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Survey Shows In-House Lawyers Preparing for Worst From Covid-19

Crises often manifest themselves in unique ways.

When David Newman served on the staff of the National Security Council, he often found himself brainstorming with colleague John Carlin about how another nation-state might launch a U.S. cyberattack. Playbooks were prepared for all kinds of eventualities—and then the actor and director Seth Rogen made a comedic film about North Korea and all hell broke loose.

Carlin and Newman still work together, although now they're partners in the national security practice at Morrison & Foerster, where Newman is head of a coronavirus task force at the law firm and part of a team of more than 60 lawyers providing crisis management counsel to clients coping with the fallout from the spread of the disease.

Newman provided Bloomberg Law with an analysis of 110 senior in-house lawyers at global corporations with revenues of up to \$20 billion to try and understand how the Covid-19 pandemic is affecting their business operations and future planning.

On a 10-point scale with 10 being the most severe, those surveyed rated the current impact level a 7.2. Only 10% of those polled reported a low impact “as of today,” with 52% calling the coronavirus severe.

Still, a majority still expect a less severe long term impact. Within 24 months, the percentages almost flip: 51% expect a relatively low impact at that point, compared to 12% for severity.

Newman said in-house lawyers have “very specific needs” during this uncertain time, so instead of doing another webinar, the firm used data analytics software from Qualtrics to survey clients and those “within our network” to get a sense of the myriad challenges facing corporate counsel.

Crunching the Numbers Newman himself is no stranger to pandemics, having been a chief of staff to the Obama administration’s “Ebola czar,” Ronald Klain, when the latter coordinated the U.S. response to that deadly virus in 2014-15. (Klain, now general counsel at venture capital firm Revolution LLC, has been a vocal critic of the Trump administration’s response to the Covid-19 pandemic.)

Newman, who in 2017 joined MoFo, the colloquial name for the global firm, said that MoFo was a bit more prepared than most for the U.S. ramifications of Covid-19 because its five offices in Asia felt its impact first earlier this year. Newman, like lawyers in most of

MoFo’s U.S. offices, is now working from home, catching up via conference calls and other means with clients doing the same.

“The folks we talked to said this will be transformative and change the way they do business,” said Newman about MoFo’s survey, which went to general counsel, chief compliance officers, and other top in-house lawyers. “They’re not just thinking about the nearest wolf at the door, the labor and employment issues, but compliance with today’s orders and what their workforce and relationship with suppliers is going to look like six months from now.”

From adopting new capital structures and contractual obligations, dealing with the privacy and cybersecurity implications of a remote workforce, to working with governments around the world dealing in different ways with the coronavirus outbreak, Newman said in-house lawyers are grappling with a wide array of legal issues stemming from the crisis. Some key takeaways:

Overall business impact: While not the most severe, 52% of companies rated the impact level at 8.0 or higher, indicating that companies in different industries and of various sizes are being affected differently. Within six months, the impact metric remains steady at 7.1, followed by 5.7 (12 months), and 4.0 at (24 months).

Biggest potential risks: Employment/human resources (85.5%); contracts (67.3%); supply chain disruption (56.4%) were the top listed, regardless of company size.

Measures taken: Suspension of business (18.2%) and layoffs/furloughs of workforce (12.7%) showed that only a minority of businesses surveyed are taking drastic measures due to Covid-19. More popular actions involved setting up remote working environments (98.2%); canceling internal meetings/events (94.5%); banning business travel (90%); and canceling external events (89.1%).

Top personal challenges: Providing legal counsel on unprecedented issues (64.5%) and making decisions in uncertain times (55.5%) were the most cited. Others were protecting the company from risk (39.1%); supporting the business (36.4%); managing a remote team (27.3%), resolving issues that could cause reputational/financial damage (26.4%), and moving transactions forward that generate revenue (22.7%).

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