

Investor Review of Jenner & Block's *Workers' Rights Assessment Report (Prepared for Apple, Inc.)*

February 2024

While the process of undertaking Apple's Workers' Rights Assessment critically brought Apple's Board and management up to speed on its labor rights commitments, fundamental flaws in the assessor's approach and methodology produced an assessment and resulting report that are neither thorough nor credible. The process reveals that Apple and its Board have more work to do to ensure that Apple workers' fundamental rights are upheld in practice.

Summary

In 2022, a group of investors—Trillium Asset Management, The New York City Retirement Systems,¹ Greater Manchester Pension Fund, Parnassus Investments, Service Employee International Union Master Trust Pension Plan and SOC Investment Group (“Proponents”)—submitted a shareholder proposal at Apple.

The proposal called on Apple's Board of Directors to commission and oversee an independent third-party assessment of the company's adherence to its stated commitments to workers' freedom of association and collective bargaining rights, as contained in the International Labour Organization's (“ILO”) Declaration on Fundamental Principles and Rights at Work and the UN Guiding Principles on Business and Human Rights (“UNGP”), and explicitly referenced in Apple's Human Rights Policy (the “Policy”). The Proponents submitted the proposal after viewing mounting media reports and regulatory filings of claims that Apple management was interfering with store workers' fundamental rights and thereby failing to live up to its policy commitments. Apple and the Proponents reached an agreement in January 2023, resulting in the withdrawal of the proposal, which established that the company would conduct the requested assessment and publish a report describing the assessment and its findings by year-end 2023. Following the withdrawal, Proponents provided Apple's management and Board with clear recommendations and expectations, in writing and orally, for the conduct of the assessment and the selection of the assessor.²

In December 2023, the assessor retained by Apple—Jenner & Block—released its *Workers' Rights Assessment Report (Prepared for Apple Inc.)* (the “Report”).³ In the Report, Jenner & Block asserts that Apple's efforts to comply with its Policy are reasonable and that the company is upholding its policy commitments. Proponents' review of the Report, however, found several fundamental flaws in the assessment's approach and methodology. We believe these flaws resulted in an incomplete report lacking rigor and credibility. Given the information and analysis presented in the Report, Proponents believe that the assessor could not conclude that Apple is upholding the commitments made in its Policy.

The key **flaws** are as follows:

- **Assessment Lacked Rigor:** The assessment failed to fully examine whether, in practice, company actors have been adhering to the company's Human Rights Policy, and instead conducted a largely superficial “desktop” review of company policies and training programs, with limited utility;

¹ The New York City Retirement Systems are comprised of the New York City Board of Education Retirement System, New York City Employees' Retirement System, New York City Fire Pension Fund, New York City Police Pension Fund, and the New York City Teachers' Retirement System.

² See Appendix for select communications.

³ https://s2.q4cdn.com/470004039/files/doc_downloads/2023/apple-workers-rights-assessment-december-2023.pdf

- **Crucial Worker Input Missing:** The assessment failed to receive input from a representative sample of internal stakeholders, and critically failed to include the input of workers who have sought to exercise their organizing rights; and
- **Insufficient Assessor Expertise:** The assessor lacked relevant international labor rights expertise, which led to inaccurate assertions concerning international labor standards that call into question the Report’s conclusions and recommendations.

Proponents identified several **positive company actions and assessment attributes**, which should be followed by other companies as well as incorporated into other companies’ workers’ rights assessments:

- **Commitments to International Standards:** Following the assessment process, Apple has retained its commitment to core international standards, including those on freedom of association and collective bargaining;
 - Specifically, Apple retained its Human Rights Policy as written, including stated alignment with the ILO Declaration on Fundamental Principles and Rights at Work and the UNGP;
 - Apple’s Policy⁴ appropriately specifies that, “[i]n keeping with the UN Guiding Principles, where national law and international human rights standards differ, we follow the higher standard. Where they are in conflict, we respect national law while seeking to respect the principles of internationally recognized human rights.”⁵ Investors expect this commitment from all companies. In the Report, the assessor recognizes that “even where national law would permit a different standard of conduct, Apple will seek to operate its business in accordance with its commitment to respecting internationally recognized human rights.”
- **Board Oversight of Assessment and Proponent Engagement:** The Apple Board appeared to be involved throughout the assessment process. Proponents met with both an Apple Board member and the assessor during the assessment process; and
- **Inclusion of Recommendations:** The assessor concludes the Report with a list of recommendations, including recommendations that the company incorporate in its trainings express discussion of workers’ organizing rights and provide written guidance to all retail employees regarding its policies with respect to organizing rights.

Fundamental Flaws in Assessment Approach and Methodology

I. The assessment lacked rigor, failing to address the company’s actual practices.

Without an assessment of both policy *and* practice, the core directive of the shareholder proposal—to assess Apple’s *adherence* to its stated commitments—cannot be met.

Jenner & Block devotes the bulk of the Report to explaining Apple’s policies and manager training efforts in the context of workers’ rights to freedom of association and collective bargaining. However, it critically failed to assess what followed from these policies and training programs in practice, and thus whether company actors adhered to Apple’s commitments when workers sought to exercise their rights. It also

⁴ https://s2.q4cdn.com/470004039/files/doc_downloads/gov_docs/2020/Apple-Human-Rights-Policy.pdf

⁵ This portion of Apple’s Policy is in line with the UNGP, which states: “Where the domestic context renders it impossible to meet this responsibility fully, business enterprises are expected to respect the principles of internationally recognized human rights to the greatest extent possible in the circumstances, and to be able to demonstrate their efforts in this regard.”

failed to detail how Apple’s Board oversees and ensures the company’s ongoing adherence to these policies and trainings.

For instance, Jenner & Block did not examine issues raised in 28 unfair labor practice (“ULP”) charges, which reflect relevant worker input and may have indicated areas of company practice that were potentially inconsistent with Apple’s stated commitments. Even if the merits of the ULP charges were outside the scope of the assessment, the issues underlying them were not.

Instead, the assessor makes clear that Apple’s training programs are crucial to its conclusion that Apple reasonably complied with its Policy. Yet, the assessor failed to perform any examination of the *efficacy* of the training programs it describes, including the subsequent understanding or actions of managers that received training.

Proponents were clear in written recommendations that all accounts of alleged interference and anti-union behavior, as well as formal and informal incentives and directions that managers face, receive, and perceive, as it relates to worker organizing, should be assessed. Excluding review of critical press coverage, as well as the very issues and controversies that gave rise to the assessment in the first place, undercuts the credibility of the Report’s conclusions, and minimizes the utility of the assessor’s recommendations.

Finally, the Report does not examine whether the company’s response to labor activity was part of a broader strategy to avoid unionization. The Report does not address Apple’s reported hiring of the law firm Littler Mendelson PC. Littler is widely known to assist companies in “union avoidance” strategies, describing its practice as helping “guide companies in developing and initiating strategies that lawfully avoid unions” on its [website](#). Employing such a firm may indicate that Apple is pursuing a workers’ rights strategy inconsistent with its Human Rights Policy. Failing to examine this practice further undermined the assessment’s rigor by failing to examine the impact of the company’s labor strategy on workers.

II. The assessor was not publicly disclosed, and the assessment lacked worker input.

Crucially, and in contrast to Proponents’ explicit recommendation, the identity of Apple’s assessor was not publicly disclosed during the assessment period, limiting—if not altogether preventing—voluntary, inbound input from workers and other stakeholders. In fact, Apple’s sole announcement of the assessment, which did not include the assessor’s identity, was within its 2023 proxy statement, a document reviewed by investors but unlikely to be widely reviewed by Apple workers and other key stakeholders. This limited level of disclosure continued after the assessment as well. The Report was posted to the bottom of Apple’s Investor Relations “Leadership and Governance” [webpage](#) and was announced only in the company’s 2024 proxy statement, meaningfully limiting its visibility to workers and other stakeholders.

To conduct a credible assessment, assurances of voluntary, confidential participation without fear of reprisal or retaliation are essential, and multiple methods for voluntary input should be offered to workers and managers. However, Apple management appears to have controlled the means of assessor outreach to internal stakeholders. Proponents provided both the assessor and company with specific, written recommendations on possible ways to solicit voluntary, confidential worker feedback. If Apple had a hand in determining the stakeholders interviewed throughout the process, and if Apple and the assessor did not ensure essential safeguards, it may have had a chilling effect on worker participation in the assessment.

Notably, and likely as a result, the assessment did not include the participation and feedback of workers who actually sought to exercise their freedom of association and collective bargaining rights. According to the Report, no workers at unionized stores, or the unions that represent them, were successfully engaged during the assessment process. This input was essential for a Report that purports to assess whether Apple upholds its commitments to protecting workers' fundamental rights.

If the company had publicly and effectively communicated that Jenner & Block was its third-party assessor, as well as made known that there were clear communication channels for voluntary, anonymous, and protected worker interaction, the assessor could have both avoided concerns of improper interference and conducted a robust and thorough information gathering process.

III. The assessor lacked relevant expertise, which hindered the Report's integrity and utility.

The topic of the assessment was Apple's adherence to its stated commitments to internationally recognized core labor rights. It follows that the chosen assessor should have expertise in international labor rights standards and norms. While the assessment team at Jenner & Block had demonstrated human rights expertise, it notably lacked expertise in international labor rights.

The assessor appeared to consult with some outside stakeholders; however, the Report does not specify who was interviewed or their organizational affiliations. It notes only that Jenner & Block "held listening sessions with a diverse group of external stakeholders, including experts on business and human rights and organized labor advocates."⁶ Jenner & Block only describes some of the feedback these stakeholders provided and does not indicate how this feedback informed the Report's conclusions or the assessor's recommendations. This lack of transparency hurts the value of this portion of the assessment.

Moreover, the Report did not reflect an understanding of the unequal power dynamics between workers and employer. This lack of understanding was most apparent in the assessor's description of certain company meetings, including town halls, daily pre-shift meetings, and one-on-ones, at which the assessor acknowledged that organizing and labor-related topics could be discussed. Summarizing Apple guidance, the assessor states that employees are "free to leave," "permitted to leave," or "not required to stay" at these meetings but failed to examine whether employees felt empowered to do so.

The assessor also relied upon an inaccurate understanding of relevant international labor standards, including:

- An inaccurate assertion that freedom of expression may take priority over freedom of association;⁷ and
- An incorrect assumption that Apple's decision to abide by the results of a union election and subsequently meet with worker representatives means that Apple is abiding by a fair and timely collective bargaining process.⁸

⁶ Jenner & Block, "Workers' Rights Assessment Report (Prepared for Apple, Inc.)," prepared for Apple, Inc, December 2023, p.18.

⁷ ILO, "[Report in which the committee requests to be kept informed of development - Report No 357, June 2010](#)," para(s). 584, 585, "[freedom of expression and freedom of association] must not become competing rights, one aimed at eliminating the other...the active participation by an employer in a way that interferes in any way with an employee exercising his or her free choice would be a violation of freedom of association and disrespect for workers' fundamental right to organize."

⁸ <https://www.bloomberg.com/news/articles/2023-07-12/apple-store-union-accuses-company-of-negotiating-in-bad-faith>; <https://appleinsider.com/articles/24/02/12/despite-what-apple-says-most-of-its-workers-still-fear-backlash-over-organization-efforts>; <https://www.goiam.org/wp-content/uploads/2024/02/Worker%E2%80%99s-Rights-Assessment-Response.pdf> p.29.

Conclusion

We commend Apple for undertaking a workers' rights assessment and recognizing the important educational benefit that it provided to Apple's Board and management. However, we are concerned that the assessment and resulting Report do not fulfill many of our fundamental expectations, which we communicated clearly to Apple and its assessor early and often during the assessment process. **Ultimately, we do not feel confident that the assessment adequately analyzes whether Apple, in practice, adheres to its commitment to upholding workers' freedom of association and collective bargaining rights.** Our initial concerns, which led us to initiate an engagement with the company and eventually file a shareholder proposal, are therefore left largely unaddressed.

Proponents remain concerned that failing to respect workers' rights and acting in misalignment with its stated commitments could hurt Apple's business, negatively affecting its ability to attract and retain a high-performing workforce, harming its reputation with consumers, while also introducing unnecessary legal and regulatory risk. This is especially true considering events that have transpired since the assessment was completed, including reports of new ULP charges⁹ and slow progress in contract negotiations.¹⁰ This month, Apple CORE Union also published a response to the Report, criticizing the lack of direct input from Apple workers collected during the assessment.¹¹

Apple still has more to do to demonstrate its stated commitment to workers' fundamental rights to freedom of association and collective bargaining. From our perspective, these actions must include good faith bargaining without delay to reach first contracts at unionized stores, ensuring non-interference in any future organizing efforts, and establishing a functional and productive relationship with unionized store workers and their representative unions. Moving forward, we hope that Apple and its Board will take its initial learnings seriously and work to strengthen board oversight and management implementation of the company's Human Rights Policy.

For a more widely applicable guide on workers' rights assessments, see the Committee on Workers' Capital's November 2023 report, "More than Words: Criteria for an Effective Labour Rights Assessment."¹²

⁹ ULP charges have been filed against Apple in [Boston](#), Chicago ([Jan 2](#), [Jan 4](#), [Jan 22](#)), and [Atlanta](#) since the assessment's release.

¹⁰ <https://news.bloomberglaw.com/daily-labor-report/apple-negotiations-for-union-contract-in-oklahoma-moving-slowly>

¹¹ <https://www.goiam.org/wp-content/uploads/2024/02/Worker's-Rights-Assessment-Response.pdf>

¹² <https://www.workerscapital.org/our-resources/more-than-words-criteria-for-an-effective-labour-rights-assessment/>

Appendix

The following pages contain two documents. The first, on page 7, is a copy of the shareholder proposal Proponents submitted to Apple in September 2022, as described on page 1 of this document. The second, on pages 8 through 15, is an August 2023 document that Proponents shared with Apple's assessor, Jenner & Block, a member of Apple's Board, and Apple management following Proponents' meeting with the assessor in July 2023.

While these are not the only written communications that Proponents shared with Apple during the assessment process, they reflect many of the key recommendations and expectations referred to above.

Worker Rights Assessment

Resolved: Shareholders urge the Board of Directors to commission and oversee an independent, third-party assessment of Apple's adherence to its stated commitment to workers' freedom of association and collective bargaining rights as contained in the International Labour Organization's (ILO) Declaration on Fundamental Principles and Rights at Work and the UN Guiding Principles on Business and Human Rights and explicitly referenced in Apple's Human Rights Policy. The assessment should apply to Apple's direct and licensed operations and address management non-interference when employees exercise their right to form or join a trade union as well as steps to remedy any practices inconsistent with Apple's stated commitments. The assessment, prepared at reasonable cost and omitting confidential, proprietary or legally privileged information, should be publicly disclosed on Apple's website by September 5, 2023.

Supporting Statement: Apple made a global commitment to freedom of association, including non-interference, and collective bargaining rights in its Human Rights Policy. According to the ILO, "Freedom of association refers to the right of workers ... to create and join organizations of their choice freely and without fear of reprisal or interference" and collective bargaining "allows workers to negotiate their working conditions freely with their employers."

Since 2021, employees accused Apple of engaging in such interference through intimidation tactics to deter organizing, including one-on-one manager meetings, captive audience meetings, retaliatory firings, and threats of reduction or elimination of benefits. As of August 25, 2022, the National Labor Relations Board was investigating 14 charges of unfair labor practices.

Apple's own non-interference practices should be consistent with those it requires from suppliers, which are explicitly referenced in its Supplier Code of Conduct: "Supplier[s] shall freely allow Workers' lawful rights to associate with others, form and join (or refrain from joining) organizations of their choice, and bargain collectively, without interference, discrimination, retaliation, or harassment."

We believe the apparent misalignment between Apple's public commitments and its reported conduct represents meaningful reputational, legal, and operational risks, and may negatively impact its long-term value. Failing to respect workers' rights could harm Apple's reputation with consumers and hurt its ability to attract and retain a high-performing workforce, a crucial element of its ability to provide quality products and service. Research shows that union membership may have a positive effect on retention, in some cases, reducing quits by as much as 65%.¹ Studies show companies spend approximately 20% of an employee's salary to replace them.²

In contrast, Microsoft recently adopted companywide Principles³ that recognize the importance of employer non-interference, and announced a "labor neutrality agreement" at Activision Blizzard which "reflects a fundamental belief ... that enabling workers to freely and fairly make a choice about union representation will benefit Microsoft and its employees...".⁴

Greater transparency on these issues could help address concerns about Apple's reputation and enable investors to assess its adherence to its human rights commitments and perform human rights due diligence.

¹https://www.researchgate.net/publication/226530917_The_Impact_of_Union_Membership_on_Intent_to_Leave_Additional_Evidence_on_the_Voice_Face_of_Unions

² <https://www.americanprogress.org/article/there-are-significant-business-costs-to-replacing-employees/>

³ <https://blogs.microsoft.com/on-the-issues/2022/06/02/employee-organizing-engagement-labor-economy/#:~:text=We%20believe%20in%20the%20importance,where%20we%20need%20to%20improve>

⁴ <https://news.microsoft.com/2022/06/13/cwa-microsoft-announce-labor-neutrality-agreement/>

August 9, 2023

Ambassador Keith M. Harper
Jenner & Block LLP
via email: [REDACTED]

Dear Ambassador Harper:

Thank you for taking the time on July 19, 2023 to provide us with a status update on Jenner & Block's assessment of Apple's adherence to its Human Rights Policy. In our correspondence with the Chairman of Apple's Board of Directors (which we requested Apple share with you), we set out certain high-level expectations regarding implementation of the assessment. We are pleased to hear that you are making progress and that we are aligned on the critical importance of engaging internal and external stakeholders.

The scope of the requested assessment and its emphasis on freedom of association and collective bargaining rights was established in the January 5, 2023 agreement letter, signed by Apple representatives and the undersigned shareholder proposal proponents, as follows:

"Apple confirms its commitment to conducting a third-party assessment overseen by Apple's Board of Directors focused on Apple's efforts to comply with Apple's Human Rights Policy, including the section entitled 'Our Commitment to International Human Rights Standards', as it relates to workers' freedom of association and collective bargaining rights. The assessment will include management's practices when employees seek to exercise their rights to form or join or refrain from joining a union and Apple's efforts to comply with its Human Rights Policy and remedy any practices that are inconsistent with the policy."

As proponents of the proposal and representatives of long-term Apple shareholders, we seek the company's continued long-term success. We believe that Apple's success relies on respecting the human rights of its workers and we expect Apple to adhere to U.S. law as well as globally recognized international human rights standards that affirm the rights to bargain collectively and freely associate without interference from the company. This expectation is consistent with Apple's human rights commitments, including: "[i]n keeping with the UN Guiding Principles, where national law and international human rights standards differ, we follow the higher standard. Where they are in conflict, we respect national law while seeking to respect the principles of internationally recognized human rights." We want to ensure that Jenner & Block appropriately assesses Apple's adherence to these commitments.

In addition to seeking an appropriate analysis of Apple's commitments, based on our recent discussion and many unanswered questions, we have concerns about the assessment. Accordingly, as set forth below, we share specific recommendations (including methods for soliciting worker and manager feedback), as well as information and references relevant to conducting a comprehensive assessment.

We also have significant concern about Jenner & Block's exclusive reliance on Apple management to identify and make available the specific internal stakeholders for interviews. Such an approach undermines the integrity and objectivity of the assessment.

As we stressed in our discussion, timely, meaningful, and effective disclosure to all stakeholders that Jenner & Block is conducting the assessment is imperative. It is particularly important that Apple workers and managers learn of the assessment, and with sufficient notice, so that they may fully participate. Further, as detailed below, assurances of voluntary, confidential participation without fear of reprisal or retaliation are essential, and multiple methods for voluntary input should be offered to workers and managers.

We also firmly believe that the final report should be publicized (e.g., through a press release or 8-K disclosure), and contain actionable and decision-useful recommendations, including steps to remedy practices inconsistent with the company's stated commitments. Accordingly, the final report should include recommendations for improved policies, procedures, and practices that will ensure respect for freedom and association without interference as well as collective bargaining and provide adequate remedies for future shortcomings and harms. Apple's commitment to conducting this third-party assessment includes a pledge to address any practices that might be inconsistent with its Human Rights Policy, and the company's Board, as overseers of the assessment, should receive these recommendations.

Finally, we urge you to reconsider the decision to omit the names of the external stakeholders interviewed in the final report. Publicly identifying external stakeholders is a common practice in similar assessments, as exemplified by Facebook's Civil Rights Audit- Final Report¹ and Airbnb's Work to Fight Discrimination and Build Inclusion.² This transparency will enhance the credibility of the assessment and demonstrate a commitment to involving diverse perspectives.

We are dedicated to supporting an objective assessment – one that is valuable, useful, and actionable for all relevant stakeholders including workers, management, Apple's Board, and investors. Such an assessment can serve as a model for such assessments in the future.

We remain available for follow-up discussions and hope that you will include us among the external stakeholders with whom you engage going forward. Thank you for your consideration.

Sincerely,

Jonas Kron, Trillium Asset Management, [REDACTED]
Hyewon Han, Trillium Asset Management, [REDACTED]
Michael Garland, Office of the New York City Comptroller, [REDACTED]
Jennifer Conovitz, Office of the New York City Comptroller, [REDACTED]
Tom Powdrill, PIRC, [REDACTED]
Emma Bayes, SOC Investment Group, [REDACTED]
Louis Malizia, SOC Investment Group, [REDACTED]
Marissa LaFave, Parnassus Investments, [REDACTED]
Renaye Manley, SEIU, [REDACTED]

cc: [REDACTED], Board of Directors, Nominating and Corporate Governance
Committee [REDACTED]
[REDACTED], Apple, [REDACTED]
[REDACTED], Jenner & Block, [REDACTED]
[REDACTED], Jenner & Block, [REDACTED]

¹ Available at <https://about.fb.com/wp-content/uploads/2020/07/Civil-Rights-Audit-Final-Report.pdf>

² Available at <https://news.airbnb.com/wp-content/uploads/sites/4/2022/12/A-Six-Year-Update-on-Airbnbs-Work-to-Fight-Discrimination-and-Build-Inclusion-12122022.pdf>

Follow-Up Materials for Assessor re: Apple Workers’ Rights Assessment

August 2023

Recommendations for a Comprehensive Assessment

As a fundamental matter, to achieve its objective, the third-party assessment should be independently conducted, which means, among other things, an assessment that is unfiltered by the company and through which sufficient latitude is granted to the assessor.

In addition to written material, internal and external stakeholder input is critical. The assessor should conduct an in-depth review of relevant Apple policies and practices and in its final report include detailed descriptions of them, as well as the assessor’s analysis and recommendations. The assessor’s review of Apple’s policies and practices should encompass, among other things, Apple policies, processes, rules, and procedures as well as their implementation; formal and informal internal communications, training, incentives, and discipline; company and store management guidance and perceptions; publicly reported activities; formal complaints; and worker input (collectively, Apple’s “Policies and Practices”).

A non-exhaustive list of topics that the assessment should address is provided below:

- The ways in which relevant sections of the company’s policies, including the portion of its [Human Rights Policy](#) titled “Our Commitment to International Human Rights Standards” are implemented and operationalized through informal means as well as formal processes, rules, procedures, and training. The working definitions for all key terms used by the company in its Policies and Practices.
- The assigned responsibilities, governance and accountability structures, and escalation processes (including methods, timing, and frequency of communication) in place for responding to worker organizing and union activity, spanning store management through corporate management and the Board. This should include the designated responsibilities at each level of the organization; how each identifies, monitors, and responds to worker organizing and union activity; and how each currently seeks to remedy practices or activity determined to be inconsistent with Apple’s stated commitments.
- A review of all Apple training materials as they relate to worker organizing and union activity, including handbooks and work rules. A subsequent assessment of any material changes made to training materials before and after recent worker organizing and union activity began and/or since National Labor Relations Board (NLRB) findings.
- A review of all Apple non-disclosure Policies and Practices and an assessment of how these may affect worker organizing and union activity.
- The formal and informal incentives and direction that managers face, receive, and perceive as it relates to worker organizing and union activity above and beyond written policies. This may include explicit or implicit direction given to store managers on how to respond to worker organizing and the real or perceived impacts of worker organizing on manager performance evaluations and career prospects at Apple.
- The extent to which Apple assesses or otherwise attempts to understand store manager opinions, biases, or perceptions as it relates to worker organizing and union activity at their stores and how such information, if collected, affects decision-making.
- All accounts of interference and anti-union behavior by Apple, including unfair labor practice charges and other reports of interference in response to worker organizing and union activity, as well as a review of how the company has addressed them.

- The ways in which Apple utilizes external law firms and consultants to provide services in response to or related to worker organizing and union activity. The company’s total annual spend on these activities and how this spend has trended in relation to recent activity.

Importantly, the report should contain recommendations on actions Apple should take based on the assessment. They should include how to improve Apple’s Policies and Practices to ensure respect for collective bargaining as well as freedom of association without interference by the company and provide adequate remedies for future shortcomings and harms.

Recommendations for Soliciting Worker and Manager Feedback

Allow sufficient time for inbound feedback. We believe it is necessary for the identity of the assessor to be made public and to be communicated meaningfully, effectively, and in a timely manner, to current and former workers (defined as any company provider of labor services including both payroll employees and contingent and contracted workers) and managers, along with a means for individuals to confidentially contact the assessor directly.

In soliciting feedback, the assessor should provide basic assurances as outlined below:

- Guaranteed confidentiality that individual identities will not be shared with Apple. This would require the assessor to engage workers and managers without influence or direction from Apple.
- Worker or manager participation will not result in reprisals or retaliation.
- Worker input is inbound and offered voluntarily. More than one method should be offered, which could take the form of an anonymous hotline, consolidated communication through union representatives, or the ability for individuals to contact the assessor directly and confidentially.
- Non-coercive, relevant questions. Questions focused on whether workers feel free to engage in organizing activity and whether workers or managers perceive that organizing activity could negatively affect their employment status or careers. Questions about union support or union activity are not relevant.

Note that store managers and former workers are not protected under the National Labor Relations Act and can therefore be contacted proactively, though they should be selected by the assessor and not Apple and given the same assurances regarding confidentiality, non-retaliation, and non-coercive, relevant questions.

International Human Rights Standards

The assessment should address Apple’s adherence to the globally recognized labor standard of non-interference. Investors expect Apple to adhere to U.S. law as well as globally recognized international human rights standards that respect the rights to collectively bargain and freely associate without interference from the company. Apple’s [Human Rights Policy](#) commits to the following:

“We’re deeply committed to respecting internationally recognized human rights in our business operations, as set out in the United Nations International Bill of Human Rights and the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work. Our approach is based on the UN Guiding Principles on Business and Human Rights. We conduct human rights due diligence to identify risks and work to mitigate them. We seek to remedy adverse impacts, track and measure our progress, and report our findings.

We believe that dialogue and engagement are the best ways to work toward building a better world. In keeping with the UN Guiding Principles, *where national law and international human rights standards differ, we follow the higher standard*. Where they are in conflict, we respect national law while seeking to respect the principles of internationally recognized human rights.” (Emphasis added.)

Apple has made a global commitment to uphold freedom of association and collective bargaining rights. As expressed in its Human Rights Policy, “we’re committed to respecting the human rights of everyone whose lives we touch—including our employees [...].” Critically, Apple expressly commits itself to the International Labour Organization’s (ILO) Declaration on Fundamental Principles and Rights at Work, which requires freedom of association and recognition of collective bargaining. These are considered enabling rights because they can foster respect for other human rights like equality, health and safety, and other decent working conditions.

Freedom of association is a fundamental human right proclaimed in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights, two key components of the United Nations International Bill of Human Rights.

The ILO Committee on Freedom of Association has declared as General Principles:

- “All appropriate measures should be taken to guarantee that, irrespective of trade union affiliation, trade union rights can be exercised in normal conditions with respect for basic human rights and in a climate free of violence, pressure, fear and threats of any kind;”
- “Workers shall have the right to join organizations of their own choosing without any interference from the employer.”³

In addition, the ILO and the UN Global Compact issued A Guide for Business that refers to non-interference as follows: “Employers should not interfere in workers’ decision to associate, try to influence their decision in any way, or discriminate against either those workers who choose to associate or those who act as their representatives.”⁴

A commitment to freedom of association, including non-interference, is not inconsistent with freedom of expression. While expressing its views on unions, Apple may not make any direct or indirect threats, create an atmosphere of intimidation or fear, or retaliate against employees exercising their right to freedom of association. Some companies take steps to ensure that their freedom of expression does not violate workers’ right to freedom of association. For instance, Ben and Jerry’s recently adopted “Fair Election Principles,” which state that if the company holds a meeting with workers on company time to discuss unionization, the union organizing its workers may hold a meeting of equal length on company time.⁵ In addition, Microsoft publicly adopted principles for employee organizing and engagement with labor unions.⁶

The assessment should also assess Apple’ actions after workers have voted to form a union and whether Apple has bargained toward a collective bargaining agreement in good faith.

³ ILO Committee on Freedom of Association, Compilation of Decisions (2018), paras. 73, 1189, at https://www.ilo.org/wcmsp5/groups/public/-/ed_norm/---normes/documents/publication/wcms_632659.pdf

⁴ <https://unglobalcompact.org/library/261>

⁵ <https://www.fastcompany.com/90890085/ben-and-jerrys-ice-cream-scoopers-union-fair-election-demands>

⁶ <https://blogs.microsoft.com/on-the-issues/2022/06/02/employee-organizing-engagement-labor-economy/>

The UN Guiding Principles on Business and Human Rights provides that enterprises should have processes in place to enable the remediation of any human rights impacts they cause or to which they contribute.

A non-exhaustive list of commonly utilized interference techniques and practices to be considered through the assessment are outlined below. While some of these tactics are arguably unlawful under U.S. labor law, and some are arguably permitted under U.S. labor law, all of them unarguably interfere with workers' freedom of association. We again note that the relevant measure for your inquiry is international standards of the ILO and the UN Guiding Principles, not U.S. law, and that Apple has committed itself to the higher standards.

- Using intimidation, retaliation, or discrimination tactics to encourage or discourage participation in organizing activity. This includes bribing or threatening workers with higher or lower wages, changes in benefits, changes in hours or shifts, or unequal promotions in response to their perceived or confirmed organizing activity, as well as establishing two-tiered payment systems. This also includes utilizing media, law enforcement, or replacement workers to discredit and dissuade organizing activity; engaging in invasive surveillance of workers to track and minimize organizing activity; selectively disciplining workers based on their involvement in organizing; and otherwise making workers feel threatened, unprotected, and forced to assimilate to the company's desired outcome.
- Discharging, suspending, laying off, failing to recall from layoff, demoting, disciplining, or taking any other adverse action against workers because of their protected, concerted activities.
- Closing locations or threatening to close locations due to union activity (i.e., where workers have voted to unionize or have petitioned for a union vote). Transferring workers or subcontracting work to quell unionization efforts.
- Utilizing tactics to divide workers based on gender, race, ethnicity and sexual orientation.
- Holding captive audience meetings. Related actions include one-on-one meetings, investigatory interviews, and written communications that discourage participation in organizing or that coercively interrogate workers about organizing activity.
- Prohibiting workers from discussing or soliciting for a union during non-work time, such as before or after work or during break times, or from distributing union literature or collecting authorization cards during non-work time in non-work areas, such as parking lots or break rooms. Prohibiting workers from wearing union hats, buttons, t-shirts, pins, and other adornments in the workplace or otherwise showing public support for unionization.
- Promising benefits to workers if the union is rejected or to imply a promise of benefits by soliciting grievances from workers during a union organizing campaign.
- Conveying to workers that organizing is futile or that management will never agree to a collective bargaining agreement meeting the union's demands. Similarly, conveying to workers that unions are an unnecessary third party that only seeks workers' financial support and will cause even more financial hardship by taking a strike action, and that wages and/or working conditions will not improve after union membership.
- Failing to provide a level playing field for company and union representatives to present materials and meet with workers to discuss organizing.
- Hiring law firms, consultants, or other third parties to conduct union avoidance activity.
- Instigating minority or company-supported unions to specifically organize and campaign against broader unionization.
- Initiating or soliciting workers to sign a decertification or union-disaffection petition.

- Discriminating against job applicants by making hiring conditional on individuals not having a history of trade union membership, activism, or support.

Overview of Relevant Events

Since August 2021, Apple, Inc. has been investigated for 36 unfair labor practices (ULPs) by the NLRB; 19 of the charges have been brought forth by individuals and 17 by labor organizations. The ULPs allege that Apple has illegally engaged in coercive actions and statements, discipline, interrogation, discharge, and other activities that interfere with workers' protected right to organize and collectively bargain in the U.S. NLRB officials have substantiated several of these allegations, including those made at Apple stores in New York City, Atlanta, and Oklahoma City. In January 2023, the NLRB general counsel's office determined that "various work rules, handbook rules, and confidentiality rules" utilized by Apple "tend to interfere with, restrain, or coerce employees" from exercising their rights to collective action.

A recent report by Communications Workers of America (CWA), "[Misleading Metrics: The Truth Behind Apple's Diversity Data](#)," sheds light on Apple workers' experience, both from a racial justice and a labor rights standpoint. The report includes the results of a survey of 120 retail workers conducted online by CWA in 2023 and input from interviews with former and current Apple workers. The report was covered by [Tech Crunch](#).

In [April 2022](#), Apple reportedly hired Littler Mendelson, a firm known to assist companies in union avoidance strategies. On its [website](#), Littler describes its practice as helping "guide companies in developing and initiating strategies that lawfully avoid unions." Littler's recent and ongoing work with Starbucks in particular has led it to receive unfavorable media coverage over its labor practice. For example, *The Seattle Times* [reported](#) that as of May 2023, "the NLRB had 552 open or settled unfair labor practices charges against Starbucks, its subsidiary Siren Retail and law firm Littler Mendelson."⁷ Littler's labor strategies have been covered by [Bloomberg Law](#), [The Hill](#), [The Verge](#), and [Nevada Current](#). [Huffpost](#) recently published a series of articles detailing labor consultant tactics and their impact on worker organizing and union activity.

Media Reports

Below is a summary of recent media reports regarding Apple's response to worker organizing and union activity at its stores.

United States

Apple Insider, "[IAM Core Files another Unfair Labor Practice Charge Against Apple with NLRB](#)," Jul 7, 2023.

Law360, "[Apple Unlawfully Removed Union Flyers, NLRB Judge Says](#)," Jun 21, 2023.

Bloomberg, "[Apple Illegally Interrogated Staff about Union, Judge Rules](#)," Jun 20, 2023.

Law360, "[NLRB Prosecutors Say Apple Fired Worker For Organizing](#)," Jun 5, 2023.

Oklahoma City Free Press, "[NLRB issues first complaint against OKC Apple Store management](#)," Jun 4, 2023.

New York Times, "[Companies Are Taking a Harder Line on Union Organizers, Workers Say](#)," May 24, 2023.

Jacobin, "[Apple Store Workers Want to Unionize. Apple is Union Busting](#)," Apr 23, 2023.

Bloomberg, "[Apple Continues Efforts to Keep Retail Stores from Unionizing](#)," Apr 9, 2023.

Huffpost, "[Apple Store Workers Say The Company is Stalling on Its First Union Contract](#)," Apr 7, 2023.

⁷ Also reported in *Law360* at <https://www.law360.com/employment-authority/articles/1594946>

Law360, "[Apple Accused Of Illegally Firing Union Backers In Kansas City](#)," Mar 28, 2023.

Wired, "[An Apple Store Worker is The New Face of US Labor Law Reform](#)," Feb 28, 2023.

New York Times, "[Regulators Find Apple's Secrecy Violates Workers' Rights](#)," Jan 31, 2023.

- Also covered by [Bloomberg](#), [Business Insider](#).

CNN, "[Apple's first US labor union reaches new milestone for tech industry](#)," Jan 11, 2023.

Bloomberg Law, "[Apple Created Pseudo-Union to Thwart Labor Efforts, CWA Says](#)," Dec 16, 2022.

Tech Crunch, "[Apple illegally interfered with union organizing in Atlanta, labor board finds](#)," Dec 6, 2022.

- Also covered by [Bloomberg Law](#).

Bloomberg Law, "[Apple Union Win Shows Labor Gains in Organizing-Resistant South](#)," Oct 17, 2022.

Bloomberg, "[Apple to Withhold Latest Employee Perks from Unionized Store](#)," Oct 12, 2022.

- Also covered by [The Verge](#).

Reuters, "[Apple interfered with union drive at NYC store, says U.S. labor agency](#)," Oct 6, 2022.

Bloomberg, "[Apple Discriminated Against Pro-Union Staff, NLRB Alleges](#)," Oct 4, 2022.

The Verge, "[Apple VP discourages retail workers from joining a union in leaked video](#)," May 25, 2022.

Vice, "[Leaked Memo Reveals Apple's Anti-Union Talking Points for Store Managers](#)," May 12, 2022.

Business Insider, "[Apple agrees to 'make improvements' to its NDAs after whistleblower documents showed evidence the company used the agreements to silence employees](#)," Nov 22, 2021.

International

We encourage the Board and assessor to consider international allegations of the company's anti-union activity given the global nature of Apple's commitments.

[UK] *Novara Media*, "[Apple's 'Union-Busting' Tactics Have Come to the UK](#)," May 3, 2023.

[Australia] *9News*, "[Union calls on Fair Work Commission to step into negotiations with tech giant Apple](#)," Mar 27, 2023.

[UK] *Apple Insider*, "[Apple signs union agreement for Glasgow Apple Store staff](#)," Feb 8, 2023.

[Australia] *Reuters*, "[Apple's Australian workers go on Christmas strike demanding better wages, work terms](#)," Dec 22, 2022.

[UK] *Fast Company*, "[Inside the London Apple Store workers' unionization efforts](#)," Dec 20, 2022.

[UK] *Apple Insider*, "[London Apple Store at White City Unionizing with UAW](#)," Dec 15, 2022.

[UK] *9to5Mac*, "[Union busting lawsuit planned, as battle between Apple and its store staff intensifies](#)," Nov 28, 2022.

[UK] *GMB Union*, "[Apple Workers make history as first in UK to secure union recognition](#)," Nov 2, 2022.

[Spain] *Business Insider*, "[Los sindicatos de Apple crean una red de solidaridad mundial, de Maryland a Tokio pasando por Barcelona: qué demandan en España](#)," Nov 2, 2022.

[Australia] *New York Times*, "[New Crack in Apple's Armor as Dozens Strike at Its Stores in Australia](#)," Oct 17, 2022.

[UK] *Huck Magazine*, "[How the Apple Store Union Movement Came to the UK](#)," Oct 4, 2022.

[Australia] *Guardian*, "['Bully in a cheap suit': Apple agrees to negotiate with Australian staff after union showdown](#)," Sep 21, 2022.

[Australia] *Vice*, "[Australian Workers Are the Latest International Apple Staff to Unionise](#)," Sep 8, 2022.

[Australia] *Sydney Morning Herald*, "[Apple accused of 'bad faith' in trying to rush through pay deal](#)," Aug 23, 2022.

[Australia] *News.com.au*, "[Apple's 'un-Australian' act to 4000 workers](#)," Aug 23, 2022.

[UK] *9to5Mac*, "[Apple pay raises are a pay cut after inflation, says union representing UK store workers](#)," Jul 20, 2022.