

Inoculating your business against COVID-19

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The pandemic has created a host of challenges for businesses. But for those who think proactively, obstacles can also be opportunities. In every aspect of a company's operation, there are actions you can take to not only withstand the pandemic's effects but even flourish.

The steps recommended below arise from a few basic facts about how the pandemic is affecting the economy. First, COVID-19 is having an uneven impact on businesses; some are thriving while others are still struggling. Second, many companies are reacting reflexively to the disruption caused by COVID-19, rather than proactively scrutinizing their operations for opportunities. Finally, there will be a "new normal" when the pandemic ends, and those companies that anticipate it will likely fare better.

Here are some actions all businesses should consider as we move toward a "new normal":

1. Conduct a financial check-up. Review your company's revenue and expenses for 2020 so you know where you were profitable during the pandemic. Consider new opportunities for growth with respect to customers, markets or product lines. Conversely, if volumes dropped or costs increased for certain customers, product lines or markets, consider what steps you should take to improve margins.

Take stock of how the terms in your key commercial contracts (e.g., supply contracts, sales contracts, leases) impacted the company's bottom line, and the risks of proceeding with existing agreements in a post-pandemic business environment. It might be worth it to renegotiate certain key terms to mitigate or reallocate risk in the event of non-performance



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or other business interruptions. For example, you could consider limitations on liability provisions if non-performance is due to government-imposed restrictions resulting from the pandemic, or terms that excuse performance where the pandemic makes performance impossible. Check to see if your notice provisions reflect how and where you are currently doing business.

Evaluate how well your company's governance processes performed during the pandemic, including if you kept your board informed of material issues and made key decisions with the required approvals on a timely basis. This is also a good time to review the company's succession plan, buy-sell arrangements and other terms among the company's owners that are critical to ensuring long-term success of any business, especially when unexpected events arise.

2. Review and reevaluate your supply chain. After a focus on just-in-time inventory management and lean manufacturing, many companies were caught with supply shortages that impacted their ability to deliver products to customers. Review your suppliers to assess whether your supply chain is robust enough to support your business. If your company depends on one or two key suppliers, consider if you can better secure supplies through improved contracting with them or find alternate sources.

From a legal perspective, review your supply chain contracts for terms that should be modified to secure materials. Consider including a "time is of the essence clause" to emphasize timely delivery. If shipping or delivery delays were

a problem due to the increased demand on delivery services, consider including other options for delivery in your contracts to avoid delays.

3. Assess sales and marketing opportunities. For your most valuable customers or those with good growth potential, consider steps your company can take to improve customer retention and loyalty. Plan what metrics you will use to decide when to send sales representatives back into the field and what new training these employees may need to return to personal interactions with customers in a post-pandemic world. Review and revise your marketing plan. Consider if there are digital tools your company needs to market virtually.

To the extent your company does not have secure supply, make sure your customer contracts allow for what happens if you face an unavoidable supply shortage. Tailor your sales compliance monitoring to the specific pressures the pandemic put on sales and marketing efforts to ensure your sales practices are compliant with the law. For instance, the increase in remote customer meetings may increase the likelihood that your written sales materials are inconsistent with legal regulations or company policy. Consider whether incentive compensation plans need adjustment so that incentives are not tied solely to metrics that have been adversely impacted by COVID-19.

4. Workforce planning. Every employee in your company likely has had their work impacted by the pandemic, and most company's human resources policies and practices have had to change to some extent.

The impact on workforce management for employees working remotely cannot be overstated. Your company should have a remote work policy in place that details employee obligations when working remotely (including work standards, hours, locations, confidentiality, etc.) and employer obligations (including expense reimbursement and right to terminate remote work). Your company should consider what it can provide to facilitate remote work, such as computer monitors, secure internet connections or meeting software. Schedule periodic team meetings to replace the collaborative interactions that happened within the office. Finally, managers should understand that some employees adapt easily to remote work, while others struggle. It is vital that supervisors continue to communicate regularly with their staff even if the methods of doing so have changed.

There have been many legal changes in the employee benefits area that are too numerous to detail here. Look for changes to retirement savings plan administration related to new hardship distribution rules, increased limits for loans and delayed repayment on loans. Make sure your company is up-to-speed on the new federal and state leave and sick pay laws.

Finally, as the strategic view of your company's future becomes clearer, consider if there is a need to downsize or right-size your workforce. Any employee layoffs should be planned carefully to make sure your company is compliant with all applicable laws.

To ensure your business is as resilient as possible to the lingering impacts of the pandemic, look back at what can be learned from your business operations in 2020 to look ahead to optimize your opportunities in 2021.

