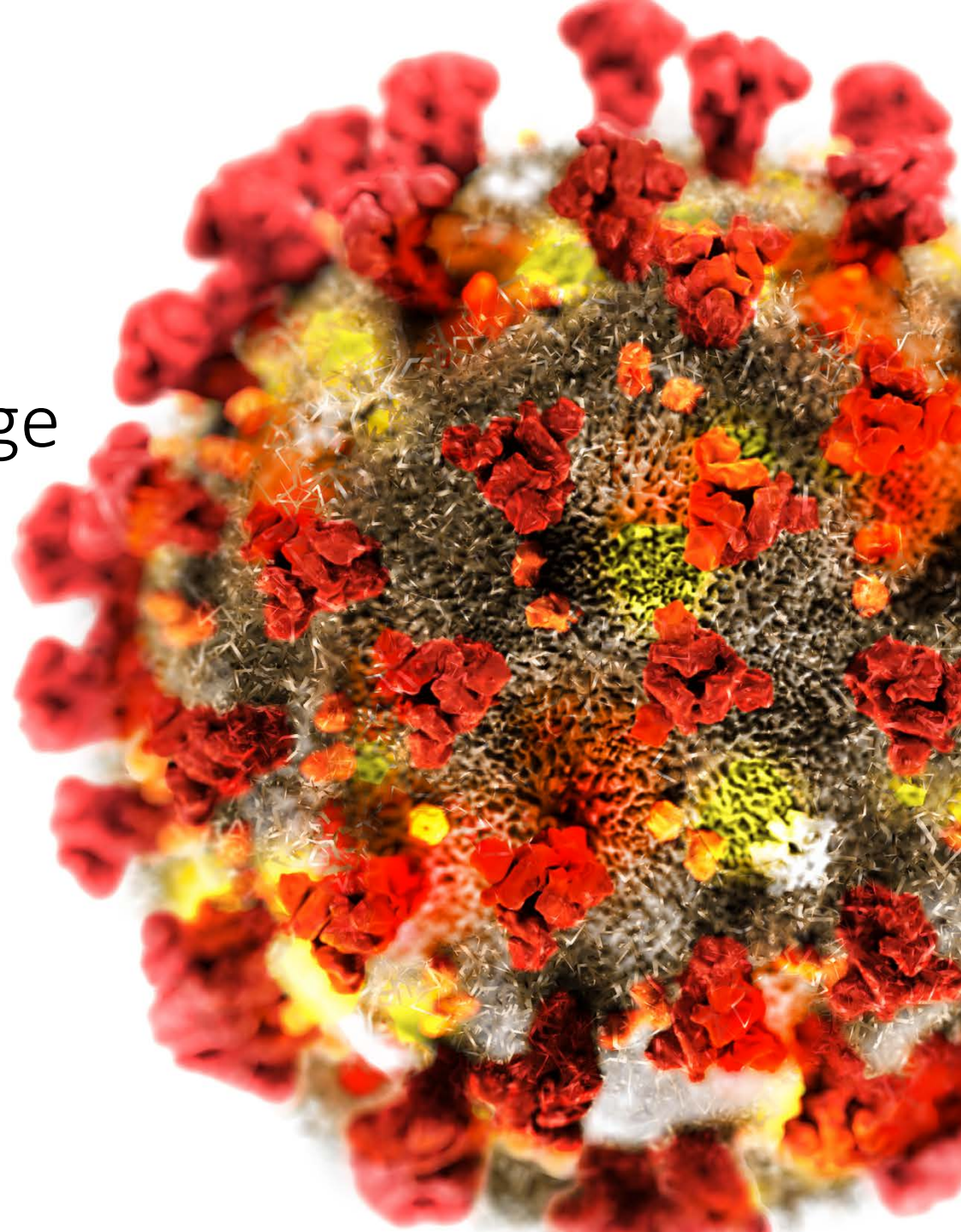


COVID-19 (Coronavirus) Business Implications & Legal Triage

Protecting Your People & Your Business During a Global Pandemic



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Amanda Halter

Partner

Presenters



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David Klein
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Amanda Halter

Partner

“Toto, I have a feeling we are not in Kansas anymore....”

The Coronavirus Pandemic So Far



Amanda Halter
Partner
Crisis Management

Global Picture

- COVID-19 first reported in Wuhan, China (late December 2019)
- First reported U.S. case (January 2020)
- WHO declares global pandemic (March 11, 2020)
 - 118k cases
 - 4,000+ deaths worldwide
- Italy announces nationwide lockdown (March 9, 2020)

The Coronavirus Pandemic So Far



Amanda Halter
Partner
Crisis Management

U.S. Public Health Picture

- All 50 U.S. states have confirmed cases
 - W. Va. last to confirm Wednesday

- Fears of overwhelmed healthcare infrastructure grow
 - U.S. cases soar past 7,000

The Coronavirus Pandemic So Far



Amanda Halter
Partner
Crisis Management

U.S. and Global Public Health Response

- U.S. significantly behind in testing
 - March 18 aid legislation promises free testing for all
- Social distancing is the new normal
- European countries enact nationwide quarantine, tighten borders
- New tests being developed
 - University of Oxford reports 30-min. results
 - WHO organizing study to test various potential treatments

The Coronavirus Pandemic: What Happened



Amanda Halter
Partner
Crisis Management

U.S. Government Response

- Congress passes, President Trump signs federal relief package
 - Paid sick leave
 - Unemployment benefits
 - Free testing
 - Food & medical aid
- Defense Production Act invoked to address supply shortages

The Coronavirus Pandemic So Far



Amanda Halter
Partner
Crisis Management

U.S./World Market Status

- Markets sink to 3-year low
 - Dow closes below 20,000
 - S&P 500 triggers market-wide trading halt
 - Crude oil closes at lowest levels in nearly two decades
- Major retailers shutter:
 - Nike
 - Apple
 - Macy's

The Coronavirus Pandemic So Far



Amanda Halter
Partner
Crisis Management

Global Industry Impacts

- Big 3 automakers shut down U.S. plants
- Airline industry projected to lose \$113B
 - Delta to halt major operations, 70% reduction in capacity
- American Farm Bureau predicts labor shortages, supply impacts
- Hospitality industry projected to lose 45% of jobs

Form Your Core Response Team



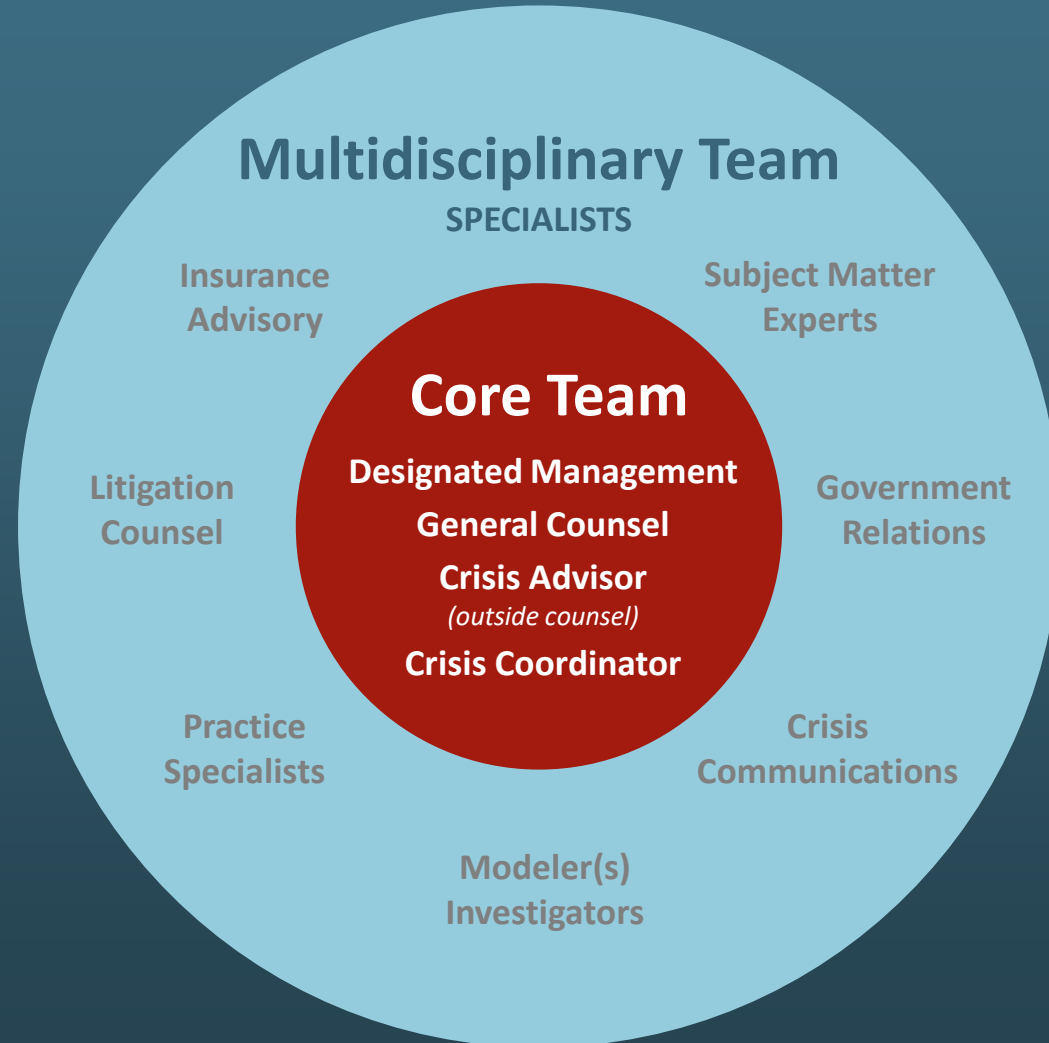
Amanda Halter
Partner
Crisis Management

- Set goals
- Decides and coordinates major response activities
- Manages the fact-gathering and analysis
- Assesses the risks, balances the priorities
- Ensures proper reporting

Assemble Your Team (Trusted Advisors)



Amanda Halter
Partner
Crisis Management



Assign a Crisis Coordinator



Amanda Halter
Partner
Crisis Management

The Crisis Coordinator assures maximum benefit from the multi-disciplinary team by:

- Tracking and managing the many moving parts
- Facilitating communication among the specialists
- Connecting the dots and spotting issues

Organize on a 24-Hour Clock



Amanda Halter
Partner
Crisis Management



Iterative Crisis Management Loop



Amanda Halter
Partner
Crisis Management



Establish Goals



Amanda Halter
Partner
Crisis Management

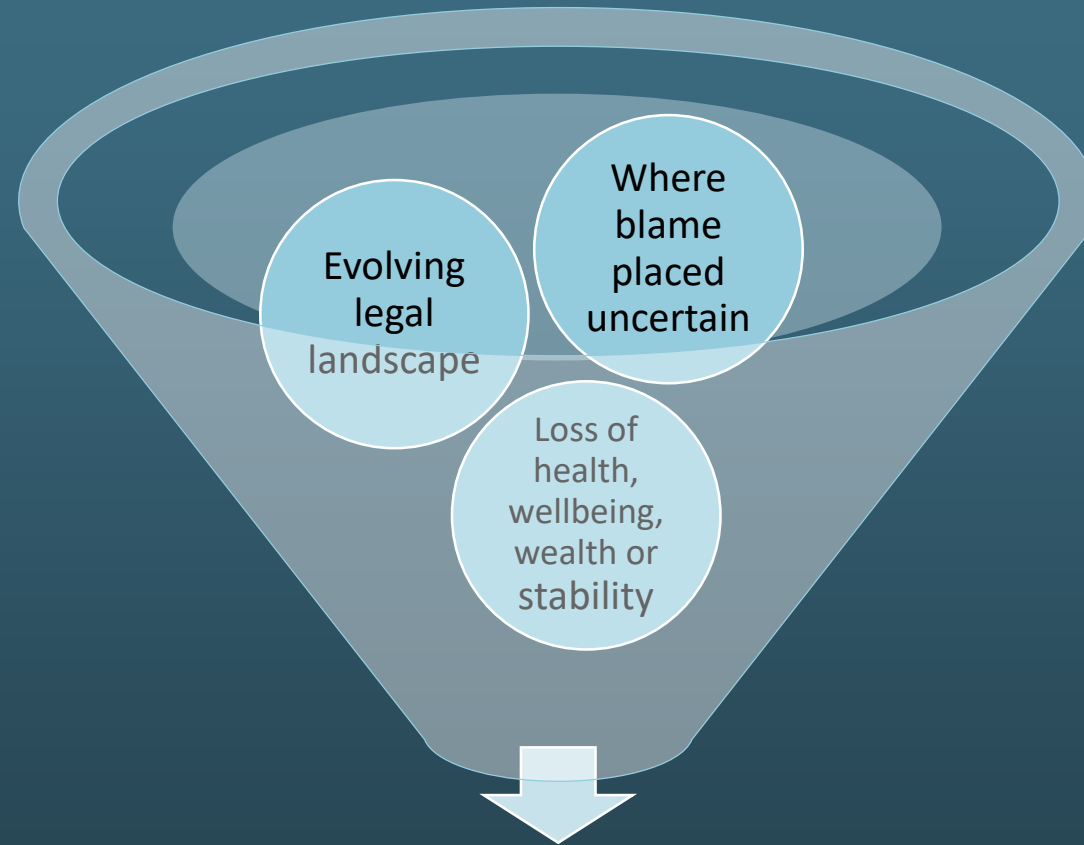
WHO DO WE WANT TO BE WHEN THIS IS OVER?

- Often an overlooked step
- Constantly revisit
- Decision-making becomes easier

Protect Privilege



Amanda Halter
Partner
Crisis Management



Crucial to Protect Legal Privileges



Protect Privilege

- Legal counsel in core team
- Legal reviews stakeholder communications
 - Even if not the norm
- Recurring call
 - Limit email



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Crisis Management

Communication is Everything



Amanda Halter
Partner
Crisis Management

- Integrate into iterative process
- Concise, consistent messaging
- Tailor to stakeholder group
- Most effective communication mechanism (may be different among stakeholders)
- Designate someone to liaise with media, field all requests

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Mario Dottori
Partner

Rob James
Partner



Supply Chain COVID-19 Impacts

Overview and Approach

- Assess your place in the entire supply chain
- Identify the stressors up and down the links
- Be aware of the doctrines *behind* your contracts
 - Applicable law can be dispositive
 - Impracticability of performance (RS2d 261, UCC 2-615)
 - Frustration of purpose (RS2d 265)
 - What was the bargain? How did the parties allocate risk?



Rob James

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Supply Chain COVID-19 Impacts

Force Majeure: *Scope*

- Core: excuse for prevented or delayed performance
- Breadth—economics, hardship?
- Covered events
 - Epidemics, quarantines
 - Acts or orders of government authority
 - Any [other] event beyond party's control
 - Unforeseeability: enumeration can make a difference



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Supply Chain COVID-19 Impacts



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Force Majeure: *Getting Prepared*

- Assess your needs now (deliberate speed)
 - Assemble team (Production, Delivery, Risk, IT, Finance, Comms, Legal)
 - Triage priorities:
 - Level 1: Immediate attention - heightened risk / financial impact
 - Level 2: Likely next wave - emerging threats
- Set Strategy (be agile)
 - Set high level plan
 - Build in contingencies, fallbacks and alternatives
 - Is it scalable or for a single exposure or risk?



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Supply Chain COVID-19 Impacts

Force Majeure: *Developing the Game Plan*

- Contract terms (checklist)
 - Content and timeliness of notice
 - Duty to mitigate, resume performance,
 - Duty to make up lost performance
 - Priority / allocation of performance across customers
 - Third party cover / cost of cover
 - Termination risks and rights
 - Indemnity protection and exposure



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Supply Chain COVID-19 Impacts

Force Majeure: *Developing the Game Plan (cont'd)*

- Disaster recovery and business continuity
 - Compliance and mitigation of impact
 - Alignment of upstream and downstream supply chain partners
 - Security landscape
 - Work from home and related cybersecurity concerns



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Supply Chain COVID-19 Impacts



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Force Majeure: *Executing the Game Plan*

- Staggered posture, if feasible
 - Plan A - Business accommodation – no Force Majeure claim
 - Plan B - Force Majeure Claim – Plan A is not feasible or is rejected
- Communication plan
 - Align and tailor comms
 - Customers / downstream supply chain / internal stakeholders
 - B2B – relationship outreach
 - Legal – formal notice, when needed



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Supply Chain COVID-19 Impacts

Force Majeure: *Executing the Game Plan*

- Alternative notices at the ready
 - Prepare alternative notices (Plans A & B)
 - Consider “templatizing” (across impacted customers/supply chain)
 - Be prepared to send immediately



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PRESS RELEASE

United States Secret Service
Department of Homeland Security

Secret Service Issues COVID-19 (Coronavirus) Phishing Alerts

WASHINGTON - Criminals are opportunists, and as seen in the past, any major news event or crisis is a prime opportunity for groups or individuals with malicious intentions. The Coronavirus is no different. In fact, the Coronavirus has become a prime opportunity for enterprising criminals because it plays on the fears of individuals and prompts them to let their guard down and fall victim to fraud and phishing scams.

The United States Secret Service is proactively monitoring for and alerting on Coronavirus. The Secret Service’s Global Cyber Force is actively monitoring for and alerting on COVID-19 related phishing scams.

“Phishing” is the fraudulent practice of sending emails or messages to reveal personal information, such as passwords, and email communication and e-commerce. Criminals send phishing emails posing as legitimate medical and health care providers, purporting to be from a medical/health care provider regarding the Coronavirus. This leads to individuals providing their personal information, system, or prompting the victim to enter their personal information or credentials. This type of incident enables identity theft, Business Email Compromise (BEC), PII theft, ransomware, and teleworking, which furthers the reliance on technology. More of these incidents are expected, and the Secret Service is actively monitoring for and alerting on COVID-19 related phishing scams.



ABUSING FEAR — The Internet is drowning in COVID-19-related malware and phishing scams

Emails and websites promise info about the pandemic. In reality, they're shams.

DAN GOODIN - 3/16/2020, 4:02 PM



systems

MOST POPULAR VIDEOS

1. Coronavirus Strikes Officials Around the World. Are Governments Prepared?
2. Which Cleaning Supplies Damage Your Phone? We Wiped for Hours to Find Out
3. Getting Tested for Coronavirus at a Drive-Through Clinic
4. Opinion: Alma Deutscher: Composer, Pianist and Violinist
5. The Challenges Ahead as U.S. Works to Contain the New Coronavirus

MOST POPULAR ARTICLES

1. A Generational War Is Brewing Over Coronavirus



Brian Finch
Partner
Cybersecurity

Emails and websites are promising vital information about keeping safe from the coronavirus, threatening millions. In fact, a flood of them are scams that use malware, spam, and disinformation to steal passwords and personal information.



Social Engineering Threats



Brian Finch
Partner
Cybersecurity

- People are desperate for information
 - Searches for COVID-19 information are dominating the Internet
- Criminals have taken notice
- Deploying a variety of techniques
 - Some are sophisticated, like fake infection maps
 - Fake domain registrations are spiking as well
- Aims are simple:
 - Credential theft
 - Fraudulent payments

Tips For Mitigating Threats



Brian Finch
Partner
Cybersecurity

- Alert Employees of Increased Hacking
 - Send training reminders
 - Remind employees who is authorized to contact them
- Add authentication steps
 - Be extra careful with wires and invoice payments
 - Consider password updates
 - Verify communications with vendors
- Monitor updates from law enforcement and security vendors



About Us Alerts and Tips Resources Industrial Control Systems

National Cyber Awareness System > Alerts > Enterprise VPN Security

Alert (AA20-073A)

Enterprise VPN Security

Original release date: March 13, 2020

Print Tweet Send Share

Summary

As organizations prepare for possible impacts of Coronavirus options—or telework—require an enterprise virtual private organizations elect to implement telework, the Cybersecurity cybersecurity.

Technical Details

The following are cybersecurity considerations regarding telework:

- As organizations use VPNs for telework, more vulnerabilities are exposed.
- As VPNs are 24/7, organizations are less likely to keep them patched.
- Malicious cyber actors may increase phishing emails targeting VPN users.
- Organizations that do not use multi-factor authentication are more vulnerable.
- Organizations may have a limited number of VPN connections, which may impact operations, including IT security personnel's ability to access systems.

Mitigations

CISA encourages organizations to review the following recommendations:

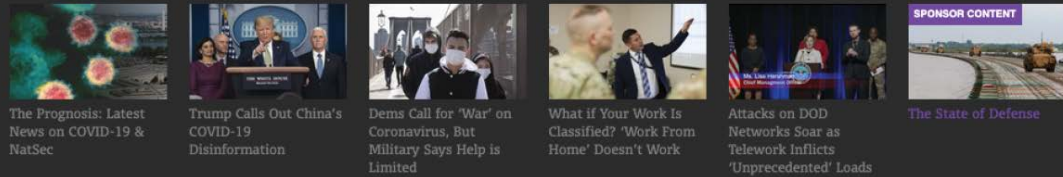
- Update VPNs, network infrastructure devices, and devices used for telework.
- See CISA Tips Understanding Patches and Security Updates for more information.



MUST READ: Coronavirus-themed phishing attacks and hacking campaigns are on the rise

PART OF A ZDNET SPECIAL FEATURE: CYBERWAR AND THE FUTURE OF CYBERSECURITY

Iranian hackers have been hacking VPN servers to plant backdoors in companies



Attacks on DOD Networks Soar as Telework Inflicts 'Unprecedented' Loads

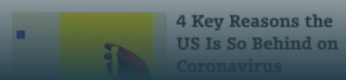


MOST READ

- 1 Iranian, Russian, Chinese Media Push COVID-19 'Bioweapon' Conspiracies
- 2 We've Got The Vaccine, Says Pentagon-Funded Company
- 3 Attacks on DOD Networks Soar as Telework Inflicts 'Unprecedented' Loads

Receive daily email updates: Subscribe to the Defense One daily. Be the first to receive updates.

DON'T MISS



Brian Finch
Partner
Cybersecurity

and Citrix VPNs to hack into large

NEWSLETTERS

ZDNet Week in Review - US

A weekly summary of the news that matters in business technology.

MORE RESOURCES

IT security and privacy: Concerns, initiatives, and predictions (TechRepublic Premium)



The Second Wave – Expert Hacking



Brian Finch
Partner
Cybersecurity

- The mass increase in telework is causing unprecedented strain on networks
- IT personnel are struggling to expand capacity
- Most efforts are focused on reliable, stable connections
- Nation states have been laying the groundwork for years to exploit just that situation

The Threat And What To Do



Brian Finch
Partner
Cybersecurity

- Foreign hackers are in a prime position to hack networks:
 - Compromised gear
 - Stolen passwords
 - Ability to place to backdoors circumventing VPNs
- What could they do with those exploits?
 - Large scale data theft
 - Ransomware or even wiper attacks
- Vigilance is key:
 - Use tools to monitor data movement
 - Watch for suspicious users
 - Remember attacks are quite possible

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Kimberly Higgins

Senior Associate

Julia Judish

Special
Counsel



Employment: OSHA

Safe Workplace Obligations

- Duty to provide workplace that is “...free from recognized hazards that are causing or are likely to cause death or serious physical harm”
- OSHA advises evaluating risks, use of preventative controls
- OSHA Guidance outlines workplace and administrative controls and recommends policies, practices
- **Bottom line:** duty to take reasonable steps to protect employees from exposure – including from co-workers and customers



Julia Judish
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Employment



Kimberly Higgins
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Employment

Employment: ADA

ADA rules apply – but some change in a pandemic

- Medical confidentiality rules still apply: don't name names
- Can ask about symptoms that pose a direct risk to co-workers
- EEOC Guidance: in a pandemic, can take employee temperatures (an otherwise prohibited medical exam)
- Employees with chronic health conditions entitled to accommodations due to heightened risk: telework or paid or unpaid leave



Julia Judish
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Kimberly Higgins
Senior Associate
Employment

Employment: Practical Options



Julia Judish

Special Counsel
Employment

Extraordinary circumstances require changed practices

- Preferred option, if feasible: *mandatory* telework, for all but essential onsite positions
- Heightened safety measures and social distancing: alternate shifts; erect barriers; protective equipment
- Mandatory leave/telework for sick or exposed employees
- Flexibility for those with certain issues/disruptions (e.g. childcare, transportation, or high-risk household members)



Kimberly Higgins

Senior Associate
Employment

Employment: Payment Issues



Julia Judish
Special Counsel
Employment

Overlapping laws affect options

- Exempt: pay for full workweek if employer prompted absence; no partial day deductions
 - May require use of paid vacation or convert to hourly non-exempt (varies)
- Federal, state, or local sick leave laws may require payment, but some laws do not permit forced use if employee not sick
- Closures: furlough or layoff? Consider state/federal WARN Act
- Consider offering paid administrative leave or advances on overtime premium pay, bonuses, or commissions (state law variances)



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Employment: Coronavirus Laws/Guidance



Julia Judish
Special Counsel
Employment

Federal

- Whitehouse [Guidelines](#) for America - 15 Days to Slow Spread
- Families First Coronavirus Response Act ([FFCRA](#)) – H.R. 6201



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States

- Legislation and Executive Orders (28+ states)
- Statewide/Local Public Health Orders (e.g. “Shelter in Residence”)
- Unemployment, Disability, and other Supplemental Income Programs
- Other State-issued Guidance

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David Klein

Partner

Potentially Insurable Risks



David Klein

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Insurance Recovery

Continuity of Operations

- The enterprise itself
- Service providers/ suppliers
- Event planning/ travel

Potentially Insurable Risks



David Klein

Partner

Insurance Recovery

Liability Exposures

- Bodily injury/ property damage
- D&O liabilities
- Professional liabilities
- Employment liability

Potentially Insurable Risks

- **Cyber – managing increased vulnerability**
- **Workers compensation**



David Klein
Partner
Insurance Recovery

Potentially Insurable Risks: Continuity



David Klein
Partner
Insurance Recovery

Risk	Insurance	Comments
The Enterprise Itself	First Party Property with Business Interruption	Generally requires property damage
Service Providers/ Suppliers	Contingent Business Interruption/ Supply Chain	Generally requires property damage to providers
Event Planning	Event Cancellation	Purchased per event – need Communicable Disease Endorsement
Travel	Travel Insurance	Purchase per trip

Potentially Insurable Risks: Liability



David Klein

Partner

Insurance Recovery

Risk	Insurance	Comments
Third Party Bodily Injury or Property Damage	Commercial General Liability (CGL), Excess Umbrella Liability	Bodily injury coverage most valuable
D&O “Wrongful Acts”	D&O/ Management Liability	Bad management decision that causes harm other than BI/ PD to third parties
Professional Liability “Wrongful Acts”	Professional Liability/ E&O	Focused on professional malpractice
Harm to Employees – E&O	Employer Liability (not EPLI)	More likely workers’ comp – but depends on claim

COVID-19 (Coronavirus)

If you have questions about how the 2019 Novel Coronavirus impacts you or your business, please contact us.

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