



## ALERTS

### COVID-19 Insurance Coverage: Resource Guide

March 18, 2020

The current COVID-19 pandemic raises many issues for businesses in connection with their insurance. Companies are suffering significant business interruptions, access is being restricted by governmental decree, and customers are defaulting. Lawsuits are already being filed over the losses, damages, and even personal injury claims arising out of the COVID-19 virus, amid disputes over the extent of insurance coverage for these losses.

Your insurance policies may provide coverage for some of the losses and damages being incurred as a result of the COVID-19 virus, including business interruption coverage, property damage, event cancellation, crisis management coverage, and even communicable disease interruption coverage. The best way to effectively assess your business' right to insurance coverage for COVID-19 losses is to understand your insurance policies and the facts concerning your losses.

Some of the most common coverage issues are:

#### Notice Consideration

As with any insurance matter, the timing of notice can be an issue, so if you have questions about coverage, putting insurance companies on notice can be crucial. Businesses should consider giving notice even if there are doubts about whether losses are covered. Also, note that some policies allow for reporting of circumstances that could give rise to a claim, which may preserve rights in the event of future claims or losses.

#### Business Interruption Insurance

## RELATED PEOPLE



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## RELATED PRACTICE AREAS

Generally, business interruption insurance is part of all risk property insurance, or is in the property insurance section of a business owners' policy. Business interruption insurance typically covers an insured's lost income resulting from a covered event, when the event caused an interruption or suspension of the business. It also often covers the costs of extra expenses incurred because of a covered event.

Some business interruption policies include coverage for "contingent" business interruption; those coverages apply when a covered event damages a key business partner and impacts the policyholder's business. Business interruption policies also might include civil authority coverage, which applies when the policyholder is unable to access a location because a governmental authority prevented access. Each of these coverages may require some sort of damage to or loss of use of the property.

In addition, these coverages are subject to certain limitations and exclusions, like with any insurance policy. In the context of COVID-19, these issues will likely be contested, particularly where the physical damage involves COVID-19 virus contamination. If your business has potential COVID-19 business interruption losses, the best practice is to have the relevant policies reviewed to determine if you have the potential for coverage.

Where the potential for coverage exists, policyholders are encouraged to provide prompt notice to their insurance carrier. Policyholders also should be aware that many property policies contain a one-year limit to bring suit over a loss.

## **Crisis Management Coverage**

Some directors and officers liability insurance policies include crisis management coverage. This coverage varies by carrier. For example, the crisis management coverage provided by one large American carrier is triggered to apply if there have been layoffs, an announcement of suits against an insured, or sickness or disease that the insured was alleged to have caused. If triggered, such coverage can include public relations costs, travel and other expenses that the insured incurs as a result of a triggering event. While this coverage typically has a lower policy limit than the full coverage available under the rest of the insurance policy, it should still be taken into consideration.

## **Event Cancellation Insurance**

Event cancellation insurance covers certain economic losses associated with the necessary and/or unavoidable cancellation, curtailment, postponement or relocation of a scheduled event. Many policies also cover losses resulting from the inability of participants to attend the event. In both instances, coverage hinges on the cancellation, reduced attendance, and related issues arising from an unexpected cause beyond the policyholder's control.

Like all insurance policies, event cancellation policies contain a wide variety of exclusions, including specific exclusions for infectious and communicable diseases. However, not all policies contain disease exclusions, and those that do may limit the application of the exclusion to

certain enumerated circumstances.

Thus, event cancellation insurance could prove to be a valuable resource for policyholders with events that will be adversely impacted by the COVID-19 pandemic.

In the event of a potentially covered loss, policyholders are encouraged to provide prompt notice to their insurance carrier. Policyholders must also be aware that most event cancellation policies shorten the time to bring suit on the policy to one year.

## **General Liability Insurance**

Commercial General Liability (CGL) insurance includes coverage for the insured's liability because of property damage or bodily injury. Most policies are "occurrence" policies and most include a defense or reimbursement for the cost of defending a potentially covered claim. The definition of property damage under a CGL policy is broader than under a typical property insurance policy and may include loss of use of property that is not physically damaged. The "because of" requirement also is broad and generally includes economic losses resulting from covered bodily injury or property damage.

Potential liability exposure to claims for bodily injury or property damage connected to COVID-19 could be substantial, and your insurance for those claims could be critical, particularly as lawsuits are already arising from this pandemic.

## **Workers' Compensation Insurance**

Workers' compensation policies typically cover job-related injuries or "occupational diseases." Diseases that are typically contracted by the general public, on the other hand, are excluded in some policies. This means that healthcare workers or others whose jobs require them to be put at greater risk of exposure to the virus than the general public likely will have a greater chance of obtaining workers' compensation coverage, compared to employees who are exposed in the same manner as a member of the general public. Coverage determinations, of course, will be highly fact-specific and dependent upon policy language or each state's workers' compensation program. The degree to which an employee's exposure relates to his or her job requirements presumably will be among the key considerations.

Employers should watch for announcements – by particular states or workers' compensation carriers – about how they intend to handle claims arising from coronavirus exposure. For instance, in the hard-hit state of Washington, the Department of Labor and Industries has announced it will pay wage-loss and medical treatment expenses for any healthcare worker or first responder who is quarantined because of coronavirus exposure. Washington operates a monopoly workers' compensation system, so that announcement will impact every employee in the state who is covered by the state system. As the number of cases increases nationwide, other states or carriers may make similar announcements about how they intend to treat coronavirus-related claims.

## **Trade Credit Insurance**

Trade credit insurance pays covered accounts receivable in the event of insolvency, bankruptcy, or protracted default by a customer of the insured. Given the projected economic impact of COVID-19 worldwide, trade credit insurers are bracing for substantial claims. Euler Hermes, a major worldwide trade credit insurer, has estimated that losses may exceed \$300 billion per quarter.

Trade credit insurance is highly specialized and contains a number of conditions and other requirements for payment, so policyholders should pay close attention to how these events play out.

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