



Modernising the Workplace Predictions 2022

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AVIATION

1. New shoots of aviation recovery post COVID-19

Cabin crew, pilots, ground staff and those in the air traffic management sector have all been adversely affected by the COVID-19 pandemic but there are shoots of recovery showing. Some studies estimate that up to 58.5% of airport-based workers have been impacted by COVID-19 in some respect, whether by reduced hours, being put on furlough or losing their positions. It was reported in early 2021 that 191,000 European aviation workers had lost their jobs due to the pandemic. In a positive turn, the number stayed stable in 2021. This is attributed to government relief measures, including job retention schemes rolled out to protect aviation workers' income at the height of the crisis. Looking forward, we expect employment figures in the airline industry to begin to recover, hand-in-hand with the lifting of travel restrictions and an end to flight corridors. However, we may not see real results until the latter half of 2022. Finally, it is ironic that as new shoots emerge, a pilot shortage post-pandemic is anticipated due to redundancies, early-retirement and the impact that COVID-19 has had on training.

CASUALTY

2. The rise of stress in the workplace claims

The HSE will be increasing its attention on how employers manage stress in the workplace. We predict that it will take a more pro-active role in undertaking spot checks of employers to assess whether they have adequate policies in place. In particular, the HSE will look at how organisations have adapted their policies in light of the demands placed on employees following changes to their work and working environment as a result of the global pandemic, including both those who have returned to the office and those now working permanently from home.

CONSTRUCTION AND ENGINEERING

3. Building for our future - time to engage in green climate-resilient construction

Climate-change literacy is now a fundamental discipline to all competent design. Consultants and D&B contractors must engage in green climate resilient construction. This adds a plethora of factors for evaluation in the specification of new infrastructure and buildings. Projects must meet both client tender and planning criteria and also developing climate decarbonisation targets. Failure to account for these in the building process has consequences. Government and private tenders will place increasingly greater emphasis on procurement by reference to sustainable factors and fewer emissions. Brownfield development, the repurposing of existing buildings and adoption of new efficient technology are all factors which will differentiate our future buildings. These must also incorporate design life climate-resilience characteristics, accounting for flood risk, rising temperature, ground and coastal change and increased fire loading. The legal obligations to meet these new standards are developing fast. Insurers should ask additional pre-inception underwriting questions and survey larger risks to avoid additional future liabilities over a 15 year risk period.



CYBER AND DATA RISK

4. Diversity and inclusion initiatives will create new data theft risks

Environmental, Social and Governance (ESG) considerations are important non-financial factors against which any modern company may find value, including having a diverse workforce that supports employee engagement, innovation and commercial competitiveness. Diversity and inclusion (D&I) initiatives, by their nature, require the collection of sensitive information about employees' gender, race, sexual orientation, religion, education and health, to benchmark and assess D&I behaviours and objectives. However, the increased need to collect, monitor and report on this sensitive data demands a heightened adoption of data protection measures to minimise the risk of security and privacy compliance breaches. While many large organisations will have existing measures in place, smaller entities may not. Investment in D&I initiatives will see positive change but managing the associated privacy and security risks must not be overlooked in the process.

DIRECTORS AND OFFICERS AND FINANCIAL INSTITUTIONS

5. Parent company liability for subsidiaries' human rights abuses and environmental damage is a fertile area for claims

UK parent companies cannot hide behind their corporate form and turn a blind eye to the activities and omissions of their foreign-based subsidiaries or corporate affiliates. The Supreme Court has signalled that the English Courts are willing to assume jurisdiction over claims of abuse or environmental damage by an overseas subsidiary where there are concerns that affected claimants may not obtain justice in the foreign court and the corporate structure suggests the UK-headquartered parent managed or supervised the activities of its subsidiary (i.e. a duty of care to the claimants can be established). While cases are highly fact sensitive, companies which operate in high-risk countries where abuse is prevalent should review their group-wide approach to risk management and governance of subsidiaries and affiliates. Ignorance will not assist those at the top of the corporate chain.

6. Long COVID presents a new frontier in disability discrimination claims

For some people, COVID-19 is not just a short illness lasting a few days; experts have predicted that 1 in 20 people suffer symptoms lasting more than 8 weeks. "Long COVID" is proving to be debilitating for those affected causing respiratory issues, as well as headaches and fatigue. Others have said it causes memory and concentration issues, numbness and heart palpitations. Research suggests older people are much more likely to get it as well as those with a high BMI. Relapses are also common. Employers must get to grips with this new illness since if it becomes long term, it is likely to be treated as a disability, which therefore triggers the need to make reasonable adjustments to the workplace environment and handle any capability and absence issues properly to avoid grievances and/or litigation risk.

7. New rules will decrease diversity claims against D&Os in the US

In 2020 and 2021, new rules and law were passed to increase diversity on boards of directors. Following the passage of the California law on board diversity in 2020, the number of complaints alleging board failure to comply with fiduciary duties with respect to diversity decreased. The US Securities and Exchange Commission (SEC) in August 2021 approved the Nasdaq mandate of certain board diversity requirements for new listings. Further, pressure is growing on US companies to address environmental, social and governance (ESG) matters and to provide disclosure and transparency on issues involving diversity, equity, and inclusion. Looking ahead to 2022, the combination of new laws, rules, and societal pressures will likely increase corporate diversity which, in turn, should lessen litigation against D&Os.

Contributed by our US Legalign partner, Wilson Elser.

8. Whose new normal? The divide between remote and office workers

As employers and employees grapple with what the next 'new normal' workplace looks like, there are real issues emerging with hybrid work practices, including decisions about whether and how workers need to return to their workplaces, and on what basis. In a two-stream or hybrid workplace, where some employees are working from home and others are working from the office, employers will need to closely manage the emerging risks. These include workers being treated differently, depending on where they are working, lower levels of collaboration, reduced team cohesion and poor behaviours enabled by mute, camera off and chat functions in video-conferencing and collaboration platforms. Employers with two-stream workplaces will need to be proactive to ensure they foster an inclusive environment as we all adjust to a 'new normal'.

Contributed by our Australian Legalign partner, Wotton + Kearney.



LEGAL INDEMNITIES

9. Love thy neighbour - an increase in claims arising from neighbour disputes?

The impact of working from home as a result of the COVID-19 pandemic will continue to cause a steady flow of claims against legal indemnity policies. Many people enjoyed their enforced time at home and engaged in home improvements. This will inevitably result in an increased number of claims against building regulation policies in the next 12 months. We also anticipate an increase in claims arising from neighbour disputes, particularly relating to access, as the goodwill engendered by the early days of the pandemic subsides and the stresses of the new normal play out at the expense of neighbourly relations.

MEDICAL MALPRACTICE

10. Clinical negligence litigation reforms are on the horizon

The Health and Social Care Select Committee is consulting on reforms to clinical negligence litigation against the NHS, with a view to reducing this annual multi-billion pound liability. Under consideration are: learning from mistakes; moving away from an adversarial "blame culture"; and simplifying the process so patients receive redress swiftly. Any reforms here will spill over into the med-mal insurance market. This consultation, together with the Ministry of Justice's call for evidence on Dispute Resolution, and a government determined to reform the role litigation takes in society, suggest fundamental changes are on the horizon.

11. Data-driven technology will improve healthcare but cyber security and data theft remains an ongoing challenge

The healthcare industry is rapidly onboarding technologies to improve operational efficiencies and deliver better patient-centric care. Both artificial intelligence (AI) and genomics rely on the generation of big data for algorithms and prediction models, but this comes with data integrity risks. Cyber security, data misuse (such as discrimination between population subsets) and data privacy claims are on the rise and remain a challenge for the industry. The availability of clinician performance data, while promoting transparency and the evaluation of healthcare quality, also creates litigation risk and the need for bespoke insurance covers supported by individualised ratings.

MOTOR

12. New legislation for electric scooters in Ireland

The legalising of e-scooters in Ireland will create new underwriting opportunity. Currently under Irish law, the use of electric scooters is not specifically regulated and by default is covered under the Road Traffic Act 1961. In an attempt to formally legalise their use, the Irish Government is set to enact new legislation in the form of the Road Traffic (Miscellaneous Provisions) Bill. The Bill would create a new vehicle category called Powered Personal Transporters (PPTs) that would not need a driving licence, tax or insurance. It is expected that a significant number of e-scooter service providers will start to operate rental services in major towns and cities. This will create an opportunity for insurers who can underwrite schemes for e-scooter sharing platforms and provide personal accident products without the requirement to have regard to road traffic legislation and regulations. In the UK, e-scooter trials are already in operation as part of the Government's strategy to tackle both the future and green mobility agendas, with legislation expected to follow an analysis of the data collected. It remains to be seen if the UK Government will follow Ireland's lead in legislating to legalise private e-scooters akin to electrically assisted pedal cycles (e-bikes), without mandating the provision of insurance against third party liabilities, nor the use of helmets.

Contributed by our Dublin office.



PROFESSIONAL LIABILITY

13. Solicitors: Law firms must balance the risks and benefits of hybrid working

The effect of the pandemic has placed modernising the workplace front and centre for all law firms which, like other businesses, were forced to transform themselves overnight in March 2020. The profession has been more resilient and adaptable than many commentators anticipated. Electronic working is now the norm and there are few firms that have turned away from the concept of hybrid working. However, these developments inevitably have accompanying risk. In particular, law firms are now more than ever a target for threat actors increasingly intent on stealing their confidential information. Breaches cause claims and expose law firms to the risk of regulatory scrutiny. Law firms will have to rise to the challenge of balancing the needs and aspirations of their colleagues with issues of operational efficiency and risk management. Staff wellbeing will also continue to be high on the agenda and firms will have to find innovative ways of supervising and supporting junior colleagues to avoid risks of hostile attack as well as more traditional risks of errors leading to claims.

14. Surveyors and Valuers: Future uncertainties in commercial property offer opportunity and risk

The seismic change to our ways of working has significantly reduced office footfall and decimated many city and town centre service providers. Rents and values have in many instances had to be rebased, making some fall out inevitable in the short term where debt levels are no longer serviceable. However, confidence seems to be returning in office, retail and hospitality sectors; not least as informed and selective investment offers far greater growth opportunity whilst global interest rates remain low. The key will be creating high-quality assets which attract good occupiers and consumers. Central to this will be buildings which meet the ever-growing importance of sustainability and ESG, not least in the new impetus generated by COP26. RICS' forthcoming Global Guidance Note, entitled 'Sustainability and ESG in commercial property valuation and strategic advice' is crucial to facilitating awareness within the profession and is likely to have a significant impact on values going forward.

15. Technology Professionals: Rise in tech E&O claims based on cyber incidents expected

We anticipate an increase in claims against IT professionals arising from their involvement in the design, maintenance or implementation of IT infrastructure that has been subject to data breaches and/or ransomware attacks. The recent dramatic increase in these attacks and their financial impact on organisations (including significant breach response costs and potential ransom payments) means that those entities that have suffered attacks and/or their insurers are likely to seek recovery from third parties involved with the IT infrastructure. This might be based on allegations that security considerations were not, or not adequately, factored into the service provision or that the systems lacked sufficient protections to withstand attacks.



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