



On Governance: New California Law – Don't Fear the Gender Quota

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On Governance is a series of guest blog posts from corporate governance thought leaders. The series, which is curated by the Governance Center research team, is meant to serve as a way to spark discussion on some of the most important corporate governance issues.

(The following post first appeared on the [Corporate Knights](#) blog on October 1, 2018.)

California's new corporate board quota law will put pressure on companies to be more diverse.

Only hours before the deadline, California's Gov. Jerry Brown signed bill SB 826 on Sept. 30, 2018, making his state the first in the U.S. to adopt board gender quotas for public companies.

The law requires listed companies headquartered in California to have at least one woman on the board by 2019, and at least two or three women – depending on whether boards have more than five members – by 2021. Companies that don't meet the quota face a financial penalty that would vary from US\$100,000-US\$300,000 depending on whether the company is facing a first or second violation.

Home to the largest technology, entertainment and venture capital firms, many of which have recently come under intense scrutiny on their treatment of women, the board gender quota could bring the transformative change many investors have sought.

It should also come as no surprise that California is home to CalPERS and CalSTRS, two of the world's largest pension funds. They have been among the strongest advocates for increased board diversity.

The pension funds point to academic studies which make the investment case that gender diversity on boards – and in leadership more generally – can lead to better financial returns. Moreover, lawsuits and penalties – as well as loss of reputation with customers or employees – can have a major impact on a company’s financial performance.

Since the adoption of board gender quotas in several countries, North American companies have gone from being leaders to laggards against their European peers, a fact that did not escape California’s legislature when it debated the board gender quota bill.

But there is still limited progress for women on boards throughout North America.

The Canadian Securities Administrators’ latest Women on Boards and in Executive Officer Positions report, released on Sept. 27, 2018, found that 34 percent of the companies surveyed had no women on their board, while 35 percent had only one woman.

That puts Canadian listed companies behind their Californian peers, where 25 percent have no women.

Though the California law is expected to face many legal challenges, the strong pushback from the American business community against California’s quota follows the same pattern observed in other markets threatened with a board gender quota.

Academics have identified a shift once quotas were in place. Directors of companies not subject to quotas were hostile to them, while their peers in companies subject to quotas held a positive view, a survey published in the [Harvard Business Review](#)^[1] said. Directors where quotas were enforced found their boards had more diverse backgrounds and experiences than in the past and witnessed increases in the number of women in the leadership pipeline.

Recently, our work at diversity research and advocacy organization LeaderXXchange [found that board gender quotas](#) could be having an even broader impact.

Applying the LeaderXXchange methodology to track companies’ intentions and outcomes on gender diversity in leadership, we compared 1,385 listed companies in the United States, Canada and France, which adopted a board gender quota several years ago. France has a larger number of listed companies than Norway, which is often used as a board gender quota benchmark since it was the first country to adopt quotas.

Using data from ESG data provider Vigeo-Eiris, our research resulted in three significant findings.

- First, the existence of a formal diversity policy does not appear to increase the number of women on boards. While 95 percent of Canadian companies and 85 percent of American and French companies adopted such policies, Canada had 20.5 percent of women on boards, the United States 17.8 percent and France 32.5 percent.

- Second, companies without quotas are less transparent on their quantitative results than their peers with quotas. We found that 74 percent of American and 69 percent of Canadian companies do not disclose the number of women in management, compared with only 23 percent of companies in France.
- Third, companies without quotas avoid setting internal targets to promote women throughout the leadership pipeline. Once quotas are passed, they are more inclined to adopt their own targets and show better results.

Our research also found that companies don't necessarily need quotas to set their own internal targets. Fewer than 0.5 percent of American companies and 3 percent of Canadian companies adopted quantified gender targets for boards, the C-Suite or management – even if there are no quota laws in those countries.

If companies don't want quotas to get on the legislative agenda or be subject to investors' wrath, they should walk the talk. Companies could begin managing what they measure by setting internal targets and making the results public, so investors, employees and other stakeholders can assess whether their intentions match their outcomes.

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[1] *What Board Directors Really Think of Gender Quotas*, by Margarethe Wiersema and Marie Louise Mors, Harvard Business Review, November 14, 2016.

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