

# Navigating the Coronavirus Challenge: Practical Advice for Small and Mid-Size Firms Dealing with COVID-19





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# Agenda

- 1) Overview
- 2) Crisis Management & Communications
- 3) Risk Management / Ethics
- 4) Remote Work Challenges
- 5) Labor & Employment
- 6) Question and Answer



# Crisis Management and Communications

## Responding to a crisis

Most often, when we think about a crisis, we are thinking about a localized event. It impacts one business, one location, one community or one country.

This situation is different. It's worldwide and unprecedented in modern times. But the general outline of a response is similar to any crisis:

- 1) Verify and assess the issue
- 2) Notify pertinent staff and remind them of role in crisis
- 3) Assess the crisis level and develop action plan
- 4) Implement the plan, develop messages and manage communications
- 5) Monitor, evaluate and course correct if necessary



# Crisis Management and Communications

## Identifying your audiences:

- 1) **Employees**
- 2) Partner organizations
- 3) Customers/clients
- 4) Vendors
- 5) General Public

## Identifying your channels of communications:

- 1) Direct communication/in-person/telephone
- 2) Email
- 3) Social media
- 4) Website
- 5) Intranet



# Crisis Management and Communications

## Employee communication:

- 1) Put company leadership front and center. Employees want to hear from the boss.
- 2) Rely on experts: Direct people to the US CDC and the Maine CDC for guidance.
- 3) Be transparent and honest. It's OK to not to have all the answers.
- 4) You cannot over communicate. People want to understand what's happening and how it will impact them, including at work.
- 5) After you've developed your action plan and when you have new information, share it with employees. For example, they want to know what you're doing and what they can do:
  - a. Increased cleaning
  - b. Asking people to voluntarily self-quarantine
  - c. Updates from US/Maine CDC, new guidance, other health experts
  - d. Changes in work: Remote work options, changes in personnel/travel polices
  - e. Changes in hours of operation/visitors to the workplace/employment levels



# Crisis Management and Communications

## What employees want to know:

Global Strategy Group, a national polling company, conducted research on workers opinions around COVID-19/Coronavirus. Here's what they found:

- 1) Employees want to know how you plan to respond
- 2) They want to be informed and prepared (as much as possible)
  - a. 68% said it was most important for business to inform workers of what's happening
  - b. 63% prioritized preparing employees for what's happening
  - c. Only 32% prioritized being reassured

GSG also identified specific information that employees want to know.

- 1) 75% want to know how you plan to respond if someone tests positive for COVID-19
- 2) 74% want to know if someone has the illness
- 3) 73% want to know what steps they should take if they believe they've been in contact with someone who has the coronavirus
- 4) 72% want specific guidance on when they shouldn't come to work if they're sick and think they might have coronavirus.



# Crisis Management and Communications

## General rules for communicating during this crisis:

- 1) Things are changing quickly. You won't have the answer to every question.
- 2) You aren't expected to be an expert on pandemics or to see the future.
- 3) When things change, let people know.
- 4) You CANNOT over-communicate right now.
- 5) Everyone is under a lot of stress: Be informed. Be kind. Be patient.



## Breaking News – On March 24:

- Governor Mills issues 14-day closure of non-essential businesses – (March 25-April 8)
- City of Portland issues “Requirement to Stay at Home” Order – (March 25-30)
- Other municipalities issue similar orders



# Rule 1.4 Communication

A) A lawyer shall: ...

- 1) reasonably consult with the client about the means by which the client's objectives are to be accomplished;...
- 2) keep the client reasonably informed about the status of the matter;...

B) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.



# Superior and District Court Emergency Order

49 calendar days are added to any unexpired deadlines established by court order or court rules

Additional time has NOT been added to any statutorily imposed deadlines, including statutes of limitations or any time periods set by statute

This order does not apply to the following case types:

- Criminal cases under the Unified Criminal Docket
- Juvenile Court proceedings
- Protection from Abuse cases
- Protection from Harassment cases
- Child Protection cases
- Involuntary Mental Health Commitment proceedings



# Law Court Emergency Order

Adds 49 calendar days to any unexpired deadline established by court order, court rules, or notices and schedules issued by the Clerk's Office in any Law Court appeals.

As with Order No. 1, this order does not affect any deadlines set by statute.



## 1.6 Confidentiality of Information

(a) A lawyer shall not reveal a confidence or secret of a client unless, (i) the client gives informed consent; (ii) the lawyer reasonably believes that disclosure is authorized in order to carry out the representation; or (iii) the disclosure is permitted by paragraph (b).



# Opinion #220. Cyberattack and Data Breach: The Ethics of Prevention and Response

**Question:** What are a lawyer's ethical obligations to understand the risks posed by technology, to prevent a cyberattack or data breach, and to respond once one occurs?

**Short Answer:** ... Any lawyer who chooses to use technology in order to provide legal services for clients has an obligation to make sure that technology is serving the clients and not disserving them. That obligation applies both before and after a third party uses the lawyer's technology for their own gains or for other purposes contrary to the interests of the lawyer's clients. The overriding obligation is to know what the technology does, what it does not, and how to use it safely. ...



# Risk Management: The Attorney-Client Relationship and Confidentiality Obligation

Responding to an informal inquiry for legal advice, absent creation of a formal attorney-client relationship with respect to that matter, presents risk management and business concerns

## Best Practices:

Before engaging in any substantive discussion concerning a new matter with an actual or prospective client, you should perform a conflict check.

You must maintain in strict confidence all confidential information and secrets that are revealed to you by any existing client and any prospective client, even if you are not formally engaged in the matter.



# Issues Affecting Contracts

- Anticipate the impact of Coronavirus on contract performance – yours and that of the other party
- Contract and legal doctrines that may excuse performance
  - Force majeure contract clauses
  - Doctrine of impossibility
  - Doctrine of impracticability



# General, Non-Specific Force Majeure Clause

## FORCE MAJEURE

If the Contract becomes illegal or impossible to perform by either party due to acts of God, war, terrorist act, disaster, strikes, civil disorder, or other comparable unforeseeable emergency, this Contract may be terminated for any one or more of such reasons by written notice from one party to the other.



# Specific, Detailed Force Majeure Clause

## 18. Force Majeure

### 18.1 Definition of Force Majeure

18.1.1 For purposes of the Contract, “**Force Majeure**” means any event or circumstance which wholly or partly prevents or delays the performance of any material obligation arising under the Contract, but only if and to the extent: (i) such event is not within the reasonable control, directly or indirectly, of the affected Party; (ii) the affected Party has taken all reasonable precautions and measures in order to prevent or avoid such event or mitigate the effect of such event on its ability to perform its obligations under the Contract, and which by the exercise of due diligence the affected Party could not reasonably have been expected to avoid and which by the exercise of due diligence it has been unable to overcome; and (iii) such event is not the direct or indirect result of the negligence or the failure of, or caused by, the affected Party.

18.1.2 Events that, subject to the foregoing, could qualify as Force Majeure events include unusual flooding, lightning, landslide, earthquake, fire, drought, explosion, epidemic, quarantine, storm, hurricane, tornado, other natural disaster or unusual or extreme adverse weather-related events, all state or nationwide strikes, unforeseen site conditions, acts (or failure to act) of Governmental Authorities, war (declared or undeclared), riot or similar civil disturbance, acts of the public enemy (including acts of terrorism), sabotage, blockade, insurrection, revolution, expropriation or confiscation, unavailability of fuel, power or raw materials if the cause thereof otherwise would qualify as an event of Force Majeure, and restraint by a court order or other Governmental Authority, provided that all events asserted as Force Majeure meet the requirements set forth in the Clause 18.1.1 and do not fall within any exclusion set forth in the Clause 18.1A.



# Remote Work – Crisis Planning

- 1) Enact the company Business Continuity Plan (BCP)
- 2) Create a core incident management team to help respond to the crisis.
- 3) Identify staff required to have a physical presence to do their job. (e.g. Finance, Mail, Scanning, Notary, etc.)
- 4) Develop list of processes that are required to be done from within the office. (e.g. Check Deposits, Proformas, Time Entry, etc.)
- 5) Ensure redundancy in critical functions if/when someone becomes ill and unable to work.
- 6) Review HR employment policies, especially around remote work, sick leave.



# Remote Work – Operations

- 1) Do all employees have necessary equipment to work remotely?
- 2) Can some functions done in the office be replaced by a new solution (DocuSign) while working remotely?
- 3) Make sure employee contact information is up to date and you can communicate easily in an emergency.
- 4) When sending updates consider messaging for both internal employees as well as external communications to clients.
- 5) Develop communication templates for COVID-19 response. Someone in physical office test positive. Family member is positive.



# Remote Work – Remote Access Technologies

- 1) **Desktops:** If you have no IT support, still have "traditional" desktops in your office, and need to access from home look at these secure options:
  - LogMeIn
  - GoToMyPC
  - AnyDesk
- 2) **Laptops:** If you have laptops you are already well positioned to take your equipment and work from home:
  - Make sure you have some form of encryption to protect client data on your laptop (e.g. Microsoft Bit locker)
- 3) **Cloud:** If you are a larger organization and already use enterprise systems such as Citrix or VMware Horizon
  - Be sure to review licenses and capacity to support an increase in remote workers.



# Remote Work – Team Collaboration Tools

- 1) Cloud based software to allow you to collaborate on documents, share posts (think Facebook for business), keep track of tasks, deadlines, and much more.
- 2) Biggest benefit leave your Inbox clean for Client demands and keep the chatter of running your business in a collaboration tool.
- 3) Trust me, your Inbox will thank you...
  - Microsoft Teams
  - Slack
  - Google G-Suite



# Remote Work – Video Conferencing

Provides ability to share screens, video chat and audio teleconference

- 1) Zoom.us
- 2) Loopup
- 3) WebEx
- 4) GoToMeeting
- 5) PGI GlobalMeet

Pro Tips:

- If possible, hold conference calls outside of the typical business hours.
- Schedule calls to start at 15 minutes before the hour (9:45 instead of 10:00)
- Use the call-out features (conference system calls the attendees)



# Remote Work – Security

- 1) Security defenses don't change because you are now remote.
- 2) Phishing E-mails still arrive on a daily basis.
- 3) The sensitivity of your Clients data remains.
- 4) Ethical obligations to maintain confidentiality still exist.
- 5) Documents in printed form still should be secured and locked away in your remote office.

## Pro Tips:

- Use 2-factor authentication for any cloud-based services you use for business, or personal, purposes.
- Look at a password manager such as LastPass or 1Password



# Remote Work – A new way to work

- **Work:** Distraction is often the biggest challenge working from home. So, “go” to work. Develop a ritual for “going to work” and dedicate a space for work and nothing else.
- **Goals:** Set daily/weekly goals. Each morning give thought to what tasks need to be completed that day/week. This will give you a clear vision of when the work day and work week is complete
- **Connected:** 9x9. Talk to your colleagues. We encourage attorneys and staff to set-up daily calls or Zoom meetings to check in.
- **Remote:** Enjoy the benefits of remote work. Removing your commute will save you time... significant time for some of you. That is your time, and you should enjoy it.



# Remote Work – Avoid Being Overwhelmed



\*<https://www.legalexecutiveinstitute.com/legal-tech-startups/legal-tech-map/>



# Families First Coronavirus Response Act (April 1, 2020)

## Emergency Paid Sick Leave Act

- Leave is paid out now by employer, recouped in full by tax credits against employer's portion of social security taxes and/or refunds.
- Employers with less than 500 employees must provide **two weeks** of paid sick leave to all employees.
- Full time employees 80 hours; for part-time, the average number of hours for 2 weeks; limit of \$511/day or \$5,110 total.
- Employees may take Paid Sick Leave if:
  - The employee is subject to a federal, state, or local isolation or quarantine order related to COVID-19 (i.e., **shelter in place**)
  - A **healthcare provider** instructs the employee to self-quarantine;
  - Employee has **symptoms** consistent with COVID-19 and is seeking a medical diagnosis;
  - The employee is **caring for an individual** who is subject to a federal, state, or local isolation or quarantine order or has been advised to self-quarantine (**2/3 regular rate of pay**);
  - The employee is caring for a child for whom the **school or childcare has been closed** or is unavailable due to COVID-19 precautions (**2/3 regular rate of pay**); or
  - A similar reason to be specified later by the Department of Health and Human Services Secretary (**2/3 regular rate of pay**).

- Potential exclusion for healthcare provider employees or emergency responders.



# Families First Coronavirus Response Act (April 1, 2020)

## Emergency Family & Medical Leave Expansion Act

- Leave is paid out now by employer, recouped in full by tax credits against employer's portion of social security taxes and/or refunds.
- Employers with less than 500 employees must provide paid leave to employees caring for children under 18 whose school or childcare is closed; 30-day requirement.
- Up to 12 weeks; first 10 days unpaid; employees may choose to use accrued paid time off during those days; pay at 2/3 regular rate (based on six months prior to leave) for normally scheduled hours; limit of \$200/day and \$10,000/employee.
- Can apply for an exemption with Department of Labor if you have under 50 employees and providing this leave would "jeopardize the viability of your business as a going concern."
- Potential exclusion for healthcare provider employees and emergency responders.



# FAQ : Unemployment and Layoffs

## Unemployment Insurance Changes

- One week waiting period eliminated.
- Benefits sought are not charged against the employer's experience rating during period of emergency.
- Defined COVID-19-related reasons:
  - He or she is under a temporary medical quarantine or isolation restriction to ensure that the individual has not been affected by COVID-19 and is expected to return to work; or
  - He or she is temporarily laid off due to a partial or full closure of the individual's place of employment as a result of the state of emergency and is expected to return to work once the emergency closure is lifted.
  - He or she is on a temporary leave of absence continues to remain able and available to work for and maintains contact with the relevant employer due to:
    - medical quarantine or isolation restriction,
    - a demonstrated risk of exposure or infection, or
    - a need to care for a dependent family member as a result of COVID-19.
- Workshare program allows employers to apply on behalf of their company or a unit of the company but has restrictive rules on the amount of reduction in hours and has separate application process.
- COVID-19 related closures or reductions may not be so predictable.
- "Supplementing" benefits with additional payments may jeopardize employees' eligibility.



# Resources

- 1) [www.bernsteinshur.com](http://www.bernsteinshur.com)
- 2) [www.portlandregion.com](http://www.portlandregion.com)
- 3) [www.cdc.gov](http://www.cdc.gov)
- 4) [www.maine.gov/dhhs/mecdc](http://www.maine.gov/dhhs/mecdc)
- 5) [www.who.int/health-topics/coronavirus](http://www.who.int/health-topics/coronavirus)
- 6) <https://coronavirus.jhu.edu/map.html>



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