



IMPACT SURVEY

COVID-19 and Easing of
Stay-At-Home Orders

**MORRISON
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In response to the global COVID-19 pandemic, Morrison & Foerster released its *COVID-19 Business Impact Survey* in March of this year, to understand how in-house general counsel from global corporations were managing the immediate and long-term business impact of the virus. Now, as the world adapts to the ongoing COVID-19 pandemic, Morrison & Foerster has once again surveyed over 100 in-house general counsel from global corporations to understand how the pandemic and the easing of stay-at-home orders are impacting their businesses now and how they expect to be impacted over the long term.

As companies begin to map out their recovery plans, assess how business has changed, and determine which operating guidelines will become permanent or semi-permanent to accommodate COVID-19's continued presence, "business as usual" no longer applies. As in-house general counsel adapt to this new business reality, assessing the impact of COVID-19 on the business as they gradually reopen after months of shutdowns, and the legal risks they believe they are facing over the next six to 12 months, will be critical to their ongoing recovery.



METHODOLOGY

For our Coronavirus (COVID-19) Easing Stay-at-Home Orders Survey, Morrison & Foerster surveyed in-house legal professionals around the globe with revenues up to more than \$20 billion. The survey was conducted between May 20 and 28, 2020.

The top three industries represented in the study include: technology (22%), followed by finance and insurance (20%), and manufacturing (9%).



FINDINGS

While COVID-19 continues to have a significant impact on companies worldwide, and many of the issues that were top of mind in our first study still remain, our new findings indicate increased optimism with respect to how businesses are navigating the impact of the pandemic as well as a shift in priorities in the current environment now that businesses have had a few months to adapt to the new business landscape.



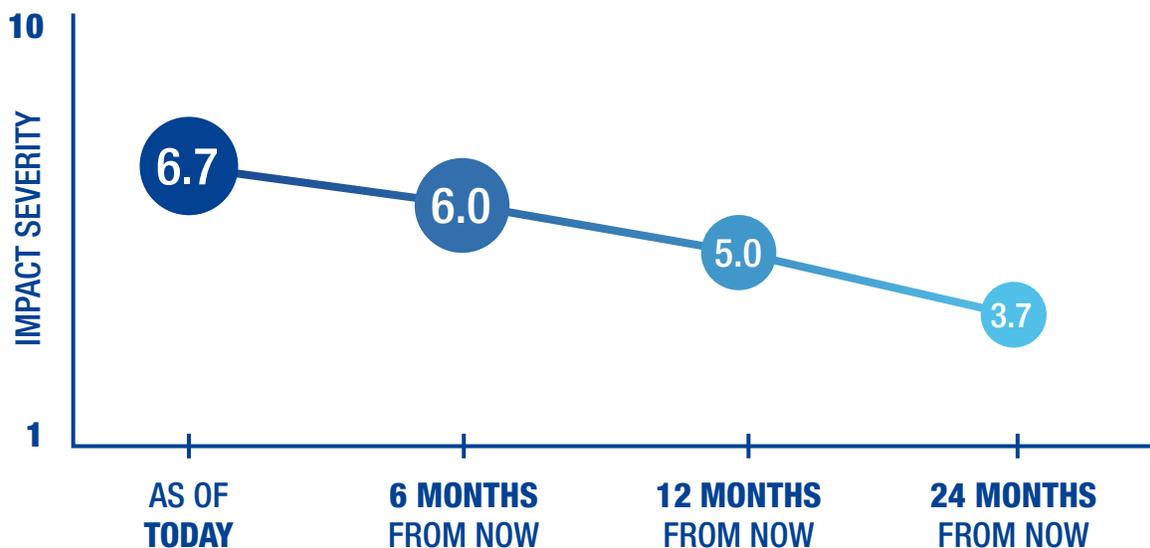
[T]HE SURVEY SUGGESTS AN INCREASED FOCUS ON PRIVACY AND DATA SECURITY AS COMPANIES OF ALL SIZES APPRECIATE THE RISKS OF OPERATING IN REMOTE WORK ENVIRONMENTS AND STUDY THE FEASIBILITY OF MEASURES TO MITIGATE THE SPREAD OF INFECTION AS STAY-AT-HOME ORDERS ARE LIFTED.

David Newman, Morrison & Foerster Partner and Head of the Firm's Coronavirus (COVID-19) Task Force, who served as Chief of Staff of the Ebola response office in 2014 – 2015 while an official on the National Security Council staff.

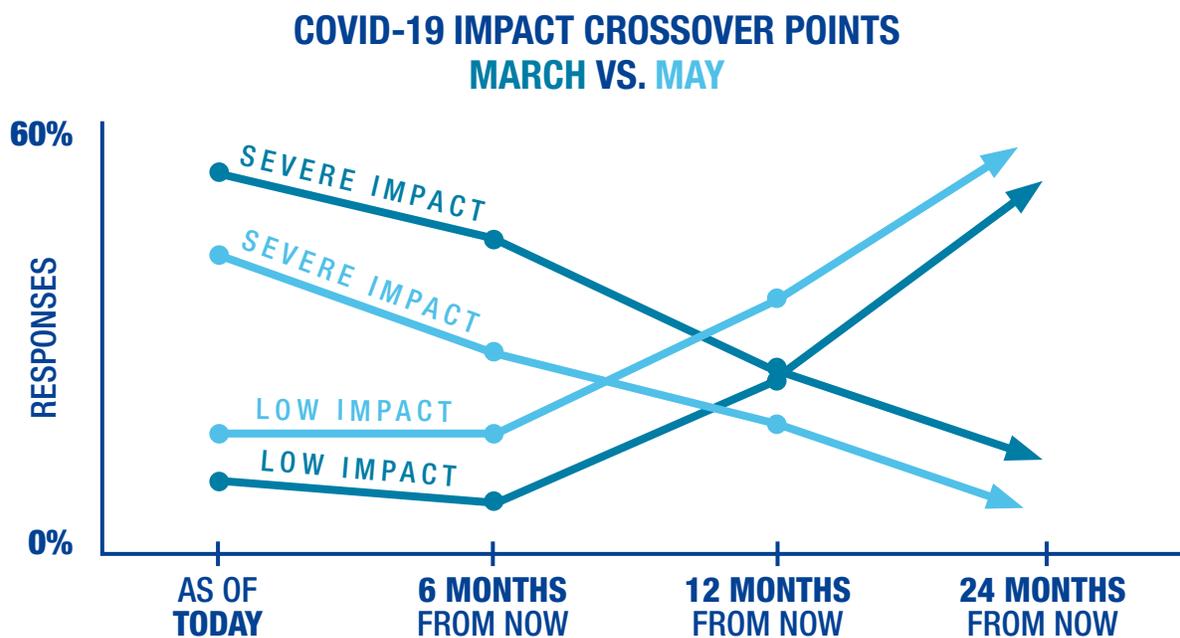
“The survey underscores that the pandemic continues to have a dramatic and disruptive impact on companies and legal departments – and that significant disruption is expected to remain the norm for at least the next two years,” said David Newman, Morrison & Foerster Partner and Head of the Firm’s Coronavirus (COVID-19) Taskforce. “While the overall assessment of disruption is largely unchanged from the previous survey conducted two months ago, we are seeing cautious indications of optimism. In addition, the survey suggests an increased focus on privacy and data security as companies of all sizes appreciate the risks of operating in remote work environments and study the feasibility of measures to mitigate the spread of infection as stay-at-home orders are lifted.”

As expected, Coronavirus (COVID-19) is continuing to have a significant impact on businesses, with the severity of the impact changing little from the previous two months. Impact averaged 6.7 on a 10-point scale – 10 representing the most severe impact – versus 7.2 previously and continues near that same level (6.0) for the next six months, compared to 7.1 previously. As referenced earlier, legal counsels expect the impact level to decrease over the next 12 (5 vs 5.7) to 24 (3.7 vs 4) months, but they do not see it completely dissipating.

IMPACT COVID-19 HAS/WILL HAVE ON YOUR BUSINESS (SCALE OF 1–10)



Although average impact levels have changed little over the past two months, one can see that there is greater optimism today than two months ago when looking at those that rated impact as “Severe” (8+). The number of companies rating the impact as severe today versus two months ago dropped by 10 percentage points, from 52% of companies to 42%. This likely reflects companies’ experience having navigated and survived the challenges of the first months of the pandemic – and greater optimism accompanying an easing of stay-at-home orders. That more optimistic view of impact, as well as the recovery, can be seen across the board, regardless of time frame.

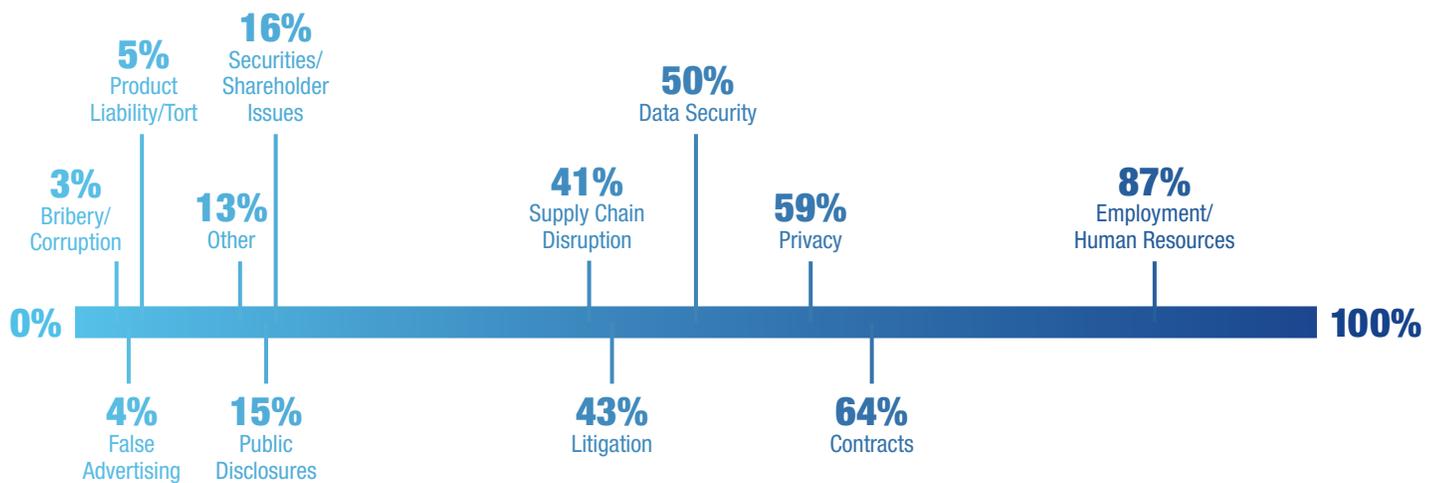


That said, it bears emphasis that companies still believe full or near recovery is still 24 months away.

In terms of legal department workload, little has changed in two months, with approximately three out of five respondents (69%) reporting that their current workload has increased as an immediate result of COVID-19 and that a majority expect it to continue to increase for the next six months (51%). It’s interesting to note that, although workload has increased, few companies report increases in legal department staffing levels today (5%) or six months from now (7%). However, staffing increases are expected to begin 12 months from now, potentially reflecting the length of time typically required to recruit legal talent and/or tighter budgets based on the immediate revenue impact of COVID-19.

“It is unclear how legal departments are going to bridge the gap between the immediate increase in workload and the delay in getting additional resources,” said David Newman. “Likely, they will have to reallocate the budgets they do have and prioritize the mission critical concerns at least over the short term, until they begin to re-hire and see their staffing levels begin to increase.”

TOP LEGAL RISKS COVID-19 POSES TO YOUR BUSINESS AS COVID-19 STAY-AT-HOME ORDERS EXPIRE/RELAX



Employment/Human resources (87%) and contracts (64%) continue to be the top two legal risks posed by COVID-19, regardless of company size or industry.

“Many companies have established new practices for their employees and resolved issues arising from shelter in place orders. The challenge now is to navigate the complex and sometimes conflicting guidance from authorities in having their employees return safely to the office,” said Morrison & Foerster Employment and Labor Partner Janie Schulman.

In contrast to our previous findings, issues related to privacy and data security have more than doubled, with privacy now considered the number three risk to the company at 59%, versus 18% just two short months ago. Similarly, data security has moved up as the fourth risk with 50% of respondents citing it as a significant concern today, versus just 18% previously. As these issues have risen in risk level over the past two months, supply chain disruption has dropped from the number three risk to the number five risk (56% to 42%).



WITH THE VAST MAJORITY OF LARGE COMPANY EMPLOYEES WORKING REMOTELY DURING THE COVID-19 PANDEMIC, WE'VE SEEN A SIGNIFICANT INCREASE IN CYBERATTACKS, PHISHING ATTEMPTS, AND SCAMS THAT HAVE OCCURRED.

Miriam Wugmeister, Morrison & Foerster
Partner and Co-Chair | Privacy and Data Security

“With the vast majority of large company employees working remotely during the COVID-19 pandemic, we’ve seen a significant increase in cyberattacks, phishing attempts, and scams that have occurred. Hackers and bad actors are capitalizing on the fear of the moment and the widespread use of unsecured wireless networks by unassuming employees,” said Miriam Wugmeister, Partner and Co-Chair of Morrison and

Foerster’s Privacy and Data Security practice. “While all of this is happening, IT departments and cybersecurity groups have never been more stretched and the bad guys know it. Now, more than ever, companies are under increased pressure to reinforce their privacy and data security plans and demonstrate to regulators how they intend to mitigate these new and evolving risks.”

“We’re not out of the woods when it comes to supply chain issues brought on by the pandemic,” said Business Restructuring + Insolvency Partner Jennifer Marines. “The virus itself has largely dictated disruptions in the supply chain as well as consumer demand. The best thing suppliers of goods and services can do to protect themselves is take proactive steps to put themselves in a more favorable position in the event that a customer files for bankruptcy.”

In terms of company size, it’s interesting to note that although only 16% of companies overall cited securities or shareholder risk, of those citing it as a risk, 70% were companies with revenues over \$1 billion dollars. And, again, although only 15% of companies cited public disclosures risk, 85% citing it were from companies with revenues over \$1 billion dollars.

“This likely reflects the fact that companies have already made the necessary disclosures. The issue will be additional disclosures required if there continues to be a deterioration or a sudden improvement in business conditions,” said David Lynn, Morrison & Foerster Partner and Corporate Finance Co-Chair.

WHAT LITIGATION ACTIONS DO YOU EXPECT YOUR BUSINESS WILL FACE AS STAY-AT-HOME ORDERS EXPIRE/RELAX?

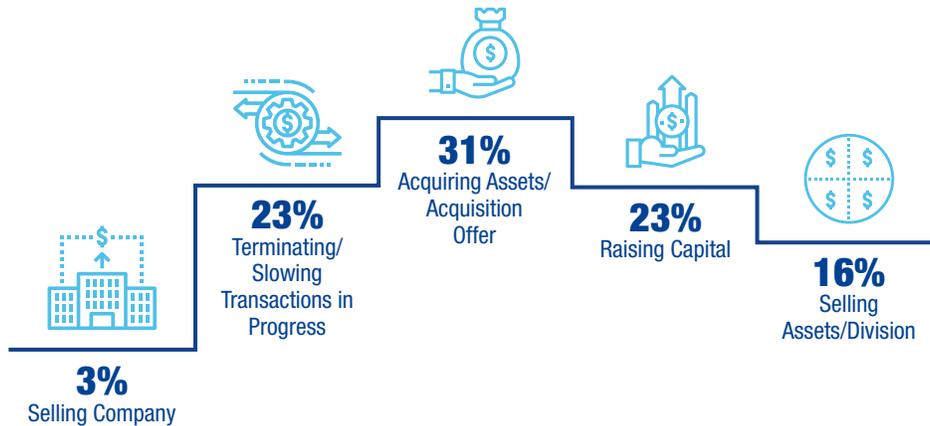


In terms of litigation actions, respondents expect their business to face with the easing of stay-at-home orders, two out of three companies (67%) expect employment/human resource litigation to be the top action they face, followed by contract disputes (47%), directly aligning with the top two reported business risks. Regardless of company size or industry, these risks were top of mind.

“Employment and human resources litigation may be inevitable as employees head back into their offices because there are competing regulations, individuals making decisions about where they work based on unique medical factors, and different levels of risk tolerance,” said Janie Schulman. “However, knowing all of this, employers need to be devising detailed plans and outlining how they intend to protect their employees in these circumstances. You don’t want to be the business that’s on the 6 o’clock news in a report that says one of your employees died because you wouldn’t let employees wear masks in the workplace.”

When asked about business transactions companies are considering taking in the next nine months, approximately one-third (31%) of respondents reported that acquiring assets or making an acquisition offer was part of their immediate plan. Approximately one out of five companies plan on raising capital (23%) or terminating or slowing down any transactions currently in process (23%). Less than 3% of companies were considering selling the business altogether, while 16% are considering selling assets or business divisions. “There seems to be a clear divide between companies that have weathered the crisis well and those who haven’t. On one hand, there are those companies that are opportunistically using the market opportunity and their liquidity to seek out and purchase

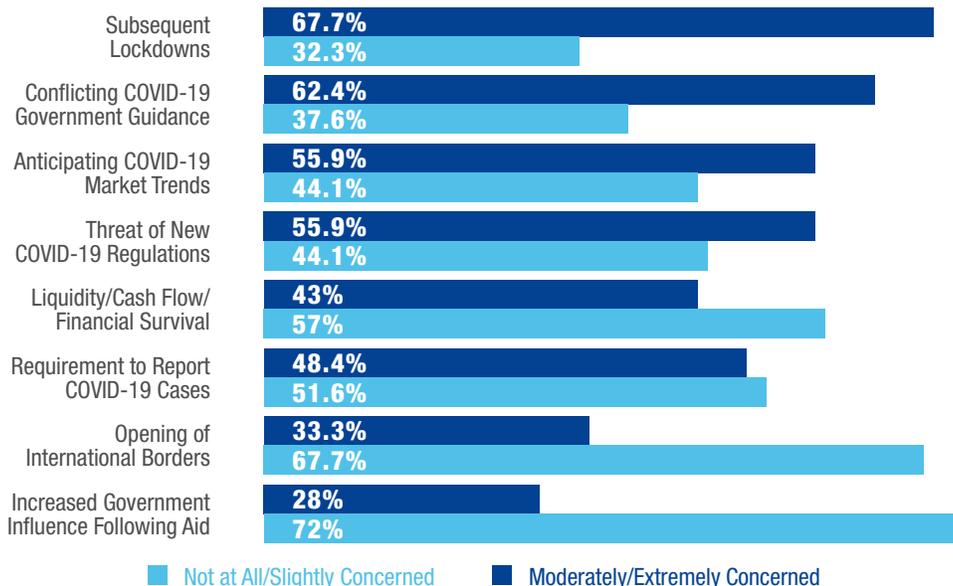
WHICH ACTIONS IS YOUR COMPANY CONSIDERING TAKING IN THE NEXT 9 MONTHS?



discounted assets. And, on the other, those that are cash constrained and raising capital to ensure that they have enough cash on hand to withstand a prolonged slump or resurgence of COVID-19 restrictions in the fall and are perhaps selling off assets and/or the company in its entirety,” said Morrison & Foerster Corporate Department Co-Chair Eric McCrath.

Nearly two-thirds of respondents report that business leadership is moderately to extremely concerned with the threat of subsequent lockdowns (67.7%), followed by conflicting government guidance (62.4%). Over half are also moderately to extremely concerned with the threat of new COVID-19-related regulations/restrictions (55.9%) as well as anticipating post COVID-19 market trends (55.9%).

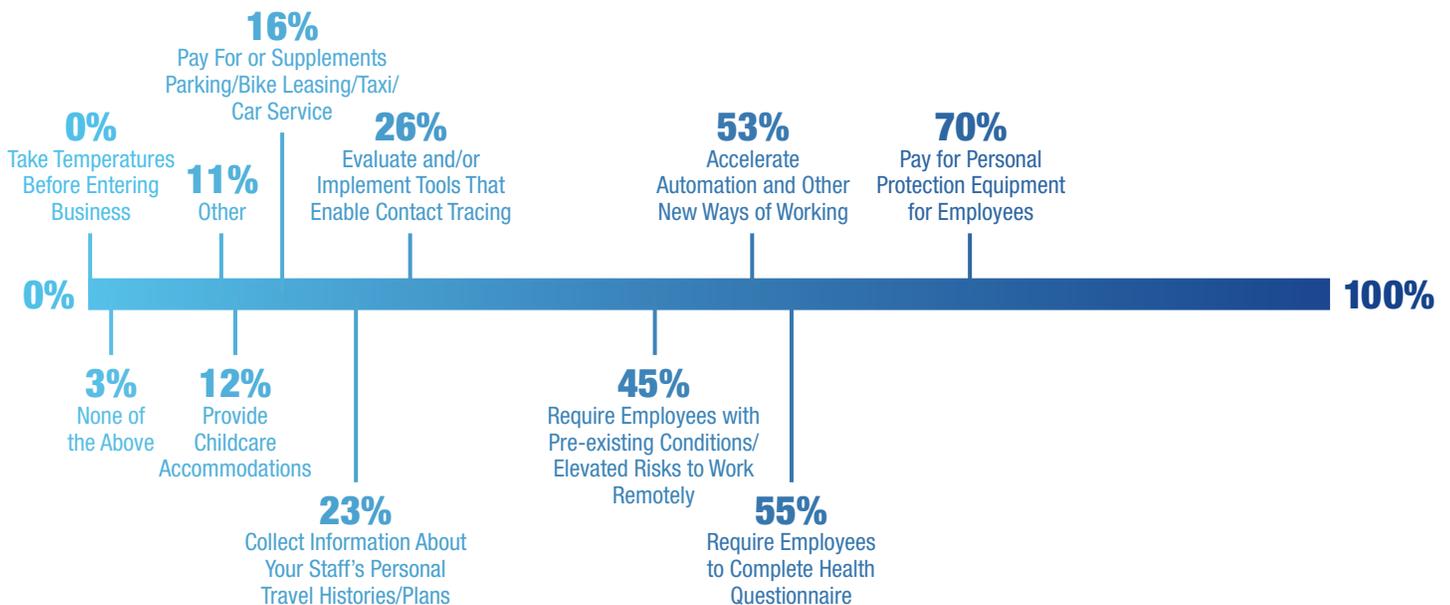
HOW CONCERNED ARE YOU AND YOUR BUSINESS LEADERSHIP REGARDING THE FOLLOWING:



“These findings are consistent with what we’re hearing in our conversations with our clients,” said David Newman, Morrison & Foerster Partner and Head of the Firm’s Coronavirus (COVID-19) Taskforce. “The challenge now will be understanding what the next phase of the pandemic will look like. But having just lived through the first stage of the virus, companies now have some insight into the challenges and issues involved in operating at a time of stay-at-home orders and with a persistent risk of infection.”

On the flip side, a large majority of respondents were not at all or only slightly concerned about increased government influence following government aid (71%) and the opening of international borders to enable better flow of goods and people for business (67%), while slightly more than half were not at all or only slightly concerned about their liquidity/cash flow financial survival of their company/business and a requirement to report suspected or confirmed employee COVID-19 cases.

BUSINESS ACTIONS TAKEN IN RESPONSE TO THE RELAXATION OR REMOVAL OF COVID-19 STAY-AT-HOME ORDERS



Some immediate business actions in-house counsel say their companies are planning to take in response to the relaxation or removal of COVID-19 stay-at-home orders include paying for personal protection equipment for employees (70%), by far the highest initiative planned. That was followed by slightly more than half of companies planning to require employees to complete

a questionnaire regarding their health status (55%) and accelerating automation and other new ways of working (53%).

Few companies planned to lessen the burden on employees by paying for or supplementing parking/ bike leasing/taxi/car service for employees to avoid public transportation (16%) or provide childcare accommodations for employees (12%) or implement more personally invasive actions, such as taking temperatures of employees, clients, and customers before entering the business or workplace (<1%), evaluating and/or implementing tools that enable contract tracing or geo tracking of employees (26%), or collecting information about staff's personal travel histories/plans (23%).

“I have been impressed with employers' genuine concern for the welfare of their employees and understand their additional concern about potential liability if they do not take precautions sufficient to satisfy the dizzying maze of rules with which they have been inundated over two short months. At the same time, however, employers are mindful of the need to reserve capital and control cash flow at a time when revenue is down and the economy uncertain. Employers are working hard to strike this delicate balance,” said Morrison & Foerster Employment and Labor Partner Janie Schulman.

When asked to share their thoughts on the business or legal impacts of COVID-19 and the subsequent loosening of stay-at-home orders, survey respondents offered a wide range of challenges they expect to face in the coming months. Given some of these challenges, some respondents said their companies might even move to a permanent work-from-home business environment:

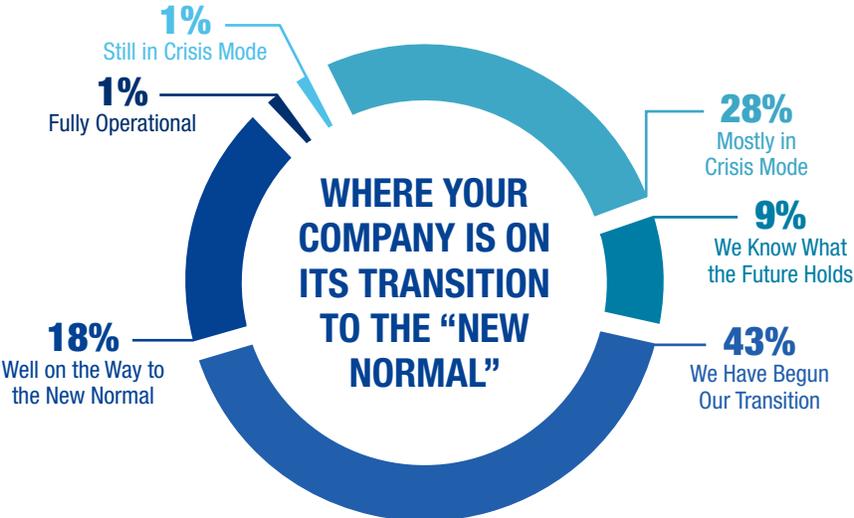
- “I am worried about inconsistent approaches of states and keeping up with changes/requirements.”



I HAVE BEEN IMPRESSED WITH EMPLOYERS' GENUINE CONCERN FOR THE WELFARE OF THEIR EMPLOYEES AND UNDERSTAND THEIR ADDITIONAL CONCERN ABOUT POTENTIAL LIABILITY IF THEY DO NOT TAKE PRECAUTIONS SUFFICIENT TO SATISFY THE DIZZYING MAZE OF RULES WITH WHICH THEY HAVE BEEN INUNDATED OVER TWO SHORT MONTHS.

Janie Schulman, Morrison & Foerster
Partner | Employment and Labor

- “Effective planning to reopen has been incredibly difficult for our company without widespread testing, treatments, and vaccines. Information is a black hole of contradictions and assessing risks impossible in the absence of reliable data. Cases are undercounted, asymptomatic carriers are unidentified, and the stakes are life or death. It’s a nightmare.”
- “We anticipate ‘Work From Home’ will be our primary method of operation for many months, and, for a good portion of our employees, it may now be permanent.”
- “Our industry (financial services) was exempt from most orders, so their imposition (and relaxing) has not directly affected us. We closed our offices ‘voluntarily’ in the interest of employee, client, and public health.”
- “We will likely have much more work from home and over time decrease our office space footprint.”



And finally, as companies around the globe adapt to conducting business in a post-COVID-19 world, we asked respondents to identify where they felt they were on the transition to the “New Normal.” On the good news side, regardless of size of the company, companies appear to be highly resilient, with nearly two-thirds of the companies reporting that they have at least begun their transition or are fully operational in the “New Normal” (i.e., have begun transition with a long way to go (43%), are well on their way to the “New Normal” (18%), or are fully operational in the “New Normal” (1%)). Unfortunately, approximately one-quarter of the companies are either still in crisis mode, not looking to the future (1%) or mostly in crisis mode, or starting to talk about the future (28%).



CONCLUSION

It is clear that, even months into this pandemic, many companies are still in crisis mode. However, contrary to where they were three months ago at the outset of the pandemic, there seems to be more optimism in terms of a long-term recovery now that companies have had a few months to adapt to their new ongoing COVID-19 business environments. The legal issues companies were originally focused on are now being reprioritized as legal departments are having to “make do” with the resources that they currently have and as new issues have come forward as a result of the evolving work environment and now as some companies prepare to bring people back into their offices and prepare for the next phases of the pandemic.

“We are coming to realize that there is no ‘new normal,’ when it comes to this pandemic,” said David Newman, Morrison & Foerster Partner and Head of the Firm’s Coronavirus (COVID-19) Taskforce. “There is nothing normal about the current situation that we are in, but we are encouraged by the progress that legal departments are making to navigate the crises, to prioritize and reprioritize in the face of new developments, and to mitigate the risks to their businesses.”

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