Changes Law Firms are Adopting Amid COVID-19: Trends in Remote Work & Litigation

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The legal industry faced many challenges during the COVID-19 pandemic, including a shift to remote work, adapting to remote litigation, and facing increased competition for talent. While it remains to be seen if the legal industry will adopt remote work and litigation permanently after the pandemic subsides, law firms that adapt to these challenges may better position themselves for success in the post-COVID world.
How is the Legal Industry Adapting to Remote Working?

After more than a year maneuvering through a global pandemic, employers are taking steps to adjust their workplaces in the post-COVID-19 environment. Many offices are slowly converting to more permanent remote work to address employee safety and to abide by the constantly-evolving OSHA standards set nationwide. The COVID mandated abrupt changes in employment policies molded a new type of workforce near the end of 2020, and affected the labor market.

As offices become accustomed to their new work policies, what can attorneys and legal staff expect from their firm partners once the dust settles? Some of the major changes in law firms nationwide include:

- Law office management of remote workers
- New types of attorney-client relationships
- Work-life balance for all firm employees
- Changes in billables and firm expenses
- Virtual court and arbitration hearings

"Many law firms and in-house employers adapted remarkably well to a work from home arrangement. You will note the strong revenue and profits realized by many of the firms throughout 2020 and into 2021," said Michelle Foster, Managing Partner at the Foster Group, a boutique legal search firm.

While the legal field historically relied on an in-person workforce, law firms made drastic changes to not only accommodate work safety, but also maintain productivity during the pandemic. Michelle Fivel, a partner with Major, Lindsey, & Africa, a leading attorney placement firm, commented on the recent overhauls of law office management:

“It’s an incredibly demanding profession. It’s a 24-7 profession, regardless of whether you’re in the office or on a beach on vacation. The vast majority of attorneys, they’re never off the grid. People have to be trusted to be their own bosses and to be professional, responsive, and hardworking. And that’s going to have to be the case to be successful whether you’re sitting inside an office at your firm, or inside of your home office. I do think it’s a huge improvement, especially from when I started practicing.”

According to Edina Beasley, a managing director with Major, Lindsey, & Africa’s In-House Counsel Recruiting Group, COVID-19 modifications spilled over into the hiring and recruiting process in the legal business.

“There is a war for talent and attorneys have more leverage than ever. For most attorneys I speak with, being allowed to work remotely has become critical and, for many, their employer’s impending return-to-office policy is motivating them to make a move. That said, with client demands at an all-time high, law firms have been creative and aggressive when it comes to creating incentives to attract and retain
talent (e.g. compensation increases, significant bonuses, and long-term flexible working arrangements).”

Law office management often struggles between maintaining the staff they have (in compliance with their state’s coronavirus mandates) and retaining the clients that keep the firm afloat.

"We are at the stage where many are mapping out returns to the office and a work schedule that will (and should) look different than how we worked pre-pandemic. Many firms want to retain their employees and talent, and understand that this is a hot-button topic," Ms. Foster said.

While the shift to remote work presented challenges initially, adopting flexible work from home policies presents the opportunity to create lasting improvement to law firms moving forward. Moreover, the legal organizations with flexible work options appeal to both current and future staff and clients.

“They're trying to focus on the positives and convenience, and the cost savings to their clients. Of not having to get on a train or get on a plane or even just in a car and rack up those hours getting to and from some of these obligations,” added Mrs. Fivel.

The shift to remote work wasn't the only challenge faced during the pandemic — Law firms needed to adjust to conducting litigation virtually as well.

What Does a Virtual Lawsuit Look Like?

On the structural level, a virtual lawsuit functions just as a traditional litigation would. However, conducting lawsuits through a screen presents unique logistical challenges. Melanie Baird, partner at Blake, Cassels & Graydon LLP, sheds light on how the day-to-day process has changed.

“Electronic trials take more logistical pre-planning,” she said. “In the Federal Court in Canada electronic trial protocols are now worked out with the Judge and counsel during the pretrial management conference and cover the technology to be used (including the virtual platform); how documents will be submitted, viewed and given to witnesses; the set-up and rules for witnesses appearing virtually; [...] Items that, when trials were done live, had standard practices and would not have required the same level of pre-gaming.”

In some cases, facing these logistical challenges revealed unprecedented benefits for attorneys. Because a virtual lawsuit means in-person appearances are no longer necessary, coordinating witnesses becomes dramatically easier. “Without the need for travel, witness availability can be managed in real time, meaning more flexibility in appearance time,” Ms. Baird said. “While it doesn’t solve all scheduling conflicts, it also tends to mean less witnesses have to be heard out of order.”

In other cases, a virtual lawsuit presents clear drawbacks. Ms. Baird points specifically to the process of cross-examination. “[It is] the one item that will never be the same over Zoom,” she says. “There is no substitute for live, in person cross-examination of a witness in the stand.”
Is Remote Litigation Here to Stay?

COVID-19 invited an array of changes to the profession, and these changes will certainly continue as the world adapts to a new normal. Though it is unlikely that the litigation process will ever become fully virtual on a permanent basis, some of these changes are here to stay for the foreseeable future.

One likely candidate is the adoption of certain technologies. By necessity, many courtrooms now hold hearings remotely, using services such as Zoom, Webex and Microsoft Teams to facilitate the process. As Ms. Baird notes, these tools will likely remain in use after COVID-19 subsides. “COVID-19 has accelerated technology modernization efforts in Canadian courts that were progressing slowly prior to the pandemic,” she said. “Some courts, including the Ontario Superior Court of Justice, have implemented electronic document sharing platforms like CaseLines to help courts and counsel electronically manage documents before and during hearings.”

Remote litigation also provides increased public access to court proceedings — another change to the status quo unlikely to be reverted. Through the use of livestreams, the media and other interested parties no longer have to sit in a physical courthouse to watch a trial. This is a unique benefit that emerged in the wake of COVID-19, and according to Ms. Baird, it resulted in a noticeably higher rate of attendance for trials that otherwise might have been conducted in-person.

What Changes Should Law Firms Adopt Post COVID-19?

While the COVID-19 pandemic presented challenges to the legal industry, it also gave myriad opportunities for improvement and innovation. The law firms that adapt to the new normal presented by the pandemic will find themselves better positioned to handle future disruptions, and attract the best talent and clients to their firms.

“By altering attitudes toward working from home, COVID-19 may have forever changed the way we work,” Ms. Beasley said, “One thing is clear - remote and flexible working arrangements at law firms and in-house legal departments have been a necessity over the past 18 months and they are here to stay.”

It seems adopting a flexible approach to the changes presented by the COVID-19 pandemic is an effective one, and that applies to the shift to remote litigation as well. In some jurisdictions, a type of “hybrid trial” emerged during the pandemic, where the judge and attorneys are in a physical courtroom, and all other participants attend virtually. Though the practice was born primarily out of COVID-19 safety measures, it is entirely possible that the trend continues long after the coronavirus has disappeared. “For hearings that do not require witnesses, like appeals and some motions, virtual is likely to remain an option in certain circumstances,” Ms. Baird pointed out. “Further, it is likely that Courts may be more amenable in future to allowing some witnesses to appear virtually when circumstances merit.”

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