



**EVERYTHING YOU KNOW**  
**IS WRONG**

**NEW RISK MANAGEMENT PARADIGMS  
IN THE POST-PANDEMIC WORLD**



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## Executive summary

- The COVID-19 pandemic prompted profound changes in the ways people work, attend school, shop, dine, worship, and access medical services. Many of these changes will continue after the present public health crisis has passed.
- Organizations of all types and sizes modified their operating models to remain viable through the pandemic. Most features of these new operating models will persist in the post-pandemic world.
- Changes in operating models have transformed the risk profiles of many organizations. As a result, pre-pandemic insurance and risk management strategies may not be relevant in the future.
- Organizations with robust risk management frameworks are positioned to benefit from a transformed business environment and risk landscape.



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## Introduction

Few were prepared for the abrupt disruption of life-as-usual caused by the COVID-19 pandemic. Profound changes in work, school, and social routines took place over a matter of weeks. Employees carved out workspaces in their homes and learned to use Zoom and Google Meet, students transitioned to virtual classrooms, and everyone adapted to new health and safety routines. Retailers ramped up online shopping and implemented curbside pick-up while restaurant owners struggled to get by on carryout and delivery business.

Changes in work, learning, shopping, and dining routines transformed the risk profiles of many organizations. For some exposures, loss frequency fell due to fewer employees in workplaces, fewer vehicles on the road, and fewer customers in public spaces. In other cases, however, coronavirus-induced changes resulted in a heightened risk of loss. Telecommuting, for example, created new data security challenges. Food delivery produced unexpected liability exposures for restaurant owners. Telehealth made it more likely that doctors will miss diagnoses.

As this report is written (mid-December), the pandemic has entered a frightening new phase as daily case totals, hospitalizations, and deaths surge to new records. Some states and municipalities are implementing new rounds of lockdowns. No one seems sure how bad it will get or how soon it will end. Eventually, however, the virus will recede, and lockdowns will be lifted. It is unlikely, though, that life will return to the pre-pandemic state of affairs. According to McKinsey & Company, "It is increasingly clear our era will be defined by a fundamental schism: the period before COVID-19 and the new normal that will emerge in the post-viral era: the 'next normal.'"<sup>1</sup>

In the next normal, many of the pandemic-induced changes to the ways people work, shop, dine, and obtain medical services will persist. Many people will continue to shop online, putting pressure on brick-and-mortar retailers. Fear of future pandemics will transform supply chains and factor into new building design and construction. At colleges and universities, some combination of in-person and online courses will be the norm. These changes will permanently alter the risk profiles of businesses, schools, nonprofit entities, and healthcare providers.

Pre-pandemic insurance and risk management strategies may not be relevant in the future. Risk managers and their brokers must understand how risk profiles have changed and ensure that risk management programs keep pace with evolving exposures. They also need to reassess their insurance programs to be certain that coverage aligns with their risk profiles and ensure that coverage gaps are identified and managed.

<sup>1</sup> "Beyond coronavirus: The path to the next normal," McKinsey & Company <https://www.mckinsey.com/industries/healthcare-systems-and-services/our-insights/beyond-coronavirus-the-path-to-the-next-normal>



**The next normal will be defined by pandemic-driven changes to work, shopping, dining, and travel in no small measure. Many workers who transitioned to telework will never return full-time to the office. People who have become accustomed to online shopping will continue to shop from home.**

## The emerging next normal

The pandemic will eventually recede but returning to pre-pandemic life-as-usual is no longer an option. COVID-19 has transformed the world in ways that will persist long after the public health emergency has passed. Four factors will define the future state—what McKinsey has dubbed the next normal: (1) lingering concerns about exposure to COVID-19, (2) preparation for the next pandemic, (3) long-term changes to the ways people work, shop, dine, and travel, and (4) the continuation of successful operating models developed in response to the pandemic.

Lingering concerns about COVID-19 exposure will mean that even after an all-clear signal is given, some people will fear the virus's resurgence. Many health and safety measures implemented during the pandemic will persist. Sanitation and safety concerns will be reflected in the ways physical space is designed and configured and how business is conducted.

Infectious disease risk leaped 28 places to reach the top 10 concerns of business leaders surveyed for the 2020 World Economic Forum's "Regional Risks for Doing Business Interactive Map." Pandemic risk will be a significant consideration in future business decisions and risk management strategies. Organizations will strive to be better prepared to respond to new catastrophes and avoid a repeat of the chaos and disruptions that characterize the current public health crisis.

The next normal will be defined by pandemic-driven changes to work, shopping, dining, and travel in no small measure. Many workers who transitioned to telework will never return full-time to the office. People who have become accustomed to online shopping will continue to shop from home. Doctors will see fewer patients as telehealth proves to be an efficient alternative to office visits for many medical issues. Companies that learned to use online meeting and collaboration tools effectively may make permanent changes to their business travel practices and policies.

The pandemic prompted many organizations to change their operating models in ways that will persist long after the current crisis has passed. As a result of pandemic conditions, companies adopted new ways to work, which resulted in gains in speed and productivity in many organizations. According to McKinsey, CEOs are taking advantage of these changes to "reinvent their companies in ways that simply make more sense for today's—and tomorrow's—economy."

<sup>2</sup> "These risks are worrying business leaders most in 2020: Survey," The World Economic Forum <https://www.weforum.org/agenda/2020/10/risks-for-doing-business-survey-unemployment-coronavirus/>

<sup>3</sup> "How COVID-19 is redefining the next-normal operating model," McKinsey & Company <https://www.mckinsey.com/business-functions/organization/our-insights/how-covid-19-is-redefining-the-next-normal-operating-model>

<sup>4</sup> Katherine Guyot and Isabel V. Sawhill, "Telecommuting will likely continue long after the pandemic," Brookings Institute <https://www.brookings.edu/blog/up-front/2020/04/06/telecommuting-will-likely-continue-long-after-the-pandemic/>





**The number of employees working from home was steadily increasing before the pandemic. Lockdowns and stringent safety measures forced millions of additional white-collar workers to, overnight, convert dining rooms and kitchen countertops into workspaces.**

## *Technology*

Few companies were prepared for the COVID-19 pandemic, but off-the-shelf communication and collaboration tools made the transition to lockdown feasible and even reasonably efficient. Zoom, Microsoft Teams, Google Classroom, and similar applications enabled at-home workers and students to carry on with their activities. Millions of people continued to enjoy their favorite restaurants without leaving home using delivery apps such as GrubHub, DoorDash, and Caviar. Telehealth apps such as MDLIVE, Lemonaid, and LiveHealth Online connected people with physicians who could remotely diagnose and treat many minor medical issues. Wearable sensors that warned workers when they were too close to co-workers enabled construction sites to reopen while maintaining social distancing standards and providing additional safety benefits.

Technology allowed society and the economy to continue to function more-or-less smoothly through the pandemic. However, new modes of commerce and communication altered the technology risk landscape for many organizations. As businesses, schools, and healthcare providers moved online, unknown vulnerabilities were exposed, and new tech risks emerged. These new risks are unlikely to disappear when the pandemic finally ends and will continue to pose challenges to IT departments and network security professionals.

## *Telework*

The number of employees working from home was steadily increasing before the pandemic. Lockdowns and stringent safety measures forced millions of additional white-collar workers to, overnight, convert dining rooms and kitchen countertops into workspaces. Up to half of American workers worked from home during the pandemic, more than double the percentage who worked from home in 2017-18. While some employers and employees are anxious to return to the office, the enforced experiment in mass telework was sufficiently successful enough that many organizations will permit, or even encourage, employees to continue to work from their homes.

Working from home comes with potential liabilities and risk management challenges. For example, workers' compensation insurance covers at-home employees for work-related injuries. However, employers may not know whether an injury occurred while an employee was acting in the interest of their employer. Wage and hour claims may increase since timekeeping systems may not be well suited for environments where work and personal life are so thoroughly intertwined.



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The immediate risk concern for many organizations, however, is information security. With many employees working from home, often using their personal computers and telecommunication devices, traditional perimeter security strategies are ineffective. “With so many devices connected to a network, the attack surface is greatly increased,” according to Adam Jaffer, Underwriting Manager for the West Region—North American Cyber, AXA XL. Jaffer notes that patching has become a critical issue since employees’ devices are sometimes not wholly under IT department control. IT departments may be up to date with system security patches, but the endpoints—often employees’ computers, tablets, and smartphones—may remain vulnerable for periods of time while disconnected from the corporate network.

Ransomware attacks were on the rise before the pandemic and have become even more frequent and more virulent during the pandemic. Cybercriminals quickly learned to use pandemic-related fears to trick employees into granting them access to networks. Jaffer notes that many companies are increasing training to help workers identify phishing attacks and other tactics used to deceive employees. However, training works only if employees are motivated to learn and adhere to security protocols. More companies are now testing employees to ensure they can recognize and avoid social engineering attacks, with penalties imposed on employees who fail the tests.

Jaffer notes that multi-factor authentication for remote access, which requires more inputs than just a username and password, is an effective security measure that most organizations have now adopted. “Probably nine out of ten organizations we see have implemented multi-factor authentication to externally connect to their network,” he said. “Most organizations that have not yet implemented it plan to do so by the end of 2020 or in early 2021.”

## **Retail**

Online shopping skyrocketed during the pandemic. During the third quarter of 2020, Amazon posted a 37 percent increase in sales year-over-year as COVID-19 pandemic shutdowns pushed more shoppers online. The increase in online shopping, however, comes at the expense of brick-and-mortar stores.

Brick-and-mortar retail stores were under stress even before the pandemic. Social, economic, and technological factors put intense pressure on traditional stores as “big box” retailers and online shopping platforms attracted more customers. COVID-19 accelerated this trend and exposed weak spots among all segments and sizes of conventional retailers. E-commerce research firm, eMarketer, predicts that US brick-and-mortar retail spending will decrease 14 percent in 2020, a combined impact of government-mandated closures, online competition, and lower demand as a result of the economic recession that accompanied the pandemic.<sup>5</sup> Consumers who become accustomed to online shopping are less likely to return to conventional stores for many of their shopping needs.

<sup>5</sup> US Ecommerce 2020: Coronavirus Boosts Ecommerce Forecast and Will Accelerate Channel-Shift, Executive Summary, eMarketer <https://www.emarketer.com/content/us-ecommerce-2020>



**As brick-and-mortar stores close, they leave behind vacant buildings and storefronts. Unoccupied buildings pose higher property insurance risks due to the increased likelihood of theft, vandalism, and burst pipes. In some cases, vacant retail properties are being repurposed, materially changing their risk profiles.**

Online retailers face an array of data security and privacy issues. Many of these issues exist for purely brick-and-mortar businesses, but they are amplified for online transactions. E-commerce sites capture and often store large amounts of personal data from customers. Merchants must take all reasonable steps to secure that data. Often they are subject to data privacy laws such as the European Union's GDPR and California's CCPA. If they fail to protect credit card data adequately, they may be subject to PCI fines and penalties. Online retailers are also vulnerable to distributed denial of service (DDoS) attacks, which can cripple a website and result in longer-term reputation damage.

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## The hospitality industry

Hotels, restaurants, and bars were especially hit hard by the pandemic and have been slow to recover.

Thousands of hotels have shuttered completely. Of those remaining open, as of July 30th, more than half of rooms were empty across the country per STR, a data and analytics company serving the hotel industry<sup>7</sup>. Hotel occupancy rates have rebounded from record lows but remain well below the pre-pandemic average. Nearly one in four hotels nationwide faces possible foreclosure as owners fall behind on loans<sup>8</sup>.

Business travel, the lifeblood of many hotels, is down nearly 90 percent<sup>9</sup> and may never return to pre-pandemic levels. Business leaders have learned that video conferencing is easy, effective, safer, and less expensive. According to Bill Gates, speaking at the DealBook conference in November, "It will be a very high threshold for actually doing that business trip."<sup>10</sup> Gates predicts that over 50 percent of pre-pandemic business travel will go away, delivering a long-term blow to the hotel sector.

<sup>6</sup> "In Coming Wave of Pandemic-Induced Vacancies, Some See Opportunity," New York Times <https://www.nytimes.com/2020/09/01/business/commercial-real-estate-conversion-coronavirus.html>

<sup>7</sup> "COVID-19's Impact on the Hotel Industry," AHLA <https://www.ahla.com/covid-19s-impact-hotel-industry>

<sup>8</sup> "In Coming Wave of Pandemic-Induced Vacancies, Some See Opportunity," New York Times <https://www.nytimes.com/2020/09/01/business/commercial-real-estate-conversion-coronavirus.html>

<sup>9</sup> "Business travel industry braces for a post-pandemic new normal," Los Angeles Times <https://www.latimes.com/business/story/2020-11-11/business-travel-industry-braces-for-a-post-pandemic>

<sup>10</sup> "The next fight is over the new normal," Financial Times <https://www.ft.com/content/befc4b05-d9f4-43ea-b676-8ef12e5c741a>



**Within the distressed Hospitality industry, bars and nightclubs have been the most thoroughly devastated businesses. A packed nightspot is an especially effective environment for transmitting COVID-19.**

Financially distressed hotels, like other financially distressed businesses, are more likely to experience both property and liability losses. On the property side, distressed companies may let routine maintenance slide because of cost-cutting measures and may be less responsive to loss control recommendations. “If the past is indicative, you’ll see a reduction in maintenance activity,” according to Scott Ewing, Americas Risk Engineering Leader, Risk Consulting for AXA XL. “They may not have a spare parts inventory, or the maintenance doesn’t get done because of staff layoffs.” Inadequate maintenance can also create unsafe conditions for customers and employees, potentially leading to increased premises liability claims and workers’ compensation losses.

Within the distressed Hospitality industry, bars and nightclubs have been the most thoroughly devastated businesses. A packed nightspot is an especially effective environment for transmitting COVID-19. A study by the Texas Medical Association that ranked the relative riskiness of various activities placed “going to a bar” at the top of the list.<sup>11</sup> More than 180 COVID-19 infections were traced to a single East Lansing nightspot in one high-profile Michigan case.<sup>12</sup> Many states permitted bars to reopen with reduced capacity but now require them to close again as new COVID-19 cases surge.

John Taffer, a hospitality industry consultant, and the host of the series *Bar Rescue* on the Paramount Network doesn’t see the bar and nightclub sector as recovering quickly. In an interview published in *Bar Business* magazine, Taffer notes that it will be a long time before it is common again for 400 people to pack into 2,000 square feet. As a result, revenue per square foot, the metric most often used to judge a bar’s financial performance, will be significantly less in the future, creating ongoing financial strain on bar owners.<sup>13</sup>

Some jurisdictions expanded laws concerning liquor deliveries to permit bars and restaurants to sell alcoholic beverages for off-premises consumption. More than 30 states plus the District of Columbia temporarily allow restaurants or bars to sell cocktails to-go, bottled spirits to-go, or both. Two states have made cocktails to-go economic relief a permanent measure. As a result, establishments could be exposed to untested liquor-related liability allegations. Since these laws are new, the full impact on liquor liability lawsuits may not be apparent for a while.

<sup>11</sup> “TMA Chart Shows COVID-19 Risks for Various Activities,” Texas Medical Association <https://www.texmed.org/TexasMedicineDetail.aspx?Pageid=46106&id=54216>

<sup>12</sup> “Coronavirus outbreak of more than 180 cases stemming from Harper’s bar was a ‘rude awakening,’ owner says,” mlive <https://www.mlive.com/public-interest/2020/07/coronavirus-outbreak-of-more-than-180-cases-stemming-from-harpers-bar-was-a-rude-awakening-owner-says.html>

<sup>13</sup> “Jon Taffer on How the Bar Industry Will Change After COVID-19,” Bar Business <https://www.barbizmag.com/covid-19-resources/jon-taffer-how-bar-industry-will-change-covid-19/>





**Customers began to return to restaurants as restrictions on both outdoor and indoor dining were relaxed in many states and municipalities. However, it is still unclear when—or even if—business will return to pre-pandemic levels.**

Entrepreneurial bar owners may be tempted to pursue higher-risk strategies to stay afloat. One enterprising San Francisco cabaret that featured entertainers in drag added food to its offering to comply with requirements for delivering cocktails by the glass. It enlisted drag queens as delivery drivers (“Meals on Heels”) and offered free socially distanced entertainment with each order.<sup>14</sup> The owner responsibly expanded his business by all indications, but the cabaret now has a far more complex risk profile.

As long as COVID-19 remains a threat, all businesses that serve the public are potentially exposed to pandemic-related lawsuits from employees and customers. These suits typically allege that a business did not follow government safety directives or establish sound practices to protect employees and customers. Since crowded nightspots are potential superspreader sites, bar owners may be significantly exposed to such lawsuits, though to date, few bars have been targeted.

Restaurants also have been devastated by the pandemic. National Restaurant Association December data indicates that 17 percent of restaurants have closed either permanently or long-term since the pandemic began. Based on input from 6,000 restaurant operators surveyed by the association, 87 percent of full-service restaurants saw a 36 percent drop in sales revenue over the past three months. Eighty-three percent of operators expect the next three months to be even worse.<sup>15</sup>

Customers began to return to restaurants as restrictions on both outdoor and indoor dining were relaxed in many states and municipalities. However, it is still unclear when—or even if—business will return to pre-pandemic levels. Consulting firm Mitel predicts a strong recovery by 2023. A study by the Canadian Federation of Independent Businesses is less optimistic. It suggests it could take as much as eight years for the restaurant industry to recover fully.<sup>16</sup>

Home delivery surged during the pandemic, and many restaurant customers will continue to order in after restrictions are lifted. Popular delivery apps such as GrubHub and Doordash have become essential tools to connect restaurants with customers. Reliance on delivery platforms, however, can potentially create additional liabilities for restaurant owners. Since drivers are typically independent contractors, and not employees of the delivery platform, restaurant owners may be exposed to litigation involving auto accidents and possibly intentional or criminal acts by drivers. Additionally, restaurants can face legal action related to food freshness and contamination. These are not new exposures, but with the surge in at-home dining, many restaurant owners are paying closer attention to the risk management and insurance implications of home delivery.

<sup>14</sup> “From Pandemic to Protests: How Food Businesses Are Responding,” bon appetite <https://www.bonappetit.com/story/food-businesses-covid-19>

<sup>15</sup> “Free-fall: 10,000 restaurants have closed over the past three months, according to the National Restaurant Association,” Nation’s Restaurant News <https://www.nrn.com/casual-dining/free-fall-10000-restaurants-have-closed-over-past-three-months-according-national>

<sup>16</sup> “Restaurants, hotels could take more than 8 years to get back to pre-pandemic levels,” Financial Post <https://financialpost.com/entrepreneur/small-business/restaurants-hotels-could-take-more-than-8-years-to-get-back-to-pre-pandemic-levels>



**Longer-term, business models for restaurants may need to change to meet evolving customer expectations. Customers who have grown accustomed to dining at home may eat out far less often than before the pandemic.**

Like bars, restaurants are especially vulnerable to lawsuits from workers or customers who claim to have contracted COVID-19 in an establishment that is alleged not to enforce adequate safety measures. According to the CDC, COVID-19 patients are more than twice as likely to have recently dined at a restaurant.<sup>17</sup> Few suits have been filed to date, but restaurants and other public establishments remain at risk. Republican lawmakers have made immunity against pandemic-related lawsuits a priority.

Even after the pandemic subsides, restaurant owners anticipate that many customers will continue to be concerned about exposure to contagions. A *Food & Wine* magazine survey of chefs found that socially distanced seating, single-use menus, silverware sealed in a pouch, contactless payments, and more in-depth cleaning standards are likely to be a part of the dining experience for the foreseeable future.<sup>18</sup>

Longer-term, business models for restaurants may need to change to meet evolving customer expectations. Customers who have grown accustomed to dining at home may eat out far less often than before the pandemic. Footprints may get smaller as full-service restaurants enlarge takeout areas while shrinking dining rooms. The number of “ghost kitchens,” which have little or no visible branding and no in-house dining, will grow to serve the surge in takeout and delivery.

New business models will result in long-term changes in the typical restaurant risk profile. Fewer customers dining indoors may reduce the frequency of slip-and-fall type accidents, but reliance on deliveries means that restaurant owners will continue to have the delivery-related liability exposures discussed above. To help, Marsh’s Sharing Economy and Mobility Practice partnered with AXA XL to provide an exclusive usage-based commercial auto liability solution. The policy features bespoke language tailored to a business’ delivery operations that clearly delineates where coverage starts and stops. More states are likely to allow restaurants to sell bottled liquor or cocktails to-go permanently, potentially requiring new liquor liability risk management criteria.

<sup>17</sup> “Community and Close Contact Exposures Associated with COVID-19 Among Symptomatic Adults ≥18 Years in 11 Outpatient Health Care Facilities — United States, July 2020”; Centers for Disease Control and Prevention <https://www.cdc.gov/mmwr/volumes/69/wr/mm6936a5.html>

<sup>18</sup> “21 Ways Restaurants Could Change Forever, According to Chefs,” *Food & Wine* <https://www.foodandwine.com/fwpro/restaurants-after-covid19-coronavirus-chef-predictions>



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## Construction

The construction industry may see an overall improvement in their risk profiles—at least as it concerns worker safety—as an outcome of the pandemic. “Wearables”—sensors worn by workers that detect unsafe conditions or activities—can significantly improve employee safety, but workers have largely resisted them because of privacy concerns. With the threat of construction projects shutting down due to social distancing requirements, however, wearables—which can warn workers when they are too close to one another—proved to be an effective way to keep job sites open.

According to Hall, in a pre-COVID world, many workers were resistant to wearable technologies simply because they didn’t want to be tracked. “Now the ability to track and trace workers is the very feature that allows them to continue to work, and it’s being embraced as enabling technology not inhibiting,” said Hall. “Wearables keep workers safe – and I’m glad to see the adoption increase in this space.”

The pandemic has amplified construction procurement risk as health and safety measures, labor disruptions, and lockdowns result in supply chain disruptions, according to Doug Strong, Head of Design Professional /Chief Underwriting Officer Design Professional for AXA XL. Procurement issues can ripple across a project, resulting in significant delays. Many contractors have improved supply chain risk management through mitigation measures such as more frequent communication with suppliers, identifying alternative material sources, and using more locally based suppliers. Improved supply chain risk management will positively impact contractors’ risk profiles long after the present public health crisis has passed.

## Professional services

An American Medical Association (AMA) report from February 2020, just before the pandemic hit the US hard, found that telehealth visits with physicians doubled from 2016 to 2019. Telehealth visits have surged during the pandemic. According to data from Luma Health, 83 percent of healthcare providers say they’ve increased their use of telehealth, while 60 percent said that more than 20 percent of their appointments are currently conducted via telehealth platforms. Eighty-eight percent of providers said they expect increased telehealth usage to be permanent.<sup>19</sup>

<sup>19</sup> “Telehealth has kept many providers afloat during COVID-19, but there are challenges and limitations,” Healthcare Finance  
<https://www.healthcarefinancenews.com/news/telehealth-has-kept-many-providers-afloat-during-covid-19-there-are-challenges-and-limitations>



**Professionals in other disciplines such as accountants, lawyers, and design professionals also were forced to offer at least some portion of their services online. While face-to-face interactions are preferable, most professionals adapted to delivering their services online without significantly increasing the risk of professional liability suits.**

Telehealth provides benefits beyond eliminating COVID-19 exposure risk. Telehealth offers healthcare access for patients who can't easily get to a doctor's office and enables more frequent check-ins for patients with chronic conditions. Many patients who tried telehealth reported high levels of satisfaction.<sup>20</sup> However, increased use of telehealth alters a provider's risk profile in various ways.

- **Malpractice.** Some experts claim that doctors do not face higher malpractice risk with telehealth,<sup>21</sup> while others caution that since physicians cannot physically examine a patient, the risk of misdiagnosis or missing a diagnosis altogether is heightened. An analysis of telehealth-related claims by The Doctors Company found that a missed diagnosis was the most common allegation, and the most commonly missed diagnosis was cancer.<sup>22</sup>
- **Licensing issues.** Since patients can call in from anywhere, doctors may unknowingly treat a patient who has traveled to a state where the doctor is not licensed, and therefore potentially not compliant with administrative rules and legal regulations.
- **Privacy and data security.** Normally, physicians must use HIPAA-compliant telehealth technology, which has fully encrypted data transmission and provides secure connections. During the pandemic, the Office of Health and Human Services (HHS) announced it would relax its rules to permit physicians to communicate with patients on various less secure video platforms.<sup>23</sup> Less secure software may enable cybercriminals to capture private conversations and information exchanges. Some applications may have serious security flaws that malicious actors can exploit to compromise a provider's entire network.

Professionals in other disciplines such as accountants, lawyers, and design professionals also were forced to offer at least some portion of their services online. While face-to-face interactions are preferable, most professionals adapted to delivering their services online without significantly increasing the risk of professional liability suits. Nonetheless, some online scenarios pose challenges, and professionals need to be diligent in avoiding miscommunications that could lead to disputes.

<sup>20</sup> Shachar C, Engel J, Elwyn G. "Implications for Telehealth in a Postpandemic future: Regulatory and Privacy Issues." JAMA. 2020 Jun 16; cited in "Your Patient Is Logging On Now: The Risks and Benefits of Telehealth in the Future of Healthcare;" The Doctors Company [https://www.thedoctors.com/articles/your-patient-is-logging-on-now-the-risks-and-benefits-of-telehealth-in-the-future-of-healthcare/?utm\\_source=pr&utm\\_medium=referral&utm\\_campaign=pr\\_external&utm\\_content=telehealth\\_whitepaper](https://www.thedoctors.com/articles/your-patient-is-logging-on-now-the-risks-and-benefits-of-telehealth-in-the-future-of-healthcare/?utm_source=pr&utm_medium=referral&utm_campaign=pr_external&utm_content=telehealth_whitepaper)

<sup>21</sup> Pratt, Mary Kay How to avoid the legal risks of telemedicine, Medical Economics Journal, 0710, 2019 edition, Volume 96, Issue 13 <https://www.medicaleconomics.com/view/how-avoid-legal-risks-telemedicine>

<sup>22</sup> "Your Patient Is Logging On Now: The Risks and Benefits of Telehealth in the Future of Healthcare;" The Doctors Company [https://www.thedoctors.com/articles/your-patient-is-logging-on-now-the-risks-and-benefits-of-telehealth-in-the-future-of-healthcare/?utm\\_source=pr&utm\\_medium=referral&utm\\_campaign=pr\\_external&utm\\_content=telehealth\\_whitepaper](https://www.thedoctors.com/articles/your-patient-is-logging-on-now-the-risks-and-benefits-of-telehealth-in-the-future-of-healthcare/?utm_source=pr&utm_medium=referral&utm_campaign=pr_external&utm_content=telehealth_whitepaper)

<sup>23</sup> "Notification of Enforcement Discretion for Telehealth Remote Communications During the COVID-19 Nationwide Public Health Emergency," Department of Health and Human Services <https://www.hhs.gov/hipaa/for-professionals/special-topics/emergency-preparedness/notification-enforcement-discretion-telehealth/index.html>





**Lawyers were already making use of remote meeting tools such as video dispositions before the pandemic. Increased usage of these tools and the need for lawyers to shift to fully remote working has not yet materially increased malpractice claims made against law firms largely due to the slowdown of litigation activity imposed by shut-downs and slow-downs in the courts**

According to AXA XL's Strong, design professionals often continue to meet in-person with project team members in states where construction is deemed essential and therefore exempt from lockdown orders. Frequently, though, the realities of doing business during the pandemic intervene. Some team members may consider in-person meetings too risky. Travel may be impractical because of quarantine requirements. In those circumstances, and in states, counties, and municipalities where construction is restricted due to public safety mandates, online meetings become necessary.

Online meetings typically work well when the participants are experienced with design and construction processes, according to Strong. Where miscommunications and misunderstandings are more likely to arise is with less experienced owners. Strong cites as an example, a school district that rarely constructs new schools.

Strong notes that the standard of care for design professionals has evolved during the pandemic. For example, in-person visits to construction sites have become a challenge. Design professionals may not be able to inspect work in progress or ensure that work has been appropriately completed if quarantine rules limit travel or local regulations impede personal observations of a site. Since malpractice claims typically allege a failure to meet the standard of care, a shifting standard of care raises obvious liability issues. It is still too early to know how judges, arbitrators, and juries will assess the pandemic's unusual circumstances when determining whether a design professional reasonably fulfilled the necessary obligations.

Once the public health crisis recedes, building owners may require design professionals to plan for future pandemics. They may be called upon to incorporate features to minimize the spread of disease. For example, office floor plan designs will likely involve balancing safety with effective use of space. New design standards and criteria, however, carry new risks, potentially exposing design professionals to liability. One hypothetical scenario is an HVAC system that fails to properly zone areas of a building, allowing contagion to move between zones.<sup>24</sup>

Lawyers were already making use of remote meeting tools such as video dispositions before the pandemic. Increased usage of these tools and the need for lawyers to shift to fully remote working has not yet materially increased malpractice claims made against law firms largely due to the slowdown of litigation activity imposed by shut-downs and slow-downs in the courts, according to Paul Rowe, Head of Lawyers and Accountants Professional Liability at AXA XL. Still, some lawyers struggle with the absence of direct contact with clients, adversaries, and courts, and lawyers working remotely may lack support, "check-ins" with colleagues, and other safety nets.

<sup>24</sup> "Construction After COVID-19: Mitigating Design-Related Risk in a Post-Pandemic Paradigm", JD Supra <https://www.jdsupra.com/legalnews/construction-after-covid-19-mitigating-48506/>



**Some experts foresee an uptick in legal malpractice claims. Many law offices now operate with skeleton staffs, increasing the likelihood of mistakes, miscommunication, and blown deadlines. Lost revenue makes it more likely that law firms will pursue riskier matters and take on unfamiliar and potentially unreliable clients.**

According to Rowe, the financial impact of the pandemic is a significant risk factor for law firms. Overall, the demand for legal services has declined, leading to cost-cutting measures, including layoffs, pay cuts, and furloughs. Rowe notes that firms specializing in collections and foreclosures have been especially hard hit by federal, state, and local laws limiting or prohibiting home foreclosures.

Some experts foresee an uptick in legal malpractice claims. Many law offices now operate with skeleton staffs, increasing the likelihood of mistakes, miscommunication, and blown deadlines. Lost revenue makes it more likely that law firms will pursue riskier matters and take on unfamiliar and potentially unreliable clients. Clients who cannot back out of now-unattractive contracts may pursue legal malpractice claims as an alternative source of financial recovery. Financially strapped law firms may aggressively press clients for payments, potentially triggering a backlash in the form of lawsuits.

The end of the pandemic will not result in a quick return to life as usual for lawyers. Pandemic-related lawsuits are likely to be filed for some time after the COVID-19 threat recedes.<sup>25</sup> Additionally, it may take years for law firms to recover from the financial impact of the pandemic.

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## Education

In an interview on ABC's *This Week*, infectious disease expert Dr. Anthony Fauci said to "close the bars and keep the schools open."<sup>26</sup> Research suggests that K-12 schools can be reopened with a low risk of transmission among students if safety measures are followed. Colleges and universities, however, are a different story. A *New York Times* survey of more than 1,900 American colleges and universities counted more than 397,000 COVID-19 cases and at least 90 deaths since the pandemic began. Because of differences in how cases are counted and reported among schools, the Times warns that their tally of cases is "a near-certain undercount."<sup>27</sup> Many colleges and universities continue with in-person classes, but some schools chose to shut down and finish the semester online.

Most colleges and universities have been diligent about implementing safety procedures, but a large part of student life is out of school administrators' direct control. Off-campus parties and packed bars are credited with much of the virus's spread in college communities. While college-age students, as a category, are not highly susceptible to severe sickness or death from COVID-19, infected students may transmit the virus to more vulnerable people in the larger community.

<sup>25</sup> "5 Ways To Reduce Post-Pandemic Legal Malpractice Exposure, Law 360 <https://www.law360.com/articles/1275861/5-ways-to-reduce-post-pandemic-legal-malpractice-exposure>

<sup>26</sup> "Close bars and keep schools open, Fauci says. Has that worked in other countries?" Miami Herald <https://www.miamiherald.com/news/coronavirus/article247504030.html>

<sup>27</sup> "Tracking Covid at U.S. Colleges and Universities," New York Times <https://www.nytimes.com/interactive/2020/us/covid-college-cases-tracker.html>



**The pandemic has shown that online learning must play a key role in every university's risk management strategy. Higher education after COVID-19 will likely be a combination of in-person and online learning with plans in place to move entirely online wholly and quickly if necessary.**

Researchers in La Crosse, Wisconsin, home to a University of Wisconsin campus, tracked the spread of SARS-CoV-2 through the town, leading to outbreaks in nearby elder-care facilities.<sup>28</sup>

COVID-19 has put many colleges and universities in financial distress. Data from the National Student Clearing House, which analyzes data from 3.6 million students, suggests that undergraduate college enrollment is down about four percent.<sup>29</sup> Ticket and concession sales for sporting events is close to zero at most schools. And while revenues are falling, some expenses are increasing. Unexpected expenses include refunds issued to students for room and board, additional cleaning costs, and increased technology costs associated with moving to online courses.

Colleges and universities that switched to remote learning are being sued by students claiming breach of contract and other injuries. Some suits rely on marketing materials that promote an "on-campus experience." Legal experts give these suits little chance of success,<sup>30</sup> though schools still incur defense costs and may suffer reputation damage.

Institutions that decide to allow students back on campus for in-person instruction may be vulnerable to lawsuits alleging that negligence caused the plaintiff to become infected with COVID-19. These suits also are unlikely to succeed, according to experts, since students engage in both on-campus and off-campus activities, making it nearly impossible to prove where a plaintiff was exposed to the virus.<sup>31</sup>

The pandemic has shown that online learning must play a key role in every university's risk management strategy. Higher education after COVID-19 will likely be a combination of in-person and online learning with plans in place to move entirely online wholly and quickly if necessary. Physical distancing will be a factor when designing campus buildings from dormitories to classrooms. Universities will promote their commitments to sanitation and overall cleanliness. More students may choose not to travel far to attend school, meaning that many universities will need to change their recruitment strategies and admission criteria.

<sup>28</sup> "COVID-19 Outbreaks, Nursing Home Deaths," Skilled Nursing News  
<https://skillednursingnews.com/2020/10/completely-predictable-link-emerges-between-college-covid-19-outbreaks-nursing-home-deaths/>

<sup>29</sup> "National Student Clearinghouse Research Center's Monthly Update on Higher Education Enrollment"  
<https://nscresearchcenter.org/stay-informed/>

<sup>30</sup> "Education and Litigation Alert: COVID-19 Lawsuits against Colleges for Opening or Closing during the Pandemic," Hancock Estabrook  
<https://www.hancocklaw.com/publications/education-and-litigation-law-alert-covid-19-lawsuits-against-colleges-for-opening-or-closing-during-the-pandemic/>

<sup>31</sup> *Ibid*



**Many organizations changed their operating models in ways that will persist long after the current crisis has passed. As a result, pre-pandemic insurance and risk management strategies may no longer be relevant. Risk managers need to identify, quantify, and prioritize new risks, and appropriately modify their risk management and insurance programs.**

## Risk management in a transformed world

The world has changed in fundamental ways. Organizations of all types and sizes are adjusting to pandemic-driven shifts in the risk landscape. According to McKinsey & Company, “Nearly all organizations need to refresh and strengthen their approach to risk management to be better prepared for the next normal.”<sup>32</sup>

The pandemic simultaneously affected employees, customers, and vendors, exposing organizations to potential losses on multiple fronts. This highlighted the interconnection of risk throughout organizations and revealed weaknesses in traditional risk analyses. Going forward, risk managers must evaluate risk interrelationships to understand how a single root cause can ripple through their organizations. They need transparency in all business areas—processes, marketing, employees, etc.—to bridge risk silos and identify potential barriers that could impair future responses to catastrophic events. Enterprise risk management and scenario-based risk analyses take on new importance as organizations strive to develop a portfolio view of the most significant risks and identify gaps to be filled to achieve resiliency.

Many organizations changed their operating models in ways that will persist long after the current crisis has passed. As a result, pre-pandemic insurance and risk management strategies may no longer be relevant. Risk managers need to identify, quantify, and prioritize new risks, and appropriately modify their risk management and insurance programs. At the same time, they should recognize that the risk landscape is still unsettled and that strategies may need ongoing adjustments. Agility will be a critical risk management attribute in the next normal. Implementing a robust risk management framework to identify emerging threats and minimize their impact enables organizations to quickly assess new risk landscapes and respond with coordinated, company-wide strategies.

The COVID-19 pandemic highlighted the crucial role of risk management in crises. Anecdotal evidence suggests that organizations with robust risk management frameworks were better prepared to respond to the public health crisis and now are positioned to adapt to a transformed business environment and risk landscape in the post-pandemic world.

<sup>32</sup> “Meeting the future: Dynamic risk management for uncertain times.” McKinsey & Company <https://www.mckinsey.com/business-functions/risk/our-insights/meeting-the-future-dynamic-risk-management-for-uncertain-times>