the company has strong anti-discrimination and anti-harassment policies and effective whistleblower protocols.

Employment policies and practices are still important, but much of today's threat is coming from the outside: from trade unions, NGOs and governments that are increasingly holding companies accountable for a wide range of social, environmental and workplace issues.

"Most companies will become a target of a corporate campaign at some point," says Toronto Partner Kevin Coon. "What they need to do now is to reset the dial on their risk analyses. The new environment requires them to expand the scope of their analysis to determine, 'What are the additional risks I face against my brand?'"

So how do you make yourself a more difficult target?

Here are some recommendations to get you started on that path:

■ Conduct a country-by-country risk assessment

Although it's often cost prohibitive to conduct a labor audit in every country where you operate, it's important to conduct assessments of those that pose the greatest risk, which are typically developing markets. Countries with difficult political climates and a strong union culture are particularly challenging because the laws can change quickly and enforcement can be arbitrary, heightening the risk of noncompliance.

One US manufacturer, for example, was blindsided by a labor strike by its plant workers in Indonesia because local management was unaware of a change in local law that required the company to consult with the union during its restructuring.

Like this US manufacturer, most companies only conduct country analyses after they've been hit with a labor crisis in a particular country, which prompts them to start thinking about where else they may be vulnerable. In most instances, however, it's better not to wait.

When analyzing your level of risk in developing markets, you want to ask questions like: How stable is the political climate? Are the laws in flux? What is the labor climate? How strong are our local human resources and legal departments? What is our guidance to local management on how to handle labor disputes? Do we need to be more conservative and sensitive in how we approach potential labor disputes or can we be more bullish without suffering serious consequences?

The audit should be conducted by counsel who is familiar with the local operating environment and fed back to central management. At a minimum, it should include a review of wage and hour issues, health and safety conditions and compliance with collective bargaining agreements because those are the most common catalysts for corporate campaigns. If you have great exposure to corporate campaigns or have already been a target, your assessment should be broader than companies at lower risk.

It's also crucial to evaluate your corporate compliance program and codes of conduct. Do you have proper whistleblower and employee hotlines? Are you responding to complaints quickly and appropriately? How strong is your FCPA compliance? What's your product safety and recall history and community service record? You want to evaluate all of these issues looking for what areas could most easily be exploited, then fix them to reduce your likelihood of attack.

"If the union knows that you're a hardened target, they'll go pick another target," says Doug Darch, an employment lawyer in Baker & McKenzie's Chicago office.

■ Conduct an industry analysis

Alongside the country analysis, companies should take a close look at which issues make them most vulnerable to attack based on the nature of their business. In the textile industry, for example, use of child labor is common in the cotton-growing industry in Southeast Asia, where many multinational clothing companies source their raw materials. Child labor is also a major issue in the tobacco and sugar harvesting industries.

For chemical companies, environmental and waste disposal issues may be a soft spot. For health care companies, compliance issues related to sales and marketing practices, clinical trial activity or the cost of certain life-saving drugs in developing countries could be hooks. Based on your industry analysis, develop a checklist of the issues that corporate campaign organizers are most likely to target.

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■ Take a close look at your supply chain

Because of the outsourced nature of today's business, any risk analysis would be incomplete without an evaluation of your supply chain. Companies today depend on hundreds, often thousands of suppliers, manufacturers, transporters, brokers, distributors and franchisees to make, market, deliver and sell their products.

These business relationships are often the most vulnerable area of a multinational's operations because companies have limited control over these third parties, but great liability for their actions. In the factory fires and building collapses that killed hundreds of garment workers in Bangladesh, it was the multinationals' subcontractors who owned and maintained the unsafe buildings. Yet it was the big name retailers whose clothing they were making that made headlines.

Any enterprise risk assessment should include a review of the labor practices of your biggest, most important suppliers and other third parties to make sure they are not putting you at risk for corporate campaigns and government actions. This is not an easy exercise, considering that most suppliers, manufacturers and distributors have their own subcontractors and subcontractor's subcontractors that you may not be aware of. But it's a worthy one, given the high level of exposure.

■ Develop an action plan to fix your biggest issues

At Coca-Cola, a company viewed as highly progressive in its approach to labor relations, Ed Potter, the company's director of global workplace rights, oversaw a value-chain analysis of potential human rights impacts within its operations, franchise bottlers and supply chain from raw materials to end use. Seven of these impacts were labeled high priority issues that were presented to the company's board of directors. The company now has projects and metrics against these issues that are reported semi-annually to the board.

"There are two ways to look at labor relations: There's playing defense and playing offense," Potter said during a labor relations panel discussion at Baker & McKenzie's Global Employer Forum. "Playing offense involves making clear what you stand for and mitigating your known risk before someone else can complain about it."

Like Coca-Cola, after you've completed your country, industry and supply chain risk assessments, you should pick your top vulnerabilities and create an action plan to remedy the issues, then monitor your progress. Many multinationals, for example, have developed international labor standards programs to evaluate and address working conditions in their facilities. Others conduct regular workplace assessments of suppliers, varying the frequency based on the length of the relationship and history of non-compliance. These steps can yield valuable insights into the most common labor problems at facilities around the world, as well as issues specific to particular countries.

Countries with difficult political climates and a strong union culture are particularly challenging.

■ Create a monitoring system

The success of any action plan depends on having a system for monitoring and evaluating your progress. Making sure local managers are implementing risk mitigation measures within your organization and third parties are complying with laws in your high priority areas is one of the most effective ways to improve your company's labor profile. A strong monitoring system should give you data and input from local management on a regular basis so you can continue to measure your level of risk and decide whether to take further action.

If, for example, the number of contract employees you were hiring in a certain jurisdiction was a problem in the past, your internal monitoring should let you know whether this issue has been resolved or continues to pose a risk. Implementing a strong monitoring program and actively addressing the issues you find will also help you avoid the need to repeat more costly, in-depth audits as frequently.

■ Monitor labor law developments in high-risk countries

A big part of monitoring is staying apprised of major changes in labor law in the countries where you operate, particularly in developing markets. This often requires relying on outside advisors if you do not have a large legal staff. When choosing your advisors, you should select those who are on-the-ground in your high-risk jurisdictions because they are closest to the political, regulatory and legal developments and most likely to know which changes will be significant.

In gathering this information, you want to stay informed about the actions that governments are taking and what may be coming next, as well as which government agencies are getting funding to increase enforcement in various human rights-related areas. It is also critical to monitor non-government groups, such as the International Labor Organization, influencing the content and shape of regulation. These organization are often discussing the trends and issues that show up on government agendas a few years later.

■ Monitor global union activities and campaigns

Knowing whether you might become a target of a corporate campaign can sometimes be as easy as looking at union websites, which often list the industries and companies the unions plan to focus on in the upcoming year. You should also pay attention to any actions these groups are taking against your competitors and make sure you're not engaged in the same practices.

"You cannot Teflon-proof every area of your operations at every second, but if you're asking the right questions to identify your areas of vulnerability and addressing them, you can greatly minimize your risk," Frankfurt Partner Guenther Heckelmann says.

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■ Align your CSR strategy with your greatest areas of vulnerability

Identifying your greatest vulnerabilities can also inform the issues you target in your corporate social responsibility program. Too often the organizational structure around CSR is fragmented and key stakeholders such as those in government affairs, investor relations, communications and legal are not regularly consulted about strategy and specific initiatives. As a result, companies can face greater legal exposure and become more vulnerable to brand attacks based on broad CSR statements that companies make on their websites and in other company literature.

Developing an integrated CSR decision-making structure that includes the labor function is critical to counteracting corporate campaign claims. Although many corporate campaigns are sparked by traditional labor issues such as layoffs, low wages and poor working conditions, they can also start with claims that your company harms the environment, exploits children or denies life-saving drugs to poor populations.

An effective CSR program should anticipate the very issues you are most likely to get criticized for. If you're a fast-food company, for example, you may want to get involved in anti-obesity campaigns, such as sponsoring health screening programs and 5K races.

You should not only engage in these initiatives, but keep track of your CSR efforts and results. These steps will not only help you become a better corporate citizen, but give you positive actions to keep in your back pocket to counteract negative publicity in the event you do become a target.

■ Create a labor crisis team and develop a multi-disciplinary crisis plan

One of the biggest mistakes companies make is failing to develop a plan to address potential corporate campaigns. They have contingency plans for product recalls, supply shortages, natural disasters, and major power outages but nothing if they become the target of a major labor strike or attack on their brand.

When a labor crisis hits, they waste valuable time scrambling internally to determine who should handle it, often assuming it would fall under the purview of human resources. But today's corporate campaigns also target shareholders, consumers and top company executives. Because they are no longer confined to internal issues between the company and its workers, they are often beyond the scope of HR.

Typically whoever's in charge of the company's labor relations function would serve as the point person for preparing for and handling these crises. They would typically have overall responsibility for executing the contingency plan and directing the response to the attacks in collaboration with task forces with representatives from the appropriate departments, such as communications, government affairs, public relations, legal, compliance, CSR and HR.

■ Make friends

Trade unions and NGOs have many allies in the community and you should, too. It's important to establish strong relationships with politicians, religious leaders, business associates, vendors and other community organizations you can call on for support, especially when issues arise such as a union that is trying to block you from getting regulatory approval or operating permits.

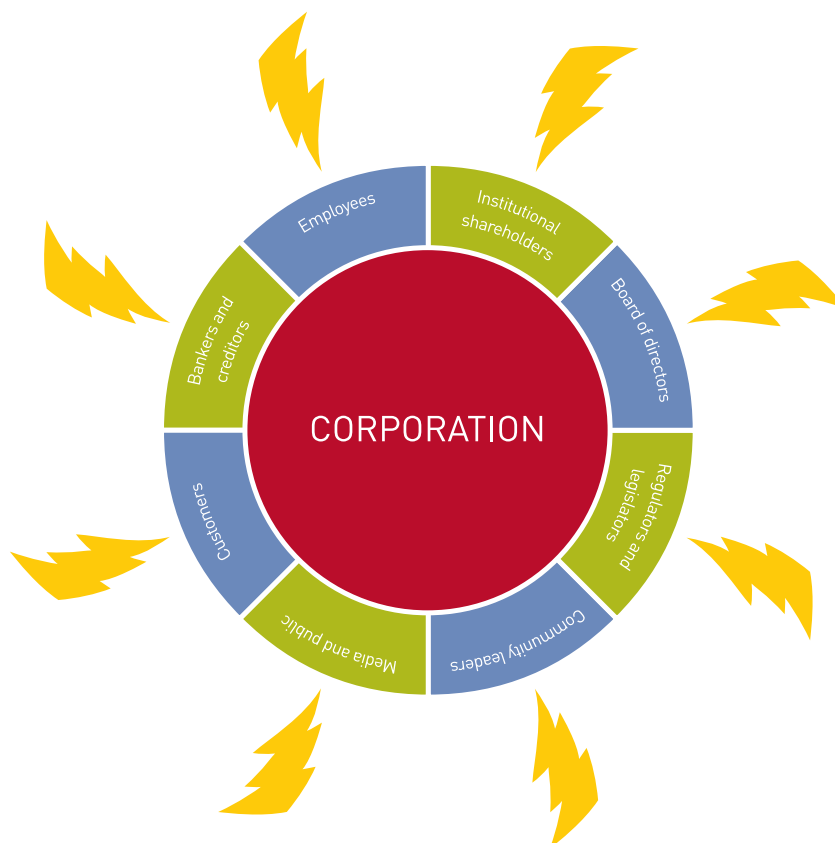
A good way to forge these relationships is through your CSR efforts, such as sponsoring sports teams, sustainability efforts and other activities that benefit the community. It's also effective to analyze your benefit to the community by gathering statistics such as the number of people you employ, the local merchants you support, the vendors you do business with, the construction and energy companies you use and the local taxes you pay. This data can help you paint a clearer picture of how much you contribute to the community and how valuable you are.

■ Join voluntary industry initiatives

It's also important to build good relationships with fellow industry members. Joining industry initiatives to address the human rights issues in your sector can provide you with a forum for sharing information about current and future labor trends and campaign tactics, as well as help you maintain a positive public image. From a public relations perspective, it can also serve as an effective defense for refusing to sign an IFA, as you can point to your industry efforts and corporate code of conduct to show that you are already addressing pressing industry issues.

Union attacks via stakeholders

The power structure of any corporation is built on the strength of its relationships with key stakeholders whose support is critical to the company's success. The goal of a corporate campaign is to create a negative image of a target company to polarize those relationships and weaken that support. Because of the negative perceptions, for example, banks may deny the target company financing or local legislators may reject its application for an operating permit. By undermining its power structure, campaign organizers hope the target company will become more receptive to their demands.





What to do if you become a target

After you've done all this work to assess your vulnerabilities, take remedial action, improve your corporate compliance, monitor international labor trends and create multi-disciplinary teams, you may still find yourself the subject of a corporate campaign. The good news is that you have already done a lot of the legwork to minimize the damage.

"Companies that have rigorous compliance programs and vigorous corporate social responsibility campaigns are going to be able to weather most of these storms because they're prepared, they don't have a litany of missteps and people will be more likely to give them a pass if they make a mistake," Chicago Partner Doug Darch says.

So what do you do if you become a target?

Here are some recommendations to help you if you do become a target:

■ Don't ignore it

A common reaction many companies have when a labor issue erupts is to ignore it and hope it goes away. In the last five years, however, the pace of corporate campaigns has sped up exponentially. Using the internet, social media and smart phones, campaign organizers are capitalizing on these advances and becoming more effective at using technology to publicize their messages.

They post labor incidents on their websites and launch electronic letter-writing campaigns targeting shareholders, local government officials and even company CEOs. Some companies have had to shut down their CEO's email accounts because of the thousands of messages flooding their inboxes.

With these campaigns ramping up so quickly, companies have much less time to respond before finding themselves on the defensive. That's why it's so important to stay alert and take action at the first sign of trouble.

■ Prepare a template press release and talking points

Given the speed at which corporate campaigns can unfold, companies should be ready to launch a counter-campaign to combat false and misleading information as well as communicate with employees and other stakeholders targeted by the union's campaign.

To keep your message consistent, it's a good idea to prepare a press release template and talking points in advance. Then when you are hit with allegations, you can tailor the template to the specific circumstances and avoid having to start from scratch under pressure. You should also update the template as needed with pertinent statistics and additional information.

■ Tell your own story

Once your brand is under attack, now is the time to bring out your list of CSR efforts to counteract the negative publicity. This is not just a matter of demonstrating that you're a good corporate citizen, but demonstrating that you understand the risks in your industry, take them seriously, and are doing what you can to be part of the solution.

When countering negative claims, multinationals should take advantage of their financial resources, which are often much greater than those of the unions and NGOs attacking them. These resources can help companies launch their own media campaigns to dispel false claims and promote their positive actions within the local community.

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I've always believed that the most effective way to stop a corporate campaign is to be prepared, and if the union makes a mistake, be ready to capitalize on it.

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Doug Darch

Employment Partner
Baker & McKenzie

■ Consider a counterattack

In some cases, it may be helpful to not only respond to the corporate campaign's allegations, but to attack the union itself: Are there improprieties in their financials? Have they failed to represent employees? Have they ignored workers' rights?

"I've always believed that the most effective way to stop a corporate campaign is to be prepared, and if the union makes a mistake, be ready to capitalize on it," Chicago Partner Doug Darch says.

Launching this type of attack requires conducting research on the union and its officials to uncover information your public relations and media relations department can use to disarm or discredit the union. Sources of information could include copies of unfair labor charges filed against the union by its members (particularly charges alleging the union ignored employee rights or failed to represent their interests), a summary of the union's strike record (where the strike occurred, how long it lasted, how the employer responded, what the outcome was), and a summary of provisions in the unions constitution (due and assessments, fines and penalties, etc.) Companies should also examine whether the groups involved in making the claims have their own political or financial motive for attacking the company's reputation.

But this must be done carefully to keep from backfiring and may not be an appropriate strategy in many parts of the world. In the US, for example, it may be effective to play hardball by challenging the legality of the union's tactics to put them on the defense. Companies could seek court orders requiring the union to remove banners they've posted outside of company headquarters or file lawsuits if allegations rise to the level of defamation, extortion, trademark infringement or unfair business practices.

In places like Europe, however, which have much stronger labor union cultures, taking legal action could make things worse by bringing more unwanted attention to an already tense situation. In all cases, regardless of location, you must carefully weigh which strategies are likely to be most effective in responding to the campaign while preserving your reputation.



The way forward

In an era of growing social consciousness, increasing regulation and instant communication, the demands on multinational companies to monitor their conduct and that of their business partners will only increase. Now that trade unions have expanded their strategies to encompass human rights issues and partnered with NGOs and other community organizations to win public support, companies are likely to experience ever-mounting pressure.

Going forward, we are likely to see more corporate campaigns that target company shareholders, customers and business partners because these comprehensive campaigns have the best chance of getting the immediate attention of top management. We are also likely to see more labor and human rights protections codified in legislation, bilateral trade agreements and business contracts. Many banks, for example, now require companies to comply with international labor and human rights standards before extending project funding or credit insurance.

Despite this ever-expanding list of obligations and the dangers that corporate campaigns can pose to a company's operations, there are important steps companies can take to protect their brand, their workforce and their reputations.

Labor relations: Three perspectives

THE UNION PERSPECTIVE:

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To be successful in organizing, I believe you have to be relentless. We are not businessmen, and at the end of the day they are. If we're willing to cost them enough, they will give in.

”

Bruce Raynor

Former Executive VP
SEIU, Workers United and
UNITE HERE

THE CORPORATE PERSPECTIVE:

“

There are two ways to look at labor relations: There's playing defense and playing offense. Playing offense involves making clear what you stand for and mitigating your known risk before someone else can complain about it.

”

Ed Potter

Director of Workplace Rights
Coca-Cola Company

THE LEGAL PERSPECTIVE:

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The main problem with international framework agreements is that they come off as being boilerplate in granting basic worker rights, but really they're not. The seemingly easygoing language can quickly be transformed into hard union rights.

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Guenther Heckelmann

Employment Partner
Baker & McKenzie

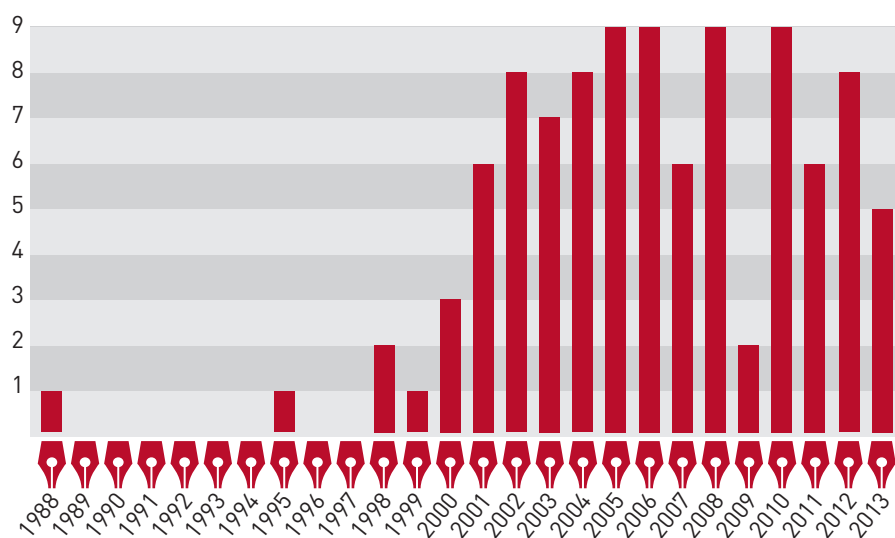
What's so wrong with signing an IFA?

On its face, signing an international framework agreement may seem harmless. Many of them resemble a company's code of conduct, with their aspirational commitments to equal opportunity, health and safety, minimum wage standards and the banning of child or forced labor.

But unlike codes of conduct, which are unilateral, voluntary statements adopted by a company, IFAs are bilateral agreements between companies and a global union federation. Many of them commit the company to meet standards that are higher than local laws, in areas such as giving workers the right to organize and agreeing to engage in collective bargaining. Many IFAs also contain neutrality clauses that prohibit management from discouraging the union's efforts to organize, while others require employers to recognize the union based on a card check.

Under this secret ballot system, union organizers usually work in teams to gather "authorization cards" signed by individual workers rather than holding elections, which greatly increases the union's chances of succeeding. In a typical US National Labor Relations Board election, employees vote for union representation approximately 60 percent of the time. Under the card check system, the union approval rate increases to 90 percent.

Number of IFAs by year



Unlike codes of conduct that are created and monitored by the companies themselves, IFAs often give the global union federation the right to raise alleged breaches of the agreement with corporate headquarters and establish regular monitoring meetings with top management. The global federation can also intervene to defend local union efforts if local managers are violating the IFA.

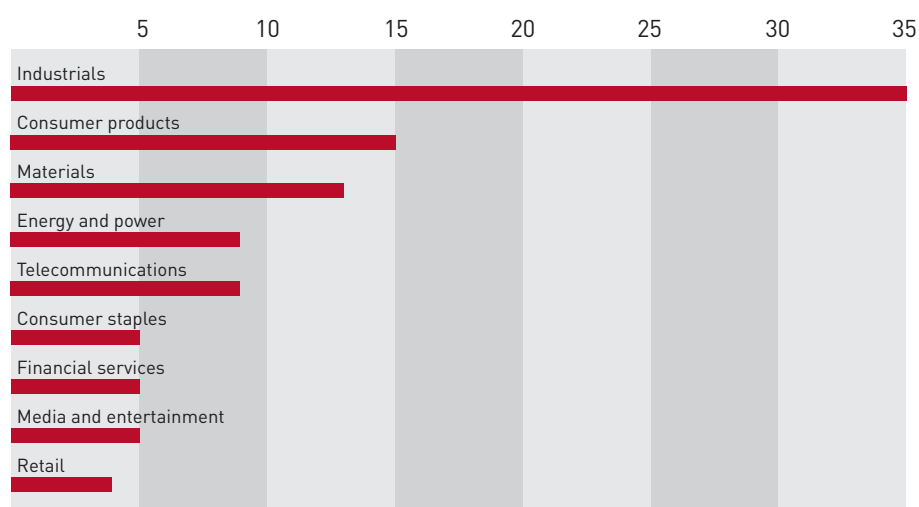
With so many repercussions, why do so many companies agree to sign IFAs? Fear of adverse publicity, anxiety about economic losses due to demonstrations and the desire to be labeled a good corporate citizen are just a few of the reasons. It's no surprise that 81 of the 100 multinationals that have signed IFAs are based in the EU, which has a worker-friendly labor climate where business practices like consulting with works councils are more common and accepted.

Another reason for signing an IFA could be ignorance of what it really requires and how onerous those requirements can be. A common provision of an IFA states, "We commit to translating collective bargaining agreements into the local language," which sounds reasonable enough. But in your factories in India, you could have workers who speak up to 180 dialects. Are you required to translate the document 180 times?

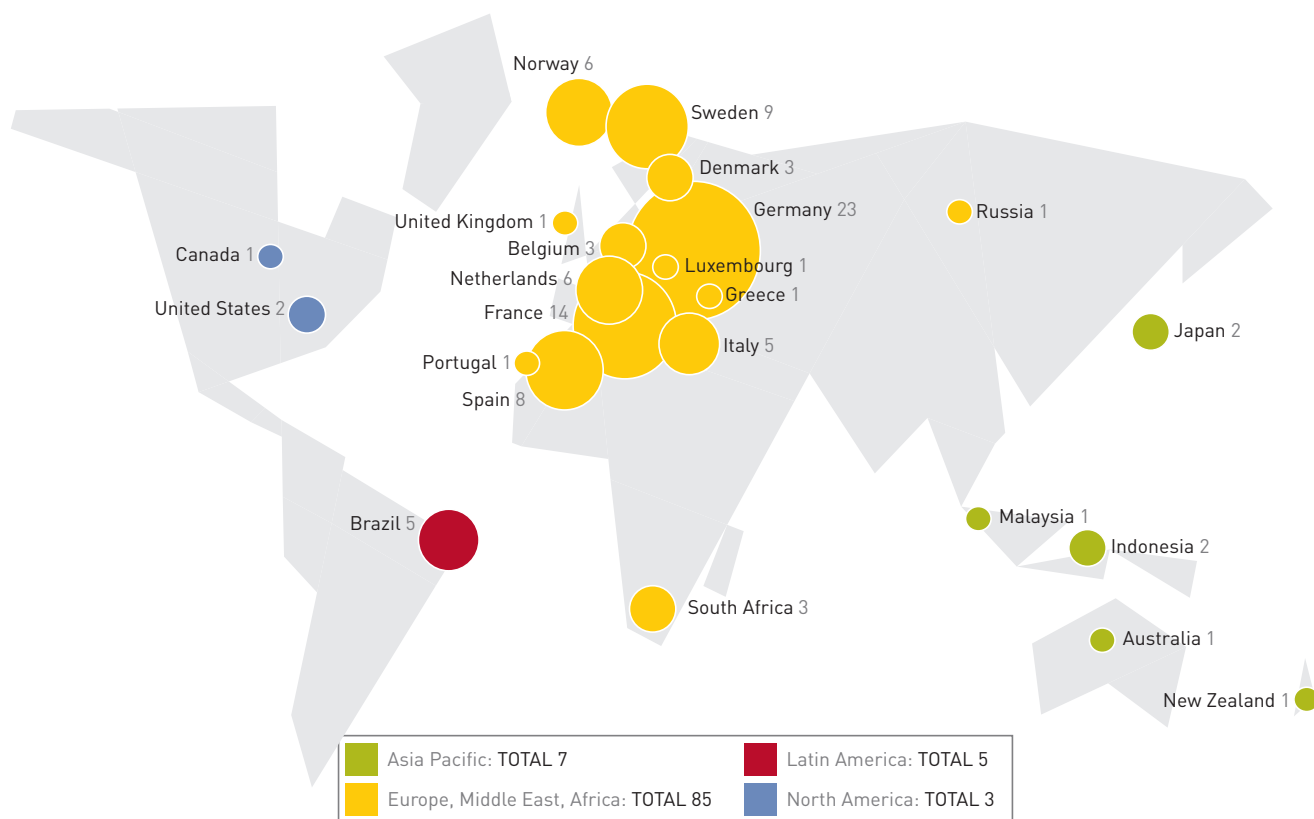
Another statement in an IFA could say, "We commit to respecting workers' rights," which also sounds innocuous. But for your operations in the US, where this provision could be interpreted to mean the right to associate, you could be accused of violating the framework if you do anything to fend off a unionization campaign.

That's why it's so important for those who oversee labor relations at multinational companies to educate their top executives on all the implications of signing IFAs. Having this information can help the leadership make more-informed decisions about whether it's the right action to take. It's also a good idea for your company to have a list of reasons why it won't sign an IFA, if that's the decision you make, to better explain your position to management, employees and the general public so that it doesn't become an issue that turns into an attack.

Number of IFAs by industry



Number of IFAs by country



Labor relations: The downfall of M&A?

Companies often overlook the importance of assessing the labor relations implications of a merger, acquisition or other business deal. During due diligence, companies are busy analyzing the target's financials and reviewing its business and employment contracts to ensure they are in order. They are more focused on whether the target is a good investment from a financial or growth perspective than whether labor complications could erode the value of the deal or derail it altogether.

But failing to evaluate labor relations issues during M&A due diligence can lead to unpleasant surprises after the deal has closed, such as unknowingly inheriting an IFA signed by the target company. In one such instance, a US company merged with a European company whose CEO had signed an IFA with a global union federation in Europe. The US company was then faced with having to comply with the terms of the IFA, one of which was to remain neutral during a union organizing campaign. A subsequent inquiry discovered that no one on the US deal team had reviewed the global-level labor agreements the European company had signed before the two companies merged.

Because of potentially serious consequences like these, it can be a valuable exercise to include a labor relations assessment in your M&A due diligence. Your due diligence questionnaire for the target company should ask questions like: What is your relationship with unions? Have you been subject to union attacks? What is the labor climate like at your company? (i.e. controversial, confrontational, congenial) Do you adhere to minimum wage and labor standards in the countries in which you operate? Are you above or below those standards?

Multinationals can also indirectly become parties to IFAs through other types of business arrangements, such as partnerships and supplier contracts. That's why the due diligence in any acquisition, partnership, majority supply contract or procurement agreement should include a review of the other party's:

- Compliance with local labor and human rights laws and customs
- Compliance with core international labor and human rights conventions
- Level of union presence or influence within the company
- Level of union presence and density in the country
- Memberships or commitments to international organizations or NGOs
- Codes of conduct and supplier policies

"In every kind of business decision, whether it's a product launch or geographic expansion, you have to assess the labor relations implications right from the beginning," said Essex Mitchell, divisional vice president of employee relations at Abbott Laboratories, during a labor relations panel discussion at Baker & McKenzie's Global Employer Forum. "You have to make sure you have all the appropriate groups at the table so that everyone understands what they have to do to get the best outcome."

The Future of Work Series

The Future of Work is a series of client reports based on panel discussions at our Global Employer Forum, a two-day thought leadership conference we first hosted in September 2013. During the forum, nearly 70 clients, academics and consultants gather with our employment partners to discuss pressing workplace topics like talent shortages, data privacy, global mobility assignments, globalization of unions and managing the employment aspects of M&A deals.

Rather than the traditional “how to” legal format of most law firm conferences, the Global Employer Forum features panel discussions of in-house counsel and senior-level executives from some of the world’s largest multinational organizations who discuss their personal experiences addressing these challenges and the solutions they have found to overcome them.

Based on the hottest topics arising out of those panel discussions, we create these reports to share the current trends on these issues, insights from members of major multinational organizations, academia and government agencies on how they are navigating these trends, and the legal expertise of our lawyers who are on the front lines advising clients on the shifting employment landscape. We hope you find these reports helpful in meeting the new challenges of managing a modern workforce.

About Baker & McKenzie's Employment Law Practice

Our Global Employment Practice includes more than 500 locally qualified practitioners in 47 countries. We have more lawyers with mastery of the subtle intricacies of labor, employment, immigration and benefits issues in more jurisdictions around the world than any other leading law firm. Chambers Global 2014 ranks both our Global Employment and Global Immigration practices as Tier 1. Baker & McKenzie is recognized by PLC Which lawyer? Labour and Employee Benefits Super League 2012, as the top global law firm with our Global Employment practice ranked in 25 countries, and we are among the 10 firms US general counsel list most often as "go-to" advisors on employment matters.

If you have any questions about this report or would like to know more about the Global Employment Practice, contact:

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