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Heroes and villains: anticipating, navigating and responding to the PR and HR challenges arising out of the pandemic

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Today's agenda: Sign-posting the issues

- The new normal
- The new workplace
- Changing support
- Changing perceptions
- Other legal, HR and communications challenges during this unprecedented time

The new normal

- Employers to determine how to implement guidelines and manage legal and PR risks
- Future second wave? Employers who re-open too quickly will be seen as the villains
- Public are scrutinising return to work plans and comparing them to that of their rivals
- Communication will be key to instill trust and eliminate mixed messaging

The new normal

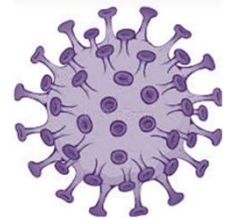
- Employers with more than 50 employees expected to publish risk assessments on their website
- Clinically extremely vulnerable individuals strongly advised not to work outside the home
- Clinically vulnerable individuals at higher risk of severe illness should be helped to work from home, either in their current role or in an alternative role and should be offered the option of the safest available on site roles
- Deciding which employees are essential to restart on-site activities will be difficult. Some may be very keen to return, others less so



The new normal: Pandemic preparedness and business continuity plans

Business continuity

- Consider impact on management, communication, and staffing as some operations are on-site while other employees continue to work flexibly
- COVID-19 working groups should change focus from crisis to recovery and should include senior executives so employees know recovery and continuity is being taken seriously
- Communication with employees to assure them business intends to continue in the new normal



Pandemic preparedness

- Review and revise pandemic response plans to respond to another potential outbreak of the virus.
- Management and HR succession if any leadership team becomes ill
- What new processes/procedures should be put in place to prepare for a potential recurrence
- Consider whether to require vaccination once it has been developed – potential backlash



The new normal: Pandemic preparedness and business continuity plans

PR crisis plans

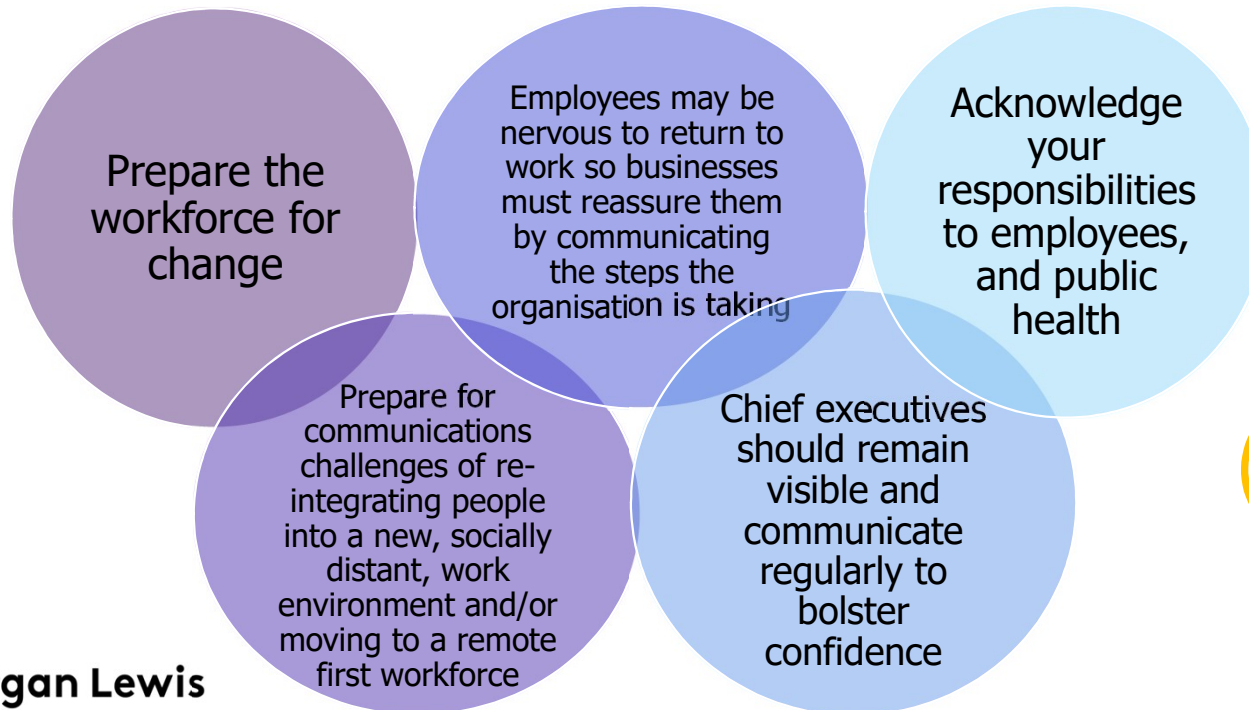
- Lessons learnt - employers will be heavily criticised if they are not better prepared for a second wave (higher standards)
- A crisis can cause severe reputational damage and deplete employee morale, so it is important to prepare:
 - pre-approved messaging for specific crisis situations
 - communications to staff when a confirmed case is established on the work premises
 - develop social posts and email templates *in advance* of a crisis situation
 - be prepared for media inquiries including anticipating difficult questions
 - identify spokespeople with the credibility, expertise and confidence
 - lawyers often “legalise” communications - it’s vital to be empathetic

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The new workplace: Social distancing plans

- Social distancing plans are being scrutinised by the public and businesses may find their plans compared to that of their rivals
- The more protection for employees the better the employer will be portrayed



Potential Risk: If employees continue to work remotely, businesses may face backlash from those who think they need to be physically present at work to avoid redundancy

The new workplace: Social distancing plans

- Legal requirement or a way to address employee concerns/reduce employer liability?
- Latest government guidance should be reflected in any plan.
- Key aspects may include:

Physical
workspace
modifications

Limiting in-person
interactions and
physical contact

Training

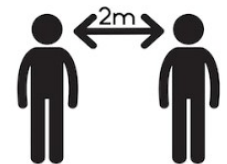
Employee
scheduling



PPE

Cleaning and
disinfecting

Safety
communication
plan



The new workplace: Screening protocols

- Employer's duty to protect health and safety of staff and provide a safe workplace – first step: keep out infection!
- Measures: questionnaires, self-assessment, temperature screening and other physical checks on staff and third parties.
- Testing is not currently widespread in the workplace so may draw media attention if made mandatory for all employees

Type of test

- Temperature, blood, saliva, nasal swab
- Some tests are more intrusive than others

Consent

- Practical agreement to testing is needed
- Employees likely to give consent (especially where less intrusive, eg temperature)

No consent

- How to deal with a refusal
- Reasonable management instruction?
- Consider less intrusive test

By whom?

- Third-party health company
- Individuals trained on confidentiality, privacy and health and safety issues

Reputational Risk: Employers should avoid stock-piling tests before they are widely available

The new workplace: Contact Tracing



- The NHS test and trace system was launched on 28 May
- Key points for employers:
 - Anyone with COVID-19 symptoms can get tested
 - Those awaiting test results must avoid high risk individuals and can ask their employer to alert co-workers with whom they had close contact 48 hours before the onset of symptoms
 - The service will get in touch with anyone who tests positive to obtain information about recent contacts (including work colleagues)
 - Where necessary, those contacts will receive a formal notification to self-isolate for 14 days
 - Formal notification from the contact tracing service is needed by the employer to claim a rebate for SSP

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N.B. Recent ICO and EDPB guidance: Data Protection Laws should not hinder measures taken to fight COVID-19

Changing support: furlough considerations

- The Government announced on 12 May 2020 that the Job Retention Scheme (JRS) will be extended until the end of October 2020
- The JRS will continue as before until the end of June.
- It will then be made more flexible in July, August, September and October with the possibility of bringing furloughed employees back part-time.
- From August, employers will also be asked to make contributions to the scheme. Employees will continue to receive 80% of their wages until the end of October while on furlough.
- Ending furlough:
 - If redundancies are not required, end furlough in accordance with furlough agreement (if applicable) or by notifying employees
 - If redundancies are required, consider starting employee representative election process in advance of JRS end date

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Changing support: furlough considerations

- Communications challenges/pitfalls associated with the end of the furlough scheme
 - Some employers may be viewed to have potentially abused or mis-used the scheme
 - Different businesses are reopening at different times (nobody wants to be the first to open)
 - When is the best time to acknowledge that a businesses is unsustainable and will need to be restructured/transition workers out?
 - Should businesses furlough employees who they know will be made redundant?



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Changing support: home-working



Gradual resumption of workplace activities in accordance with government guidance and consider approaches being adopted by others in the same sector (split-teams and/or only certain business operations)

Employers should notify employees of plans to reopen workplace and what measures have been introduced to ensure their safety

Accommodate employee concerns where possible

Careful consideration should be given to certain categories of employees (e.g. individuals on “extremely vulnerable” list and working parents)

Ensure any decision is applied consistently to reduce discrimination risk

Changing support: Redundancies



Redundancy

- **Service:** continuous service of at least two years
- **Redundancy:** business closure, workplace closure or diminished requirements for employees to do work of a particular kind
- **Acting reasonably:** fair warning; fair consultation; fair selection criteria

Collective redundancy

- Duty to consult representatives triggered where an employer **proposes** to dismiss as **redundant**:
 - **20 or more** employees
 - at any one **establishment**
 - within a period of **90 days or less**
- Collective consultation must commence in **good time** at least **30- or 45-days** (depending on number of redundancies) before first dismissal
- Consultation should consult on ways of: (a) **avoiding dismissals** (b) **reducing the numbers** of employees to be dismissed (c) **mitigating** the consequences of the dismissals.....with a view to **reaching an agreement** with the appropriate representatives
- Employees can be made redundant while on furlough (HMRC guidance)

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Changing support: Redundancies



- Consider starting the **employee representative election process** in advance of the Job Retention Scheme end date (NB: furloughed employees CAN act as employee representatives without breaking furlough)
- Consider timing of **consultations**
- Practical challenges of consulting staff who are working remotely/furloughed:
 - May have caring responsibilities
 - Need disability-related reasonable adjustments to access virtual meetings
 - Have limited access to the internet
 - Right to be accompanied to redundancy meetings remotely
 - The impact of selection criteria on employees who are shielding and/or more vulnerable

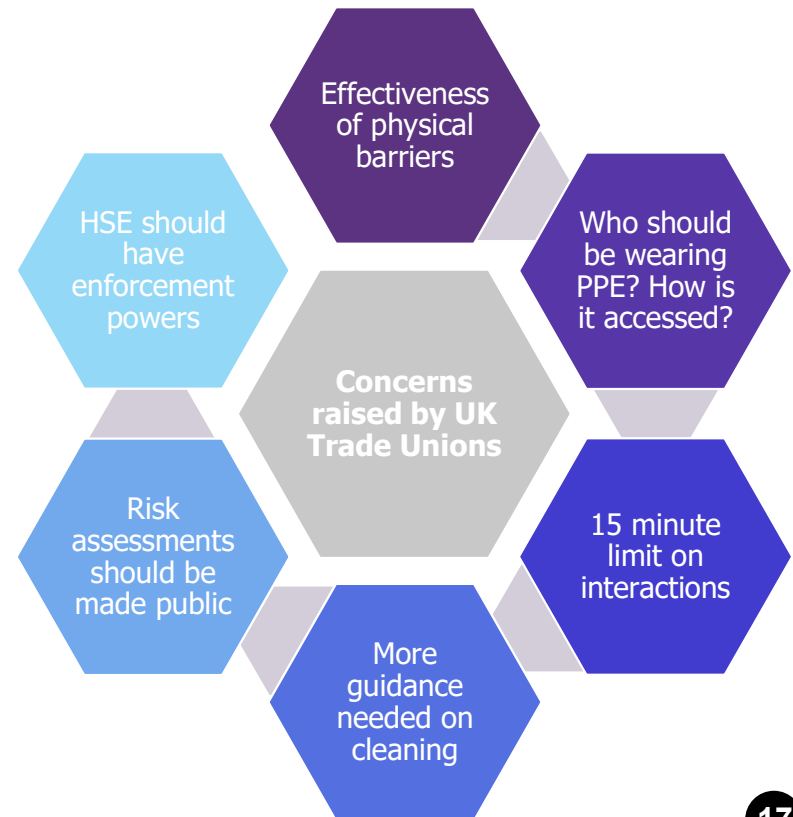
Changing support: Redundancies



- PR considerations
 - **Reputational Risk:** of making large redundancies while the furlough scheme is still available
 - Effect of individual redundancies on the employer's reputation
 - Communicating complicated issues to an anxious workforces
- Restructuring will need to be handled carefully on a PR level. Industries that have been severely impacted have more leeway because the public is aware (i.e. travel and tourism)
- Other sectors will need to communicate their reasons for restructuring very carefully (poor communication could scar the workforce in the long-term)

Changing support: The role of trade unions and other employee bodies

- Where employers recognise a trade union, trade union representatives have statutory duties to investigate potential hazards in the workplace and complaints raised by employees
- Employers need to think carefully about how they engage with unions and other representative bodies to:
 - Agree social distancing plans to provide input on proposals
 - Collective redundancy consultation
 - Changes to terms and conditions
 - Helping to communicate guidance to employees and providing a route to raise questions/concerns



Changing support: The role of trade unions and other employee bodies

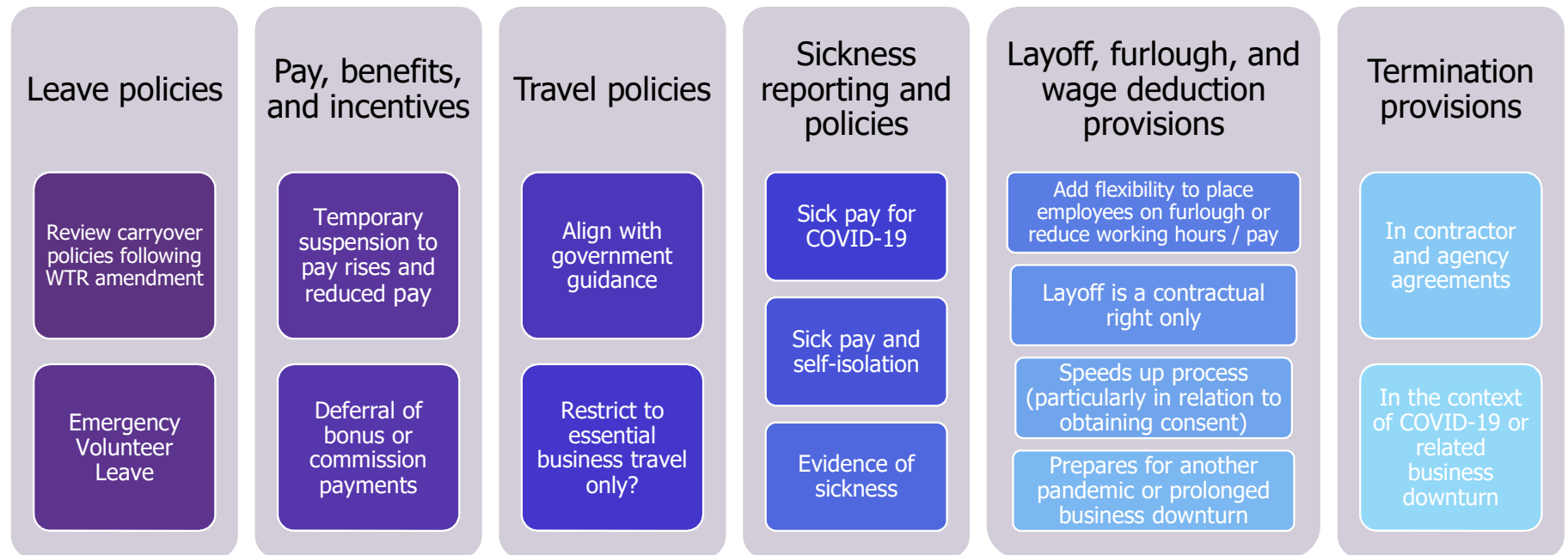
Trade unions

- Managing worker-employer relationship by challenging measures put in place by the Government and/or employers to mitigate effects of COVID-19
- Employers seen to be cooperating with trade unions is encouraged
- But important for employers to maintain direct communication and relationship with its employees



Changing support: Contracts and policies

- COVID-19 impacts many aspects of employment relationship
- Consider whether contracts and policies need updating in light of the pandemic



Changing support: Contracts and policies



Employers risk reputational damage if they are seen to take advantage of the pandemic to introduce new provisions that are unfavourable to employees

A recent YouGov survey found that coronavirus has made 44% of Brits feel less financially secure

Introducing provisions that make it easier for employers to terminate employment could damage the employer's reputation and affect the workforce morale

Communicating early and thoroughly can help reduce panic and anxiety among the workforce

Changing support: Whistleblowing



Employers may receive complaints regarding failures to abide by health and safety guidance or to properly assess and address risk

Concerns may qualify as protected disclosures. If so, individual is protected from detriment and dismissal

Ensure workers are **trained** on how to respond to whistleblowing complaints. Review whistleblowing policy and ensure it is accessible to all staff

Employers who follow government guidance are likely to have an adequate defence to allegations. **No financial cap** on compensation in whistleblowing claims

Changing support: Other litigation risk



Potential spike in **employee misconduct**, **grievances** and **health and safety litigation**

E.g. complaints relating to detriment and dismissal in certain **health and safety** cases

E.g. increase in **sexual harassment** issues as employees return to the workplace or **other harassment** complaints where employees fail to respect personal space or comply with safety guidelines

Sudden impact of COVID-19 may have forced employers to make quick and important decisions to protect the business → potential increase in claims relating to **unlawful deduction of wages**, **unfair dismissal** and/or **breach of contract**, among others

Direct and indirect **discrimination** risks – ensure decisions are applied consistently and are not based on protected characteristics. Addressed in EHRC COVID-19 guidance

Changing support: Whistleblowing and other litigation risk

- It is also important from a PR perspective that whistleblowing complaints are dealt with properly
- Employees are becoming increasingly encouraged to speak out and fewer whistleblowers are choosing to stay anonymous
- Lots of high-profile litigation will arise from the pandemic
- Must be avoided where possible or dealt with appropriately from a PR/comms perspective



Changing perceptions

Attitudes to lockdown and non-essential services re-opening will impact business decisions

The general polling on attitudes to the last lockdown easing revealed that **half (54%) of Britons think the changes go too far in relaxing the rules**

If there is an increase in infection it will lead to backlash against government and companies that are opening

Challenge: even though individuals are breaking the rules they are angry at the Government for not having severe enough measures. People will not give Government the benefit of the doubt if they get it wrong.

Online polling in May by Ipsos MORI finds that despite people being encouraged to return to work where working from home isn't an option, only **47% of workers feel comfortable returning to their place of work** (little change from April).

Other legal, HR and communications challenges during this unprecedented time

Global Issues

- COVID does not exist in a vacuum, two major flashpoints on the horizon:
 - The Brexit transition deadline
 - US presidential election
- The corporate communications minefield has never been so complex



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Other legal, HR and communications challenges during this unprecedented time

Global issues

- Corporates may start to re-think in which countries they want to do business in light of the Government response to the crisis (e.g. Spain has taken a very business unfriendly approach)
- Remarkable variation in EU countries means international businesses can't adopt a common European approach



The importance of culture to successful reintegration



Impact of COVID-19 on workplace culture will depend on how the employer has reacted to the crisis. Important for businesses to foster a culture of open, transparent communication with stakeholders and the community.

A positive workplace culture motivates workers and has a positive effect on the employer's reputation

Post-lockdown, be mindful of mental health issues (exacerbated by remote working, isolation, job security)

Increase in flexible working may mean better gender equality in some roles (lack of flexible work arrangements is often cited as a significant source of the gender pay gap)

Presenters



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Biography



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As practice group leader for Morgan Lewis's labor and employment practice in London, Matthew Howse represents clients in the financial services, media, legal, and insurance industries in High Court and employment tribunal litigation and in class actions, collective actions, and group litigation. His experience includes employment law as well as privacy and cybersecurity law. In addition to litigating both contentious and non contentious issues, Matthew provides strategic employment law advice and counsels clients on the employment law aspects of transactions.

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Biography



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Lee Harding has a broad and versatile practice that goes beyond the provision of traditional legal services. Lee's practice is focused on the myriad legal implications arising out of a rapidly changing workplace: flexible working, five generations in the workplace, giving workers a voice, and the crossover between employment and the regulatory environment, to name but a few. The nontraditional legal services that Lee offers require a proactive approach to managing workplace issues before they escalate. He engages with a wide range of stakeholders to deliver sophisticated and actionable solutions that resonate across the entire business.

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Biography



Kevin McKeever, Founder & Managing Director

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Kevin founded Lowick in 2017. With over 15 years' experience in corporate communications and public affairs, Kevin has advised a range of politicians, companies and organisations across a number of sectors, including property, transport, FMCG, sport and financial services. He has experience of working on political and reputation campaigns in the US, EU and Middle East. Politically active, he stood for election to the UK Parliament at the 2015 and 2017 General Elections.

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Biography



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Louise Skinner provides sophisticated, strategic advice on all aspects of employment law, with particular focus on regulatory employment matters. Described as “truly exceptional and insightful” by clients in The Legal 500 UK guide, Louise advises on issues including investigations, contractual disputes, whistleblowing, discrimination and restraint of trade. Louise has particular experience in the financial services, life sciences, and sports, media and entertainment sectors.

Our Global Reach

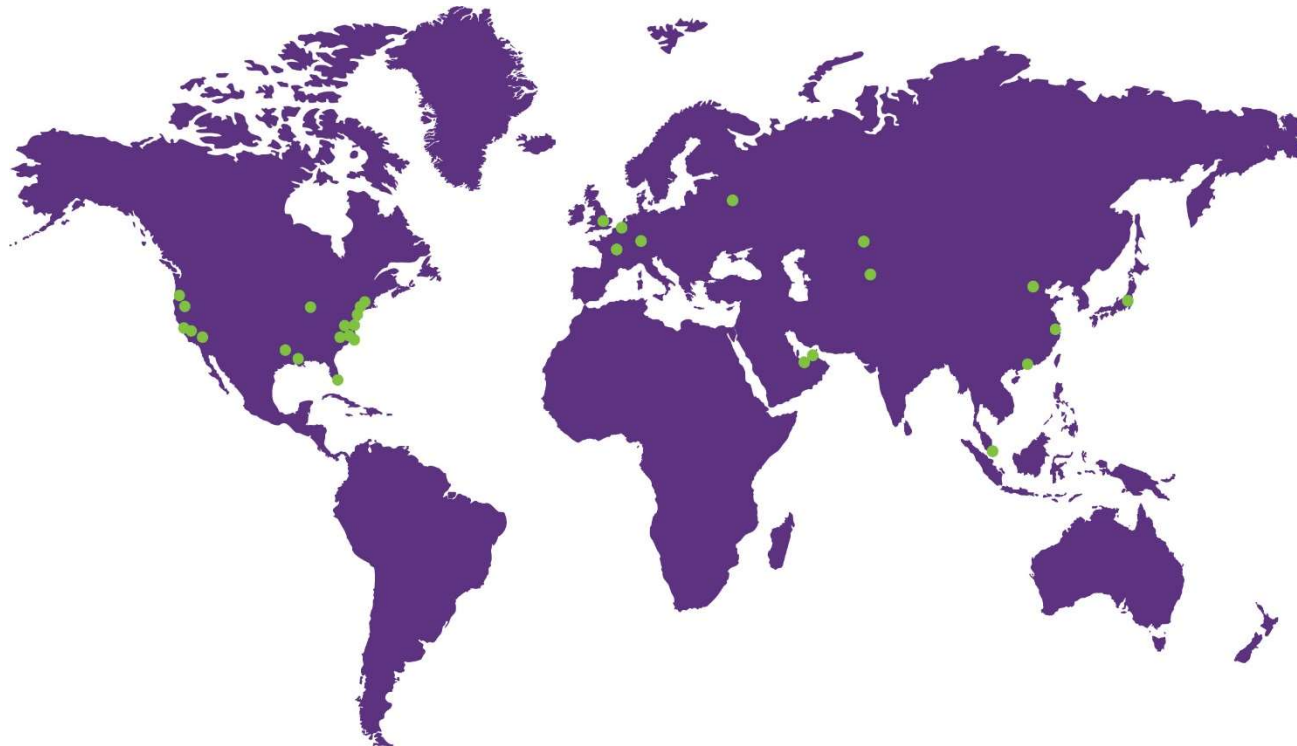
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