

We Navigated Crises. Here's How to Prepare Your Business in the Coronavirus Era

Former U.S. Secretary of Homeland Security Jeh C. Johnson and Jeannie S. Rhee, a former team leader at Special Counsel Robert Mueller's office, share insight to help general counsel and other key stakeholders through rough waters.

BY JEH C. JOHNSON AND JEANNIE S. RHEE

The business community today is contending with unprecedented challenges stemming from the global spread of the coronavirus (COVID-19)—not least of which is the widespread anxiety and uncertainty that the pandemic has created. In times like these, business leaders look to us as lawyers to help them cut through a veritable whirlwind of fast-moving, sometimes conflicting information and to understand the legal and business ramifications of the crisis. They expect us to be problem solvers and to be a core part of any crisis response team.

During our years of leadership in government service we found a few simple, guiding principles to be helpful in a crisis. We offer these principles for general counsel and chief legal officers as they strive to protect the health of their businesses, employees and other key stakeholders.

Communication is key. Whether your message is aimed at your company's employees, board or management, it is critical to communicate honestly and directly. Communicate the facts; try not to unnecessarily create anxiety



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or fear in the people who depend on you for leadership. Arm them with what they can do about it; with what you are doing to protect them and to protect the business; and with sources of information they can go to for trusted advice on how best to navigate the situation. Experience shows that people have a remarkable ability to confront and respond to crises when they understand the facts and the steps they need to take to help their colleagues and families—and what is good for your people is good for your entire organization.

Anticipate potential threats.

There is a substantial likelihood that this crisis will worsen and that it will impact your business more profoundly in the coming weeks and months. Plan for all the contingencies that you can. This is not the time for a “wait and see” approach in the hope that this crisis will eventually pass. As part of your company's leadership team, or as an adviser to that team, it is on you to look at the big picture and anticipate to the best of your abilities how the crisis might unfold and how it will affect your



Former U.S. Secretary for the Department of Homeland Security Jeh Johnson. Credit: © Matt Greenslade/photo-nyc.com

business, your workforce and your customers. The people who work for you and who depend upon your advice are relying on your leadership to respond in ways that protect them, and that will ensure the resilience of your business.

As longtime legal practitioners, we also offer the following practical, proactive steps in-house counsel should consider taking to mitigate the many and future business and legal impacts of this fast-moving crisis:

Communicate with employees. Ensure that your employees understand what they should do to protect their own health and the health of their colleagues. Communicate clearly and directly, and ensure that employees who are ill or who have been potentially exposed stay home. Review and make sure that your company complies with laws governing disability, sick leave and other employment practices that may be relevant.

Review supply contracts. Proactively review your company's contracts, whether you are the supplier or the customer, and consider how the pandemic may affect your ability to supply or to secure the products or services that are the subject of the agreement. Assess whether there are contractual provisions at issue that might cover the situation, and assess, in conjunction with your outside counsel, whether the pandemic qualifies as force majeure under the contracts.

Check business interruption coverage. Review your company's business interruption insurance to assess whether it is applicable. Specifically, review the notice provisions of the insurance policy to ensure that you are providing any notice within the periods required by the policy.



Jeannie S. Rhee, a former team leader at Special Counsel Robert Mueller's office. Credit: © Matt Greenslade/photo-nyc.com

be material by investors—and regulators. Review any previous public statements to see whether they need to be updated or modified as the crisis evolves. Consider whether disclosure of potential changes in financial results is required.

Be alert to cybersecurity risks. The fact that many employees may be working remotely will tax networks and may create vulnerabilities, particularly if your company has not previously provided for remote work on a significant scale. In addition, cyber-criminals are using the pandemic as an opportunity to capitalize on fears and engage in phishing attacks designed to gain access to confidential systems and information. Work with your IT group and cybersecurity advisers to anticipate changes in work practices and mitigate these risks.

Monitor government actions. Several states have declared

Take care with public disclosures. If your organization is a public company, consider your disclosure obligations. Evaluate your public statements. What you say now in response to this crisis could be considered to

states of emergency, while state consumer and federal antitrust authorities have announced a renewed focus on the sale of critical public health products. Monitor the announcements and responses of national, state and local governments, both to ensure that your company is complying with applicable directives, and to take advantage of any services or programs that may facilitate your operations.

Check financial covenants. As the crisis impacts your company's results and the securities markets, review whether your company is compliant with any relevant financial covenants, and take appropriate steps to ensure it has adequate sources of cash and credit to maintain operations without disruption.

In times of crisis, experience teaches that effective leadership requires clear direction and accurate information, and the foresight to anticipate and prepare for future developments.

While each organization will face its own challenges when responding to COVID-19, following some simple steps and trusting in the ability of our colleagues and employees to follow our lead will help us all to weather this crisis—and help protect our business enterprises.

Jeh C. Johnson was U.S. Secretary of Homeland Security from 2013-2017. Jeannie S. Rhee served in leading roles in Special Counsel Robert Mueller's office and previously served as deputy assistant attorney general in the U.S. Department of Justice's Office of Legal Counsel. Both Johnson and Rhee are litigation partners at Paul, Weiss, Rifkind, Wharton & Garrison.