

FROM CRISIS COMES OPPORTUNITY: A SILVER LININGS PLAYBOOK FOR BUSINESSES EMERGING FROM THE PANDEMIC

Insights
May 3, 2021

It's been said that from crisis comes opportunity. And given that the COVID-19 pandemic has handed us the greatest collective crisis in our lifetimes, it should stand to reason that we should now be in the perfect position to take advantage of the many opportunities that have emerged – if we know where to look.

Employers should recognize that the pandemic continues to take a devastating toll on the health, well-being, and economic security of tens of millions of Americans, and you should continue to do your best to provide a safe working environment while remaining sensitive to this new reality with every business decision you make. But at the same time, you now have a unique opportunity to better the lives of your workforce and improve your business operations for years to come by examining some of the positive outcomes that have come from the COVID-19 crisis.

By taking the time to reflect on the improvements and initiatives implemented by other businesses to weather this storm, you might find a few nuggets that can aid in your recovery and your forward progress. We collected insights from a cross section of attorneys in our firm covering a variety of practice areas and industry teams that range beyond the standard “we now realize the value of remote work” and “we can save on commercial real estate costs.” Here then are a collection of silver linings (positive developments that may have come out of the pandemic) and opportunities (strategies for consolidating and leveraging some of these gains for future advantage).

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“Compliance professionals and business leaders worked together to distill long-standing and often complicated procedures to the elemental ‘why’ – eliminating red tape and focusing on what is most important.” – [Melissa Dials](#) (Cleveland)

“The pandemic presented opportunities for compliance and ethics officers to connect in real time with employees, company leadership, and Boards of Directors to communicate the importance of making values-based decisions in the midst of unprecedented disruptions.” – [Ray Perez](#) (Columbus)

California Employment Law

“Most employment lawsuits in California are resolved by alternative dispute resolution (ADR). A byproduct of remote sessions is that more client personnel can attend such sessions. A general counsel from Miami or a vice president of human resources from Chicago who might not otherwise travel to California to attend a mediation can attend remotely and get a closer look at what went wrong to cause the dispute to have arisen. This opportunity for senior leadership to participate in the mediation or arbitration process can equip them with a better understanding of the exposure their organization faces doing business in California and how to limit that exposure going forward.” – [Jim McDonald](#) (Irvine)

Privacy and Cyber

“Many employers have had occasion to revisit dated remote work policies and associated security practices or create new ones to protect sensitive data while employees were working from home. As a result, those employers are now in a better position to provide remote work flexibility while maintaining stronger data security practices.” – [Brett Owens](#) (Tampa)

Employee Benefits and Tax

“Thorough and accurate benefit plan communication helps plan sponsors avoid costly misstatements or omissions. Timely notification and disclosure of plan information helps sponsors avoid costly fines and penalties. Multiple waves of emergent COVID-19 guidance affecting employee benefit

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plans have forced employers to respond quickly, proactively, and flexibly to communicate employee benefit plan information. Employers should embrace this heightened diligence and urgency for all future benefit plan communications, notices, and disclosures.” – [Carl Pilger](#) (Atlanta)

Employee Leaves

“The longstanding preconceived fears associated with work-from-home arrangements proved largely unfounded. The fear that people would not be productive were quickly disproven, and employees whose positions require collaboration found ways to work through it with the aid of technology. This embrace of work from home provides another tool in the accommodation toolbox, allowing for some employees to work from home as an accommodation when they previously would have had to take leave.” – [Myra Creighton](#) (Atlanta)

“A number of employers have reported a large decline in leaves due to remote work, particularly stress-related leaves. Reduced commutes and decreased interpersonal conflicts from the workplace may also be contributing to lower numbers of such leaves.” – [Megan Winter](#) (San Diego)

“The pandemic has cemented the importance of adopting a formalized accommodation policy that explains the process and gives employees clear direction on how to request an accommodation.” – [Andria Ryan](#) (Atlanta)

“Some companies took the opportunity to provide significant leeway to their working parents beyond what was afforded under the Families First Coronavirus Response Act. You should consider whether you will continue to provide flexibility for your working parents, and whether you should formalize these practices into policies. And if your attendance policy did not provide the kind of flexibility you needed, it may be time to reevaluate it. As your employees return to work in larger numbers, it will soon be time to review those policies to determine whether more or less flexibility is needed.” – [Courtney Leyes](#) (Nashville)

Gig Economy

“By providing funding and the legal structure to provide gig economy workers with unemployment insurance, the federal government could be furthering the concept of a hybrid



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category of worker – one that retains the flexibility of contractor status for both company and individual, while permitting the eligibility of certain benefits. This would go a long way towards eliminating confusing and costly misclassification claims.” – [Rich Meneghello](#) (Portland)

Government Relations

“The pandemic has taught employers to be nimble and respond in real-time (with legal counsel and government relations staff) to an almost overwhelming volume of federal, state, and local mandates. This will make them more well-suited to respond to future developments that come down under normal circumstances and under the normal timeframe.” – [Ben Ebbink](#) (Sacramento)

Healthcare Industry

“In some settings, remote visits with patients or nursing home residents became more innovative and personalized through the use of technology. This may open doors for family members to see their loved ones even when they are thousands of miles apart.” – [Laurel Cornell](#) (Louisville)

“Healthcare employers are probably even better prepared to respond rapidly to future epidemics or similar threats, having learned from overcoming the logistical challenges presented by the sudden increased demand for supplies and shortages of staff.” – [Kevin Troutman](#) (Houston)

Hospitality Industry

“The trend towards teleworking may benefit the hospitality industry in a nontraditional way. Those who want a change of scenery from their home office may seek out working from another destination, providing a boost to businesses that cater to this new demographic. While the extent of the cleaning and sanitizing during the pandemic will not be necessary or feasible as business increases, you should prepare to transition and memorialize the sanitizing protocols you will retain after the pandemic passes. – [Andria Ryan](#) (Atlanta)

“With the pandemic came flexible scheduling innovations, such as app-based scheduling, use of staffing agencies, and third-party contractors. Employers will want to determine which of these should remain post-pandemic. Many hospitality employers used the past year to offer



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retooled training opportunities for employees – teaching new skills, safety requirements, and guest experiences in light of increased touchless technology. Incorporating salient strategies in the future can be helpful.” – [Courtney Leyes](#) (Nashville)

Immigration

“The United States Citizenship and Immigration Service (USCIS) not only created temporary flexible options for reviewing I-9 documentation for certain employers impacted by COVID-19, but also increased its ability to accept copies of signatures on petitions and applications. Employers can only hope that the lessons learned from the pandemic will create other modernization options which have long been promised.” – [Davis Bae](#) (Seattle)

International Employment

From an international perspective, employers can seize on new opportunities for talent around the world because of remote working options and virtual communications. This can allow companies to possibly avoid high costs of finding local in-person talent and expand options for a more diverse pool of talent to join the workforce.” – [Bill Wright](#) (Philadelphia)

Labor Relations

“The pandemic has sharpened the focus on workplace safety issues (which historically have been a “hot button” issue in organizing campaigns), and employers have responded with a renewed commitment to safety and hygiene that should be rewarded with a culture of positive labor relations. The increased attention to safety improvements could pay added dividends in the form of reduced workplace and related lost-time injuries and – by extension – reduced health insurance costs.” – [Steve Bernstein](#) (Tampa)

“Those employers who introduced new temporary and/or long-term benefits (such as paid time off, hazard pay, childcare stipends, and related premiums) in recognition of their workers likely improved morale and labor relations. In many instances, businesses became more creative when it comes to maintaining effective downward (and upward) communication vehicles, which will continue to serve them

Wage and Hour

Workplace Safety

Industry Focus

Healthcare

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PEO

well in closing perceived communication gaps going forward.” – [Todd Lyon](#) (Portland)

“Many employers were forced to become more flexible and innovative in their approaches to production methods and work schedules, which could offer added benefits on the labor relations front from a work-life balance perspective (not to mention potential cost savings with respect to leased office space, etc.). Other employers who took the opportunity to reinvest in supervisory training during the downtime occasioned by dormant productivity periods are also likely to reap the benefits from a preventive standpoint.” – [Steve Nobil](#) (Cleveland)

For unionized employers, an increased tendency toward virtual labor arbitrations and remote contract negotiations could yield additional cost savings (in the form of travel expenses, etc.) and may allow them to realize other efficiencies, while ongoing market challenges could present opportunities for concession bargaining in the short term and beyond.” – [Mason Alexander](#) (Charlotte)

Legal Operations

“Appreciation for data analytics by legal departments soared during the COVID-19 pandemic, and not just as a means to track the spread of the virus and the efficacy of vaccines. Analytics on COVID-19 litigation trends – whether by industry, by employer size, or by claim type – became key drivers of Legal Ops strategy in pandemic response planning. And now that the secret’s out, you can expect to see many more Legal Ops teams scouring litigation analytics in the future for all their cases. That includes analytics on judges, opposing counsel, damages and settlement information, litigation financials, and more.” – [Evan Shenkman](#) (Chief Knowledge & Innovation Officer)

Pay Equity

“For a long time, companies have talked about the fact that work places are inequitable. Identifying the problem is great, but taking action is another story. The pandemic has given an opportunity to companies to shift their focus on being part of the solution and building back better. The top female talent will go to companies that are a great spot for them, so here’s the chance for the workplace to evolve.” – [Setareh Ebrahimian](#) (Washington, D.C.)

“As a result of the pandemic and the focus on social justice issues, employers have begun to use pay equity audits in greater numbers to identify and rectify pay inequities not only for women but for persons of color. This will not only reduce unwanted litigation but will create a more equitable working environment for all workers.” – [Margaret Scheele](#) (Washington, D.C.)

PEOs and Staffing

“During the pandemic, PEOs proved their value to customers – and this will only pay dividends for the industry going forward. They found new and creative ways to serve their clients over the past year in pandemic-related matters, helping their customers navigate the many complexities related to PPP loan applications, the complicated world of tax credits, paid sick leave, furloughs, and safety best practices. Likewise, staffing and contingent workforce management companies demonstrated their value to customers who desperately needed guidance on a variety of complex staffing problems caused by the repeated closing and reopening of business, among other things. They provided their customers the flexibility they needed to make quick changes in their workforce with the confidence that they were supported by organizations that would properly take care of their workers. In the future, PEOs and staffing companies will benefit from enhanced remote work abilities that will continue to expand the available talent pool, and from the efficiencies that emerge for those with the aptitude for leveraging technology. A dispersed workforce will also drive more business to PEOs and staffing companies given their ability to ease the compliance burdens associated with workers located in multiple states and countries.” – [John Polson](#) (Irvine)

Wage and Hour Law

“Wage and hour disputes are at their highest level in years because of the pandemic (reimbursement claims for home offices, meal/rest/off-the-clock work claims for remote workers; off-the-clock work for symptom screening, etc.), and will likely remain as such for the foreseeable future. While no employer wants to deal with one of these claims, a strategic approach to resolving them can wipe out all liability and buy them a clean slate, like a reverse insurance policy. And, in the interim, we can use the case as a vehicle to install some preventive and protective measures, so when

the settlement is approved, they truly start fresh and healthy.” – [Danielle Moore](#) (San Diego)

“As a result of remote employment, some employers have upgraded their timekeeping technology reducing the likelihood of costly mistakes.” – [J. Hagood Tighe](#) (Columbia)

“Employers have learned that flexible hours can lead to more productive employees.” – [Kathleen McLeod Caminiti](#) (New Jersey)

Workplace Safety

“Companies that were forced to implement measures to address employees’ safety and health will be better equipped to handle workplace health and safety issues moving forward. Increased focus on safety also highlighted many deficiencies in employers’ existing safety programs – and the resulting improvements will have long-term benefits on workplace safety and health, not to mention productivity.” – [Patrick Dennison](#) (Pittsburgh)

“Measures such as increased sanitation practices and awareness of mitigation measures to prevent the spread of viruses and infectious diseases may have lasting benefits moving forward with seasonal flu or other illnesses. Further, because of the pandemic’s challenges and issues, human resource professionals will better understand the roles of safety and health professionals and the increased collaboration can only lead to a better organization.” – [Nick Hulse](#) (Charlotte)

Our firm will be hosting a complimentary one-hour webinar to explore this topic further. Join us for this interactive presentation on May 18, 2021 at 12:00 PM EST. [Registration can be found here.](#)