

# MANAGE TODAY, PREPARE FOR TOMORROW

## Post COVID-19 Litigation

There will likely be a massive amount of litigation in the post-COVID-19 world. Some of the lawsuits will be legitimate and others will be frivolous but both come with a cost: in distraction from your primary business purpose and in legal fees. Consider the **Top 10 Things businesses** should **think about doing NOW** to prepare for the post-COVID world. Doing so can reduce the likelihood of being sued, and will certainly reduce the likelihood of being sued **successfully**.

**1**

### Have a Reason for What you are Doing

Everyone is making difficult decisions that were not planned for in real time. If you are not able to explain any extraordinary decisions you made (why you did what you did) someone will provide their own reasoning, and you are unlikely to like their explanation! (E.g., Essential operations you prioritized or why you altered standard business practices)

**2**

### Document, Document, Document

Contemporaneous documentation of daily activities that are planned, purposeful, and prepared by well trained and authorized company representatives is the best way to explain what you are doing and why. Holes in your documentation create uncertainty and uncertainty can add significant expense to litigation.

**3**

### Sanitize Your Work Processes

Everyone is working remotely. Wherever possible, make sure people continue to exclusively utilize work emails and work computers rather than personal devices to limit instances where discovery would extend to personal computers, telephones, and devices.

**4**

### Evaluate Your Document Retention Policies

Does your previous policy still make sense today and will it make sense tomorrow (and, per above, whether you make a change or not, have a reason for whatever you do)?

**5**

### Assess Your Regulatory Compliance and Exposure

Every historical economic downturn has been followed by increased government enforcement actions. Make sure you have assessed your paperwork, policies, procedures, and compliance for when the government comes knocking... because they will.

**6**

### Look For Small Problems that Might Fester

Get rid of the problems you can, now. Identifying and removing these problems is like managing a brush fire, as getting rid of this underbrush can help keep things from getting worse. However, make sure that whatever positions you take today are evaluated, framed and presented to prevent them from being used against you when the shoe is on the other foot (i.e., your position on force majeure or enforceability of contract terms).

**7**

### Be Aware of Wrongdoing and Avoid Questionable Conduct

At times like this, anything appearing too good to be true likely is. Because a competitor engages in questionable conduct does not mean you should do so. "They were doing it too" is a lousy defense and the second person to act is often the one punished.

**8**

### Take This Opportunity to Strengthen Your Relationships

People are less likely to sue someone they like and trust. Check in on business partners, employees, and vendors, especially those who may be in some distress. Letting people know you care makes a difference and can enhance your future prospects for success.

**9**

### What Changes or Concessions Might you Be Willing To Make or Need in your Contracts?

The contracts under which we are all working did not necessarily envision a post COVID-19 world. What changes might you need to seek in your agreements and what changes are you willing to make for your strategic partners? This approach could allow you to avoid unnecessary litigation.

**10**

### Think Long-Term

Do not make short sighted decisions. The best interest of your business, employees, and customers goes far beyond what happens today. These groups will remember less about the day-to-day shelter-in-place experience but never forget how they were made to feel.

#### For more information contact

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