

Managing Your CPA Practice and Mitigating Professional Liability Risk in the COVID-19 Environment

The coronavirus pandemic has changed, at least for the moment, the practice of accounting, and in certain ways these changes have potentially increased the risk of professional liability claims. COVID-19 has impacted CPAs' use of technology and how the profession interacts with staff, clients and the IRS.

The virus has increased risks but client obligations remain. The recent economic decline has placed a lot of pressure upon clients and the rules of business have been changed and personal obligations collide and conflict with client obligations. To help our clients meet new challenges in uncertain times, we have compiled the following risk-management strategies geared toward avoiding and mitigating accounting professional liability claims stemming from COVID-19.

1. AWARENESS AND PLANNING

Successfully avoiding professional liability claims in the COVID-19 environment will require CPA to stay informed of any developments which may impact your clients, colleagues, and your firm; to stay up-to-date with firm policies and procedures; and to stay well—physically, mentally, and emotionally.

Keep informed

CPAs have an obligation to client to provide the best quality service. This includes the obligation to monitor and comply with new rules arising from COVID-19. IRS rules have changed, client require assistance with PPP SBA loan applications and dealing with compliance, landlords, suppliers, vendors and the IRS. Offices may be closed and deadlines uncertain. Many tax rules impacting clients may be changing. Therefore CPAs must keep abreast of what is happening and communicate this to clients. Ensure effective communication—taking into account and addressing the increased risks of miscommunication that will arise in remote working scenarios A recent claim against a CPA arising from and SBA illustrates that lack of communication with clients about the rules could result in a professional liability claim. In tax work, missed deadlines are a leading cause of professional liability claims, even under routine circumstances.

On a day-by-day basis, CPAs should monitor news, health advisories, and internal firm alerts that could impact client goals or the CPA's plans in accomplishing those goals. Practice-specific information is readily available. Take the time to find and digest how COVID-19 is impacting your particular practice.

Keep firm documentation up-to-date

We now know that any firm continuity plan must have a proviso for pandemic response. CPA firms should draft or update internal policies—on subjects including such as working remotely, sick leave, and security—to reflect what we have already learned from the pandemic, and to accommodate the realities of social distancing and other disruptions to the rhythms and routines of work. Policies should be transparent and readily available. Be mindful of the need for flexibility and to identify a point-person virtually accessible to employees to address questions or concerns. Likewise, business continuity and succession planning may be necessary to avoid problems down the road.

Also, make sure you are obtaining engagement letters for all work performed during this time. It may be difficult to get a physical signature but electronic signatures are now commonplace and recognized by the Courts. Your client could sign on their computer. Engagement letters are your first line of defense. Go [here](#) for a library of engagement letters. There is a suggestion example of a PPP SBA loan engagement letter [here](#).

Keep fit and well

The stresses of the practice of accounting take a toll on many of our peers, clients, and colleagues. Reportedly, even before the COVID-19 outbreak, some CPAs suffered from “problem drinking”, depression, or anxiety. Some professional liability claims arise from a CPA’s mental health or substance abuse struggles. Such problems may intensify in times of increased stress. Be mindful of the pressures caused by this pandemic and how it has impacted your routine and your state of mind. There are countless resources available to help establish a healthier work-from-home approach and to help prioritize breaks, healthy eating, and social interaction through virtual sources.

Given the uncertainty surrounding COVID-19, and the particularly high contagion rate, CPAs should also plan for the possibility of physical incapacity. Update any contingency and succession plans and review such policies with CPAs and staff. CPAs are ethically obligated to implement transition plans to account for representation on short notice in the event of unavailability.

Huffington Post recently published a [good article](#) about taking care of yourself while at home. Some of the suggestions:

1. Make a list of activities that feel restorative to you right now.
2. Identify what you’re grateful for.
3. Set boundaries with work.
4. Make a “done” list.
5. Put limits on your news intake.
6. Crack open a book.
7. Let yourself grieve losses big and small.
8. Pause to check in with yourself every day.

9. Try a breathing exercise.
10. Work out.
11. Create a bedtime routine to encourage good sleep habits.
12. Stretch your body.
13. Keep a journal.
14. Be extra gentle with yourself.

2. OPERATING THE CPA FIRM

A CPA's obligation to represent their client competently includes technological familiarity. Remote access was already on the rise recently but COVID-19 has forced many employers to implement an immediate work-from-home mandate. Many CPAs had experience working remotely, but most could not have anticipated the immediate global shift to a virtual environment of this scale and with such urgency.

Depending on your firm, your interests, and your firm's resources, there may be a dramatic difference between the technological assets and capabilities in your traditional office and those available in your home office. When transitioning to remote work, consider the technology necessary to fulfill each step in the life of a matter from conflict check through document retention for closed files. Are you prepared to meet your client's needs securely from your living room? Technological advancements in equipment and software including paperless systems, collaboration platforms, and presentation tools permit CPAs to perform nearly every aspect of the practice of accounting from a virtual environment. These tools are fallible, of course, and efficacy will depend on the user's comfort level, connection speed, and available IT support. Refusing to use modern technology is not an option, though, as doing so could be considered an ethical violation and/or a breach of the standard of care if the client incurs a recoverable harm.

Billing

Given the obvious importance of preparing, issuing, and receiving payment for bills, special attention must be paid to the invoicing process in a remote environment. This may be an opportune time to transition to electronic invoicing and online payment options as opposed to mailed bills. In these uncertain times, firms cannot afford to blunder in the billing process. The economy has taken a hit, and many clients will be struggling financially. CPA firms are imposing pay cuts and furloughs to reduce the financial impact of COVID-19. Perhaps this is a necessary consequence of clients' reduced economic activity. Clients may be tightening purse strings and limiting the work available to CPAs. Thus, depending on the focus of your firm, there simply may be less work to do.

Firm leadership should take the appropriate steps to track and collect payment for the work performed and, as always, be mindful that efforts to collect outstanding client invoices often lead to professional liability claims. Given that certain tasks may take longer when working from home without the conveniences of an office setting, consider whether the CPA may bill for that

“extra” time. Monitor employee productivity, both the good and the bad, to obtain a clearer picture of those whose transition to a remote environment may be cumbersome as the inability to conduct business as usual may also result in a reduction in billable hours. Others may seamlessly embrace technology and the adjustment to a new form of client service. Some may hoard work or be more willing to accept assignments that are clearly outside of their practice area, which can increase the likelihood of an error and eventual professional liability claim as evidenced by the increase in accounting professional liability claims following the 2008 recession. Oversight and collaboration are key.

3. CLIENT SERVICE

Client service is paramount. If there ever was a valid excuse for missing a deadline, for neglecting a task, for allowing something to slip through the cracks, it is COVID-19. However, while justifiable by common-sense standards, such mistakes amount to professional negligence. Particularly in a difficult economic environment, clients may be more likely to file suit for such negligence. CPAs must stick to their ethical obligations. A good approach may be to heed the “four Cs”: *communication, confidentiality, civility, and control*.

Communication

Effective client communication is one of the fundamental CPA requirements. Also, it is a necessary risk-management tool as miscommunication leads to misunderstanding which leads to unmanaged expectations and, potentially, a professional liability claim. Without the benefit of the traditional face-to-face client meetings, CPAs must use other communication methods and consider a different approach. Undoubtedly your client’s personal or professional needs have changed due to COVID-19. Concern yourself with those changes and be mindful if said changes have impacted the scope of your engagement. Document any change of scope, if necessary.

CPAs will use email, phone, texting, and video conferencing to communicate with clients in place of in-person meetings. For email correspondence, update the signature block to communicate any pertinent changes and consider the pros and cons of auto-reply/out-of-office messages. When conferring via telephone, be mindful that outgoing client calls may depict a different telephone number than your client is accustomed to and therefore preplanning may be helpful. When necessary, be sure to document pertinent phone and video conference client communications to memorialize the conversation. Texting with clients can be incredibly efficient but is likely not the best option for all client communication; *i.e.*, sensitive, critical correspondence should not be conveyed through text messaging. To be sure, texting with clients should not be considered a viable alternative to e-mail or phone communication, but is available as a simple and efficient way to communicate.

Confidentiality

CPAs know that they are bound by the obligation to maintain client confidences. This mandate is complicated by the virtual environment where CPAs may struggle to preserve confidentiality, and without the option of face-to-face contact, communication may be confined to less secure technology. For instance, the ease of use of some virtual meeting programs may permit unwelcomed intruders to participate in CPA-client meetings anonymously. Similar to an in-person meeting, CPAs must be mindful of their surroundings when discussing sensitive client information in a virtual setting. Likewise, the types of sloppy email mistakes caused by the unintended use of “reply all” or addressing a message to the wrong recipient which are rare in the office setting may be more likely when working remotely. Be extra vigilant. In terms of record destruction, many firms use shredders or document destruction vendors to retrieve and destroy client documentation and other sensitive information. Hopefully, that same information is not placed in a curbside trashcan outside your home.

Civility

We are all facing incredible uncertainty and we each deal with the impact of COVID-19 differently. To that end, professional associations such as the AICPA and State Societies have advised all CPAs to exercise every professional courtesy and/or discretionary authority vested in them to avoid placing clients under undue or avoidable stresses, or health risk. This is sound advice.

Control

CPAs are responsible for monitoring, supervising, and controlling associates, paraprofessionals and support staff in a virtual environment as they would in a physical office. All personnel must be trained to comply with firm protocol governing the transition to a remote environment. Delegation is sometimes a difficult skill for CPAs, but this will be more important for firm leadership than at any time in recent memory. Frequent inner-firm contact and supervision are absolutely necessary when in-person check-ins are impossible.

4. SECURITY

Fraudsters and cyber criminals are exploiting COVID-19 to prey on vulnerable CPAs. Already one of the greater professional liability risks facing CPAs, it is crucial that all professionals be wary of the threat of cybercrime in this remote environment. Reportedly, there are thousands of COVID-19 scam sites created daily, many of which target CPA firms. CPAs are in the crosshairs of cyber criminals attuned to the industry's remote work transition, and therefore CPAs and CPA firms must intensify cybersecurity and training.

In addition to software designed to detect and combat cyber risks, firms must fortify the human element of the equation through training and supervision. According to the Department of

Homeland Security, cyber criminals target victims by “masquerading as trusted entities” who use COVID-19-themed phishing messages or malicious applications. Cybercriminals deploy a variety of techniques, including phishing and malware distribution via email using the subject of COVID-19 as a lure. Others rely on curiosity and concern surrounding the virus in order to persuade targets to click on a link, download a phishing app, or open a file that contains malware. By way of example, hackers have used “Coronavirus Update” or “2019-nCov: Coronavirus outbreak in your city (Emergency)” to gain entry.

To appear authentic, cyber criminals may alter sender information to appear to come from a trustworthy source, such as the World Health Organization, a physician, or even a leader in your firm advising an employee to open a corrupt attachment. As is always the case, be on the lookout for unusual emails as this may suggest a phishing attack. Many firms have implemented the security change of including an external email notification banner in all email communications to notify users when a communication originated outside the firm.

Practice caution when executing wire transfers, which may be on the rise given the logistical difficulties of submitting physical checks from a remote location. Now is a great time to update passwords. Finally, do not forget about the security of your physical office. Short of Kevin McAllister defending your unoccupied office, ensure that the office is physically locked and secure given the uncertainty of when you will be in a position to return.

Inspired by a paper by Goldberg Segalla: “Managing Your Law Practice and Avoiding Malpractice in the COVID-19 Environment.”

Jorgensen & Company are not attorneys and do not offer any form of legal advice. Consult with appropriately qualified local counsel for more assistance. Rickard Jorgensen is President and Chief Underwriting Officer for the CPAGold™ program and may be contacted at (877) 272 4653 X 200 or rjorgensen@jorgensenandcompany.com