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IN THIS ISSUE

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Planning ahead: brand protection as a preventative service

BY **CHRIS HARVEY**
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For so many businesses, brand protection is inextricably linked to crisis management. Frequently, though, the planning and exercises necessary for effective crisis management are done reactively, rather than proactively; and all too often, those critical preparations are incomplete, out of date or altogether neglected. This can be a real gamble; because brand protection is the driving force behind risk management and crisis planning, organizations risk making costly mistakes when managing recalls and other product safety incidents in the midst of a crisis.

Businesses are arguably operating in the most turbulent and uncertain time in recent history. The global pandemic created challenges that no one could have predicted. Some have survived by adapting operations, some completely transformed their business, still others were forced to shutter. The impact of COVID-19, however, is only part of the story.

Consider all the market and regulatory forces at play: Companies face ever-higher expectations and demands from consumers — and those consumers are motivated and more than willing to use social media as a forceful and effective method of mass communication. A paradigm shift is occurring in the U.S. under the new Democratic administration and legislature committed to strengthening regulations in many cases or enhancing them to better protect consumers and the environment. And while the judicial process has slowed in response to COVID-19, the plaintiffs' bar remains more active than ever in its pursuit of new class-action lawsuits in an increasingly litigious society.

Reputational damage and financial costs are more likely to exceed expectations when there's inadequate planning, or when businesses underestimate the impact a product safety or quality event like a recall can have. Start at a philosophical level before drilling down to details, and ask yourself the following fundamental questions to determine your organization's level of preparation for a product safety crisis.

DO YOU HAVE A RECALL PLAN OR A PRODUCT SAFETY CRISIS PLAN?

Product recalls are sometimes viewed as cut-and-dry exercises in communication and logistics — at least, that's how many recall plans make it look. But one misstep could turn even a minor recall into a major crisis, if recall plans fail to consider factors beyond regulatory obligations and tactical execution.

By thinking about recall planning differently, you can evolve the traditional recall plan into a product safety crisis plan. To start, shift your priorities to align with your ultimate objective: brand protection.

A brand's product safety or quality may be called into question the moment a customer complains (which happens long before and far more frequently than a recall), or learns about an adverse event. Reputational risk can begin when a regulator conducts an inspection. It continues when potential quality or safety issues are identified and investigated. The truth is, reputational threats remain even when a decision is made **not** to recall the product — there's still a chance for bad publicity, a drop in customer satisfaction and loyalty, or even legal action.

How a business chooses to respond upon learning about a potential safety or quality issue is every bit as important as how a recall is managed. Perceived inaction in response to product safety-related allegations and adverse event reports are often more damaging than a low recall response rate.

SHIFT YOUR PRIORITIES TO ALIGN WITH YOUR ULTIMATE OBJECTIVE: BRAND PROTECTION

As you review your organization's plan, consider whether it addresses more than just the recall process, taking into account:

- The evolving regulatory landscape and latest recall best practices
- Tools to demonstrate a commitment to quality products and customer service (e.g., product updates, upgrades, field teams, warranty work, etc.)
- Product safety and recall track records and how the latest events will be viewed by regulators, customers and consumers
- The risk profile for each product or service offered
- The impact competitors' recalls have directly and on the entire industry
- Current and new liability risks, including regulatory enforcement and potential legal actions
- How you'll engage partners, customers and industry organizations during a recall
- How you'll handle a single inquiry, complaint or adverse event report
- How best to handle negative press and upset or angry customers

DO YOUR CRISIS AND RECALL PLANNING EFFORTS ALIGN WITH YOUR CURRENT (AND FUTURE) BUSINESS STRATEGY AND OBJECTIVES?

In today's fast-moving, hyper-competitive market, nimble and innovative businesses edge out the competition. Never was this more apparent than in the early months of the COVID-19 pandemic.

Organizations of all sizes were challenged to find new ways to do business in order to survive. In some cases, traditional business-to-business organizations, including those in the food service space, explored ways to shift to a direct-to-consumer model. In other industries, manufacturers halted production of normal product offerings to make personal protective equipment (PPE) used in the global COVID-19 response. While these organizations very likely benefited from first-mover advantages, positive publicity or increased revenue, it is likely these decisions were made without full appreciation for what the new obligations would be in the event of a recall.

Now is the time to catch up.

Consider how business has changed since you last updated your recall or crisis plans. Ensure planning documents provide the guidance needed to navigate the current regulatory environment, evolving legal risks and business operations (including go-to-market strategy) for the full suite of product offerings (past, current and future). Any change made over the last 12 months could present new risk and exposure.

But this process should not be viewed solely as a post-pandemic task. It would be wise to regularly evaluate potential risks and exposure, including conducting periodic product sampling or quality testing, examining advertising materials and claims, evaluating risk profiles, and analyzing the legal and regulatory landscape. Be sure to review your insurance policies and coverage to fully understand when and how a product recall, contamination or liability policy is triggered for every product offered. Review insurance policies to ensure they protect from potential losses.

WHAT IS YOUR RELATIONSHIP WITH YOUR SUPPLY CHAIN, CUSTOMERS AND CONSUMERS?

It shouldn't be a surprise that business partners are typically very responsive to recall actions; retailers and grocers, for example, often act with more urgency than the manufacturer or producer responsible for the product. That's at least in part because business interruption, liability risks and loss of sales are not risks unique to the recalling firm. They impact organizations up and down the supply chain.

During a recall, firms that understand and appreciate this shared risk are often best positioned to maintain positive relationships with consignees, retailers and consumers. The companies that effectively communicate, act quickly and make the recall as turnkey as possible for partners are the ones with the most success retaining those relationships.

When coordinating recall plans, consider these questions upon evaluating existing relationships with the supply chain, customers and consumers:

- Do my partners upstream understand my product safety expectations of them?
- Do my partners downstream know my plans for managing a recall if needed?
- What do my partners downstream expect from me in the event of a product safety issue? How can I make a recall as easy as possible for them?
- How will I reach consumers if needed? What are the best channels?
- What actions are we willing to take to make the situation right for our customers and consumers?
- When is the last time I had these conversations with key stakeholders?

By engaging customers, supply chain partners, industry groups, regulators and recall experts ahead of a potential recall, you will have a plan in place that goes beyond navigating the recall process. This plan will help you uphold your commitments to the stakeholders that matter most.

HOW PREPARED ARE YOU FOR THE UNEXPECTED?

The best crisis and recall plans reflect guidance and input from internal and external stakeholders, including product recall experts, legal counsel, crisis communicators and product recall insurance providers. One effective way to validate your recall plan is through a "mock recall" drill.

A well-facilitated recall drill puts your plan to the test. It helps evaluate whether the team is prepared and has the resources necessary to execute critical components of a recall including notifications, retrievals and reverse logistics, data management and regulatory reporting, and product storage and disposal. With a well-crafted scenario and expert facilitator, these exercises shed light on gaps and opportunities for improvement not just in a recall response, but also in the daily approach to in-market remediation activities. Ideally, you'll examine questions including:

- What are the latest best practices?
- Do your team members understand their roles and responsibilities?
- Do you have standing agreements with partners who can provide additional resources you need?
- Are there new regulations we need to consider?
- What has worked for companies facing similar product safety risks?
- What can we learn from missteps other companies took during a recall?
- Is your insurance adequate?

Some companies choose to run these drills in-house; in our experience, this can result in a routine exercise that "checks the box," rather than facilitating a thought-provoking examination and validation of your recall preparedness.

Effective preparation involves turning best practices into strategies, plans, processes and systems. It helps to ensure your remediation capabilities are adequate and aligned (in-house and with partners) to efficiently and effectively deliver results. This way, you can be confident that your plan will work smoothly when a recall occurs.

TAKE THE TIME TO PLAN AND PREPARE

As the regulatory landscape becomes more strict and complex, supply chains grow longer and consumer expectations expand, businesses need to better prepare for and manage their risks. That starts with a focus on the basics: ensuring regulatory compliance, mitigating legal liability and responsibly managing your supply chain.

A key part of that preparation is taking the time to plan and to prepare your team for a crisis. Effective recall planning requires foresight, dedication and hard work, and always benefits from an outside-expert perspective to turn product recall best practices into actionable strategies, plans, processes and systems. To do that, you must ensure your product recall plan is more than just a check-the-box approach to regulatory compliance — it should be a guide to protecting your brand from a product safety crisis.

REVIEW INSURANCE POLICIES TO ENSURE THEY PROTECT FROM POTENTIAL LOSSES.

The most common product quality and safety issues include:

- Business interruptions
- Regulatory and legislative changes
- Data, privacy and cybersecurity issues
- Market developments and economic changes
- Damage to reputation and brand
- Increasing competition or changes in market share
- Innovation and new technologies
- Sourcing and supply chain challenges
- Customer retention

WHEN TO REVIEW YOUR PLAN

Best practice means reviewing your recall or crisis plan at least annually, and any time one or more of the following occurs:

- Changes in management, leadership, crisis or recall management team
- Recall post-mortem assessment is completed
- Changes in legislation and regulations take effect
- Partnership with a new supplier or logistics provider
- Contract with a retailer
- Movement into a new sales channel or model
- Launch of a new or updated product
- Newly identified or evolving legal risks
- Acquisition of a new company or assets

Keeping track: vaccination tracking in the wake of COVID-19

BY **KIMBERLY GEORGE**
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As the pace of vaccinations continues to pick up steam across the U.S. and other parts of the world, we're feeling a gradual shift away from the panic and uncertainty of a year ago, and toward reengagement with hopes that this summer will look quite different than the last.

Some employers are working through how best to address their employees' fear or hesitancy around getting vaccinated, while others are weighing the benefits and potential pitfalls of requiring their employees to be vaccinated. Still others are including vaccine tracking programs to support their COVID-19 response plans. Vaccine tracking provides a view into the collective vaccination status of employees and helps employers prioritize and monitor employees' health and safety — and not just for COVID-19; this program can also track for the flu, hepatitis and other diseases.

Tracking vaccination progress has quickly become an important part of the pandemic recovery. It holds a heightened importance for employers working to get back to business — those who are eager to return their workforce to on-site offices, plants, schools, etc. Fully understanding vaccination trends among their workforces will allow employers to best serve the needs of their people, while keeping the workplace running.

Most employers are opting to promote the vaccine as a health and safety consideration for their workforce, and for the customers and communities they serve and operate within. Fewer are focusing on mandating the vaccine, recognizing that there are a myriad of reasons people may choose not be vaccinated, from historical mistrust in the process to those taking a "wait and see" approach until more time has passed.

HOW IT WORKS

Vaccine tracking — initiated through a brief questionnaire for employees that is voluntary, secure and private — notes which employees have or haven't received a vaccine, who is in need of a second dose, who does not plan to be vaccinated and who is experiencing side effects as a result of vaccination. A strong tracking program includes:

- Reporting on workplace vaccination status
- Monitoring and providing reminders for second doses
- Tracking checkpoints for incentive programs
- Providing prompt communications
- Is your insurance adequate?

Ultimately, in order to address the health and safety of their workforce, the data will be used by employers to support employee paid time off (PTO), stipend pay, vaccine-related incentives, and excusing absences if an employee has adverse side effects from the vaccination.

Fully understanding vaccination trends among their workforces will allow employers to best serve the needs of their people, while keeping the workplace running.

THE LEGAL PERSPECTIVE

The Equal Employment Opportunity Commission (EEOC) has acknowledged that employers may ask if an employee has had a vaccination, plans to receive a vaccination, or will opt out. They may also request validation that the employee has received a vaccination.

Under the previous administration, the EEOC considered vaccination details as health data, which holds a status of 'special category data' under data protection laws and therefore requires extra protection. We're currently waiting to see how or whether the Biden administration will make any changes to that status.

In terms of employee rights, consent is critical, as is sensitivity to the imbalance of power that often exists between employer and employee. Any vaccine tracking requests should include a clear acknowledgment that the employee's information will be shared with their employer — transparently ensuring that employees understand what will happen with their information promotes heightened awareness and greater acceptance. Communications regarding vaccine tracking are best sent in a way that's consistent with how the employer has been sharing other news and information related to COVID-19 and preparations for returning to on-site work.
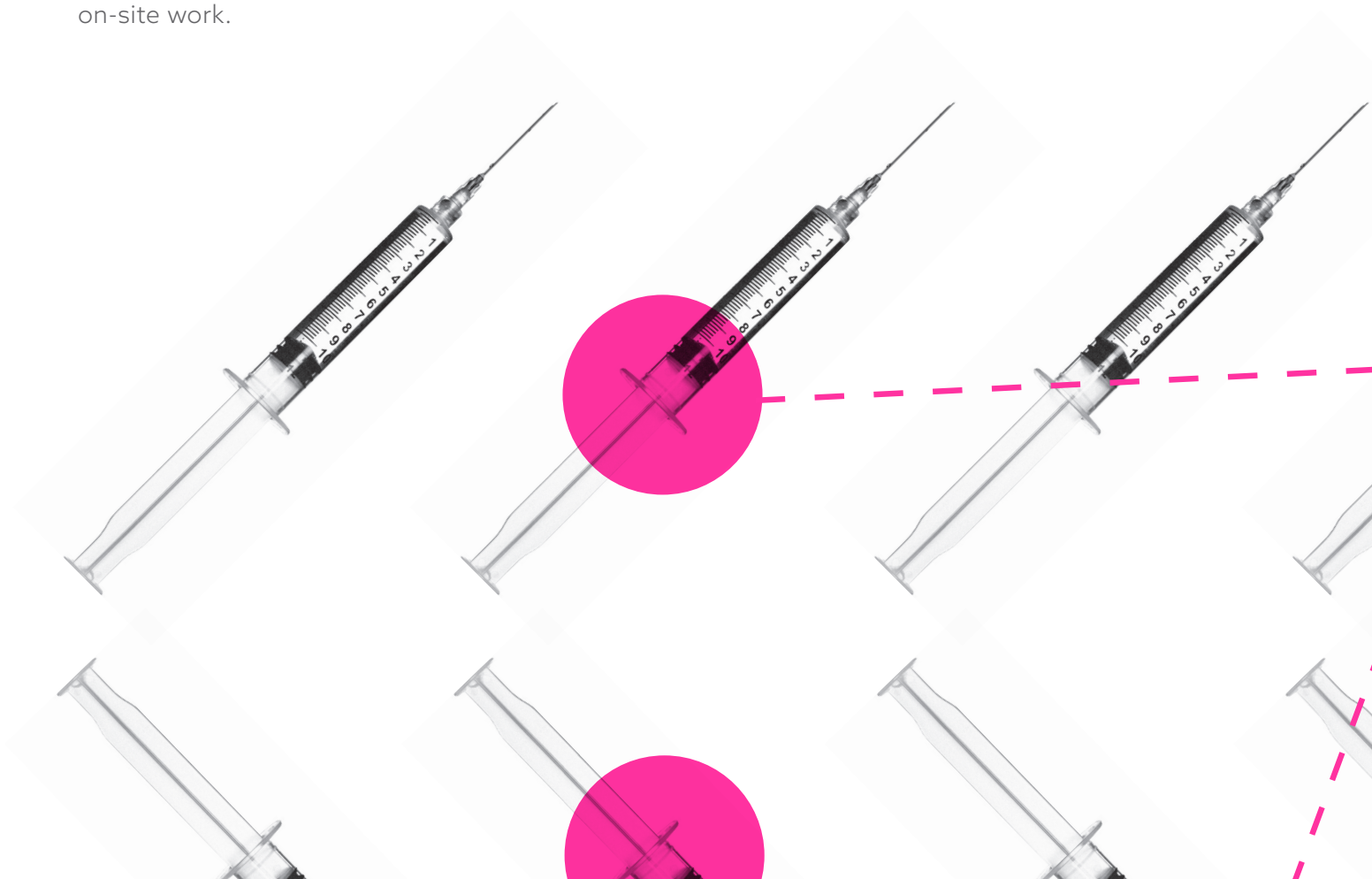
For employers with a global presence, monitoring their employees in Europe or the U.K. may require an E.U. and, following Brexit, a U.K. representative. Any vaccine-tracking program with international implications should follow each applicable country's data storage and COVID-19 employer tracking compliance.

Transparency is key: If an employer determines it is justified to record whether their employees have had the vaccine, they also need to make sure each employee understands why they're collecting the information, and what they're using it for.

SECURITY OBLIGATIONS

- **Data minimization:** Only collect data appropriate for the purpose. Being able to customize what is collected is key.
- **Secure storage:** The collection and storage needs to be secure (e.g., password protected, encrypted, assigned hierarchy of access). Respect any duty of confidentiality owed to employees; don't routinely disclose vaccine status among other employees unless there's a legitimate and compelling reason to do so.
- **Continued legitimate grounds:** Regularly review whether you still have grounds for the collection and retention of this information as the vaccination roll-out progresses and more people receive the vaccine. This should include monitoring the latest government and scientific advice on the vaccine roll-out and coronavirus restrictions.

Of course, there will be questions and concerns when it comes to collecting and processing employee health data. It's up to each employer to assess the need for, and to decide if they'll request or require, collecting this kind of personal information. Be sure that you've taken all the necessary steps to ensure the data is safeguarded and not in conflict with local regulatory requirements.
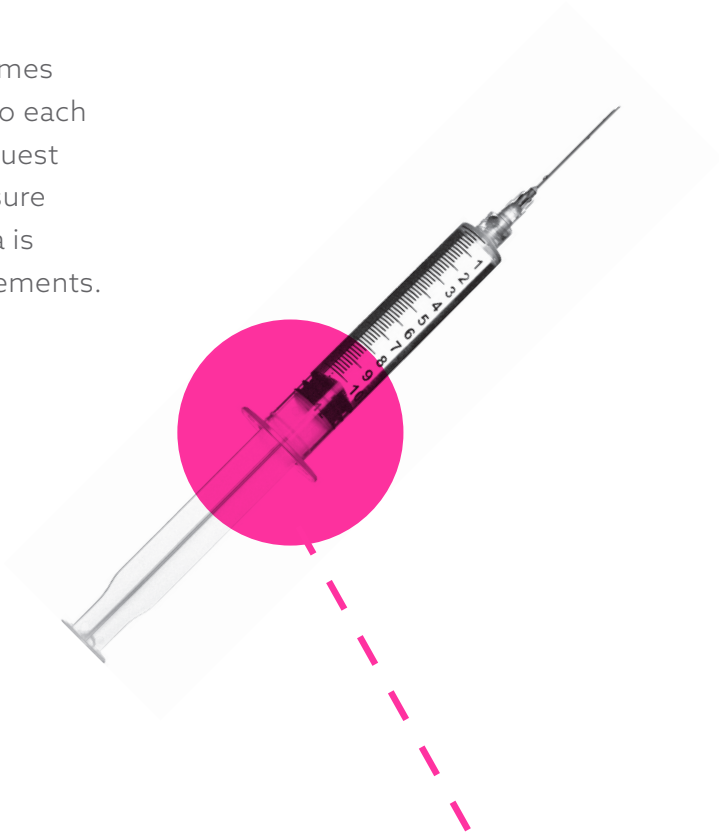
How behavioral science is transforming digital claims solutions

BY **RICHARD SHERIDAN**
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Technology is great, but it's a given: We expect technology in most of our business transactions — it would be odd *not* to use it. Technology, in and of itself, is no longer the differentiator; instead, it's what we use it for, and how we use it to its best effect.

Today, it's more about how you *design* the experience. Technology gives us the ability to reimagine the entire process — to move beyond "the way it's always been done," because the way it was done previously was dependent on the technology available at the time. Consider the booming rise of ridesharing companies as an example. The end product is still a taxi service, but technology has transformed the whole experience, making it far easier — for the customer, and for harvesting data essential to making further improvements into the future.

The insurance industry can learn from other sectors in how to deliver ease of use for all stakeholders (not just customers). On one hand, technology supports the claims process by offering more speed, better direct communication and more efficient data (e.g., system integration, automated workflows). It improves the customer experience by providing a more personalized, intuitive and effective interaction. It reduces handling costs and indemnity spend, and gives us greater analytical insight. But to really understand how to make things easier, we need to learn how people think and act; we can do this by applying the techniques of behavioral science.

BEHAVIORAL SCIENCE AND THE CLAIMS PROCESS.

Claims result from disruptive events; for most individuals, thankfully, those events are rare. Whether it's a brand-threatening major fire loss or a series of minor issues, claims have the potential — perhaps even the likelihood — to create work, confusion, frustration and delays. This happens because people often don't have a full understanding of how the process works; they lack what we call a "mental model" for what's supposed to happen. Add that to an already stressful and unfamiliar situation and it's easy to see why some claimants struggle to adhere to the process, which was inherently designed to serve and suit the technical needs of the claims handler or carrier.

If we're not careful, that "understanding gap" could grow into a "motivation gap" as well. Claims professionals are driven to settle claims quickly; that's not always the case for customers, who may not feel the same sense of urgency to provide important information or take action necessary to keep the claim moving forward.
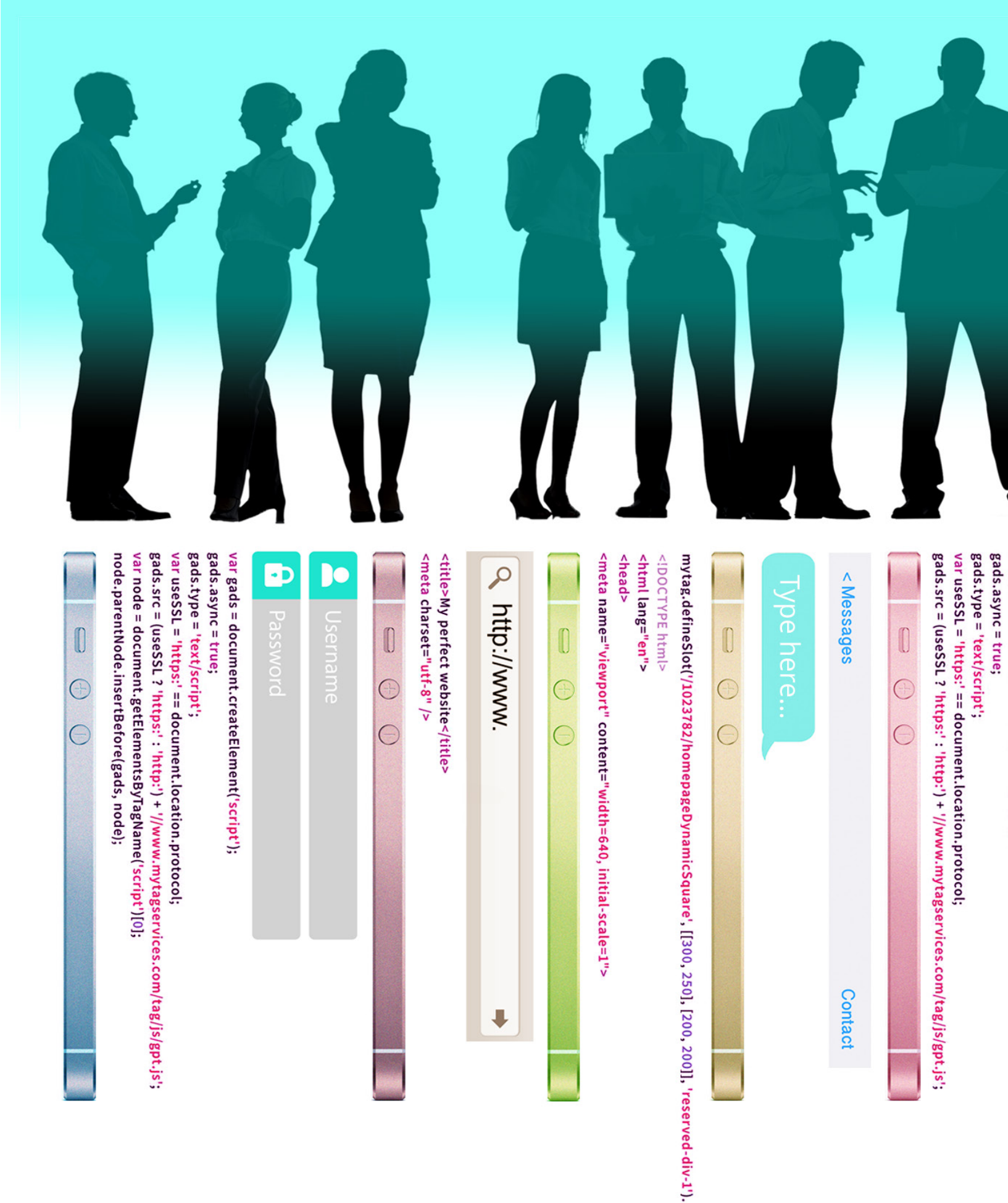
Behavioral science allows us to design communication, processes and technology that help the customer understand the situation, and to influence their motivation to take action. This benefits everyone involved by increasing customer satisfaction even as it reduces the time and cost to settle the claim.

HOW CAN WE IMPROVE CUSTOMER UNDERSTANDING?

- **A clear mental model** gives customers "the big picture."
  - Describe processes first in high-level, simple categories: "We'll start with the 'assess' phase, then 'prepare,' then 'restore'" — and then share the necessary details: "The first phase, assess, involves the following…"

- **Focus on key topics** and one decision at a time.
  - It keeps customers from shutting down under stress or disinterest.

HOW CAN WE IMPROVE CUSTOMER MOTIVATION?

- **A clear ask** creates a sense of clarity and simplicity.
  - Avoid industry jargon; be prescriptive and succinct.

- **Social proof** provides the comfort of commonality.
  - Help them see where others have had a similar experience.

- **Grow confidence** by focusing on attainable goals.
  - Lay out straightforward, step-by-step tasks.

- **Minimize loss aversion** by highlighting as many "gains" as possible.
  - Stay forward-looking instead of focusing on the pain of loss.

- **Reciprocity** demonstrates that we're here to help, and equally invested.
  - By shifting the message from "you need to do this for us," you'll change the recipient's motivation and improve response rates.

By adopting a less process-driven, computer-directed workflow, we're giving teams the opportunity to do what they do best: be people.

SUBMIT
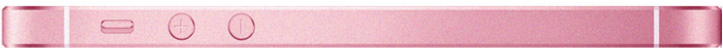
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gads.type = 'text/script';
var useSSL = 'https:' == document.location.protocol;
gads.src = (useSSL ? 'https:' : 'http:') + '//www.mytagservices.com/tag/js/gpt.js';
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TANGIBLE RESULTS

Sedgwick is engineering change in how our own colleagues approach claims resolution. By adopting a less process-driven, computer-directed workflow, we're giving our teams the opportunity to do what they do best: be people. People with real-world experiences. People who care and connect. Here's a look at notable improvements we've seen in programs where we've applied behavioral science to our messaging:

- By redesigning our communications and messaging process for water damage claims, we've seen a 50% reduction in complaints and a 15% reduction in customer effort.
- With building damage claims, we needed to create a better mental model for customers to tackle customers' perceived dissatisfaction because expectations weren't clear. Since redesigning the process, we've seen a 43% improvement in response times, and a 37% improvement in time to conclude.
- By changing just two words to an outgoing mail message on a third party administration (TPA) account (adding "your claim"), we saw a 14% reduction in inbound calls, representing a reduction in customer effort.
- Reviewing the handling of storm claims, we found that the underlying cause of much delay and dissatisfaction was customers' unrealistic expectations of the process. Uncertainty also led to delays in accepting settlement offers. By changing our initial communications to the customer, we established an appropriate mental model of what needed to happen and what the customer could expect. We also changed how we explained settlement offers, making it quicker and easier for them to review with others before acceptance. These changes led to a 129% improvement in the number of cases settled within 10 days and a 24% reduction in the overall average settlement time for all claims*. Where claims were declined, we saw a 22% reduction in the number of complaints.

*total sample size = 1,932 claims

And the best part? Changes to messaging are comparatively cheap, with no major technology overhaul needed, making it a quick and practical application.

STRIKING A BALANCE BETWEEN HUMAN AND DIGITAL

It's true that automation is not just helpful to our industry, it's critical. It greatly reduces human error, it quickens progress and it frees people up to contribute in much more high-value, human-touch ways. It also allows claims professionals to focus on more meaningful work that can have a greater positive impact on outcomes.

By using behavioral science to reimagine how we design and use technology, we can bring about real change in how we resolve claims: less process-driven workflow for our claims professionals gives them the opportunity to do more than simply check items and tasks off a to-do list or provide computer-generated answers — it allows our *people* to solve people's problems.

KEY DESIGN PRINCIPLES FOR IMPROVING THE CLAIMS SERVICE:

- Understand the needs and motivations of all stakeholders. The process, and the technology, has to work for everyone involved.
- Focus on the ultimate desired outcomes, and stay flexible on how you'll achieve them. Every situation is different, because every customer is different.
- Create a blend of skills and automation. Automation is helpful for routine tasks and sharing data, but only people can solve problems and provide empathy.
- Keep it straightforward and intuitive. Research indicates customers value ease and simplicity above all.

Regulatory updates: what to expect from the new administration

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The Biden administration has reached its first hundred days — long considered a key benchmark for new presidents as we begin to see what legislation they're focused on (particularly important when a new party takes over), who they'll choose to serve in key roles and how their policy may vary from the previous leader's. And, as is always the case, there's one thing we can surely predict when an administration changes hands: unpredictability.

A LOOK BACK

Historically, we know what each platform looks like for our industry. The Republican party generally is a proponent of limited government involvement in economic policy and less business regulatory engagement, with the objective of promoting economic growth. The Democratic party generally places more focus on the labor movement and growing the economy by empowering the individual worker, utilizing government regulation as a tool to protect workers' fundamental rights and encourage safety. During a Republican-led administration we tend to see more business-centric policy, whereas a Democratic-controlled administration will often focus on more employee-centric policy.

THE HERE AND NOW

Based on those historic trends, there are a few changes to compliance requirements we can expect under the new administration, and some we're already seeing come to fruition. In the casualty line, as in all others, it's clear the post-COVID economy will be different than the pre-COVID economy; as NCCI outlined in their final quarterly economics briefing of 2020, changes affecting labor markets will also affect casualty:

- With the slowing rate of job recovery and increasing share of permanent layoffs in 2020, we should expect to recover more slowly in 2021 than we did last year.
- Job losses concentrated among low-wage, low-skilled workers will likely prolong the period of employment adjustment.
- Employment shifts from small businesses to larger may reduce workers' compensation premiums, via self-insurance and large deductibles.
- Existing trends toward digitization, automation and contract work arrangements may also mean lower employee headcounts in affected occupations.
- Continued at-home and remote work may affect the nature and frequency of workplace injuries.

We can also expect, at some point over the next four years, renewed discussion around paid leave as part of the Family and Medical Leave Act (FMLA). It's reintroduced nearly every year but has yet to gain tangible traction; there is, however, increased focus in the wake of the COVID crisis. Last year, Congress passed the Families First Coronavirus Response Act (FFCRA), which required "certain employers to provide employees with paid sick leave or expanded family and medical leave for specified reasons related to COVID-19." At the state level, we're seeing paid family medical leave introduced, with a track record of about 40% passing. We'll see a multitude of states activate this type of regulation between now and 2024.

CONSIDERATIONS FOR 2021

- **COVID-19 presumptions:** 15 states have enacted workers' compensation compensability presumption laws — either by executive order or legislative action — and several more are considering them in their 2021 legislative session. Each considered bill is retroactive, mandating reevaluation of claims since March 2020 for compensability determinations.

- **Telemedicine:** We saw a significant increase in use beginning in March 2020; it began to level off in September and is stabilizing at this point. We can expect to see state regulatory "fine tuning" this year when it comes to telemedicine.

- **Vaccinations:** Businesses are ranging from encouraging to mandating employees to get vaccinated before returning to work; some are providing incentives to employees who participate. Case by case and state by state, employers should be aware that they may face workers' compensation exposure for any adverse reactions to a mandated or "strongly encouraged" vaccine policy.

  - Workers' compensation considerations aside, another area of discussion regarding vaccination mandates and encouragement by employers is the potential for discrimination claims by those who do not attain the vaccine due to beliefs, disabilities and/or other reasons. Because these individuals would not be entitled to any employer incentive, there is the potential for discrimination lawsuits if the employee is in a protected category.

- **OSHA:** We can expect OSHA activity to increase in 2021, with a greater focus on inspections, general duty clause citations for COVID-19 violations of CDC guidelines, a permanent infectious disease standard and enforcement of the 2016 OSHA anti-retaliation rule.

- **Employer's liability:** We may see more attempts to evade the exclusive remedy under workers' compensation for COVID-19 lawsuits against employers, alleging failure to provide a safe work environment, exposure of employees' families or wrongful death due to failure to adhere to CDC guidelines.

- **Liability litigation:** The social and economic response to the pandemic led to lower claim activity for the duration of the year. Court closures slowed resolution of litigated matters, basically putting on pause the number of large verdicts. This continues to present an opportunity to push for resolution of litigated matters as opposed to the prolonged process to attain new trial dates. Additional concerns with litigation include:

  - Jury pools (e.g., older jurors potentially being excluded because of increased COVID-19 exposure risks)
  - Larger venues for jury trials to ensure social distancing and reduced risk of possible exposure
  - A backlog of cases prolonging the trial process

40%

At the state level, we're seeing paid family medical leave introduced, with a track record of about 40% passing.

KEEP IN MIND

In order to help our clients stay (or get) compliant as we move into the second half of 2021 and beyond, there are several key legislative and regulatory issues we will be following closely:

- Whether you're introducing a new paid leave program or considering changes to your existing program, keep a close eye on the introduction of state- and federal-level bills related to mandated paid family and medical leave. In some states, employers with existing paid leave policies which provide equivalent rights may be exempted from participation in the state program; we may see this at the federal level as well. Generally, this results in lower overall cost to the employer, and allows a bit more control and insight into their employees' use of the benefits.

- Continue to evaluate the relative risk associated with mandating vaccines. Consider policies which encourage vaccination, while ensuring those in protected categories are not discriminated against.
- Stay abreast of the federal regulatory environment, specifically regarding OSHA.
- Ensure a continued focus on resiliency in your risk management program. Assess and leverage your risk strategically for short-term tasks and long-term plans alike.
- As many states continue to consider expanding the nature of what is covered under workers' compensation beyond traditional work-related risk, the industry must remain diligent in expressing its views on what workers' compensation should represent.

Building a strong accommodation program

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An accommodation program's value is tied to the employer's willingness to offer strong options. Good intentions paired with a good vendor can create return to work and stay at work programs that are ready to deploy when you need them.

Chances are, you've got a solid business continuity plan — think about accommodations in much the same way. If you're short an employee for any period of time, how will you keep your business moving? How will you continue engaging that employee during their time away? Have you considered alternatives that may help an employee stay at work, rather than needing to return to work after an absence? It's critical to have these best practices in place — and documented — in advance, so you don't have to design on the spot when an employee is out.

BEST PRACTICES EMPLOYERS CAN FOLLOW TO BUILD A SUCCESSFUL ACCOMMODATION PROGRAM:

Provide clarity and consistency.

One of the biggest gaps we see from clients is inconsistent — or altogether missing — job descriptions. It's challenging for managers and human resources to determine how, or even if, they can make accommodations, if the organization doesn't have employees' essential functions documented.

TIP: Think beyond the "hiring" job description to the "functional" one, especially in roles with a higher propensity for injury. Focus on the physical demands of the job, so they can be reviewed by medical/therapy professionals. How much will the employee have to lift or carry? Push or pull? What's the environment? It should be completed by someone with a true sense of what the position requires.

TIP: Make your description detailed and accurate, but concise. It should be an efficient tool for the physician who will have to make, in some instances, a life-altering decision on your employee.

It can be hard to engage and communicate consistently with a decentralized and/or remote workforce — and inconsistency is the number one thing to make someone think they're being treated unfairly. Employees are becoming more familiar with their rights: According to the EEOC, in 2019, employees filed charges of disability discrimination more often than any other type of discrimination (e.g., race, religion, age, etc.). Getting job descriptions down on paper helps with compliance, legal coverage and efficiency, whether that worker is in Billings or Philly.

TIP: Once you're clear on job descriptions, define what accommodations are appropriate and necessary, and document what you're willing to do for each function.

Everyone, every step of the way, needs to understand what their role is. Beyond role, though, it's important to look at each employee, and each requested accommodation, individually; just because the disability or diagnosis is the same does not automatically mean the accommodation will be.

TIP: Wherever you can, involve your employee in the conversation. What you're trying to solve for, they've probably already experienced — at home, in their community, traveling — they know what they need and, oftentimes, how best to get it.

TIP: Don't hesitate to engage return to work professionals in these interactions. They can assist you throughout the interactive process, they're well-versed in what questions are okay to ask and they'll use "person first" language that serves your employee best while making sure legal parameters are respected.

Think creatively.

The quicker you can get an employee back to work, the more everyone benefits. The Americans with Disabilities Act (ADA) is not about putting someone out on leave, it's about doing everything you can to get them back to work, and keep them there. If you can find or create a solution that helps your employee stay at work without needing to go through ADA, everyone wins.

A good return to work program gets employees back to work as soon as possible after an illness or injury by modifying their job responsibilities (sometimes called light or transitional duty) and, if necessary, accommodation through the ADA or other state disability law.

But the difference between a good plan and a great one is thinking ahead, and thinking creatively, about helping your employees *stay* at work, rather than returning. Stay at work starts with culture, and with genuine buy-in from the top down. It tells your employees, "If you sustain an illness or injury that impacts your ability to work, we'll do everything we can to keep you here; we value you." That messaging leads to better outcomes and a happier, more diverse workforce. Accommodations go hand-in-hand with diversity and inclusion efforts by providing a natural support for people with disabilities, be it short-term or long-term.

TIP: Don't underestimate the influence of a manager or supervisor on their frontline employees; make sure they're trained and educated on the organization's return to work and stay at work policies. If their messaging contradicts formal policy, correct it immediately and communicate clearly with the employee about their rights and options.

Even when you put forth a best effort, sometimes you just can't come up with an accommodation that will enable an employee to continue their essential functions. The Equal Employment Opportunity Commission (EEOC) and the Department of Labor caution that it's important to consider all options before you terminate anyone; wherever possible, be flexible and creative and, again, plan ahead.

Consider the total cost of absence.
Did you know that the majority of accommodations cost employers less than $500, if they cost anything at all? The cost of a strong accommodation program isn't nearly as much of a concern as the cost of not having one. Just ask the defendant in a recent case, who opted not to install an automatic door for an employee in a call center. The modification was estimated at about $2,000. The employee sued for disability discrimination and was awarded $650,000.

ROI is just one piece of the puzzle. Be sure you're thinking about the intangibles: how much added time and energy is your internal staff going to spend on paperwork? Who will take on the additional responsibilities of a missing employee? How will you ensure productivity and quality standards are met with a temporary worker or a reduced staff?

Connect the dots.
By developing and offering a holistic work environment, with products and services available that are both usable by and beneficial for the broadest array of individuals, employers can ensure there's space for someone with a disability to be mobile, productive and safe. This practice of universal design puts policies and procedures in place that encompass everyone.
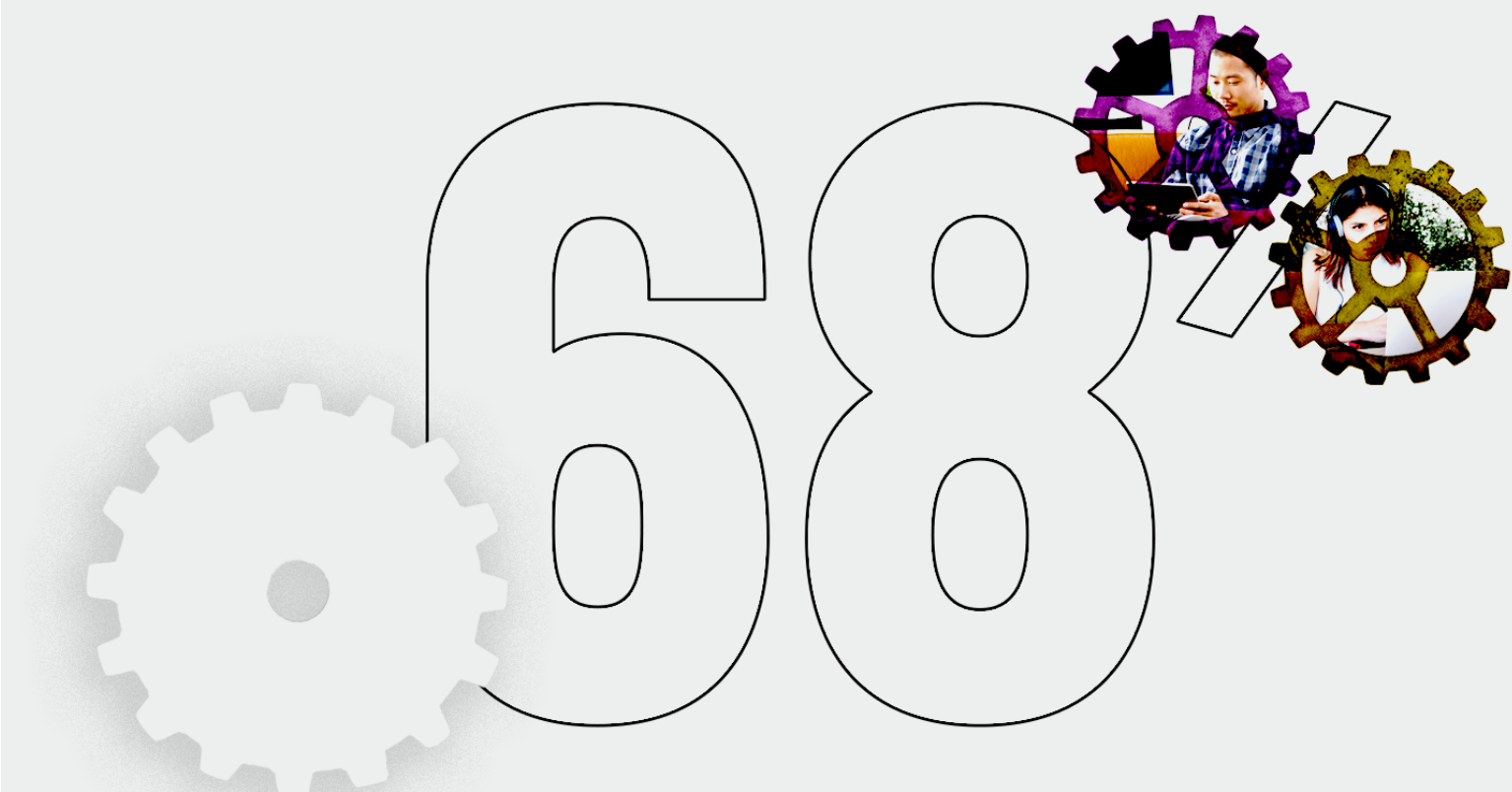
In a recent DMEC survey, 68% of employers reported an increase in accommodation requests over the previous year — the number one request being to work remotely.

TIP: Think of unexpected yet simple ways to embrace universal design. Choose words and phrases that can be easily understood by someone who doesn't share the same primary language or is impaired in some way. When you create presentations or other visual aids, consider the font size, color contrast, etc. from an ADA perspective for optimal accessibility.

For more information on universal design, visit these resources:

JAN article on universal design in the workplace
https://askjan.org/topics/univdes.cfm?csSearch=3102847_1

National Disability Authority on the seven principles of universal design
http://universaldesign.ie/what-is-universal-design/the-7-principles/the-7-principles.html

Many organizations have been employing universal design, whether consciously or not, as they work to keep their workplaces functioning throughout the COVID-19 pandemic, decreasing exposure and transmission by installing automatic doors, improving air quality, lessening the number of unnecessary in-person interactions, etc.

COVID-19'S IMPACT ON ACCOMMODATIONS

A year and a half into the pandemic, we're just now beginning to understand the "long-haul" effects many are suffering after a COVID-19 diagnosis. Along with accommodating for physical symptoms that continue long after the virus has left the body, we also have an opportunity to look differently at employees' mental health concerns, particularly as more and more workers express anxiety over returning to a post-COVID workspace. An employee with a physical diagnosis can go through a capacity assessment and measure their recovery progress through physical therapy; there are fewer opportunities for those kinds of metrics with mental health.

While the world slowly moves beyond a nearly singular focus on the pandemic, its effects will be wide-reaching and long-term. In a recent DMEC survey, 68% of employers reported an increase in accommodation requests over the previous year — the number one request being to work remotely — and we have every reason to believe this will continue for the foreseeable future.

Before COVID-19, many employers claimed that allowing employees to work from home would unduly burden the organization. Since COVID-19, those same employers, out of necessity, had to rethink, and in many instances require, remote working. Moving forward, it may be more difficult to prove that working from home is logistically impossible or bad for business. And where absence plans were traditionally built for the workplace, employers now need them to embrace a newly expanded remote workforce.
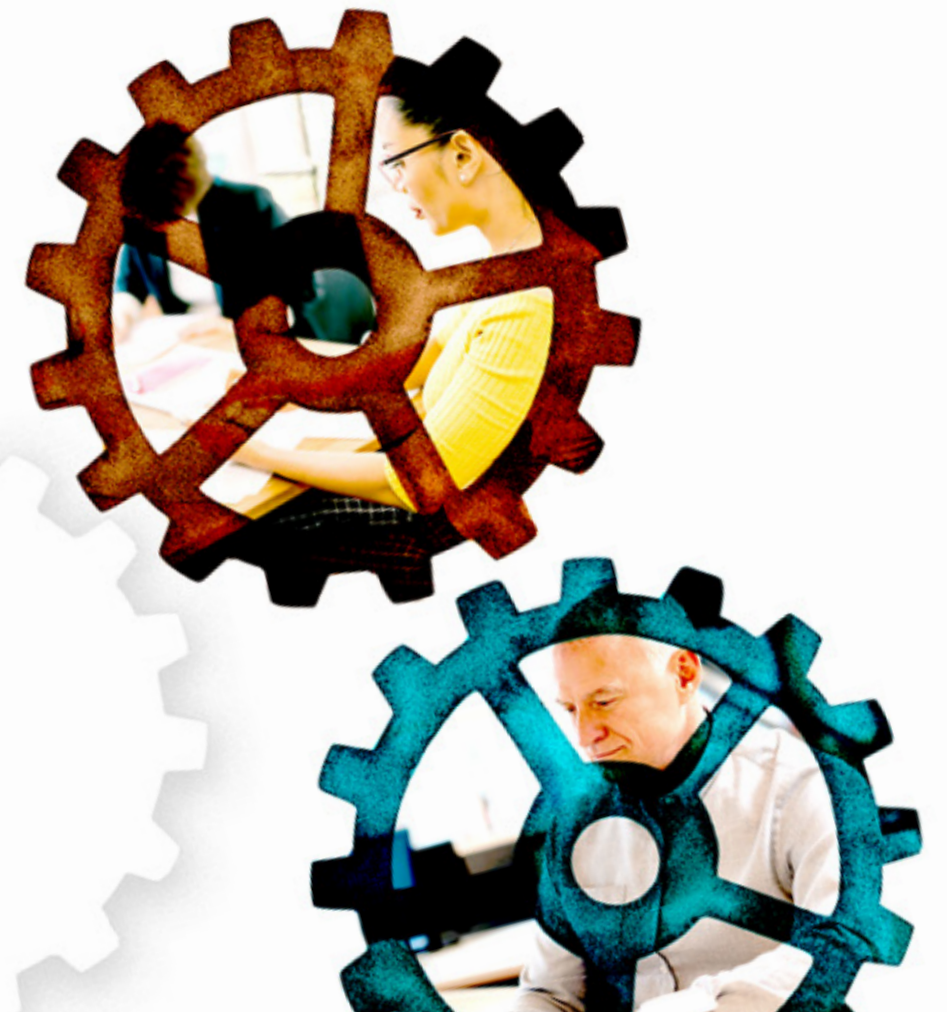
WFH AS A NEW WAY OF LIFE.

Absence plans were built around the traditional workplace — now we need them for employees working from home. The Department of Labor is clear that just because you allowed remote work during the height of the pandemic doesn't mean you have to continue offering it forever. But consider what kind of leader and organization you want to be. How you lead will have long-lasting effects on how you define yourself — or, perhaps more importantly, how others define you — as an employer. Compliance and the bottom line are crucial, of course, but so is safety, inclusion and morale.

Take proactive measures to invest in the whole employee, wherever their work is being done. Find ways to conduct wellness checks for your remote workers. Arrange for standing desks in home offices. Stay flexible with scheduling. Offer in-home ergonomic evaluations. Chances are, your employees have already figured out how to transition to a new environment, and this increased opportunity to provide accommodations can set you apart.

As is so often the case, there are silver linings: The pandemic has led to a broader view of what is possible for workers and accommodations have been an important part of the conversation. Employees who aren't able to work in a traditional workplace are finding great success with expanded work from home options, and employers are benefiting from a more diverse talent pool.

By making accommodations part of your "total health" management strategy, you're helping your workforce stay healthy and happy and, by extension, productive.

Expert view

A conversation with John Stanzi, president, casualty, Sedgwick

As part of Sedgwick's planned shift of key leadership positions in late 2020, Jim Ryan stepped into the new role of chief operating officer for the Americas. He named John Stanzi as his successor, who took over executive leadership responsibility for casualty operations. We spoke with John about the broad reach of his new role, and his vision for the future of casualty both in and outside of Sedgwick.

edge:
Hi John! While the title might be relatively new, you're certainly not new to Sedgwick, or to the industry. Fill us in briefly on how you came to assume the role of president of the casualty business unit.

John:
First of all, let me just say how proud I am to be part of the casualty team here at Sedgwick. As of today we're more than 6,600 colleagues strong, each of whom is working on behalf of our clients every day — and, for many of us, we've been doing it for more than a year in a new, at-home environment. I've been so impressed by the unwavering commitment of our colleagues to continue delivering at the highest levels.

Like many in our industry, I didn't grow up planning on a career in insurance, let alone claims. I entered the insurance sector about 15 years ago, after working at Merrill Lynch, where I had to get up to speed quickly on the companies that came across my desk for investment. That's how I first got acquainted with York, and I joined the team there in 2008 as the head of mergers and acquisitions (*Sedgwick acquired York in late 2019.*) I was really drawn to the idea that we are a people-first business, but also a data-driven one. The best of both worlds to make a career

and an impact on peoples' lives from my perspective. We are often helping people when they need it most.

After York, I spent time on the brokerage and managed care side of the ecosystem before reaching a point where I wanted to cement myself, and I kept coming back to Sedgwick. They'd been a client of mine as well, and I'd felt like a real part of that extended team. After meeting Jim [Ryan] and Mike [Arbour], it all came full circle. I took over as president of casualty in October of last year.

edge:
From your vantage point, what have we carried forward from the wild year that was 2020? And where does the casualty market stand today, as you see it?

John:
2020 saw a continued firming trend throughout the year, and many expect that will continue through 2021. Auto and general liability rates continued to climb, particularly for insureds with large auto fleets and/or adverse loss experience. Additionally, workers' compensation rates were subject to increasing pressure due to rising medical inflation and evolving presumptive legislation relative to the coronavirus pandemic.

Within casualty, carriers and self-insured clients are clearly focused on workers' compensation and the ongoing impact of COVID-19. Given our broad client set, which is representative of the overall economy in many ways, our workers' comp COVID claim trends have mirrored U.S. incident rates. In December of 2020 and into January of this year, the number of COVID claims we handled peaked, hitting about 750 per day. Thankfully, we saw a decline in February where numbers dropped to less than half those levels, and I'm cautiously optimistic that declining trend will continue.

edge:
What other effects is the pandemic having on casualty? And how is Sedgwick responding?

John:
Sedgwick has been at the forefront of helping our clients manage the challenges of COVID-19, including complex reporting requirements and staying in front of state presumptive measures. Examples include SB 1159 in California and essential worker provisions. The value of our technical experts and thought leadership, along with the knowledge-sharing and training

for our examiners, has never been more evident, or more important, for our clients.

edge:
What will a post-COVID Sedgwick — and industry, and world — look like?

John:
Today, the vast majority of our colleagues are continuing to work from home. I don't see that changing significantly in the near future, and like other people and client-centric organizations, we're busy working to develop an operating environment that will sustain over the long-term for colleagues and clients alike. One positive side effect of the pandemic has been the efficiency gains from the adoption of new technology we've deployed; we've learned a lot through necessity and will be able to carry those lessons forward, especially as the world shifts to post-COVID ways of doing business.

We're performing at a high level — I am amazed at the adaptability of our colleagues — but I think, like a lot of people, we're missing some of the benefits of an office-first environment: mentorship, face-to-face client interaction, impromptu knowledge sharing. So, I think we'll find a way to

get back to that — it won't be a complete reversion to the old way of doing things, but it's an opportunity for us to reshape where it makes sense for both our colleagues and clients. And our caring counts philosophy has never been more important than it is today. We're all making an extra effort to reach out to one another as much as possible, to stay connected; we've even tapped our own Dr. Bartlett to lead group sessions with colleagues who are dealing with the challenges of COVID, either personally or in their extended families.

John:
The casualty team has a few specific areas of growth we're focused on, and I'm really excited about each of them.

In the fall we announced our acquisition of Nationwide Appraisals, now integrated as Sedgwick's auto appraisals team. The addition of the team led by Chris Bakes and its services will allow us to significantly expand our offerings more broadly across all of the auto claims arena, in both commercial and personal lines. We heard our clients expressing their desire that we expand this offering, and Nationwide brought it in-house through a more coordinated solution. We're also expanding the number of ancillary services Sedgwick provides (*e.g., repair networks, towing, rentals*) to build a more holistic model with best-in-class offerings. In many ways, it's akin to how we've expanded our leading managed care offering. We view this as a top growth opportunity, and you'll hear a great deal more from us on our end-to-end auto story in the coming months.

Another growth driver is Sedgwick's strategic expansion into the middle market. Historically, we've been best known for how we serve larger clients in workers' compensation and liability. That being said, we have a tailored service offering for mid-size companies, and we're focusing energies there, leveraging the best of what we do and packaging for a traditionally underserved group. Stewardship and data management are cornerstones for Sedgwick, and in that way our high standards of client service will serve the market exceptionally well.

We've also got a growing practice called CX, which we're using as an incubator for new services. It's a growing operational unit that thrives on flexibility, with 24-hour service capabilities that can deliver tailored services to complement our core claims platform. We're also continuing to invest in new technology, like robotic process automation, to enhance our delivery models to improve program results and drive down clients' loss ratios.

Each of these areas of focus demonstrate Sedgwick's ever-evolving service offerings, and our desire to continuously be expanding what we can do for our clients, to meet their specific needs.

"One positive side effect of the pandemic has been the efficiency gains from the adoption of new technology we've deployed…"

John Stanzi
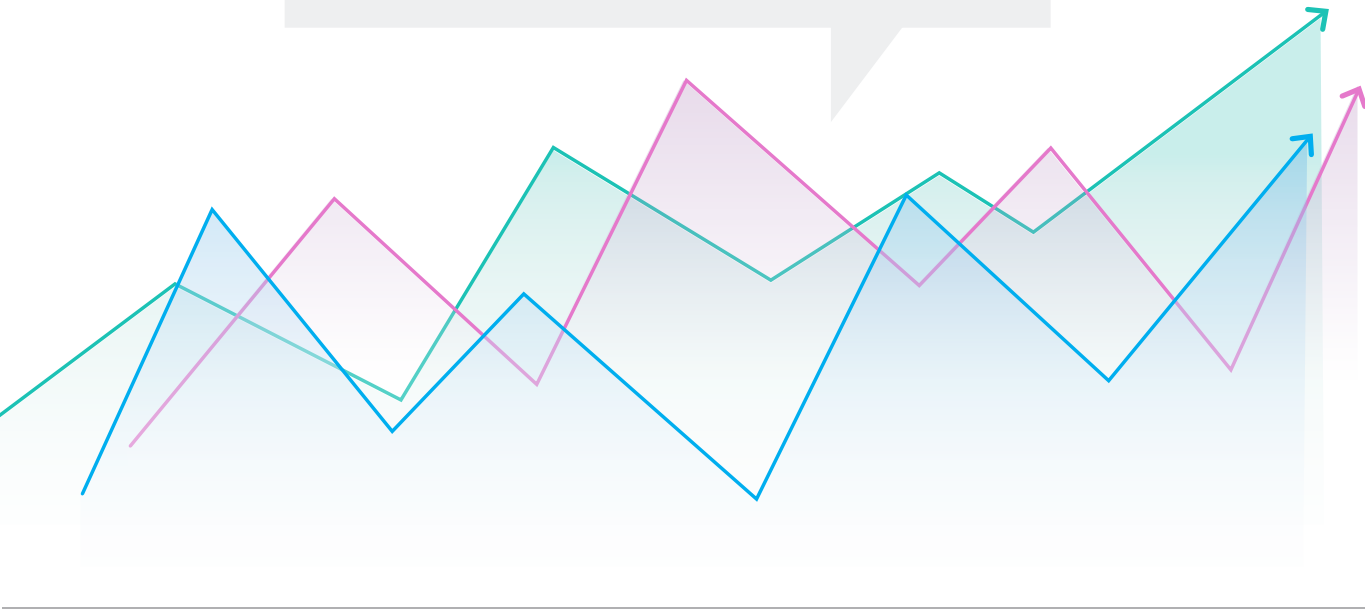
JOHN STANZI
As president of casualty for the Americas, John is responsible for leading colleagues across Sedgwick's casualty lines, delivering innovative solutions and results for our clients and the employees and consumers they serve. He previously served as Sedgwick's managing director of casualty operations, supporting strategic projects and growth initiatives across the company's casualty lines of business. With more than 20 years of experience in operational, financial and corporate development roles, and a proven track record in both the healthcare and insurance services industries, John's leadership skills and broad insurance expertise have been integral to improving and expanding Sedgwick's comprehensive solutions.

Community spotlight: holding on to hope

2020 season of giving campaign

BY **KIM KRAUSS**
managing director, global marketing and communications, Sedgwick

Just over a year ago, millions of us were first hearing about COVID-19 — though few of us could have predicted at that time just how far-reaching its impact would be on our health and our lives. We retreated to our homes, kept our circles small and our interactions few, in order to protect our most vulnerable family and community members. For many, the resulting fear of the unknown and social separation, while necessary, was difficult; even today, the effects of those many months of isolation on our collective mental health remains. And COVID-19 was hardly the only matter we faced in 2020: devastating wildfires, civil unrest and destructive weather events also made their mark on the year.

To say we had a lot to contend with is an understatement.

DIRECT RELIEF

Hope can be tough to find — and even tougher to hold onto — in the midst of challenges, grief and uncertainty. So when the time came to launch our annual season of giving campaign, we felt more compelled than ever before to spread a positive message, generate hope and build resilience within our workforce and communities.

Each year at Sedgwick, we challenge ourselves to find a meaningful way to exemplify our purpose statement: "Taking care of people is at the heart of everything we do. Caring counts." Often, what our communities need most is something tangible; we may collect canned goods, coordinate company blood drives or donate to important causes like water conservation. After reflecting on 2020, we felt that what people needed most was a positive message. Hope.

A virtual hug, if you will. With these ideas in mind, this year's campaign supported Direct Relief, a humanitarian organization helping people around the world during times of emergency. Like Sedgwick, Direct Relief spent much of 2020 taking care of people impacted by wildfires, hurricanes and the COVID-19 pandemic; partnering with such a great organization, raising awareness and encouraging people to support its important efforts just made sense.

One of the best pathways to hope and healing is connectedness.

FUELED BY GRATITUDE

One of the best pathways to hope and healing is connectedness. So when we launched this year's season of giving campaign, we invited people around the world to contribute to our wall of gratitude. People wrote about how thankful they are to have a healthy family, helpful coworkers and a place to call home. Others recognized the little things, like being able to work remotely, walking their dog more, working out with friends over Zoom...and the fact that they still like their significant other after so much extra time together! Many of the posts commended the resilience and dependability of frontline workers, and how truly valued they are around the world. As you scroll through the dozens of notes, we hope you'll be inspired by those who have shared what they're most looking forward to in 2021, and their faith that brighter days are right around the corner.

It'll take some time to move beyond the challenges and struggles 2020 brought. We're still working toward healing and safely reengaging. But we're moving forward with a sense of renewed optimism and hope — and we're committed to helping our colleagues, clients and communities thrive in 2021.

I am thankful for all the cares that I received from my company and colleagues at Sedgwick.

I am so thankful to Sedgwick Australia (Brisbane) for valuing all their staff and their safety.

Remembering whats truly important in life - health, safety, family

I am thankful for my family and for the lovely teams I get to work with @ Sedgwick Brisbane office.

I am thankful for a staff who values the families we serve!

Thankful for a slower pace of life and enjoying time with family.

MI familia y yo estamos muy agradecidos con todos Sedgwick México y todos sus colaboradores.

I am thankful for my Heavenly Father first of all! We are blessed with work and good employees!

I am thankful for the reliability and resilience of our frontline workers!

Thankful for family, friends, employment, our health, and hopeful for a brighter future for all.

I'm thankful my fiancee and I still like each other after spending so much time together this year!

My family and friends that understand the important work I do and support me through the hard times.

I'm thankful for the opportunity given to me to become part of a true team here at Sedgwick.

Edging up

Short takes on emerging industry issues – legislation impacting employer requirements related to COVID-19 and updates on state PFL and PFML programs

COVID-19 prevention plan requirements for California employers

MALCOLM DODGE
vice president, risk services, Sedgwick

LAURA OSLUND
senior risk services consultant, Sedgwick

The California Occupational Safety and Standards Board released emergency temporary standards pertaining to COVID-19 prevention that went into effect on November, 30, 2020. Among the standards is a rule that requires employers to establish, implement and maintain a COVID-19 prevention program.

This rule (sections 3205–3205.4 of the California Code of Regulations) defines who is considered a "COVID-19 case" and what is considered a "COVID-19 exposure," an "exposed workplace" and a "high-risk exposure period." A "COVID-19 case" is the same as a qualifying individual defined in California Assembly Bill 685, which took effect on January 1, 2021.

A COVID-19 prevention program can be incorporated into an employer's current injury and illness prevention program. The components of the program must include:

- A communication strategy that applies to COVID-19 reporting, accommodations, access to testing and hazards
- The identification of hazards to include the participation of employees and their authorized representatives in identifying and evaluating hazards, screening, policies and procedures in order to respond effectively and immediately to identified hazards, places where risks may be greater such as congregate settings, maximizing air flow, possible industry specific hazards, assessing whether additional controls are needed, and ongoing inspections to identify possible unhealthy behaviors, work practices, work procedures and to ensure compliance
- Investigating and responding to COVID-19 cases in the workplace to include illness history, determining which other employees may have had a COVID-19 exposure

and what, if any, workplace conditions that may have contributed to the COVID-19 risks and what could be done to minimize those risks; personal identifying information shall be kept confidential as well as relevant medical records
- Training and instruction on the policies and procedures, benefits, how COVID-19 is spread, methods of physical distancing and the medical reasons for doing so, frequent handwashing, proper use of face coverings, and the importance of not coming to work when employees have COVID-19 symptoms
- The employer's plan to accomplish physical distancing
- Specifics on face coverings, when they are required, exceptions to face covering requirements, directions to non-employees who are on the premises, and how to manage circumstances where employees may have a medical or mental health condition or disability that precludes them from wearing a face covering

- Other engineering, administrative controls and personal protective equipment (PPE) including the use of cleanable solid partitions when physical distancing is not an option, the implementation of cleaning and disinfection procedures, prohibiting the sharing of PPE, evaluating handwashing facilities and allowing time for frequent handwashing as well as the use of hand sanitizer, and the use of respirators and eye protection to minimize COVID-19 risks
- Reporting, recordkeeping and access including the report of cases to the local health department when required by law, reporting to the Division serious illnesses or deaths, the steps taken to implement the COVID-19 prevention program, making available the written COVID-19 prevention program to employees, their authorized representatives and Division representatives, and tracking all COVID-19 cases (notice, testing and reporting criteria exist and are defined in 3205–3205.2 and vary depending on the number of cases occurring over specified periods of time)
- Setting guidelines for exclusion from and subsequent return to work for COVID-19 cases; return to work criteria include several factors but proof of a negative COVID-19 case is not one of them; these factors include:
  - 24 hours have passed since a fever of 100.4 occurred and the resolution of the fever has happened without the need for fever reducing medication
  - The symptoms have improved and at least 10 days have passed since the symptoms first appeared
  - Employees ordered to isolate or quarantine by a local or state health official must, when no period has been specified, isolate for 10 days or quarantine for 14 days

We are here to help

Sedgwick offers consultative review services to help employers develop or enhance COVID-19 prevention programs to ensure compliance. Our expert team can review your programs to make sure they cover all the required components. We can assist employers by:

- Helping build or enhance injury and illness prevention programs to cover the new COVID-19 prevention rules
- Providing consultative guidance on how the rules can be implemented (e.g., social distancing, investigations)
- Assuring documentation requirements are being met
- Offering guidance on how to address hazards when cases are reported; this may include a review of notice requirements; notice content would be driven by the available benefits for each employer
- Assuring that any transportation or housing policies and procedures meet the requirements

Virginia establishes COVID-19 requirements for employers

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LAURA OSLUND
senior risk services consultant, Sedgwick

On January 27, 2021, Virginia Governor Ralph Northam signed Standard 16VAC25-220 into law as a final, permanent standard. Its purpose is to establish requirements for every place of employment in the Commonwealth of Virginia and within the jurisdiction of the Virginia Occupational Safety and Health (VOSH) program to control, prevent, and mitigate the spread of COVID-19 to and among employees and employers.

The standard also became effective on January 27, 2021 and it modifies content and replaces the temporary status that was initiated in July 2020. Should this standard conflict with an existing VOSH rule, regulation or standard, the more stringent requirement from an occupational safety and health hazard prevention standpoint shall apply. Higher education institutions that have received certification from the State Council of Higher Education for Virginia are excluded.

On March 26, 2021, the standard's elements below became effective:

- The written infectious disease preparedness response plan requirements in section 16VAC25-220-70
- Training requirements in section 16VAC25-220-80

The following information includes details about the standard and actions employers need to take in key areas to remain in compliance.

Exposure assessment

- Assess the workplace for hazards and job tasks that can potentially expose employees; classify hazards and job tasks according to the exposure risk levels of very high, high, medium and lower

Physical distancing

- Use verbal announcements, signage or visual cues to promote distancing
- Limit access and occupancy; clearly post a policy at building and room entrances and enforce
- Establish access controls for work areas; common areas in particular will require cleaning and disinfecting between uses
- Implement flexible work options, including physical distancing of six feet between coworkers and other persons, when feasible
- Workers must isolate and shall not be permitted to return to work until at least 10 days after COVID-19 symptoms first appear; in cases of severe illness, replication-competent virus or a severely immunocompromised employee, additional days and a consult with the Virginia Department of Health (VDH) and/or VOSH may be required

COVID-19 testing

- Tests *cannot* be required by an employer unless the employer's health insurance covers the entire cost

Notification of exposure

- When a person was present at the place of employment within two days prior to symptom onset (or a positive test if asymptomatic) until 10 days after onset (or positive test), employers shall notify:
  - Their own employees within 24 hours of discovering an exposure
  - Employers whose employees were present in the workplace within 24 hours
  - Building and facility owners within 24 hours; advise whether there are one or more cases and the floor(s) or work area(s) that have been compromised
  - VDH within 24 hours of discovery when two or more of their own employees present in the workplace test positive within a 14-day period; (refer to section 16VAC25-220-40(B)(7)(d) for more details)
  - Virginia Department of Labor and Industry (DOLI) within 24 hours when three or more of their own employees present in the workplace test positive within a 14-day period

Vehicle occupancy

- Apply the safety hierarchy of controls to prevent employee exposures

Sanitation and disinfecting

- Provide supplies to employees and require their immediate use to clean and disinfect surfaces after use or non-employee interactions
- For exposures, wait 24 hours to clean and disinfect, where feasible, after known or suspected infection
- Perform cleaning and disinfection at least once per shift, or no less than every 12 hours if there are multiple shifts
- Clean and disinfect shared tools, equipment, workspaces and vehicles prior to transferring from one employee to another
- Provide employees with handwashing facilities and hand sanitizer where feasible. Provide mobile crews hand sanitizer for the duration of work

Face coverings

- Use of face coverings for contact inside six feet of persons *is not an acceptable* administrative or work practice control to achieve minimal occupational contact
  - Face shields along with face coverings with vents are not an acceptable face covering unless adhering to criteria in the standard
  - Religious waivers require requests to and consultation from the DOLI
  - Refer to section 16VAC25-220-10 of the standard for provisions related to personal protective equipment not being readily available commercially

Employers whose employees engage in job tasks classified as very high, high, medium or lower risk must comply with additional requirements. Information specific to the exposure risk levels may be found in the standard under sections 16VAC25-220-50 through 16VAC25-220-80.

The standard's expiration is contingent upon the expiration of the governor's COVID-19 public emergency declaration and the results of a review to be conducted thereafter.

Massachusetts enacts emergency regulation for paid family leave

BRYON BASS
senior vice president, workforce absence, Sedgwick

BRIDGET CASWELL
director of national technical compliance – absence management, Sedgwick

In December 2020, Massachusetts adopted an emergency regulation regarding qualifying events for using paid family leave. Under the emergency regulation, births, adoptions and foster care placements that occurred during the 2020 calendar year can be treated as a qualifying event for family leave. Thus, a covered employee may take this leave, referred to as family bonding leave, during 2021 for a birth, adoption or foster care placement that occurred during 2020. The employee must complete the family bonding leave during the first 12 months after the child's birth, adoption or foster care placement. Also, the family bonding leave must be completed during the 2021 calendar year.

In addition, the emergency regulation includes a special provision regarding the use of family bonding leave by an employee of an acute care hospital, in order to prevent under-manning during the COVID-19 pandemic. An "acute care hospital" is defined as a hospital licensed under Massachusetts general law, as well as the teaching hospital of the University of Massachusetts Medical School. An employee who was eligible for family bonding leave during the 2020 calendar year may request a period of family leave that extends beyond the 12-month period. The regulation also states that the leave applies to all acute care hospital employers, regardless of whether the employer provides leave benefits through contributions to the Family and Employment Security Trust Fund or through an approved private plan.

The Department of Family and Medical Leave may also enact provisions to assist other classes of covered individuals, business entities and employers regarding family bonding leave. The Department has the authority to enact such provisions when it prevents disruption of business operations that are a risk to the public health, or if it is contrary to the public interest. Sedgwick will continue to monitor the implementation of Massachusetts Paid Family and Medical Leave and make appropriate changes to our processes.

Washington adopts emergency PFML rule

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BRIDGET CASWELL
director of national technical compliance – absence management, Sedgwick

Earlier this year, Washington adopted an emergency rule to clarify, for purposes of the state's paid family and medical leave (PFML) program, what service is considered localized as it relates to which employees need to be reported to the Employment Security Department based on their temporary work location due to the COVID-19 pandemic.

On May 29, 2021, this emergency rule will expire. Once the pandemic restrictions are lifted, employees who are considered localized may not continue to be considered localized if the reassignment of their physical work location becomes permanent.

Key considerations for employers:

- An employee's service is localized in Washington if, prior to March 23, 2020, an employee's service was considered localized in Washington, the employer requirements or the state's restrictions due to COVID-19 resulted in the employee temporarily working from a location that was not Washington, the employee's residence or domicile was out of state prior to March 23, 2020; and the employer and employee intend for the employee to perform work exclusively, or mostly in Washington, once the COVID-19 restrictions are lifted.

- Employers must comply with all responsibilities and employee rights guaranteed under the Paid Family and Medical Leave Law, and must submit amended reports and pay premiums for the affected quarters if applicable. Employers that acted on the advice of the Department and did not previously report these employees are not required to amend reports.

For more regulatory updates and helpful resources, see Sedgwick's COVID-19 update center.

RESOURCES

Virginia DOLI COVID-19 Standard 16VAC25-220

Cal/OSHA emergency temporary standards on COVID-19 infection prevention

Cal/OSHA COVID-19 guidance and resources

California Assembly Bill 685

Massachusetts PFL emergency regulation

Washington PFML emergency rule

Sedgwick's COVID-19 update center

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