



# An In-House Counsel's Guide to ESG Strategies for Private California Companies



The concept of environmental, social, and governance (ESG) frameworks is not new, but the scope and complexity of related regulations is evolving. As stakeholders demand greater transparency and accountability over corporate behavior and sustainability efforts, companies are under increasing pressure to align their operations with ESG standards.

This puts in-house counsel in a pivotal position to drive organizational change — and ensure compliance while managing legal and reputational risks. As the country's most regulated and progressive state, California is uniquely positioned to lead the way on ESG.

For many, ESG might have begun as a virtuous communications initiative that was nice to have but not necessarily a priority. However, as more regulations have required businesses to file reports on greenhouse gas emissions and other metrics, ESG has made its way to the radar of major global companies.

For smaller private companies, these disclosures can feel burdensome and unnecessary, particularly when legal thresholds for reporting don't apply. However, adopting ESG practices now could provide a competitive advantage when future regulations, particularly in California, make such practices mandatory. Beyond compliance, proactive ESG adoption can foster trust and confidence among global investors, employees, suppliers, business partners, and customers, who are increasingly socially conscious and values-driven.

# 1 Demystifying ESG

What does ESG mean? The below elements comprise a set of standards for measuring an organization's impact with data and metrics that inform decision-making for companies and investors.



## Environmental

**Environmental refers to a company's efforts to reduce its environmental impact, such as:**

- Lowering carbon emissions and energy consumption
- Implementing waste reduction and recycling programs
- Promoting sustainable sourcing and supply chain practices
- Protecting natural resources and addressing climate change impacts

Companies that prioritize environmental sustainability can reduce their operational risks and strengthen their reputation in addition to meeting regulatory requirements. Proactively mitigating the financial and reputational risks associated with climate change and resource scarcity makes businesses more viable over the long term.



## Social

**Social involves how a company approaches its relationships with employees, customers, suppliers, and the communities in which it operates, including:**

- Ensuring workplace diversity, equity, and inclusion
- Providing fair wages and benefits to employees
- Supporting local communities through charitable giving or volunteer initiatives
- Upholding ethical labor practices in supply chains

Companies that prioritize social responsibility can improve employee morale, reinforce customer loyalty, and attract top talent. Addressing social issues also strengthens relationships with communities and stakeholders, reduces the risk of labor disputes, and enhances brand reputation, all of which contribute to a company's long-term success.



## Governance

**Governance encompasses the leadership and management structures that ensure a company operates ethically and in compliance with legal and regulatory standards. For example:**

- Maintaining transparency in corporate decision-making
- Implementing effective anticorruption policies and practices
- Ensuring fair executive compensation structures
- Promoting board diversity and independent oversight

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## Where do stakeholders fit in corporate decision-making?

While most fiduciary duties of loyalty and care are owed only to the corporation and its shareholders, many states have enacted constituency statutes. These require or allow directors to consider the interests of employees, communities, customers, and suppliers as well as shareholders in decision-making. There's growing agreement that directors can consider the interests of nonshareholder stakeholders in their decisions if they align with shareholders' long-term interests.

A 2023 Delaware ruling provided further clarity, holding that boards have broad discretion to address social and political issues as part of corporate strategy. In *Simeone v. The Walt Disney Co.*, an appellate panel found that Disney's decision to oppose Florida's "Don't Say Gay" law was a legitimate business judgment tied to long-term shareholder value. The court emphasized that promoting stakeholder interests, such as fostering strong employee and partner relationships, can align with shareholder goals.

California founders seeking to reduce the risk of liability when considering nonshareholders' interests can form a [benefit corporation](#) or a [social purpose corporation](#), which allows for-profit companies to prioritize social and environmental goals alongside financial performance.

## Understanding California's current ESG rules – and those on the horizon

California is at the forefront of ESG in the U.S., with a growing body of rules designed to hold companies accountable for their impact on climate, workforce, and communities. In particular, recent new laws now mandate that large companies doing business in California must disclose certain information.

### These include:

- The [Climate Corporate Data Accountability Act](#), which requires companies earning over \$1 billion annually to share their greenhouse gas emissions. Penalties for noncompliance can reach up to \$500,000 per reporting year.
- The [Climate-Related Financial Risk Act](#), which says companies making more than \$500 million in annual revenue must disclose the threats they face due to climate change and detail their mitigation strategies. Penalties for noncompliance can climb to \$50,000 per reporting period.
- The [California Transparency in Supply Chains Act](#), which mandates that manufacturers and retailers grossing more than \$100 million annually must disclose what they're doing to help eradicate slavery and human trafficking from their supply chains. Failing to comply can trigger a lawsuit from the California attorney general seeking an injunction to force compliance.

While these laws don't yet apply to smaller private companies, they signal a broader trend toward increased ESG accountability that could eventually include businesses of all sizes. Smaller companies that interact with large corporations might also need to provide data to support their partners' compliance efforts, particularly when it comes to emissions or supply chain transparency.

ESG compliance in California goes beyond environmental reporting. Labor laws, pay transparency requirements, and corporate diversity mandates also play a role. The Freelance Worker Protection Act of 2024, for example, aims to ensure transparency and fairness by requiring written contracts for freelance services valued at \$250 or more, which must outline the scope of work, payment method, deadlines, and other details.

The Diversity Reporting Law, signed into law in 2024, will require venture capital companies with a sufficient connection to California to file an annual report with the California Department of Financial Protection and Innovation (DFPI). These reports will detail demographic data about the founding team members of the businesses in which such entities made a venture capital investment in the prior calendar year, as well as the total amount of money invested in such businesses. Also included will be a breakdown of diverse and nondiverse businesses and founding teams. It's advisable for businesses to start collecting data now to be ready for compliance in 2025.

On the global stage, there are growing ESG disclosure requirements in regions like the European Union, Asia, Australia, and the U.K., along with increasing investor demand for sustainability transparency.

Businesses that expect and plan for expanded ESG regulatory frameworks in California and beyond will be best positioned to comply down the road. Taking steps now will ensure future compliance demands have a reduced impact on a company – and avoid potential penalties for inadvertent noncompliance.



## Assessing your company's ESG needs

Rome wasn't built in a day, and your ESG strategy won't be either. Developing and implementing an effective plan is an ongoing, long-term effort peppered with various challenges — especially for smaller companies.

So, start at a place that makes the most sense for your company. Prioritize initiatives that align most closely with your objectives and will have the greatest impact on your stakeholders and operations. Work with your risk management team, if you have one, to identify potential risks and opportunities.

### Here are some questions to consider when assessing your ESG needs:

- **What existing regulatory requirements does your company need to meet right now, both in California and nationally or internationally?** What requirements might be on the short- and long-term horizon that will require planning?
- **What ESG-related issues are most relevant to your industry and operations?**
  - If you're a manufacturer or retailer, where do you source your products or raw materials? Are your suppliers doing anything to mitigate their environmental impact, such as using sustainable materials, reducing waste in production, or transitioning to renewable energy sources?
- **Which initiatives align with your company's core values and business goals?**
  - Does your company value diversity, equity, and inclusion? You might prioritize initiatives like improving workforce diversity or fostering an inclusive workplace culture. Or if sustainability is a key value, focus on reducing carbon emissions or increasing energy efficiency. Also consider what your employees and customers care most about.
- **How do your company's current operations impact employees, customers, and the community?**
  - Do your business practices ensure fair wages and safe working conditions for employees? How do you ensure your products are safe and ethically produced? Does your business contribute to local development or address social issues in the community?
- **How could you measure progress and success for each ESG initiative?**
  - You might track your company's carbon footprint, employee satisfaction, turnover rates, or the diversity of your supply chain.
- **Do you have the internal resources to develop and implement these initiatives, or will external help be needed?**
  - Consider hiring a sustainability officer or partnering with consultants who specialize in ESG reporting and strategy development.
- **How can you engage stakeholders in shaping and supporting our ESG goals?**
  - Host town halls with employees to understand their concerns, work with local communities to identify social impact goals, or align with investors who prioritize ESG in their decision-making.
- **What legal, financial, and reputational risks could arise if you fail to address key ESG considerations?**
  - Failing to address climate risks could trigger high operational costs or stranded assets, while overlooking employee welfare could lead to increased turnover or labor disputes. Failing to meet reporting requirements might also result in regulatory fines.

While the urge to act quickly on ESG is understandable, be cautious and thoughtful rather than opting for quick fixes or superficial solutions. Your customers will be wise to your insincerity (also known as greenwashing and pinkwashing). Go beyond the mere appearance of concrete action by backing up your ESG strategy with genuine investment — both personal and financial.

## Creating an ESG reporting framework

As in-house counsel, it's your responsibility to ensure ESG metrics are reported effectively and in compliance with local and/or international standards. This means creating a reporting system that helps you meet the relevant requirements, such as California's climate-related disclosure laws or the EU's Corporate Sustainability Reporting Directive (CSRD).

Start by going through the steps outlined above to identify the ESG factors important to your company and stakeholders. Then, strategize and determine how you'll collect data and ensure your reports are clear, accurate, and easy to verify.

### Here are a few ways smaller firms can offer a superior client experience:

- Keep it simple:** These reports don't have to be long, complicated documents teeming with data (in fact, it's best if they aren't). The most effective ESG-related reports are clear and precise — focusing on the areas where your company can make the biggest impact. Begin with straightforward metrics that are easy to measure.
- Track what you already measure:** Take inventory of any ESG-related data your business collects, even if it's not currently being reported, such as energy consumption or employee retention.
- Bring in the experts:** There are various tools and third-party consultants that can help simplify data collection and reporting, including climate management and carbon accounting platform [Persefoni](#), global environmental disclosure system [CDP](#), and ESG risk and compliance platform [Diligent](#).
- Start a dialogue with stakeholders:** Let your customers, employees, and community know about your ESG journey by sharing how your business contributes to sustainability and social good.
- Don't aim for perfection:** It's OK to start small and gradually improve your ESG reporting. What's most important is that you're taking action and showing progress.
- Prepare for growth:** Your ESG reporting should evolve with your company. Ensure the system you set up is flexible enough to be scaled as new regulations and reporting needs emerge.
- Anticipate future reporting needs:** If your planning steps from above reveal future regulations that will likely apply to your company, incorporate those into your reporting structure and consider tracking that data now. This will help ensure you'll be ready when needed and won't have to reconfigure your reporting or systems.





## ESG goes beyond compliance

Rather than a compliance checkbox, ESG reporting can serve as a management tool. Success isn't just about filling out forms; it's about digging into the data to understand which ESG issues truly matter for your business – and how they impact costs, employee engagement, and brand reputation.

By starting your ESG journey early, your company will be ahead of the curve when it becomes a regulatory requirement. After all, the risks of mistakes are much higher when your disclosures are formalized in regulatory filings rather than aspirational marketing statements. As ESG metrics evolve to face as much scrutiny as traditional financial figures, getting them right will be critical.

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