

COVID-19: Five Pressing Management Priorities for Organizations During This Pandemic

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Cases of COVID-19 continue to rise exponentially in the United States and many corporations, if not most, are transitioning to a remote/telecommuting workforce. As federal, state, and local governments issue new announcements and guidelines on a daily (even hourly) basis, companies need to be prepared for the eventual long-term impact of these announcements on its workforce.

Develop Clear Chains of Command

This is not a time for confusion. To navigate significant business disruption effectively, there must be a clear chain of command to facilitate communication and execution of the mission. This is particularly true now when an organization physically separates its personnel through responsible “social distancing.” In fact, the lack of physical proximity among teams requires leaders to be even more vigilant about over-communicating with teams to execute a common mission.

To facilitate this, it is critical for top leadership to strategically prioritize mission-critical functions to the organization, and then empower teams – or mini-task forces – to execute discrete missions that feed into the broader mission of the organization.

These discrete missions might take various forms depending on the organization. They may vary from product supply chain issues, employee safety issues, client relationship issues, customer service issues, communications issues, government affairs issues, scenario planning issues (including when leaders themselves may become out

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of commission due to health reasons or otherwise), cybersecurity issues, and the like. Having clarity on the chain of command will not only help foster communication, it will also allow leaders and teams to focus on discrete tasks to accomplish the broader mission of the organization.

Continue Plans to Protect (and Communicate Clearly with) Employees

The pandemic has resulted in major disruption to the lives of employees all over the world, and it will be important to communicate clear and consistent policies from the organization to ensure continued engagement and employee safety.

Additionally, employees are likely facing major disruption in their lives due to school closures and major disruption of services. Questions are likely to arise regarding health plan coverage, options for telemedicine, sick leave, childcare options, and workplace flexibility, requiring some consideration by the organization with respect to communication on any (if not all) of these important topics impacting employees.

And, as mentioned above, scenario planning is also integral at this time, particularly if there is a prolonged, significant business disruption. Scenario planning will involve considerations with respect to hiring, contractor staffing resources, cash flow, potential contraction, and redeployment of staff.

Ensure Hyper-Attentiveness to Federal, State & Local Government Action

The Supreme Court has suspended arguments amid Coronavirus fears and courts - at every level all over the country - are issuing standing orders that are impacting litigation, including the indefinite continuation of civil and criminal cases, extensions of deadlines, and partial closure of the courts.

Additionally, federal agencies such as the FTC, have announced that nearly all of its employees are now working remotely, and are conducting a "matter-by-matter review of investigations and litigations" to consider appropriate modifications, and are imposing travel restrictions and reallocations of resources. These types of changes are updated daily by government regulators and the courts, impacting legal deadlines and obligations that flow to organizations doing business before the government.

Concurrent with how courts and agencies are possibly modifying legal obligations that flow to private parties, additional notices are being sent by government agencies to forewarn against ways in which bad actors are taking advantage of the pandemic.

The FTC announced warning letters recently, and has committed to maintaining its mission of protecting consumers. Similarly, the Commodity Futures Trading Commission (CFTC) just sent a customer advisory on frauds seeking to profit from market volatility caused by COVID-19. This CFTC advisory echoed an Attorney General memo circulated to the 93 U.S. Attorneys nationwide directing prosecutors to prioritize prosecuting scammers who are seeking to exploit the pandemic.

These direct actions taken by government regulators and entities in response to the pandemic are distinct from the fast-evolving actions that federal, state, and local governments are taking to actively mitigate the pandemic's public health impact. Some of these actions include the issuance of public health/safety

guidance, as well as fast-moving directives to implement quarantines and closures of activities common to every day public life. These types of government directives, typically issued through executive orders and/or regulator guidance, can not only inform key-decision making in an organization, but it can also buttress legal positions for an organization going forward, should disputes arise later with respect to certain policies or actions adopted by the organization. It is therefore incumbent to ensure that an organization is keeping up to speed on the fast-moving pieces of guidance and executive orders coming from the government.

Finally, the entirety of government is now tasked with dealing with the pandemic, and that includes both the Executive Branch and Congress.

On the Congressional front, the federal policy response is evolving extraordinarily quickly, with lawmakers now attempting to conduct business quickly due to the possibility that the institution itself may shut down for public safety reasons.

Congress is considering policies affecting unemployment, health care protection, and funding to back certain industries as well as getting cash immediately to Americans. Whatever policies get instituted and are up for debate, these policies may have direct and collateral consequences for your industry and/or your organization, and may even provide helpful fiscal or alternative resources to navigate the pandemic. In fact, as the number on “phase 3” of a stimulus package continues to grow to exceed \$1 *trillion*, trade associations are flooding Capitol Hill with requests for stimulus funds, urging lawmakers to consider backstopping their industries and members.

Carefully tracking these fast-moving updates – which impact all industries – will allow the organization to make better informed decisions while navigating ongoing procedural and legal obligations to weather the pandemic.

Scrupulously Analyze Current Legal Protections; But Don't Discount Extra-Legal Solutions to Navigate the Pandemic

In this fast-moving environment, an organization's legal department should be fluent on the particulars of supply and vendor contracts and the provisions that will likely pertain to this situation (e.g. whether the current pandemic qualifies as force majeure), as well as insurance protections and public disclosure requirements. This type of legal analysis, however, should not narrowly confine the organization as it attempts to figure out solutions to navigate the pandemic.

As has become apparent, the pandemic is having an enormous, disrupting impact on all industries – including government regulators and enforcers – and an organization will invariably have to make decisions that are not solely based on legal analysis.

For example, if an operative contract between the organization and a vendor includes contract language that benefits the organization, but ultimately disadvantages the vendor, the organization may wish to evaluate a softer approach to resolve disagreements in a way that considers non-legal solutions, taking into account perhaps long-standing business relationships, public safety, and industry-wide concerns. In this way, resolving

legal disputes may require alternative dispute resolution approaches to optimally survive this crisis.

Critically, this is also why the legal function in any organization should also be keyed in to the overall strategic mission of the organization during this pandemic. Counsel should be acutely aware of the public health objectives of the organization; the short-term and long-term business goals of the organization; state of the customer and business relationships; and overall mission of the organization in evaluating potential legal disputes.

Cybersecurity Must Continue to be an Absolute Priority

Coming on the heels of the release of the U.S. Cyberspace Solarium Commission (CSC), a reported hack of the Department of Health and Human Services, and fraudsters exploiting public fears, bad actors will invariably be active in attacking organizations and causing disarray during this period of general vulnerability. Indeed, not only will private organizations appear vulnerable during this pandemic, but the “cops” – government intelligence and enforcement agencies – will need to address potential disruption themselves due to the pandemic.

There have also been reports of rampant bot activity, and particularly with the upcoming election season, bad actors have every incentive to engage in active measures (to include cyber attacks) at this time. It will therefore be incumbent upon organizations to remain equal to the task to protect themselves. This includes reminders to personnel to exercising vigilant cyber hygiene (along with social distancing personal hygiene recommendations), and actively monitoring patch management for systems, software, and networks, and ensuring that policies and controls are firmly in place to be monitored and used by IT security leaders in the organization.

Indeed, on the topic of cyber hygiene, because social distancing and quarantines will become more intense in the coming weeks, organizations will likely be engaging in a mass scale transition to virtual workplaces.

To the extent that a large number of employees will now be working remotely – in some cases for the first time ever – it will require employees to recognize and exercise good judgment in the face of phishing attempts and other attempts to unlawfully penetrate networks. The costs are simply too great to forsake cybersecurity efforts at any point during this pandemic.

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