

FREQUENTLY ASKED QUESTIONS ABOUT CORONAVIRUS DISEASE (COVID-19)

The Coronavirus (COVID-19) and resulting actions taken by both local and federal governments are likely to impact businesses on a number of levels. Insureds will likely seek coverage for losses incurred on both a first-party and third-party basis. Policy language, endorsements and other modifications vary greatly from one policy to the next and understanding the specific driver of the loss will be critical when approaching insurers.

As always, Insgroup will work closely with impacted clients to understand their losses and explore coverage available to them. As your advocate, we will exhaust every option and turn over every stone to ensure each policy responds appropriately; providing the maximum benefit to our clients.

Q1. How will my property insurance and business income coverage respond to losses related to Coronavirus?

Answer: By and large we expect most property policies to offer limited to no coverage for this viral outbreak. First, many property policies include an exclusion specific to virus and bacteria. For those policies which do not have exclusionary verbiage, the coverage trigger becomes key. Because the virus itself is unlikely to create the type of “property damage” needed to trigger coverage, the policy will not be triggered and not respond to claims.

Let’s explore a few specific areas of coverage concern:

- Business Interruption (BI) – Businesses are clearly at risk of losing revenue as a result of the COVID-19 outbreak. When considering coverage for the loss of revenue two claim drivers must be considered: Direct Physical Loss and Indirect Loss.
 - Direct Physical Loss: In order to trigger BI, the insured location(s) must suffer direct physical damage. We find it highly unlikely that policies will be triggered to provide coverage for business interruption absent direct physical loss to an insured location.
 - Indirect Loss: The majority of claims to arise from this outbreak will be tied to an Indirect Loss and, within those, we expect policies to be tested in the area of Civil Authority and Contingent Business Interruption given the number of restrictions on travel, public gatherings and event cancellations.
 - Civil Authority coverage varies from policy to policy but they are always specific about what circumstances or events are required to trigger coverage. Standard coverage qualifiers include distance from the area impacted by Civil Authority action as well as a time element. This coverage is based on the premise there is “direct physical damage” and this Civil Authority Action is in response to that damage. Again, the definition of “direct physical damage” will be key in coverage determinations. The entire coverage form must be thoroughly analyzed.
 - Contingent Business Interruption – The same challenges facing previously discussed property coverages will face Contingent Business Interruption claims. The property on which a business is dependent must face a covered cause of loss in order for this coverage to be triggered. If that property is shut down, reduces output or is otherwise impacted by COVID-19 but does not suffer “direct physical loss,” property policies will be unlikely to respond.
 - Ingress/Egress Coverage: Similar in scope to Civil Authority, this coverage requires “direct physical damage” in order to be triggered. As always, the terms and conditions must be carefully considered and explored for the benefit of the insured.
 - Stock Throughput Policies: As a form of property coverage, these policies are also primarily based on physical damage or loss. As such, similar coverage analysis to the policies previously mentioned is necessary on a case by case basis.

Q2. What if I believe I have a property-related claim?

Answer: As always, contact our Claims Advocacy Group as soon as possible to discuss the scenario of the loss and potential claim. Our team of advocates will gather pertinent data and begin a detailed coverage analysis with the intent to find coverage for your claim. Specific data information related to the loss will be critical as we gain an understanding of how you, or your company, have been impacted.

Devote particular attention to:

- Specific details regarding physical damage to an insured premise where applicable
- Specific details around directives from authorities which limited access to insured premises by employees, customers, suppliers, etc., and what impact those directives had/continue to have financially

Q3. Will Workers' Compensation insurance provide coverage for my employees who get sick?

Answer: Workers' Compensation statutes are not intended to provide coverage for communicable or contagious diseases. That being said, there may be exceptions if the contraction of the disease occurred in the course and scope of work. Like many coverage considerations the details around the when and where the virus was contracted will be of critical importance. We are of the belief many of these cases will be ruled not to be compensable but exceptions to this may be found in certain service industries (airlines, healthcare, delivery services, event coordinators, hotel employees, etc.).

Q4. I have a General Liability policy. How can it protect my company from claims we spread the virus?

Answer: This is a legitimate concern for hospitality companies in particular. Patrons of restaurants and hotels may claim they contracted the virus while dining in a particular restaurant or staying at a given hotel. The burden of proof on such a claim is almost overwhelming. Not only would the claimant would have to allege the virus was contracted because of the insured's negligence, but they would have to be able to identify when, how and where it was contracted.

Q5. As an executive or owner of a company, what exposure do I face and am I covered?

Answer: In the current environment it seems executives can be held accountable for virtually any event which impacts an organization's bottom line. Failure to be prepared for or to quickly respond to a global pandemic can result in shareholder action in the same vein as failing to plan or execute upon business strategy. Executive Lines, a suite of coverages which include Directors & Officers liability (D&O), Employment Practices Liability (EPL), Fiduciary Liability, Cyber Liability, Crime, Kidnap & Ransom, are designed to protect and indemnify a company's executives. While these suits or actions may ultimately be baseless, the defense and litigation costs can be material.

- One of the more likely coverages to be tapped is the previously mentioned D&O liability. While these policies exclude bodily injury by default, there may be room for coverage if a suit or SEC investigation, for example, is the result of the company's financial performance and resultant decline in stock value.
- Another area of concern for business leaders is the reaction of employees to the spread of the virus. Employment Practices Liability can be triggered by claims of discrimination based on race or national origin. Employees who refuse to travel for business may believe they will face retaliation. Employees who are considered "at risk" due to age, travel or health history may feel isolated, harassed, etc. by fellow employees or management.
- Fiduciary Liability coverage scope may be stressed by claims of inadequate healthcare benefits and ancillary benefits such as short- and long-term disability. Claimants may suggest the company was negligent in selecting the benefits offered; that they are inadequate or unavailable.

Q6. I have an Environmental, or Pollution, Liability Policy. Is COVID-19 a pollutant and do I have coverage for spreading it?

Answer: These policies are some of the most varied in the insurance industry. There is no "standard" Environmental policy so each must be examined on its own merit prior to taking a position. As previously discussed, the specifics around the alleged damages, facts of the occurrence, and circumstances which gave rise to the pollution incident will be important data.

Q6. I have an Environmental, or Pollution, Liability Policy. Is COVID-19 a pollutant and do I have coverage for spreading it?

Answer continued from previous page:

Within the policy, critical areas for review include, but are not limited to:

- Specific policy language referring to viruses and bacteria.
- Policy definitions:
 - Definition of Pollution Conditions
 - Definition of Microbial Matters
- Similar to other policies, the critical condition is what triggers the coverage. This can be discovery of the virus or a notice from a third-party (customer, government authority, health department, CDC, etc.)
- Does the policy include Business Interruption coverage? What is the trigger?
- Even if the policy initially provides coverage, exclusions may carve out coverage for communicable diseases.

As always, these policies must be evaluated cover to cover to fully comprehend what may be available to an insured.

Q7. What do I do NOW?

Answer: Businesses should evaluate their preparedness for potential impacts brought about by COVID-19 to both their bottom line and their employees.

- Review and update business continuity/disaster response plans – focusing on mission critical services
- Explore alternatives to critical parts of the supply chain and put back ups in place
- Consult with legal counsel on necessary disclosures to shareholders and others
- Survey employees to discover who may have been exposed and create a plan to prevent proliferation
- Organize a work from home plan; implement technology and processes to ensure business continuity
- Communicate the importance of enhanced hygiene and provide hand sanitizer stations
- Cancel large and/or unnecessary group meetings
- Ensure employees are aware of Paid Time Off, sick leave and work from home policies, as applicable
- Consult with a labor attorney on the topic of prohibiting employees from returning to work to ensure actions do not violate the Americans with Disabilities Act and discrimination under Title VII of the Civil Rights Act of 1964.
- Instruct management to be acutely aware of potential harassment, discrimination, teasing or bullying related to Coronavirus susceptibility, race, nation of origin, etc.
- Finally, immediately report any suspected cases of Coronavirus to the Communicable Disease Division of the Department of Health for further direction on testing and treatment

Insgroup's FAQ document is intended to be informational only and should not be characterized as advice for legal or tax matters.

CONTACT US

If you have a question not included in this document or need additional clarification, please don't hesitate to contact your Insgroup Risk Advisor or Client Service contact. We're happy to help!