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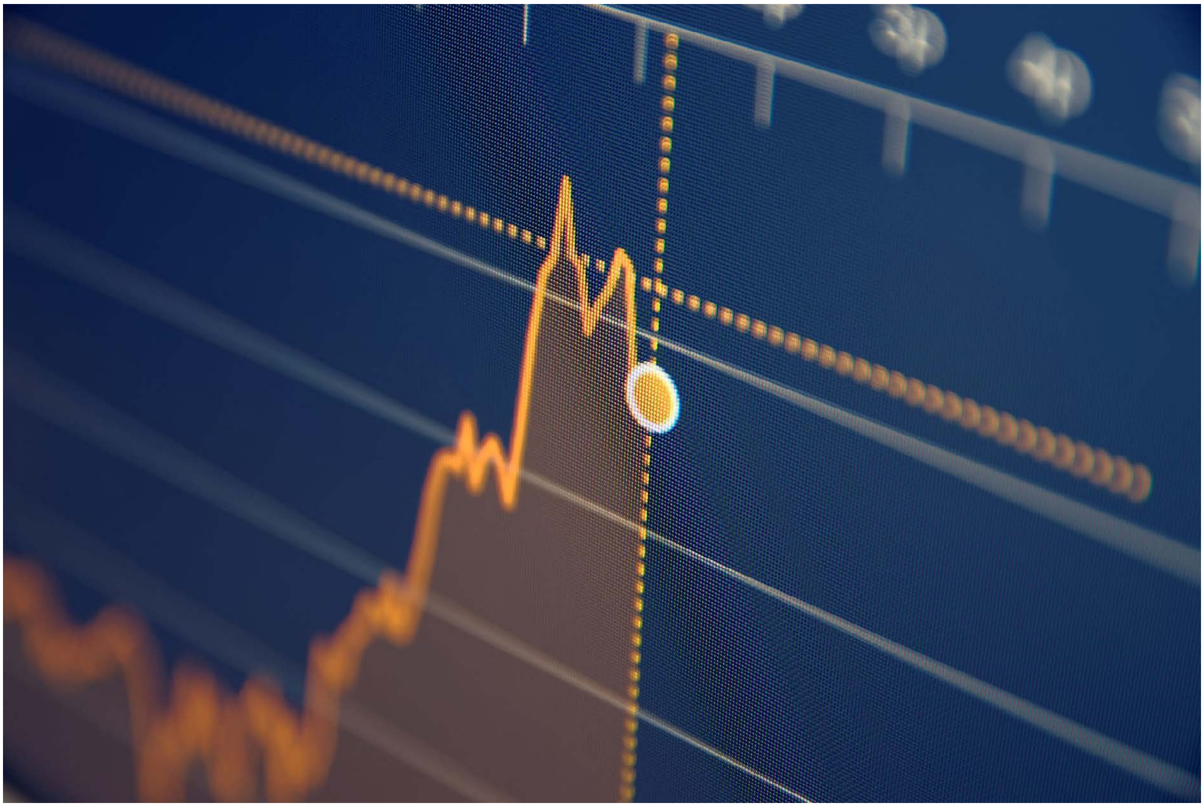

Business lessons from past pandemics

Past pandemics—and there have been four in the last 100+ years—offer critical lessons for making socially responsible decisions while remaining operational in the future. **Aly McDevitt** has more.

For most, the coronavirus pandemic has ushered in an era of unprecedented uncertainty. For businesses, this dangerous, novel virus has introduced unparalleled issues in employee health, business continuity, and supply chain disruptions, to name a few.

Yet, in the midst of mayhem, knowledge is power. History is one area to mine for such knowledge. Thus, past pandemics—and there have been four others in the last 100-plus years—offer critical lessons for businesses that are striving to make socially responsible decisions today while also remaining operational in the future.

The H1N1 pandemic of 1918 and the "swine flu" pandemic of 2009 are two such examples. Each event shares certain resonances with the pandemic of today—the coronavirus known as COVID-19—and unpacking these resonances is what lends business leaders, including compliance officers, valuable and practical knowledge they can carry forward into the uncertain days and months to come.

Prepare for waves

Lesson 1: It will behoove business leaders to fully anticipate and prepare for a second—or third—wave of the COVID-19 pandemic. Develop and plan your business' pandemic preparedness plan accordingly.

Consider the pandemic of 1918. The most severe in recent history, the H1N1 spread worldwide in 1918-1919, exacerbated largely by mass troop movement during World War I. Control efforts were limited to non-pharmaceutical interventions: isolation, quarantine, personal hygiene, use of disinfectants, and limitations of public gatherings.

President Trump originally introduced a 15-day plan (now extended until April 30) requesting all Americans to stay home as much as possible and avoid collecting in groups of more than 10, among other interventions aimed at curbing the transmission of the virus. The plan was prompted by a scientific report, "Impact of non-pharmaceutical interventions (NPIs) to reduce COVID19 mortality and healthcare demand," authored by a team of British researchers.

The U.K. report directly compared COVID-19 to the 1918 pandemic: "The global impact of COVID-19 has been profound, and the public health threat it represents is the most serious seen in a respiratory virus since the 1918 H1N1 influenza pandemic."

Importantly, the 1918 pandemic occurred in three waves: one in spring 1918, another in fall 1918, and a third in winter 1918-19. While the H1N1 virus subsided in summer 1918, it was actually the second wave in the fall that proved most fatal in the United States. Thus, even if the number of cases drops in several months' time, businesses should be amply prepared for a resurgence.

Indeed, pandemics are actually known to occur in waves. Infections spike, peak, and taper off, only to rebound and repeat the process later. This was true in 1918-1919; in 1957-58 with the H2N2 virus; and in 2009-2010 with the swine flu, according to the Center for Disease Control and Prevention (CDC).

Topical evidence may point to a relative respite on the COVID-19 horizon if one looks to China for any sort of forecast (provided the United States adopts stringent measures, per the report's guidance). China has been on lockdown since late January, and after weeks of tight control—requiring a quarantine of households nationwide—new COVID-19 cases in China have slowed to a trickle.

Still, the U.K. report warns the transmission of the virus can quickly rebound when intervention efforts are relaxed, suggesting that another wave of the COVID-19 pandemic is conceivable. "While experience in China and now South Korea show that suppression is possible in the short term, it remains to be seen whether it is possible long-term," the report states.

Be vigilant, be communicative, be proactive

Lesson 2: Resist the urge to bury your head in the sand between waves. Ask important questions, revisit weaknesses in your company's initial response to the COVID-19 pandemic, and refine your plan going forward.

The impact of the swine flu in 2009-2010 was less severe than previous pandemics, though to frame it as such feels insensitive: estimated deaths worldwide reached anywhere from 151,000 to 575,400, according to the CDC. (By comparison, however, the pandemic of 1918 saw 50 million deaths worldwide. The COVID-19 pandemic, which is considered an emerging pandemic, has seen over 8,200 deaths worldwide as of mid-March.)

Nonetheless, the swine flu of 10 years ago forced businesses to confront their preparedness for the next 21st-century pandemic. In hindsight, business lessons gleaned from the swine flu feel like rudimentary practice for the challenges of today.

After the first peak of swine flu in fall 2009 as well as in the second wave's tapering-off period in spring 2010, news outlets covering public health and business intelligence published various articles reflecting on lessons learned. Some pertinent and noteworthy lessons for business leaders are:

Resist the urge to bury your head in the sand between waves. Ask important questions, revisit weaknesses in your company's initial response to the COVID-19 pandemic, and refine your plan going forward.

» **Having a fixed plan is insufficient.** Six months after businesses received a "real-world crash course in pandemic response," Risk Management suggested "re-visiting plans to assess [their] company's response," "putting structure behind the evaluation process," and "gaug[ing] the employee opinion of how the company responded" to the initial outbreak.

Relevance today: Obviously, every business' initial pandemic preparedness plan is being pressure-tested by the reality of today. Still, even in a trial by fire, companies can be thinking aloud about the full range of contingency plans going forward, striving for the highest level of flexibility as they consider how various scenarios could play out, and how those scenarios will impact employees, suppliers, and customers.

» **Employer communication is paramount.** Straightforward information alleviates fears, minimizes speculation, and inspires employees' trust. Four months before the World Health Organization (WHO) declared the swine flu pandemic over, the University of Minnesota's Center for Infectious Disease Research and Response (CIDRAP) suggested to businesses that they be "providing information in bite sizes rather than long lectures or meetings," and "offering email addresses to receive and respond to employee questions."

Relevance today: Good communication between business leaders and their employees cannot be overstated. With the full gamut of messages spread by the media, from facts to misinformation (such as a fake text message spread virally), along with the added exacerbation of social media fanning the flames of people's hysteria, it is critical that employers cut through the noise. Employees need a strong beacon to communicate updates, amended plans, and procedures.

» **Maintain business operations by managing absenteeism.** As the swine flu virus put a strain on a workforce, absenteeism had to be monitored and managed to the greatest extent possible, "increasing [a business'] chances of maintaining normal operations throughout the pandemic and minimizing the financial impact on [the] company," Risk Management said at the time, recommending employees be categorized into four groups:

» Essential to the work site
» Essential but can work remotely
» Non-essential but can work remotely
» Non-essential and not necessary to work remotely

Relevance today: Now that a national emergency has been called, businesses have been obliged to either shut down operations for the time being or attempt to transition to a fully remote workplace. Risk Management's advice is particularly relevant to larger companies today that are remaining operational during the pandemic and that have a wide base of employees. It is important to track absenteeism numbers as they trend upward to keep a pulse on the overall percentage in the likelihood that employees and/or their family members get sick. Then, assess essential business functions to determine maximum thresholds of absenteeism and categorize healthy employees accordingly to maintain business continuity to the greatest extent possible. ■

SEC provides coronavirus disclosure guidance

The SEC Division of Corporation Finance has published guidance specific to securities law and touching on the risks and impacts of COVID-19. **Jaclyn Jaeger** reports.

The Securities and Exchange Commission's Division of Corporation Finance published new guidance to provide clarity regarding its view on disclosure and other securities law obligations during the escalating coronavirus pandemic.

The SEC said it's "providing this guidance as companies prepare disclosure documents during this uncertain time. The Commission and the staff have also provided targeted regulatory relief where appropriate, in light of evolving circumstances."

Several existing rules or regulations require disclosure about the known or reasonably likely effects of and the types of risks presented by COVID-19, the SEC noted. "As a result, disclosure of these risks and COVID-19-related effects may be necessary or appropriate in management's discussion and analysis, the business section, risk factors, legal proceedings, disclosure controls and procedures, internal control over financial reporting, and the financial statements," the agency stated.

Regarding disclosures about the risks and impact of COVID-19, including how the company and management are responding to them, "should be specific to a company's situation," the SEC said.

The agency additionally provided a non-comprehensive, illustrative list of dozens of questions to consider, a few of which are listed here:

- How has COVID-19 impacted your financial condition and operating results? How do you expect COVID-19 to impact your future operating results and near-and-long-term financial condition?
- How has COVID-19 impacted your capital and financial resources, including your overall liquidity position and outlook?
- How do you expect COVID-19 to affect assets on your balance sheet and your ability to timely account for those assets?
- Do you anticipate any material impairments (e.g., with respect to goodwill, intangible assets, long-lived assets, right of use assets, investment securities), increases in allowances for credit losses, restructuring charges, other expenses, or changes in accounting judgments that have had or are reasonably likely to have a material impact on your financial statements?
- Have COVID-19-related circumstances such as remote work arrangements adversely affected your ability to maintain operations, including financial reporting systems, internal control over financial reporting, and disclosure controls and procedures? If so, what material changes in your internal controls have occurred?
- Have you experienced challenges in implementing business continuity plans or do you foresee requiring material expenditures to do so?
- Do you expect COVID-19 to materially affect the demand for your products or services?
- Do you anticipate a material adverse impact of COVID-19 on your supply chain or the methods used to distribute your products or services, with impact on cost and revenue?
- Will your operations be materially impacted by any constraints or other impacts on your human capital resources and productivity?
- Are travel restrictions and border closures expected to have a material impact on your ability to operate and achieve your business goals?

The SEC encourages disclosure that is "tailored and provides material information about the impact of COVID-19 to investors and market participants. We also encourage companies to provide disclosures that allow investors to evaluate the current and expected impact of COVID-19 through the eyes of management, and that companies proactively revise and update disclosures as facts and circumstances change."

Reporting earnings and financial results

The SEC is also encouraging companies to "proactively address financial reporting matters earlier than usual. For example, to the extent a company or its auditors will need to consult with experts to determine how the evolving COVID-19 situation may impact its assets—including impairment of goodwill or other assets—it should consider engaging with those experts promptly so that its reporting remains as timely as possible, as well as complete and accurate."

The agency also reminds companies of their obligations under Item 10 of Regulation S-K and Regulation G concerning the presentation of non-GAAP financial measures, as well as the Commission's guidance concerning performance metrics disclosure. "To the extent a company presents a non-GAAP financial measure or performance metric to adjust for or explain the impact of COVID-19, it would be appropriate to highlight why management finds the measure or metric useful and how it helps investors assess the impact of COVID-19 on the company's financial position and results of operations," the SEC said.

In the guidance, the SEC also acknowledged that "there may be instances where a GAAP financial measure is not available at the time of the earnings release because the measure may be impacted by COVID-19-related adjustments that may require additional information and analysis to complete." In such cases, the SEC cites examples of how companies can provide reasonable estimates. ■

EPA lessens enforcement amid coronavirus

The EPA won't seek penalties for non-compliance with routine reporting obligations during pandemic. **Jaclyn Jaeger** has more.

The U.S. Environmental Protection Agency announced in March a temporary policy regarding its enforcement of environmental legal obligations during the coronavirus pandemic.

The EPA said the enforcement discretion policy applies to civil violations and "addresses different categories of non-compliance differently." For example, it doesn't expect to seek penalties for noncompliance with routine monitoring and reporting obligations resulting from the coronavirus "but does expect operators of public water systems to continue to ensure the safety of our drinking water supplies."

The policy also describes steps regulated facilities should take to qualify for enforcement discretion. "EPA is committed to protecting human health and the environment but recognizes challenges resulting from efforts to protect workers and the public from COVID-19 may directly impact the ability of regulated facilities to meet all federal regulatory requirements," said EPA Administrator Andrew Wheeler. "This temporary policy is designed to provide enforcement discretion under the current, extraordinary conditions, while ensuring facility operations continue to protect human health and the environment."

The temporary policy makes it clear that the EPA expects regulated facilities to comply with regulatory requirements, where reasonably practicable and to return to compliance as quickly as possible. To be eligible for enforcement discretion, the policy also requires facilities to document decisions made to prevent or mitigate noncompliance and demonstrate how the noncompliance was caused by the pandemic.

"This policy does not provide leniency for intentional criminal violations of law," the EPA said. Nor does the policy apply to activities that are carried out under Superfund and RCRA Corrective Action enforcement instruments. The EPA said it will address these matters in separate communications. ■

10 ways to maintain a positive workplace

Jaclyn Jaeger explores 10 tips from a Salary.com Webinar on how to maintain a sense of normalcy in the virtual workplace.

Companies all around the world right now are working around the clock to adjust to a new normal as we quickly learn to navigate the coronavirus pandemic. Aside from the human component of fear, anxiety, and stress, we're also seeing on the business side some companies going out of business, having to make payroll adjustments, layoffs, and more. All of this is to say that it's more important than ever for senior leadership teams—including ethics and compliance officers—to do their part to help maintain a sense of normalcy in the virtual workplace.

On March 19, Salary.com held a Webinar, "Navigating the New Normal," in the spirit of sharing strategies for leading effectively and helping others do the same in this new normal; how to maintain a social work environment; and how to support employees as they transition to remote work. "This is an unprecedented time in our recent history, and it carries with it a call for stoicism, hope, and compassion," said Salary.com founder and CEO Kent Plunkett.

Paul Toth, chief culture strategist at Vital Leadership Coaching, shared numerous ways leaders can reduce anxiety and maintain a social atmosphere, even in a time of social distancing. "Effective leadership through all of this really requires a strong focus on the people," he said. Consider the following key measures:

1. **Replace fear and unease by refocusing the conversation.** One thing leaders, including chief ethics and compliance officers, can do is deliver messages that focus on the company's mission statement. "Now is a time to really ground people in why the company exists," Toth said. Consistently deliver the message, "'What we deliver matters. What we create for our mission matters,'" he said. "Remind employees what you stand up for as a company."
2. **Practice compassion.** The coronavirus is creating drastic changes in how we all work. People now must simultaneously manage other challenges and responsibilities at home, and so the more compassion we can bring to those conversations, the better, Toth said. "Accept that productivity is

going to change. It's going to be different—but if we're all clear on what our vision is and what our responsibilities are, we'll be able to pay attention to what's actually getting done and the progress people are making," he said. The number of hours people spend online or the time they spend for lunch or taking their dog for a walk, none of that stuff is as important as measures of success. "Outcome matters. Progress matters."

3. **Look to others as mentors.** Working remotely can create stress and burnout very quickly. Some people naturally thrive off of the routine of going into work every day, and so without that routine, some may struggle. Others, on the other hand, thrive in a remote work environment. For those that thrive, "tap into them as experts and mentors to guide the success of others in the organization," Toth advised.
4. **Conduct regular check-ins with employees.** To gauge how employees are handing this unique work environment, it's a good idea for managers to conduct regular check-ins with employees—not in a micro-management kind of way, but rather in a compassionate 'How are you doing?' kind of way. "Encourage people to take breaks. Encourage people to get up, take a walk," Toth said.
5. **Maintain a sense of teamwork.** During a typical job exit interview, most people say what they enjoyed most was their coworkers, and so combatting feelings of isolation that are likely to occur working remotely is important, Toth said. He cited one example of a company that has rolled out video lunches, where folks still have the option to gather together to maintain that informal connection.
6. **Create a culture of honesty and transparency.** We are living in uncertain times. Nobody knows what to expect one day to the next. Now is not a time to be opaque. Senior leadership teams, including chief ethics and compliance officers, shouldn't be afraid to be honest, to say "'Look, things are happening quickly. We don't necessarily know all the changes we're going to implement, but I can guarantee you that every decision we make is going to be examined through the lens of what will ensure the health of our community and the people in our organization,'" Toth said. "That sense of openness is going to build that sense of trust."
7. **Don't make assumptions.** In the same way that it's important to be honest and transparent with employees, it's equally important to not assume employees are mind readers. Be clear about what it is that you want employees to know—for example, that leadership is making decisions in the best interest of the organization and for employees. "It's easy to assume that employees already know these things," Toth said. "This is not time for assumptions, however."
8. **Be creative about communication techniques.** "Look for new ways to get your message out there," Toth said. Whether it's through electronic means or video, use every tool at your disposal. "Engaging with people is probably one of the most important things we can do right now," he said.
9. **Learn. Learn. Learn.** Learning is another way for leaders to play a key role. "Now is the time for us to learn as much as we possibly can," Toth said. Because we are in uncharted waters, every day will be a day to learn something new and to grow as a business and as a workplace. Don't be afraid to share what you've learned. "Learn from each other," he said. Share new updates on new protocols that are rolled out each day. "Share successes."
10. **Along the way, remember to celebrate.** Take time to stop and celebrate that you made it through another day, to celebrate that maybe you learned something or that you created something new and amazing, Toth said. "Celebrate everyone who has shown up every day, committed to deliver on the organization's mission and celebrate that you're doing it together."

"There are a lot of challenges ahead of us," Toth added. "The more we can do to celebrate every little success, that's going to help reduce that fear, reduce that anxiety, create more trust, create more connection, and it will help us to thrive as we get through all of this." ■

For some in the age of coronavirus, ethics pays

Such businesses as Darden Companies, Microsoft, and Stop & Shop are going the extra mile to give support to customers and employees. **Aaron Nicodemus** reports.

Despite slow governmental response to the coronavirus outbreak that is grinding the world economy to a halt, several businesses have decided it is worth going above and beyond to help customers and employees.

A good example is Darden Companies, which operates the Olive Garden and Longhorn Steakhouse restaurant chains. After receiving some criticism in the media on its healthcare policy, the organization extended sick leave protections to 190,000 workers, including those paid by the hour. REI, an upscale outdoor store with 162 locations nationwide, announced that it would continue to pay all its employees during the chain's 12-day temporary closure. L.L. Bean, a national retailer based in Maine, also pledged to pay all store employees during the closure of all its stores, which lasted through March 29.

These companies are not the norm. Many hundreds of thousands of retail and food service workers likely will not be paid for as long as their employers are shut down by local and state governments attempting to curb the spread of the virus. Most of them don't have employer-provided health insurance, either. The situation is much the same for hourly workers.

Microsoft, which has a huge employee footprint in two of the hardest-hit areas around Seattle and San Francisco, pledged March 5 to pay hourly vendor service providers throughout the coronavirus crisis, regardless of whether they could report for work. Cisco almost immediately followed suit.

What motivates companies to think beyond their bottom lines in a time of such turmoil?

Alison Taylor, executive director of Ethical Systems, a non-profit research group based at New York University's business school, said corporate leaders recognize their brands are a huge part of their company's value. She said some companies have made the moves after being criticized online and by the media.

"Social media is allowing people to keep track, and for some businesses the reputational downsides of these critiques create enough of a business case for action, despite the more direct expense of covering sick leave," she said.

What business leaders do in times of crisis will be remembered, she said.

"For businesses that can afford it, this is a long-term play on building (or rebuilding) public trust and brand loyalty, which they hope will last when the situation turns," she said. "Also, acting quickly and proactively has a lot of benefit, as it is the first movers that will be remembered."

Other companies have taken steps to bolster their images and support their customers. Facebook, whose business model has been criticized relentlessly in the media and by regulators, announced a $100 million small-business grants program for 30,000 individual small businesses in 30 countries where Facebook does business. The grants would comprise a combination of cash and Facebook advertising credits.

More than 60 of the nation's largest internet service providers—including large providers like AT&T, Comcast, Cox, T-Mobile, Sprint, and Verizon—signed a pledge March 14 with the Federal Communications Commission to waive fees and avoid implementing service interruptions for people and small businesses who cannot pay over the next 60 days. The companies also pledged to make free WiFi hotspots available around the country.

Richard Bistrong, a compliance consultant, writer, author, and CEO of Front-Line Anti-Bribery, said corporations are doing their best to support their employees and customers in what is an incredibly trying environment.

"While we have seen a fair share of criticism with respect to how government is communicating and responding to the current crisis, I see multinationals taking a very forward-leaning and proactive approach with respect to their workforce and also giving them a sense of appreciation of how their social interactions have wider societal consequences, so it's not all about just working and workplace issues," he said. "It's about helping people to be better sensitized and aware of how their public interactions impact our collective welfare and well-being. It's been inspiring to see our global corporate leaders taking a very proactive posture with respect to employee engagement, health, safety, and welfare."


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Some supermarket chains—which came under criticism when panic buying caused them to have empty shelves—have come up with creative ways to help their customers.

Stop & Shop in the United States, Woolworths in Australia, and Lidl and Tesco in Ireland offered special times for customers 60+ years old to shop, usually immediately after a store had been cleaned, and to avoid large crowds. Morrisons, a U.K.-based supermarket chain, pledged to pay its small suppliers immediately.

In addition, with food deliveries likely to create vital lifeline for the quarantined public, Uber Eats made an announcement that it will drop delivery charges for all U.S. restaurants, while GrubHub announced it would "temporarily suspend" the collection of up to $100,000 worth of commission payments from U.S. restaurants affected by the coronavirus.

Other companies sought to help feed the homeless, the poor, and children who depend on their school lunches for at least one daily meal. Many restaurants pledged to open their kitchens and offer food for free.

Book publisher Scholastic Inc. partnered with actors Jennifer Garner and Amy Adams to launch #SaveWithStories, a program working to provide free lunches to school children whose schools are closed because of the coronavirus outbreak. The actors will read books to children via Instagram and Facebook and encourage donations to local food drives.

Forced social responsibility?

Perhaps not all of the corporate social responsibility will be voluntary, as governments seek to enact war powers to ensure there are enough ventilators and other key pieces of equipment available as the crisis gets worse.

Some companies—including Ford, Honda, and Rolls-Royce—may be pressed into service by the U.K. government to manufacture ventilators, according to a recent Reuters story.

They are likely weighing their options and trying to figure out how to comply.

A Rolls-Royce spokeswoman said, "We understand that the Government is exploring ways in which businesses can help deal with the outbreak of COVID-19. As they shape their plans, we are keen to do whatever we can to help the Government and the country at this time and will look to provide any practical help we can." Ford and Honda did not respond to requests for comment.

This story was originally published on March 17. ■

Your CEO has coronavirus: Who needs to know?

Experts discuss when and how companies should reveal if a senior officer has the coronavirus. **Aaron Nicodemus** reports.

As infections stemming from the coronavirus pandemic continue to mount around the world, publicly traded companies face questions about when and where to disclose that their CEO or other key executives have contracted the virus.

There are also good reasons to make a public disclosure if a key company executive is quarantined but not infected, especially if the quarantine somehow inhibits that executive's ability to perform his or her leadership functions.

In this environment, boards of directors should "err on the side of over-disclosure" when it comes to CEOs and C-suite executives contracting coronavirus, said Jackie Liu, co-chair of Morrison & Foerster's Global Corporate Department.

When should companies report their CEO or other key executives are infected?

"There's no bright line," Liu said. In her position with Morrison & Foerster, Liu has counseled publicly traded companies for two decades about what information should be conveyed to regulators like the U.S. Securities and Exchange Commission (SEC) and when. The general guideline is to report a material change to business operations as soon as it is known.

With the coronavirus pandemic and its effect on nearly every aspect of business, Liu says she is counseling her public company clients to disclose if a CEO or C-suite level executive is infected with coronavirus.

"It's difficult to argue that is not material," she said.

Since March 4, two publicly traded companies, a mining company and telecommunications firm, informed the SEC that they will delay filing certain financial reports because their CEOs have contracted the coronavirus or entered quarantine, according to a March 20 blog by Audit Analytics.

Other companies have also announced their CEOs are infected. Altria Group CEO Howard Willard disclosed he has coronavirus and will take a leave of absence, according to the Wall Street Journal. The CEO of Holy Name Medical Center in Teaneck, N.J., Michael Maron, tested positive for coronavirus, as has the president of Harvard University, Lawrence Bacow.

Even so, disclosure of positive test results for a CEO or executive should not be automatic, argued Kevin Abikoff, partner and firm co-chair at Hughes Hubbard & Reed.

Companies often have to make the difficult balancing act in considering whether immediate disclosure through a press release or Form 8-K (as opposed to period filings) is required. One company employee—be it the CEO or other "critical inspirational people"—going out of pocket temporarily requires detailed analysis but does not automatically trigger a need for immediate disclosure, Abikoff said.

Liu said one disclosure trigger may be upcoming earnings calls. Companies may find it difficult to explain away the unexplained absence of a key executive like a company CEO.

Another trigger might be the press, according to a recent blog post by the firm Vinson & Elkins.

"As a practical matter, absent any public- or shareholder-facing notice that your CEO has tested positive for COVID-19, the press may end up doing it for you," the blog post read. "A public communication can provide opportunities to assure shareholders and dissipate panic. It can also do the opposite, and companies must be cautious not to provide misinformation."

Should companies decide to disclose that their CEO or key executives are infected with coronavirus, Liu cautions against playing it too cute. The company should name the executive officer and explicitly say the medical condition sidelining them is a coronavirus infection, she said. Otherwise, a disclosure might just create more uncertainty.

"In this environment, you can't just say a named executive has a medical condition. No one is going to buy that," she said.

Peter Cohan, author and professor of strategy and entrepreneurship at Babson College in Wellesley, Mass., argued companies have an obligation not only to disclose coronavirus infections of key executives, but provide regular health updates.

"Without such disclosure, companies are holding on to market-moving information that they should disclose to investors so they can make informed decisions," he said. "Absent such disclosure, the board ought to be liable for any insider trading that occurs as a result of a failure to disclose the information."

What about informing other employees?

If a company decides not to make a public disclosure about a positive coronavirus test for an executive, the company is still obligated to inform employees who came in contact with that person.

"Privacy regulators in the U.S. and around the world have cautioned employers about the need to protect the confidentiality of employee health information, including in response to the current pandemic," said Chris Lyon, a partner in Morrison & Foerster's Privacy and Data Security practice. "However, companies may face competing pressures to reveal the identity of the affected individual, when the individual is a key senior executive whose absence may attract attention notice or require explanation. This may require a more tailored risk-based approach, working with the individual where possible to align on the nature and content of the disclosure." ■

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