



IMPACT SURVEY

COVID-19 and the
Road to Recovery

**MORRISON
FOERSTER**



In response to the global COVID-19 pandemic, Morrison & Foerster released its first COVID-19 Business Impact Survey in March of this year, followed by its COVID-19 and Easing of Stay-at-Home Orders Impact Survey, to understand how in-house general counsel from global corporations were managing the immediate and long-term business impact of the virus.

Now, as the world is working to recover from the ongoing pandemic, Morrison & Foerster has once again surveyed in-house general counsel from global corporations to understand where companies are on the road to recovery and how they have been impacted to date.

METHODOLOGY

For our Coronavirus (COVID-19) Road to Recovery Survey, Morrison & Foerster surveyed in-house legal professionals around the globe with revenues of up to more than \$20 billion. The survey was conducted between September 23 and November 10, 2020.



The top three industries represented in the study include finance and insurance (20%), followed by technology (14%) and life sciences (10%).

FINDINGS

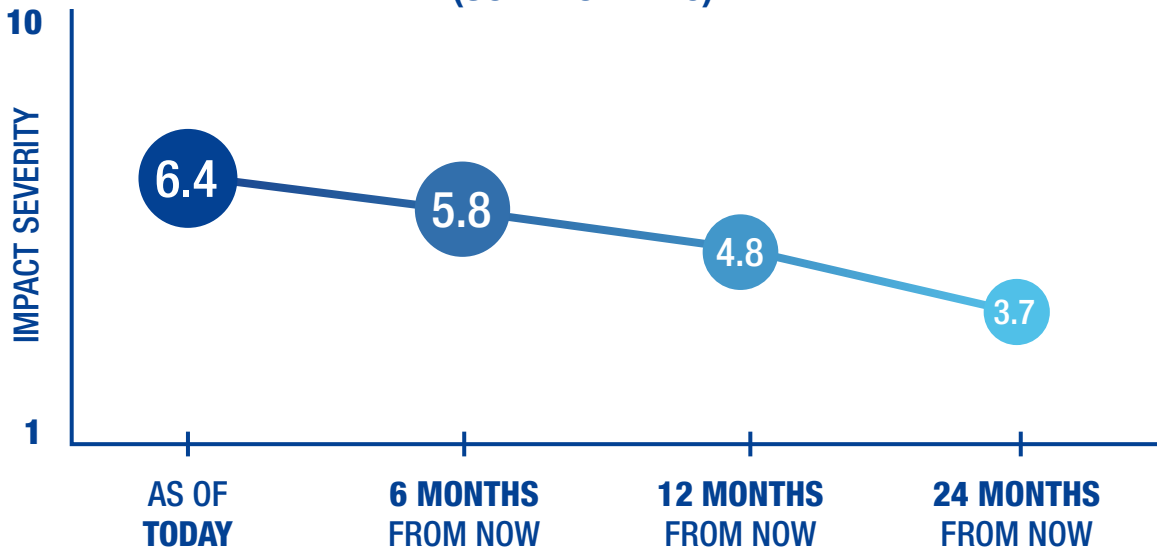
While COVID-19 continues to have a significant impact on companies worldwide, and many of the issues that were top of mind in our first study still remain, our new findings indicate increased optimism with respect to how businesses are navigating the impact of the pandemic and as they look towards the future with the possibility of a viable vaccine on the horizon.



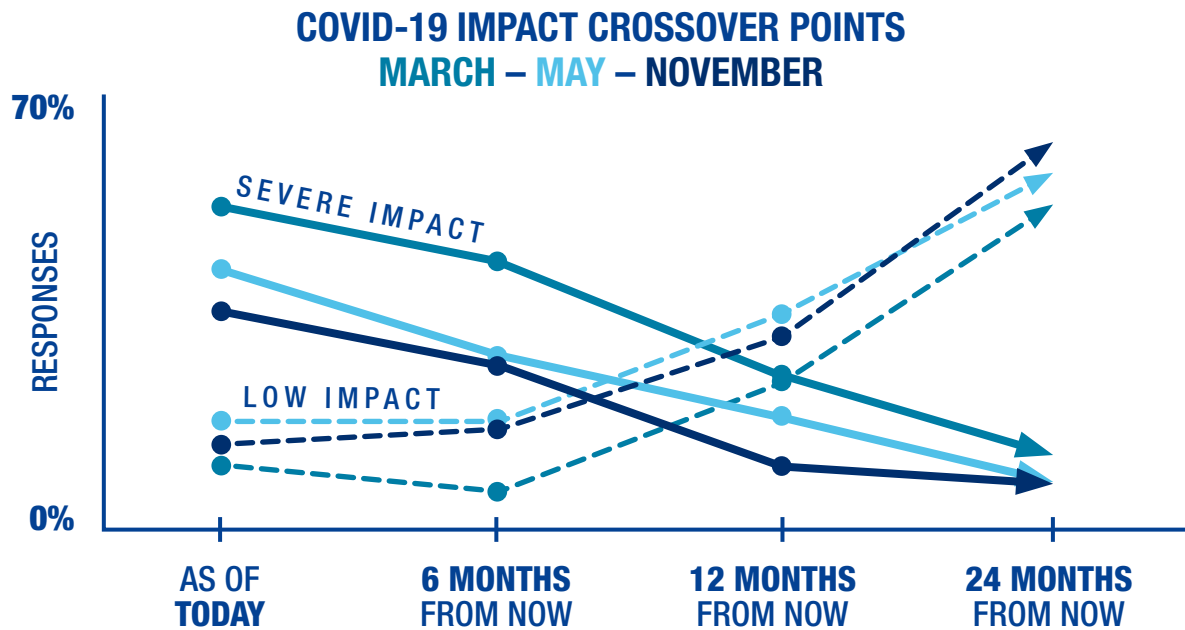
[C]OMPANIES ARE BEGINNING TO SEE SOME EVENTUAL LIGHT AT THE END OF THE TUNNEL, AS MULTIPLE VACCINES ARE POISED TO BECOME AVAILABLE IN THE MARKET, AND GIVEN THAT COMPANIES NOW HAVE HAD SEVERAL MONTHS OF ADAPTING THEIR PROCESSES AND OPERATING IN A PANDEMIC ENVIRONMENT.

David Newman, Morrison & Foerster Partner and Head of the Firm's Coronavirus (COVID-19) Task Force, who served as Chief of Staff of the Ebola response office in 2014 – 2015 while an official on the National Security Council staff.

IMPACT COVID-19 HAS HAD/WILL HAVE ON YOUR BUSINESS (SCALE OF 1–10)



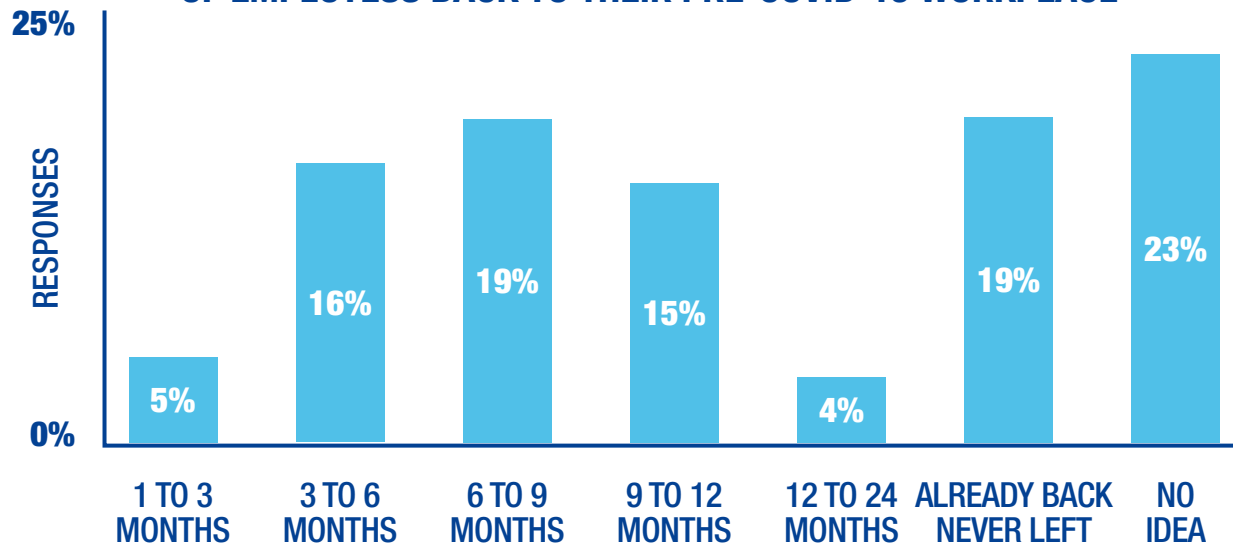
As expected, COVID-19 is continuing to have a significant impact on businesses, with the severity of the impact changing from the previous March and May surveys. Today's impact is averaging 6.4 on a 10-point scale – 10 representing the most severe impact – versus 7.2 and 6.7 previously and continuing near that same level (5.8) for the next six months, although one point lower when compared to March (7.1) and May (6.0) previously. As referenced earlier, legal counsels expect the impact level to decrease over the next 12 (4.8 vs. 5.7 and 5) to 24 (3.7 vs. 4 and 3.7) months, but they do not see it completely dissipating.



Although average impact levels have changed only slightly over the past two months, it is evident that there continues to be greater optimism today than four or six months ago when looking at those that rated impact as “Severe” (8+). The number of companies rating the impact as severe today versus four and six months ago dropped by seven percentage points, from 35% of companies compared to 42% four months ago, and 17 percentage points from 52% six months ago. This likely reflects companies’ experience having navigated and weathered the challenges of the first months of the pandemic – and greater optimism regarding recovery. That more optimistic view of impact, as well as recovery, can be seen across the board, regardless of time frame, and is especially apparent when looking at the percent of companies now believing COVID-19 will have low impact (1 to 3 rating) 24 months from now, increasing 10 percentage points from March (51%) to today (61%). That said, it bears emphasis that a majority of companies still believe full or near-full recovery is still 24 months away.

“Even as we are currently in a very difficult period from a public health perspective, companies are beginning to see some eventual light at the end of the tunnel, as multiple vaccines are poised to become available in the market, and given that companies now have had several months of adapting their processes and operating in a pandemic environment. In spite of this, a majority of businesses still think it will take up to two years before the impact of COVID-19 is no longer felt, which really underscores the gravity this pandemic has had on companies across industries,” said Morrison & Foerster COVID-19 Task Force chair and Global Risk + Crisis Management partner David Newman.

WHEN YOUR COMPANY ANTICIPATES BRINGING THE MAJORITY OF EMPLOYEES BACK TO THEIR PRE-COVID-19 WORKPLACE

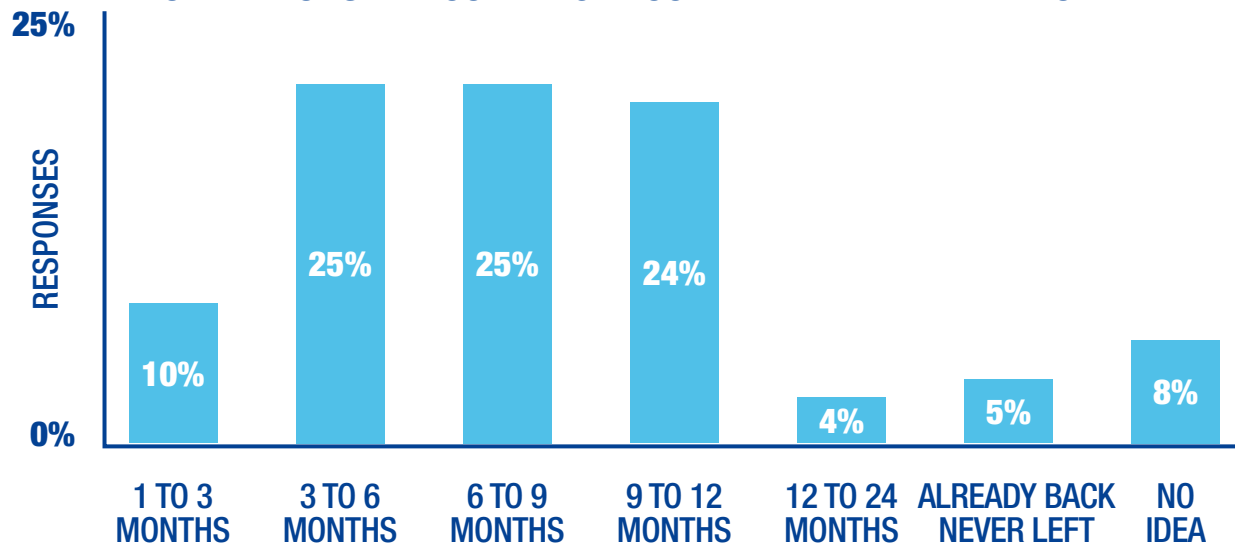


In terms of returning employees back to their pre-COVID-19 workplace, 55% of companies report that they expect to have the majority of employees back to the workplace by one year from now or sooner. Approximately a quarter of companies (23%) report having no idea when the majority of employees can return to the workplace, while 19% report that the majority of employees are already back or never left.

As the world watches the status of the development of a COVID-19 vaccine and sees it as the means to truly return to normal (employees return to office/facilities, travel restrictions removed, social distancing restrictions removed, etc.), we asked general counsel for their opinion. Opinions ranged from one to three months (10%) to 12 to 24 months (4%), but for the most part, a majority of counsel felt normality would return within three to 12 months if a vaccine were available today.

Although the above question on vaccine availability was not limited to just the return to the pre-COVID-19 workplace, the responses to this question appear to suggest that general counsel anticipate that having a vaccine available today would speed up that return overall, with over 50% reporting they expect being back to normal within three to nine months with a vaccine compared to 35% expecting a return to normality in the workplace within the same time frame when a vaccine wasn't part of the consideration.

WHEN YOUR COMPANY WOULD RETURN TO NORMAL OPERATIONS IF A COVID-19 VACCINE WERE AVAILABLE TODAY



When asked what percentage of their workforce would have to be vaccinated for their company to return to normal, a majority (56%) believe over 50% of employees would need to be vaccinated; 15% felt they could return to normal with less than 50% of employees vaccinated. Slightly more than one quarter of counsel (28%) reported they didn't know or had no idea. Many stated they have neither considered this question with leadership nor considered a return to normal as dependent on the availability of a vaccine. Several indicated they would wait for scientists or local health regulators to advise, while some questioned companies' ability to require employees to be vaccinated.

Although there are clear benefits to having employees vaccinated, and employers may generally mandate their employees be vaccinated, subject to reasonable accommodations for individuals with disabilities or who object for religious reasons, requiring vaccinations can also expose employers to a host of legal challenges. Those challenges include potential workers' compensation claims by employees who allege negative side effects, as well as possible unfavorable PR and brand implications should unhappy employees take their grievances to social media platforms.

“With one or more vaccines on the verge of being approved, some employers will undoubtedly mandate employee vaccines, either for altruistic reasons – they don't want people to get sick at their place of business – or because they



WITH ONE OR MORE VACCINES ON THE VERGE OF BEING APPROVED, SOME EMPLOYERS WILL UNDOUBTEDLY MANDATE EMPLOYEE VACCINES, EITHER FOR ALTRUISTIC REASONS – THEY DON'T WANT PEOPLE TO GET SICK AT THEIR PLACE OF BUSINESS – OR BECAUSE THEY ARE WORRIED ABOUT LIABILITY FOR WORKPLACE EXPOSURE TO COVID-19.

Janie Schulman, Morrison & Foerster
Partner | Employment + Labor

are worried about liability for workplace exposure to COVID-19. Other employers will take a different tack, merely encouraging vaccines,” said Morrison & Foerster Employment + Labor partner Janie Schulman.

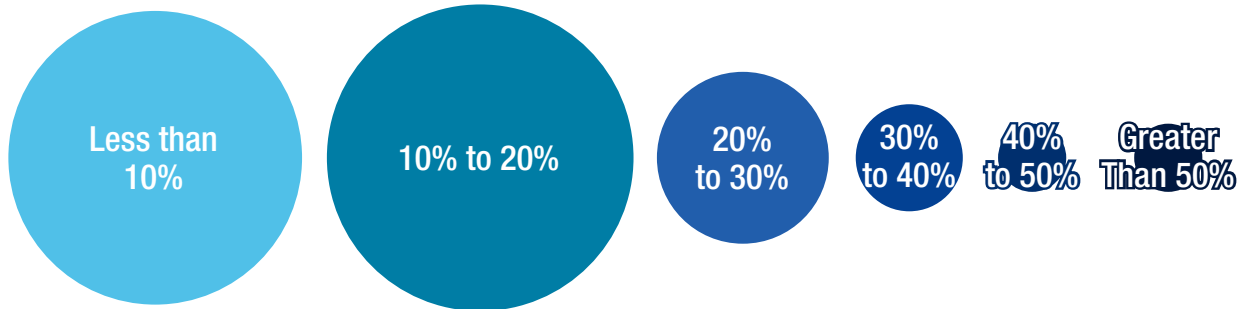
Perhaps the biggest challenge for employers operating in this largely uncharted territory is weighing the benefits and potential legal risks of mandating employee vaccinations against the benefits and potential legal risks that not doing so would pose to the business.

Since no vaccine has yet been approved, government agencies have thus far shied away from

concrete proclamations regarding mandatory workplace vaccines, but the U.S. Equal Employment Opportunity Commission (EEOC) has previously recommended that employers “consider simply encouraging employees” to be vaccinated.

“I would imagine EEOC may revisit its guidance when a vaccine becomes available,” said Morrison & Foerster Employment + Labor partner Janie Schulman. “Especially given that EEOC has said COVID-19 poses a direct threat to the health and safety of [employees] and the general public, I imagine that the EEOC may be warmer to the idea of employer mandates than during the 2009 H1N1 pandemic when it suggested employers consider simply encouraging employees to be vaccinated. The EEOC’s final position and those of other government agencies remain to be seen, but regardless of whether mandates are merely tolerated or actively encouraged, employers will still have to consider legally required reasonable accommodations on a case-by-case basis.”

PERCENT OF YOUR CURRENT LEGAL DEPARTMENT WORKLOAD THAT IS DUE TO OR RELATED TO COVID-19



In terms of legal department workload, the majority (51%) of in-house counsel report that 20% or less of their workload is due or related to COVID-19 (28% – less than 10%; 29% – 10 to 20%). On the flip side, 12% of in-house counsel report that workload due or related to COVID-19 is more than 40% of their workload, indicating the wide variation of impact on legal departments.

When asked how they anticipate COVID-19 and non-COVID-19 legal workload to change over the next six months, 74% of general counsel reported expecting COVID-19 legal workload to decrease (38%) or remain the same (36%), while 93% of general counsel felt non-COVID-19 legal workload would increase (64%) or stay the same (29%).

OVER THE NEXT SIX MONTHS, HOW DO YOU ANTICIPATE THE FOLLOWING WILL CHANGE?



When looking at non-COVID-19 workload expectations across the top three industries compared to all respondents, 90% of the Technology sector and 71% of the Life Sciences sector reported expecting an increase in non-COVID-19 workload over the next six months, compared to 64% across all industries, which might be a result of the Technology and Life Sciences sectors being less affected by COVID-19 than some other areas of the economy. The Financial sector aligns closely with the general populations of industries in terms of non-COVID-19 and COVID-19-related workload expectations over the next six months.

A majority of general counsel expect their legal department budget (55%) and the number of full-time department employees (58%) to remain the same over the next six months, while 29% and 21% respectively expect their department budget and headcount to decrease.

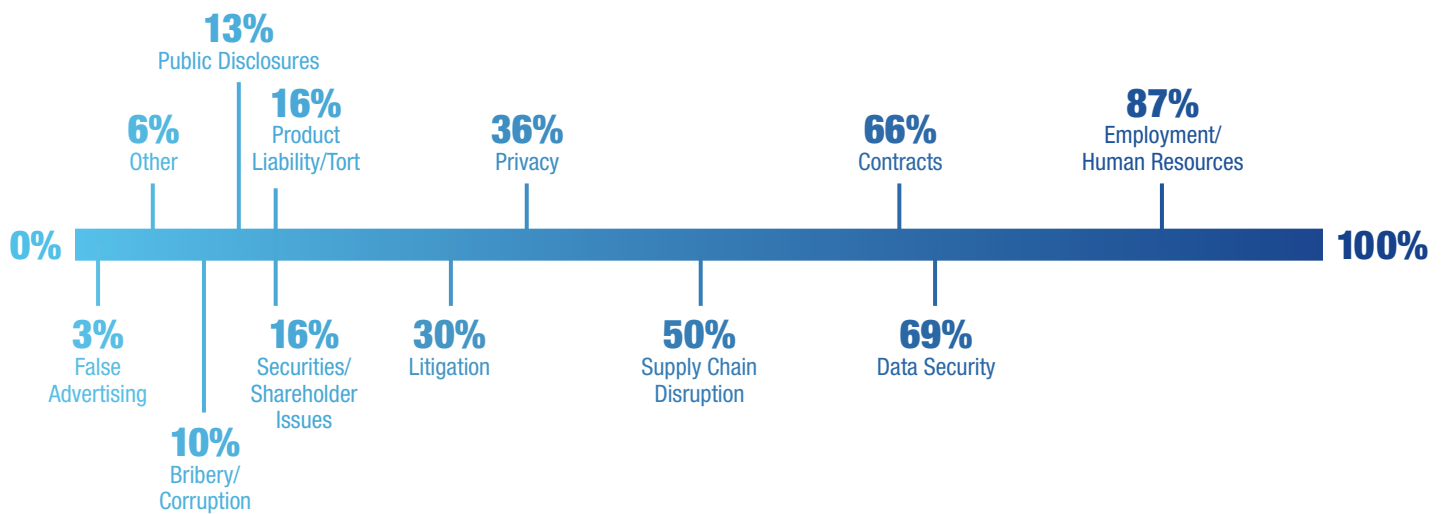
A majority (61%) of counsel expect outside counsel spend to increase (18%) or remain the same (43%) over the next six months, while nearly one-third (30%) of counsel expect outside counsel spending to decrease.

In terms of legal technology investments, a majority of counsel (72%) expect to keep investments at the same level (47%) or increase investments (25%). Only 13% expect to be decreasing investments in legal technology over the next six months.

In terms of the top three legal department priorities, priorities centered on supporting the business, administering contracts, and balancing legal department resources and workload given the changing business and legal priorities. In their own words, survey respondents reported that their priorities center on:

- “Continuing to support the business in all aspects of what it is doing and plans to do.”
- “Help the company capitalize on the opportunities amid this cataclysmic event; transform how work is organized to streamline costs and improve margins.”
- “Help revenue generators and investment teams avoid fatal missteps; continue to work on loosening resolve to offload nonperforming investments and people.”
- “Continue to fight fires related to COVID-19 and economic recession in subsidiaries around the country.”

WHAT DO YOU BELIEVE WILL BE THE TOP FOUR LEGAL RISKS YOUR BUSINESS WILL FACE ON THE ROAD TO RECOVERY?



Employment/Human Resources (87%) continues to be the top legal risk posed by COVID-19, regardless of company size or industry. However, Data Security has now risen to the second-highest legal risk for companies, increasing from 50% in May to 69% today, surpassing contracts (64% in May to 66% today) as the second-highest legal risk.

“The ongoing pandemic has emboldened cybercriminals, and the demands for ransomware in particular are increasing in volume and amount,” said Morrison & Foerster Global Privacy and Data Security partner Miriam Wugmeister.

“Every business is a potential target because every company has some type of data – personal information, trade secrets, confidential customer information – and thus every business should take steps to bolster its cyber security programs, including technical



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Miriam Wugmeister, Morrison & Foerster
Partner | Global Privacy and Data Security

controls (such as multi-factor authentication, regular patch management, and malware detection tools), administrative/organization controls (such as training on phishing, limiting access to sensitive data, and conducting tabletop exercises to prepare to respond to an incident),” Wugmeister added.

In contrast to our previous findings, concerns related to privacy have dropped significantly, from 59% in May to 46% today. As these issues have risen or lowered in risk level over the past six months, supply chain disruption continues to remain among the top four risks (41% to 50% today).



THE KEY TAKEAWAY

HERE IS THAT PUBLIC COMPANIES ACROSS THE SIZE SPECTRUM SHOULD PAY CLOSE ATTENTION TO ANY NEW COVID-19-RELATED BUSINESS DEVELOPMENTS . . . THIS UNDERSCORES THE IMPORTANCE OF UPDATING FINANCIAL REPORTING AND DISCLOSURES ABOUT OPERATIONS, LIQUIDITY, AND CAPITAL RESOURCES . . .

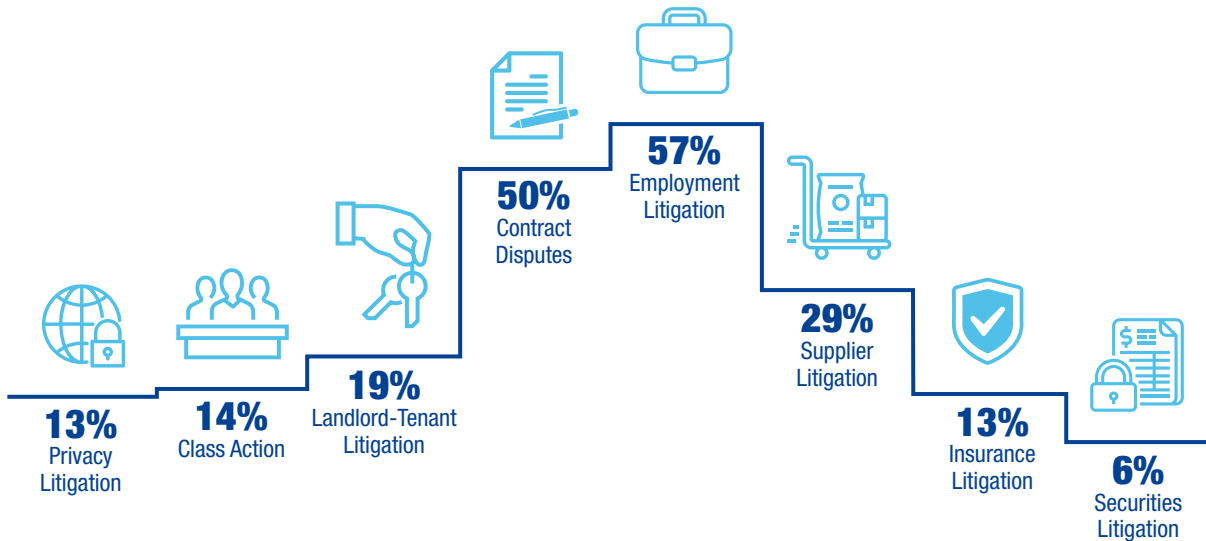
David Lynn, Morrison & Foerster
Partner and Co-Chair | Corporate Finance

In terms of company size, it’s interesting to note that the percentage of companies overall citing securities or shareholder risk remained consistent from the previous survey at 16%. Now that concern can now be seen across a broader spectrum of companies. Previously, 70% of those citing it as a risk were companies with revenues over \$1 billion. However, today, only 36% are companies with revenues over \$1 billion, while 63% citing it as a risk are companies under \$1 billion. The same change can be seen when looking at companies citing public disclosures as a risk. Previously, 85% citing it were from companies with revenues over \$1 billion, while today, only 44% are

from companies with revenues over \$1 billion, while 55% citing it as a risk are from companies under \$1 billion.

“The key takeaway here is that public companies across the size spectrum should pay close attention to any new COVID-19-related business developments, including potential improvements in business conditions,” said David Lynn, Morrison & Foerster partner and Corporate Finance co-chair. “This underscores the importance of updating financial reporting and disclosures about operations, liquidity, and capital resources, especially as companies look to the future.”

WHAT LITIGATION ACTIONS DO YOU EXPECT YOUR BUSINESS WILL FACE ON THE ROAD TO RECOVERY?



In terms of litigation actions, respondents expect their business to face on the road to recovery, over half of companies (57%) expect employment/human resource litigation to remain the top action they face, followed by contract disputes (50%), directly aligning with the top two reported business risks. Regardless of company size, these actions and risks were top of mind.

When asked about business transactions companies are considering taking in the next nine months, 38% of respondents reported that reducing commercial real estate/renegotiating leases was among their immediate plans.

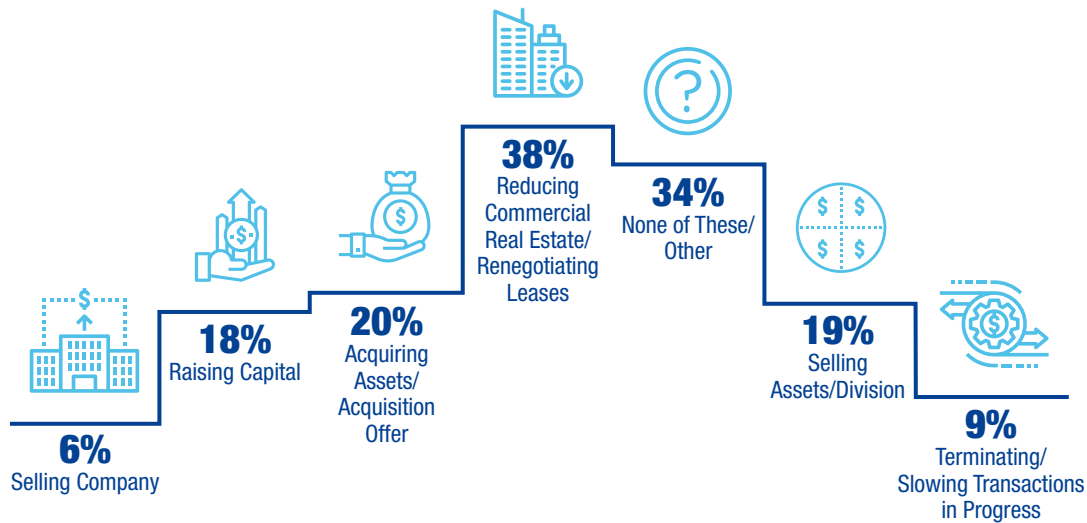
“This finding is likely being driven by the fact that many employees, especially in cities that rely heavily on mass transit and with high-rise buildings requiring elevator usage for large numbers of tenants, are nervous about health risks in getting to the office, and that has weighed on the minds of employers,” said Mark Edelstein, Morrison & Foerster Global Real Estate Group chair and



LONGER TERM, EVEN AFTER THE PANDEMIC ABATES, MANY COMPANIES WILL LIKELY REASSESS THEIR COMMERCIAL SPACE NEEDS AS THEY CONSIDER THE COMPETING CIRCUMSTANCES OF NEEDING LESS SPACE IF THEY PERMIT GREATER WORK FROM HOME FLEXIBILITY AND NEEDING MORE SPACE IN THE OFFICE TO ALLOW FOR SOCIAL DISTANCING.

Mark Edelstein, Morrison & Foerster
Partner and Chair | Global Real Estate Group

WHICH ACTIONS IS YOUR COMPANY CONSIDERING TAKING IN THE NEXT 9 MONTHS?



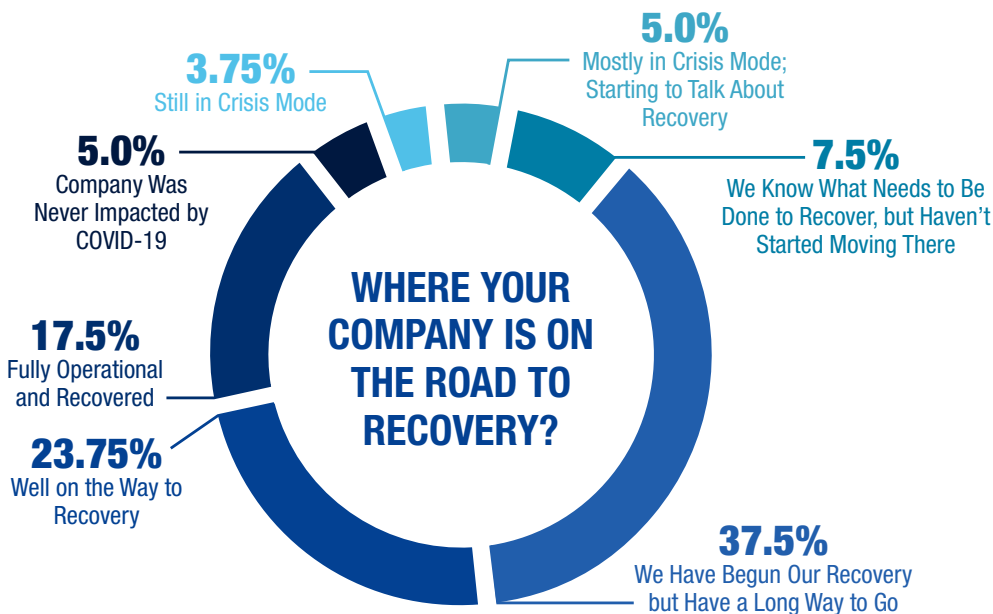
partner. “As a result, some companies that have opened their offices have made it voluntary for their staff to go into the office and have found that many are opting to work from home. These changes have prompted a number of businesses to revisit and renegotiate their leases, and to sublease some of their space, to accommodate for this changing office-workplace dynamic, which is likely going to continue until employees feel that it is safe to return to the office.”

“Longer term, even after the pandemic abates, many companies will likely reassess their commercial space needs as they consider the competing circumstances of needing less space if they permit greater work from home flexibility and needing more space in the office to allow for social distancing,” Edelstein added.

Far fewer respondents, however, were considering acquiring assets or making an acquisition offer (20%), selling assets or business divisions (19%), or raising capital (18%). Terminating or slowing down any transactions currently in process dropped significantly since May, with 9% of in-house counsel reporting slowing or dropping transactions compared to 23% six months ago.

“At the beginning of the pandemic, we saw companies either slow down or terminate existing transactions. We are now seeing companies revisit those deals and big investments being made in the areas of technology and healthcare. We are also seeing companies start to emerge from crisis mode and begin to strategically position themselves for a post-COVID-19 world,” said Morrison & Foerster Corporate Department co-chair Eric McCrath.

And finally, as companies around the globe adapt to conducting business in a post-COVID-19 world, we asked respondents to identify where they felt they were on the road to recovery. On the positive side, four out of five companies report that they have at least begun their transition or are fully operational on the road to recovery (i.e., have begun transition but with a long way to go (38%), are well on their way to recovery (24%), or are fully operational and recovered (18%). This compares to three out of five companies in March reporting that they had begun the transition. Additionally, companies reporting being fully operational increased from 1% in May to 18% in November, showing significant progress in adapting business during the pandemic.



Although nearly one out of five companies are either still in crisis mode (3.75%), know what needs to be done, but haven't started moving there yet (7.5%), or are still in crisis mode, but starting to talk about recovery (5%), that number represents a significant reduction from six months ago, when nearly two out of five companies reported still being in crisis mode.

“The COVID-19 pandemic has devastated many industries and continues to have a profound impact on companies worldwide. Most companies are still not out of the woods, but the findings in this report indicate a majority of businesses are at least more optimistic about the road to recovery than before,” said David Newman, Morrison & Foerster partner and head of the firm’s COVID-19 Taskforce.



CONCLUSION

“While the public health picture remains dire, and there will undoubtedly be continued legal risks and challenges ahead in the coming months, particularly in the areas of employment and labor, data security, and contract disputes, among others, this sense of optimism underscores the important planning work that we saw our clients put in throughout this pandemic to mitigate risks and protect their businesses from the impact of this unprecedented global health crisis,” Newman added.

For more insights, visit our [COVID-19 Resource Center](#) and read our previous COVID-19 Impact survey, [COVID-19 and Easing of Stay-at-Home Orders](#), and our inaugural [COVID-19 Impact Survey](#).



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