

It's All Practice Groups On Deck To Tackle Coronavirus

By **Cara Bayles**

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WilmerHale partner Alejandro Mayorkas is no stranger to viral outbreaks.

As deputy secretary of the U.S. Department of Homeland Security during the Obama administration, he supervised DHS' response to the Zika and Ebola viruses. That required not only ramping up airport screenings and developing safety education, but a "whole-of-government" approach and coordination with other agencies.

That experience has come in handy in recent weeks. On Saturday, Mayorkas was tapped to lead WilmerHale's coronavirus task force, which counsels clients on the unique legal issues that arise as businesses brace for more outbreaks. His team members, who include attorneys from a variety of affected practice areas, are "in constant communication," Mayorkas told Law360.

"Sometimes an issue is not necessarily so discrete that one discipline is implicated, but rather multiple issues are," he said. "So communication and coordination and the exchange of issues and ideas is vital to delivering comprehensive and up-to-date advice to our clients."

As the coronavirus continues to spread in the U.S. and internationally, firms like WilmerHale, Sheppard Mullin Richter & Hampton LLP, Alston & Bird LLP, Dentons, BakerHostetler, K&L Gates, Akin Gump Strauss Hauer & Feld LLP and Varnum LLP are forming dedicated coronavirus task forces.

The virus, which originated in Wuhan, China, in December, has since spread to nearly 80 countries and infected more than 95,000 people. It has also created novel legal problems that can blur the lines of trade, health care, employment, privacy and corporate law.

Client calls began trickling into Alston & Bird in January, said David Brown, the leader of the firm's



Alejandro Mayorkas, now a partner at WilmerHale, supervised the Department of Homeland Security's response to the Zika and Ebola viruses as an official in the Obama administration. He was selected to lead his law firm's coronavirus task force. (AP)

coronavirus task force. The first wave came from travel-related businesses and companies with a multinational presence or supply chain. As the virus spread to South Korea that month, more clients raised concerns.

“What we’re seeing now is that no clients want to be caught unprepared,” he said. “The general counsels want to make sure they’ve asked the appropriate questions and they’re starting to think about the various issues they may face in the future, even if so far they’ve been insulated from any direct impact.”

Sheppard Mullin formed its task force last week because having attorneys team up was “the easiest way to aggregate all the knowledge and experience” at a multidisciplinary firm, especially as clients began to pose unusual legal questions, according to co-managing partner David Sunkin.

“There’s nothing worse for business than uncertainty. And that’s sort of where we find ourselves,” he said. “We feel it’s our obligation as a full service law firm to help our clients navigate this as best we can.”

Some of the legal issues raised by the outbreak are predictable. With supply chains from China shut down, manufacturers stateside are wondering if they can fulfill contract obligations. There are employment law issues, like whether a company can require that a worker with coronavirus symptoms stay home, and whether reporting that employee to health authorities violates privacy rights. The virus implicates health care law as well.

But the spread of the virus is also raising unusual, almost philosophical questions for attorneys and their clients.

What premises liability issues should retailers prepare for in case there’s an outbreak tied to a shopping mall? What environmental laws should health care workers think about when disposing of medical waste? Could requiring self-quarantine of employees who recently traveled abroad trigger discrimination suits? Must publicly traded companies issue press releases if their business has taken a hit because of the coronavirus? What are the responsibilities of landlords and tenants if there’s an outbreak in a commercial building?

Many of these questions span multiple practice areas, and that’s why firms are forming multidisciplinary task forces so attorneys can share client concerns and work together to consider the various legal issues at play, Brown said.

For example, some customers have begun requiring vendors to certify that personnel coming on-site haven’t recently traveled to any of the countries the Centers for Disease Control and Prevention deemed at high risk for the coronavirus.

Alston & Bird’s clients include both customers wondering if they can impose such requirements and vendors wondering about their potential exposure if they agree to them. The issue raises concerns about privacy and the Health Insurance Portability and Accountability Act, as well as employment and contract law.

“You have at least three difference practice areas overlapping, so it’s important to make sure everyone’s on the same page with respect to what’s permissible,” Brown said. “You wouldn’t want a contract

lawyer agreeing to something without fully understanding what the parameters are for these other areas.”

And one problem can trigger several potential legal pitfalls, said Scott Hill, an executive partner at Varnum, which has also formed a coronavirus task force. For example, a company’s supply shortage could not only affect its ability to meet orders, but may hurt its line of credit, forestalling some future development it may have planned.

“With all of these things stemming from the situation, having a one-stop shop where we have the breadth and experience across multiple practice areas ... [means that] clients are served by the same group of attorneys they trust and everyone can be on the same page,” Hill said.

He also noted the virus is “not necessarily all doom and gloom” for businesses. Some might not have their supply chains disrupted, putting them at an advantage over their competitors, and the law firm can help out with business advice if that’s the case.

Advising clients doesn’t always have to be reactionary either, according to Mayorkas. There are preventive measures companies can take, especially since some have “more mature levels of emergency preparedness” than others. Part of an attorney’s job might be to create a framework for response not just to the coronavirus, but to disasters in general.

Moving forward, attorneys are trying to predict what legal issues are coming down the road, particularly as the virus continues to spread.

Litigators may soon have to go to court with emergency filings, seeking injunctive relief against suppliers, Hill said. Brown said he thinks new issues could arise as the virus moves to new locations. And in the employment sector, clients need to start thinking about telecommuting options, according to Sunkin.

But as far as disasters go, the virus does give firms some time to plan, Sunkin said. It’s not like a hurricane that triggers a sudden “crisis containment mode,” he said.

“In a strange way, as this virus migrates, it gives us all a bit of an advantage. We can contemplate what may happen so we’re not left struggling, and we’re trying to jump into that void,” he said. “We want to get our clients thinking about stuff that we hope doesn’t happen.”

--Editing by Jill Coffey and Emily Kokoll.