

Latest COVID-19 Insurance Update as of April 1

If you're in business, you're in shock. The momentum dragging the economy down is challenging to even the most experienced and observant owners. A business that was surviving, maybe even thriving, just weeks ago now faces an uncertain future.

If you're running a business that forces you to shutter or drastically reduce operations, you may be wondering if your business interruption insurance will pay for your company's lost revenues.

Business interruption coverage is usually part of your commercial property policy or the property portion of your business owner's policy. It covers losses if you have to suddenly shut down your business for a variety of reasons. Policies may also cover rental income that tenants fail to pay after a direct physical loss.

While policies require physical damage to your property in order to trigger a business interruption claim, it's in your best interest to file a claim on your business interruption policy for your insurer to review, as there may be exceptions. So far, the insurers we have spoken to say that contamination from coronavirus is not considered physical damage and most standard policies exclude coverage for pandemics and viruses.

One question that remains unanswered, though, is whether insurers will consider that the presence of coronavirus on a property constitutes physical loss or damage as covered by the policy.

Whether you have insurance coverage or not, it is important to document your losses. Most policies require prompt notice be given of claims, and your insurer may deny coverage if you delay notifying them of your claim. Also, don't assume that your claim will be denied. Not all policies exclude pandemics or viruses. Also, the coronavirus claims are uncharted territory for the insurance industry.

Businesses that have prepared in advance will have their claims reviewed first. To ensure you are well placed to act quickly:

- Start by documenting how the COVID-19 outbreak has affected your business operations, and include orders by government that may have affected the operations.
- Track your metrics, such as daily sales before and after the outbreak, and include a year-on-year comparison for the month of March and onwards.
Metrics can include daily customer numbers, number of procedures performed, or units produced, for example. Make sure to include the same information for the past three years, so the insurer can accurately assess the financial damage to your operation.

- Track your related expenses, such as costs of cleaning and disinfecting your facilities, costs of protective equipment, costs of any media and communications campaigns that you organized to keep customers, employees or the public informed, as well as the costs of arranging for staff to work from home, and of associated overtime pay.
- Document everything related to the outbreak that affects your business, including order cancellations, complaints, discounts you have offered, refunds you have made, and loss of employees, vendors or customers.

You should coordinate all this with your insurance broker and review your policy's coverage definitions, limitations, conditions and, in particular, exclusions. You may also have deductibles to consider.

LIABILITY ISSUES

Besides business interruption claims, you may want to prepare for any potential liability claims or lawsuits that your business may face due to the outbreak, particularly due to any actions you take regarding your employees.

The biggest risks you face are potential lawsuits by employees who claim discrimination or retaliation under Title VII of the Civil Rights Act and/or the Americans with Disabilities Act in response to actions you may take.

There are a few other issues you need to keep in mind when dealing with personnel during this sensitive time:

- If you have staff that refused to come to work out of fear of contracting coronavirus and you take adverse action against them, you could open yourself up charges for interfering with "protected activity" under the Occupational Safety and Health Act's protected activity regulation.
- If you have a group of employees who refuse to work due to fears of coronavirus in the workplace, it could also be considered "protected activity" under the National Labor Relations Act. They could file an unfair labor practices claim if you take any disciplinary action or terminate some or all of them.
- If you have fewer than 500 employees, the newly enacted Family Medical Leave Act requires that you provide two weeks of paid sick leave to employees who are subject to a government quarantine or isolation order related to COVID-19; or if they have been told by a health care provider to self-quarantine due to COVID-19.
- The FMLA also requires you to offer partially paid leave of up to 10 weeks for any parent or guardian who has to stay home because their child's school or daycare center has been closed.

This material is for informational purposes only. In the present environment, new information is issued quickly, so please note that this may not reflect the most current information depending on the time of review. If you have questions about coverage or insurance, then please reach out to us directly.

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