

Tips to Reduce Legal Risks When Bringing Lawyers, Staff, and Clients Back to the Office

By Kirsten Small



As lawyers begin returning to corporate legal departments and law firms after months of working remotely, they are not returning to business as usual. Reopening means adopting new measures to ensure the safety of employees and clients. The resulting challenges range from the logistical (such as reduced occupancy limits in conference rooms) to the ethical (maintaining privilege and confidentiality when speaking to a client from six feet away).

We are providing a [checklist](#) to assist DRI members in navigating a wide variety of legal risks as they reopen their offices. DRI's [Coronavirus Information Center](#) contains additional resources to help lawyers navigate the COVID-19 crisis. In addition, the [Canadian Bar Association](#) and the [American Bar Association](#) are providing resources to help firms navigate the crisis and determine when, and how, to reopen their physical locations. Other resources include [a helpful checklist and graphics](#) from the Ontario Bar Association. Lawyers in the U.S. can find additional guidance from state and local bar associations. See *also* [Nexsen Pruet webinar on COVID-19 litigation](#), including segment from the Electronic Privacy Working Group's Kirsten Small on privacy law issues with returning to work.

Often missing from such guidance is information about privacy and cybersecurity aspects of returning to work. These are important considerations for any business, but law firms must account for the additional dimension of ethical obligations of technology competence and client confidentiality. Here are some of the top issues that law firms should consider in the months ahead.

1. Plan for the future by considering the past. Like many other businesses, law firms found themselves making an abrupt transition from working at the office and meeting clients face-to-face, to working remotely and meeting clients via Zoom or other video communications apps.

The COVID-19 crisis, with its sudden shift to remote working environments, has spawned increased cybersecurity risks. Individual lawyers must be on guard against “phishing” emails and other cyber-attacks that may lead to compromise of systems and exposure of sensitive client information. At the firm level, adapting to the new normal means reviewing security processes and procedures

related to remote access to confidential client information. Lawyers have, in general, been slow to adopt security measures like virtual private networks (VPN), end-to-end encryption, and two-factor authentication that are standard in other industries. Now is the time to adopt these technologies and to adopt policies requiring their use.

2. Manage liability risks. No less than other businesses, law firms must be concerned with the potential for liability arising from the spread of COVID-19 due to workplace contact. In the face of numerous wrongful death lawsuits that have already been filed on behalf of employees who purportedly contracted the virus at work, initiatives are underway at the state and federal level to consider limiting COVID-19-related business liability.

In most U.S. jurisdictions, workers' compensation is the sole remedy for on-the-job injuries. Because COVID-19 does not fit neatly into the categories of “workplace injury” or “occupational disease” traditionally covered by workers' compensation laws, some carriers may deny coverage, thereby placing the burden on employers through secondary liability. To avoid this, some states are considering legislation establishing a legal presumption that COVID-19 is a workplace injury, while others, such as California, are accomplishing the same result through executive orders. The National Conference of State Legislatures is [tracking this rapidly evolving landscape](#).

3. Consider your surroundings. It appears likely that social distancing will continue to be the norm, even as courthouses reopen and begin to conduct in-person proceedings again. When discussing privileged matters in court or other public spaces, lawyers should be mindful that conversations between people who are six feet apart are more susceptible to being overheard.

4. One size does not fit all. Law firms and legal departments come in all shapes, sizes, locations, and practice areas. The considerations affecting when and how to reopen a physical office are equally varied and unique. Not only that, but current recommendations or guidelines may change as public health experts gain more knowledge about COVID-19. For these reasons, any reopening plan must account for each firm's or company's unique circumstances and legal obligations.

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breach occurs. She is a member of the DRI Center for Law and Public Policy's Electronic Privacy Working Group. Fellow group members Susan Gunter, Brandon Hull, and Laura Clark Fey contributed to this article.