

MANAGE TODAY, PREPARE FOR TOMORROW

Preparing Today for Registered Investments Advisors' New Normal

This information looks forward to the post-COVID-19 environment that will face registered investment advisors (RIAs) and their organizations, and provides guidance as to what needs to be done today in order to prepare for some aspects of the “new normal.”

1 Act now to mitigate post-COVID litigation risk.

COVID-19-related litigation, in the form of lawsuits and arbitrations, will be brought against advisors and their organizations by their advisory clients. Some of the litigation will be legitimate; most will be frivolous; but all comes with costs, including distraction from time with clients and properly minding their business, possible reputational harm and legal fees. Plaintiffs' lawyers are soliciting investor clients to make claims against their advisors and their organizations because, “These losses must be someone's fault!”—and that someone may as well have deep pockets or insurance coverage. Click [this link](#) for important, additional guidance as to what advisors should be doing now to avoid or otherwise deal with post-COVID litigation. The guidance provided in this communication and the linked information will put advisors in a better position to avoid COVID-related litigation, if possible, and to successfully defend themselves against it, if necessary.

2 Comply with regulatory requirements, including requirements to adopt, maintain, and adhere to certain internal policies.

Review your compliance program, business continuity plan (make sure it provides for working remotely), disaster recovery plans, business succession, and cybersecurity policy. These likely have been and will continue to be impacted. Failure to comply with the terms of your policies can result in liability and lawsuits against RIAs by their investor clients.

3 Review all existing internal policies and consider modifying them (whether or not legally required to do so).

Consider selectively modifying any pre-COVID-19 policies that are needed in light of COVID-19—perhaps because an existing pre-COVID-19 policy may impose practices or requirements that don't work or are not needed post-COVID-19—or because a new policy is needed.

4 Communicate with clients early and often.

While this item states the obvious, it is too important not to emphasize. Assuming that, “no news from clients is good news” in the current climate is not wise. It is critical that advisory personnel reach out to their clients—even if the communication is a difficult one, and do so regularly.

5 Review Your Form ADV and Duties to Clients.

Click [this link](#) to familiarize yourself with some SEC-granted extensions on updates to Form ADVs (and brochures). While the SEC has granted some extensions on Form ADV filings (and brochure deliveries), RIAs should evaluate whether to take advantage of such filing deadline relief. Determine whether any other-than-ordinary changes are required to Form ADVs (i.e., CARES ACT loans, liquidity concerns). RIAs should constantly be assessing their obligations to their clients in light of COVID-19' including their fiduciary duties under the securities laws.

6 Update advisory personnel on the tax-related provisions included in recent COVID-19 legislation.

This includes the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”) so that advisors can consider such tax provisions when servicing individual clients. Also, given the favorable changes to the charitable contribution deduction limitations under the CARES Act, clients may desire to increase their philanthropic giving. More market driven tax strategies and opportunities should be considered as well, such as the harvesting of tax losses. See [this link](#) for more tax-related guidance.

(continued)

7 Comply with new and changed employment-related laws.

Whether or not you have already, or are considering, right-sizing your organization, be sure to comply with applicable employment and employee rules, generally, and with the employment-related provisions of the CARES Act, specifically. The numerous following links provide additional employment-related guidance reflect the extensive and important changes in this area:

- [Trump Administration Announces Guidelines for "Opening Up America Again," Including Recommendations for Employers](#)
- [EEOC Issues Updated Guidance Regarding COVID-19 Employment Issues](#)
- [Returning to Normal Operations after COVID-19](#)
- [CARES Act Provides Expansion of Unemployment Benefits](#)
- [DOL and IRS Issue Additional Guidance Regarding FFCRA—including Answers to Four Common Questions](#)
- [Employers may Elect to Exclude Health Care Provider and Emergency Responder Employees from FFCRA Paid Leave Provisions](#)
- [Key Provisions for Employers in the Coronavirus Aid, Relief, and Economic Security \(CARES\) Act](#)
- [DHS Demonstrating Flexibility in Response to COVID-19](#)
- [Employer Tax Credits Against Payroll Tax Obligations Under the Families First Coronavirus Response Act](#)
- [Revised Families First Coronavirus Response Act Narrows the Scope of Emergency FMLA Expansion and Paid Sick Leave Benefits](#)
- [U.S. Department of Labor Offers Guidance on COVID-19 Wage Related Issues](#)
- [COVID-19: Focus on Employment Law Considerations](#)

8 Update advisory personnel on the employee benefits-related provisions included in recent COVID-19 legislation and consider ongoing compliance of the RIA's plans.

Extensive changes include provisions that employers may elect to include in their 401(k) plans, including allowing employers to amend their plans to: (1) provide for in-service distributions of up to \$100,000 for participants who have been impacted by COVID-19; (2) provide an expanded loan program whereby participants can borrow up to the lesser of \$100,000 or 100% of their account balance. Click on [this link](#) for more employee benefits-related guidance, and be sure to review ongoing compliance with anti-discrimination rules applicable to 401(k) and other benefit plans, particularly in the case of right-sizing.