

Post-COVID-19 Practices and the Legal Industry

(Session: You Survived COVID: Now What?)

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Introduction

Just as in every other aspect of society, the COVID-19 pandemic that gripped the world in 2020 has forever altered how lawyers utilize technology in their necessary interactions. Lawyers in both firms and in-house legal departments have had to change a once mostly face-to-face profession into an unfamiliar, virtual job while still maintaining an efficient practice for their clients and colleagues.

Transitioning out of a global pandemic into a post-COVID world, spurred by the vaccine, has formed new realities of the legal industry. Speculation swirls around even the most basic aspects of the new normal, such as when and how lawyers should return to in-person work. Innovative technology trends have emerged that, due to their mostly successful debuts, do not appear to be dissipating anytime soon. Even in the legal industry, a realm whose very foundation rests on steady-handed risk-averseness and tradition, technological shifts for the rest of the world have pushed the industry towards new trends like virtual proceedings, artificial intelligence, and digitalized administration.

The uncertainties of the COVID-19 era have also presented new obstacles for in-house legal teams. With ever-changing public health regulations, the role of the in-house attorney is more challenging than ever. As a result, many in-house attorneys are finding themselves in the boardroom serving more often as business advisors for their companies who are striving to comply with COVID-19 fueled regulations while simultaneously managing shrinking legal budgets. Despite all this uncertainty, one thing is abundantly clear: COVID-19 has altered the way law firms and legal departments conduct their daily business, and some changes may be here to stay.

Remote Work: A Pandemic Fad or a Permanent Change?

Working as an Attorney in 2021

Firms across the U.S. and abroad are currently faced with tough decisions when it comes to employees returning to work. Very few firms will remain completely remote. Because many employees have demonstrated that they are just as productive at home as they are in the office, most firms will maintain a hybrid approach. The COVID-19 vaccination has caused firms to expedite these decisions.

Firms Going Remote Full-Time

Law firms drastically vary in the time they expect to fully return to working in-person. Firms are gauging a return timeline; a few firms anticipate returning in September 2021, while others are waiting until even January 2022. Only a small

number of firms have decided to remain remote indefinitely. However, some interesting innovations have emerged.

Although not embracing remote work for all employees, big law firms like Husch Blackwell and Orrick are now casting a wider net to attract diverse attorneys from all over the country to work remotely only. Orrick and Husch Blackwell have created virtual offices for these attorneys. Orrick's chief talent officer stated, "that physical presence in an office does not equate to success." The firms last five classes included attorneys who live and work in places without Orrick offices. Additionally, Husch Blackwell has hired over fifty-seven attorneys that will only work remotely. The firm believes its ability to hire from anywhere in the country has increased talent and interest among new associates.

The Carbon Law Partners is one of the United Kingdom's first virtual law firms. The law firm chose to extend their tech platform, that is used by their own virtual staff, to other lawyers looking for a level of autonomy. The Virtual Law Firms provided by Carbon Law Partners allows lawyers to set up a law firm, while benefiting from the comfort blanket of the Virtual Law Firm's infrastructure. The completely virtual platform, Bamboo, provides lawyers with "everything they need to run a law firm", from back-office functions to compliance and professional indemnity insurance.² The Carbon Law Partners are revolutionizing the future of law through virtual assistance.

Because of the issues associated with completely remote work (e.g., difficulty in maintaining a firm's culture and properly training young talent), most firms have transitioned post-COVID into a more balanced structure. These firms are moving towards a hybrid approach as they make their way back to more normal day-to-day operations.

Hybrid Work: A Balance Between In-person and Remote Working

Like the rest of the working world, law firms mostly have decided to welcome a hybrid approach. Balance between working remotely and being present in the office a few days a week appears to be working well within the legal community. However, each firm that embraces a hybrid approach must determine how many days, if any, are required to be in the office versus working remote. Manar Morales states in Law360 that the possible fears expressed by firm leaders who have initiated a hybrid approach is "losing one of the five C's – control, contribution, connection, community and culture." Finding the balance is key, as many firms have learned.

For example, the Harvard Business Review referenced Hanson Bridgett, a full-service midsized law firm based in California that started transitioning the firm to remote work fourteen months prior to the pandemic. The firm was already

looking into reducing their fixed costs by minimizing leased space and finding alternative ways to becoming more productive. The firm designed its "hoteling system" to give first priority to "pods." Hanson Bridgett's pods are work groups that arrange to be in the office at the same time, both for the purposes of working and connecting with one another. Having already made the transition to working remotely, the firm discussed the lessons it learned when reintroducing workers to the workplace after over a year of enforced absence, as well as its suggestions in optimizing a new work paradigm:

- First, prioritizing the firm's culture is key. Firm leaders must seek to create
 bonds between the individuals working from home and those that are
 working in-office to prevent any animosity that may arise over perceived
 work schedules and potential variance in work product. Firms must seize
 opportunities for in-person interaction by arranging team outings or Zoom
 networking events. Trust is paramount to the success of hybrid working.
- Second, firms must ramp up their information technology (IT) equipment and training to better serve clients and employees who follow a hybrid work environment.
- Third, firms must have a plan. It is likely inevitable that there will be a lack of consensus as to the appropriateness of remote work in the future and firms will need to experiment to achieve the appropriate balance.
- Fourth, firms must articulate metrics and business goals. Some metrics, like employee turnover and productivity, can easily be tracked by measures such as billable hours and produced work product. Other aspects about the transition from remote to hybrid work, however, may not be so clear such as non-billable staff productivity. Thus, the ability to accurately assess a firm's success in transitioning to post-COVID life will be essential in determining whether COVID era implementations were beneficial and potentially useful moving forward.

One ABA article journal detailed the struggles that Ascension Law, a midsize firm in Charlotte, North Carolina, is facing. One of the most prominent obstacles is the pressure many attorneys face when balancing their domestic and professional responsibilities with the need to maintain efficiency and the ability to create work product equivalent to pre-COVID standards. One way Ascension Law sought to combat this issue was by holding semi-weekly meetings to keep in touch with the firm's employees. Similarly, the chairman at Baker Hostetler opted to create a task force to evaluate staff roles and determine which employees may work remotely more often than others: "We're encouraging people to be in the office and reminding them that their job requires them to be in the office, but not necessarily every day of the week."

Another issue with remote work identified by Ascension Law is that an attorney's ability to work anywhere at any time possibly creates less opportunity for individuals to step away from the workday. Some worry that this new arrangement is conducive to "burnouts," especially among associates. As clients and colleagues have become more comfortable with communicating at all hours of the day, the distinct lines between home and work have evaporated.

This is not to say that hybrid working patterns are not productive. The ability to work or be reached at any time is most convenient for clients and allows attorneys to be more accommodating. Increased flexibility allows for higher consistency of communication with clients, and more flexibility attracts more talented attorneys from all over the country. Firms must think "outside the box and consider all types of holistic flexibility, such as asynchronous schedules, job sharing, reduced hours, and compressed workweeks." As the Danielson Law firm has found, remote work affords the efficiency of allowing office phone calls to be rerouted to individual cellphones and creates a shift away from a strict focus on the number of hours an attorney spends in the office. Goodwin Procter has taken a unique approach to capitalize on the efficiencies of remote work: the firm has a dedicated team that spends at least three days a week in the office. Any individuals who work less than three days a week in the office do not have a dedicated office space and must use the firm's office hoteling options.

Ascension Law asserts a major benefit to a hybrid schedule: working remotely a few days a week is beneficial for those attorneys who have children attending school remotely. Some have considered the push to return to the office to be a "macho position." This perspective is the subject of an interesting debate that, among other things, "encompasses culture, gender, the generation gap, [and] autonomy." In response to concerns about disparities between genders, Norton Rose Fulbright mandated that all lawyers work remotely at least two days a week, "in order to avoid disadvantaging women who would presumably be the more inclined to a hybrid work option."

On the contrary, the Shaw Divorce & Family Law firm located in New Jersey anticipates that small and midsize firms that focus on consumer-focused areas of the law will not return to physical offices at rates similar to larger firms with "wealthy corporate clients who expect and demand a certain level of service." This trend against remote work will also likely be exhibited by firms who are uncomfortable with new technologies.

Mandating Immunity?: Firms Wrestle with Requiring the Vaccine

To return to the office for in-person work, the midsize firm Sanford Heisler Sharp is requiring all employees to be vaccinated against COVID-19. Similarly,

Skadden, Arps, Slate, Meagher & Flom requires employees who have not received the vaccine by September 13 to be continually tested for the virus. Lawyers who decide not to receive the vaccine must show a negative test within forty-eight hours of their arrival to any Skadden office or in-person meeting. For Sanford Heisler chairman David Sanford, the desire to protect public health and get vaccinated is paramount: "People will be expected to be vaccinated, unless they have a religious or health reason" and "if they don't, they will be expected to seek other employment." 13

Some the country's largest law firms, including Mayor Brown, Fox Rothschild, Nixon Peabody, Faegre Drinker Biddle, DLA Piper, and Baker Hostetler have only encouraged lawyers and the firm's staff to get vaccinated.

Post-COVID Tech Trends: The Law Goes Digital

Opening Pandora's (Digital) Box

It is no secret that the legal industry has never been celebrated for its technological advancements. COVID has forcibly accelerated the industry's adoption of certain technology trends like digitalizing legal administration, making services more client-centric, and even using artificial intelligence to assist in analysis. With legal consumers demanding efficiency and alternative services more now than ever, it is concerning that only approximately one-third of law firms say they are prepared to use technology to be more productive. On the other hand, tech leaders during the pandemic have been more likely to increase profitability and have also still experienced increased business. Because these trends will likely stick around for a while, firms need to adapt to the changing environment before they fall too far behind.

The Shift to Client-Focused Technology

Just as the rest of the world's consumers have been discovering since the pandemic's start that businesses can further cater to consumer needs, legal services consumers have been taking note. As legal consumers have looked to their three-course meals they promptly received through apps like DoorDash or Uber Eats, they have begun to wonder why law firms cannot provide the same level of customer focus.¹⁶

One example of a client-focused service is "Do-it-Yourself" (or "DIY") law. While many types of services could fit under this broad umbrella, offering clients a legal documents database is one of the more common trends. Firms can compete with template providers, such as LegalZoom, by offering a legal precedent documents library that allows clients to have a more cost-effective means of

obtaining the firm's expertise through a subscription or a one-time fee. A more advanced program may use artificial intelligence ("AI") to tailor a document, such as a lease or a will, to a client's specific needs. SixFifty, a subsidiary of the law firm Wilson Sonsini, does exactly the latter, and it pitches to consumers that using the company's technology is like having one of the nation's best lawyers by their side.

E-learning resources and AI chatbots demonstrate a more progressive, yet growing approach. When a client wants to know about a simple legal topic, that client can peruse the firm's e-learning resources to find a topic overview that introduces them to the subject. Firms may even employ AI chatbots, where a client, at any time of day or night, can type out a legal question (when the question is relatively simple) and receive a virtually instantaneous response. Alternatively, on a more complex question, the chatbot can summarize the question for the lawyer and refer the client to the lawyer.

Lawyers also use other AI services to benefit the client more indirectly through cutting down time billed. Although using AI to predict litigation outcomes is still in an early phase, its success thus far and its current use demonstrates that firms will continue to invest in such tools. A Washington University study showed that an AI prediction tool correctly predicted outcomes for 75 percent of the 2002 Supreme Court cases, as compared to an expert panel's rate of 59.1 percent. Michigan State University researchers utilized an AI tool to successfully predict 70 percent of all Supreme Court cases from 1816 to 2015. A recent Wolters Kluwer survey showed that 32 percent of firms are looking to invest in predictive regulatory and case law analysis tools. Not only are firms utilizing AI for predicting cases, but they are even using it to save time in areas such as due diligence and timekeeping.

A Digital Form of Everything

Ninety-one percent of legal departments will ask their law firms within three years to use more productive and efficient technology. One way to cut client costs and increase productively is to utilize administrative tech advancements, which law firms have been traditionally slow to adopt. If firms want to start being more client-centric, they should take note that 69 percent of consumers prefer digital documents. Though there may be legitimate security concerns in certain instances, this is one instance of a relatively easy change that firms are beginning to take.

More and more firms are using virtual notaries, e-signatures, and e-filings. At least one legal field survey identified e-signatures as the top tool in which firms were most likely to invest.²² Firms in the survey identified other top technologies as e-voting management and document/case management tools.²³ To spend more time performing legal analysis and less time doing administrative tasks, law firms

may even work alongside alternative legal service providers ("ALSPs") during litigation, as ALSPs can also use AI-powered document review or other e-discovery specialties.

The next frontier in the legal administration field may be cloud-based services and secure document transfers. Due to the sensitive nature of the attorney-client privilege, firms' unique needs have historically prevented them from taking part in these services. Data security overall appears to be one of the major concerns and trends in the post-COVID era. However, with cloud providers continually enhancing security through stronger encryption, more firms have been shifting towards cloud-based technology.

Featured Firms — Investing in Tech and Going Back to School

For these changes to take root, firms must educate their employees, both the current and future generations, so that attorneys may utilize today's new legal tech and be able to keep pace with tomorrow's advancements. Law schools have been increasingly adding coursework designed to foster practical tech skills. As of last year, fifty schools offered programs on innovative legal technology.²⁴ However, one salient issue with the programs is that schools are concerned that large firms may be uninterested in lawyers who use technology that shaves off billable hours on projects.

Education is no longer confined to the classroom. Dechert, one of the fifty largest firms in the U.S., announced that it is starting an innovation certification program for lawyers and business professionals that consists of four classes over six months. The firm will count the courses, which center around skills like research and digital literacy, towards billable hours. Another large firm, Paul Hastings, exposes new associates to technology through its Legal Tech University. The program teaches associates to collaborate through using legal tech to solve real-world problems. Firms and schools collided earlier this year when Northwestern University computer science and law students collaborated with several large firms on legal technology projects. One project featured McGuireWoods utilizing a tool that students designed to help standardize negotiations for clinical trials between a hospital and pharmaceutical companies.

While some firms are going back to school to brush up on their legal tech skills, others have launched development partnerships or built out venture capital arms. Orrick recently announced it will invest in a new corporate venture fund and that it will work alongside portfolio managers to foster innovation and startups. Cooley has also hopped into the legal tech investment game and has reportedly made serious profits from the IPO for Snowflake, Inc., a data cloud company, among other IPOs.

Legal tech marketplaces have been one of the more surprising post-COVID trends. They provide a much-needed service for consumers to efficiently compare different tech platforms.²⁵ Nineteen large law firms have invested in Reyen Court, a legal tech marketplace that functions as a type of "AppStore" for legal tech consumers. While there are several new marketplaces, joining Reyen Court in terms of notoriety are the platforms from Thompson Reuters and Orrick. Thompson Reuters has launched the Thompson Reuters Marketplace, which functions as an online legal tech store, and the Thompson Reuters Legal Home, a digital launchpad for users to access products and resources all from one place. The Observatory, Orrick's new platform, allows its users to analyze over 600 legal technologies on the market.

Another notable innovation to help foster learning and firm-wide collaboration has been the rise of live courtroom video streams that allow attorneys a chance to watch their coworkers try cases. Latham & Watkin's feed, referred to as the "Observation Deck," gives a window into a virtual courtroom. Jackson Kelly also utilized a live feed into a physical federal courtroom this summer for its attorneys to observe their coworkers try one of the nation's highest profile opioid trials. As the legal profession becomes less camera shy, livestreams such as these will likely become commonplace.

In-House Counsel: Navigating the Choppy Waters of Post-COVID Life

The Juggling Act Becomes Even More Challenging

In addition to dramatically affecting how we live our day to day lives, COVID-19 has created unprecedented legal questions and obstacles that require careful review and analysis. This aspect of coronavirus life is particularly felt by attorneys serving as in-house counsel. Prior to 2020, in-house counsel tackled several issues within the scope of their employment, including striving to meet business demands, being mindful of resource constraints, and managing compliance challenges while continuing to keep up with the company's everchanging needs. Now, with frequently fluctuating public health guidelines and businesses seeking to comply effectively while getting back to business as "usual", the importance and necessitated flexibility of the in-house counsel role cannot be overstated.

From Risk Mitigator to Business Advisor

The role of the in-house attorney has traditionally been viewed as that of a conduit—communication between the business team, the executives, and outside law firms was essential to an in-house attorney's successful completion of their daily duties. While this is still largely true, over the last few decades in-house

lawyers have gained new duties that have led to a heavy shift towards risk mitigation and an expansion of responsibilities. COVID-19 has served as a catalyst in bringing about yet another new role to the in-house lawyer's job description: a business advisor.

One survey by the multinational firm DLA Piper found that prior to COVID, 41 percent of in-house attorneys felt as though they served a business advisor role, a figure that has risen 25 points to 66 percent throughout the transition to post-pandemic life. Several factors have contributed to this trend, but one of the biggest factors is the reality of living in a world where the rules are continuously changing. Being well-equipped to interpret new laws and regulations, in-house attorneys have been increasingly involved in the strategic activities of their companies that are striving to comply with new public health regulations and legal issues raised by changing business models while simultaneously mitigating economic damage. In-house counsel attorneys are also more involved in helping companies to predict which of these new norms, laws and regulations will be temporary and everchanging versus those that will be here to stay long-term.

In addition to the many tasks in-house counsel juggled before COVID-19, these attorneys are now seeing a shift towards legal leadership and a need to take a more proactive role in risk mitigation and planning. Accordingly, COVID-19 has created a world wherein in-house legal teams are striving to demonstrate their value to management—a trait that is likely to persist in post-pandemic life.

Turning to Technology in a World of Tight Legal Budgets

The pandemic's effect on the global economy has been universal. Businesses of all shapes and sizes struggled as people were urged (and sometimes required) to stay home to prevent the spread of COVID-19. Unsurprisingly, inhouse legal departments struggled to adapt to these same remote work and economic pressures, with many departments experiencing a decrease in their legal budgets. Despite lower budgets, the legal challenges and workloads in-house counsel faced throughout the pandemic, as well as in the post-pandemic world, are only increasing.

Nevertheless, many in-house attorneys saw an average salary increase of 3.5 percent in 2020, partly as a result of in-house counsel stepping into the business advisor role.²⁷ However, this increase is lower than the average 4.4 percent rise in-house attorneys saw in 2019. The 2020 salary increases were more predominantly realized by counsel employed by businesses that were able to rebound economically in the transition to post-pandemic life.²⁸

For those businesses that were not able to bounce back as successfully, the results were not as optimistic. For example, due to tight budgetary constraints, in-

house legal departments at the epicenter of the pandemic in Asia have reportedly been hiring junior lawyers from outside law firms rather than senior attorneys to fill vacancies in their general counsel positions.

Some legal departments, however, are choosing to take different routes to reduce their budgets, including an increased reliance on technology. One of the few silver linings to come out of the pandemic is the impetus it placed upon the use of technology. Society quickly learned and adapted to conducting business over the Internet and holding meetings via Zoom. Despite being an industry that has long been apprehensive of automation and digitalization, many in-house legal departments are also capitalizing on the use of technology and remote work.

In addition to the short-term efficiencies technology can provide, there are potential long-term economic benefits for "corporate real estate balance sheets" due to the increase in remote work and automation. ²⁹ Amy Tu, general counsel at Tyson Foods Inc., found that her team has been very productive in the era of remote work. "Our ability to embrace technology and to embrace that democratization of communications meant that we could work more quickly to address the issues that were so important to the frontline team members all the way up to our managers and leaders who needed to make decisions that affected the enterprise." Similarly, Ivan Fong, the chief legal and policy officer at The 3M Company, noted that "[remote work] can work, and I think going forward, the future is both hybrid and flexible." ³¹

Some have suggested that technological adaptations have had a pleasant and humanizing effect on in-house legal departments, as noted by Rachel Gonzales, general counsel at Starbucks. "The webcam peers into everyone's home, making it almost impossible for co-workers to maintain a neat separation between their personal and professional lives." Having that personal view and connection to other team members was one of the bright spots during the darkness of quarantine.

This is not to say that remote work has been beneficial for all in-house departments. Companies that saw the most success were those that had regularly performed work remotely prior to the onset of the pandemic and those that had the technology in place to work efficiently while remote, such as document management systems and electronic signature processes. Companies who conducted most or all their business in the office and through paper processes were more likely to struggle at the onset of coronavirus spikes and shutdowns. Gregory Gallopoulos, general counsel at General Dynamics Corp., found that his outside counsel "exhibited a marked decline in both quality of work product and efficiency—as well as a loss of focus at the outset of the pandemic." 33

Enhanced technology is also playing an important role for contract management. In the aftermath of the onset of COVID-19, many parties to contracts quickly learned that they were not entirely protected from unforeseen events like a global pandemic. With reduced budgets and heightened public health guidelines and regulations, businesses were forced to closely examine whether they could meet their contractual obligations. The solution to unprecedented compliance issues for many legal departments was an advanced contract management system that simplified the review of the many contracts an in-house legal department juggles at any given time.

Similar to e-discovery platforms, new forms of contract management software incorporate artificial intelligence to streamline the analysis and editing of contracts. For example, the software can help in-house attorneys quickly locate contracts with nonstandard provisions, a feature that will expedite in-house response to mitigate any potential economic damage to the business team. In addition to the unmistakable efficiency of electronic contract management systems, such technological advancements also facilitate the execution of new contracts, bringing in more revenue for the company and combating shrinking legal budgets.

All in-house departments have derived some benefit from new technological advancements, and many expect to continue remote work, virtual meetings, and collaborative technologies to some extent in the future. The DLA Piper survey, for example, found that 66 percent of in-house counsel attorneys planned to work from home often in the future. ³⁴ Although certainly not a fool proof system, many in-house legal teams found that technology helped light the uncertain path that was working through a global pandemic.

Back to the Office: Post-COVID Life Necessitates a New Workplace Experience

To the extent that work is again being conducted in a formal office setting, many in-house counsel teams are seeing marked differences from their pre-COVID workplace experience. Perhaps the most prominent new trend is that staff wellbeing is now higher on the list of priorities for in-house legal departments.

A focus on wellbeing is especially important for in-house attorneys that work in smaller teams: approximately 31 percent of in-house departments consist of just 1 attorney, and another 41 percent are comprised of departments of 2 to 5 attorneys. A very small 8 percent of in-house legal teams are staffed by more than 20 lawyers. As such, a focus has been placed on the wellbeing and mental health of attorneys who, even absent a global pandemic, typically work in isolation. DLA Piper's survey found that a staggering 93 percent of in-house attorneys felt that their company managed staff wellbeing and health very well. However, as we move to new workplace arrangements, such as full remote or hybrid remote, and varying arrangements depending on the position, it will be important to ensure that staff wellbeing remains a focus for in-house legal departments.

Another change to the post-pandemic workplace landscape for in-house counsel is the format of team meetings. For now, informal, unstructured remote team meetings at frequencies of more than once a week now tend to be much more common and somewhat of a necessity due to the everchanging public health guidelines and businesses' subsequent responses.

Flexibility and Adaptability are Key

In summation, the in-house lawyer juggled many different tasks at the onset, throughout the duration, and now in the transition out of the COVID-19 era. While many aspects of life shut down around them, in-house teams were nevertheless faced with helping to solve unprecedented new compliance and legal issues for their businesses. This "unique position within the organization's structure to play an integral role in the strategic planning of the company's business" paved the way for the transition from risk mitigator to business advisor and outlined the myriad of duties that come with stepping into a legal leadership position.³⁸ Nevertheless, technology, remote work, and a focus on staff wellbeing have provided an outlet for in-house counsel to tackle their increased workloads as they begin to navigate their expanded legal leadership roles, a role in-house counsel will likely continue to undertake in the future.

Conclusion

Amidst all the uncertainty that surrounds the unprecedented events and effects of COVID-19, one thing is certain: the legal industry is changing. A community once resistant to automation and digitalization is now beginning to embrace remote work and enhanced technology, noting the many efficiencies modernity can afford both the attorney and the client. Additionally, as businesses grapple with what the COVID era means for them, in-house attorneys are stepping into leadership positions to help navigate ever-changing public health guidelines. While at one point the pandemic unquestionably brought daily life to a dramatic halt, it also catalyzed innovation in the legal profession—innovation that is likely here to stay.



Resources

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