

RESPONDING TO COVID-19: KEY INSURANCE COVERAGE CHECKLIST FOR BUSINESSES

REVIEW ALL POLICIES

Carefully review all insurance policies and work with insurance counsel to create a list of potential coverages available for losses and claims caused by coronavirus based on the actual language in your company's policies. Insurance policies vary significantly, and companies should not rely on general advice based on policy type.

REVIEW YOUR CONTRACTS TO DETERMINE IF YOU ARE AN ADDITIONAL INSURED AND REQUEST POLICIES

Review contracts with your suppliers, vendors, and customers to determine whether your company is an additional insured under any insurance policies. If so, request copies of those policies, review them for potential coverage, and add the policies to the list of potential coverages available.

DOCUMENT ANY KNOWN OR SUSPECTED EXPOSURES TO THE VIRUS

Document in as much detail as possible any known or suspected exposure to the coronavirus in the workplace. Create procedures to document exposures with the date, time, location, and all known circumstances. Facts will be critical to securing coverage.

DOCUMENT ALL COSTS AND LOSS OF USE OF PROPERTY

Keep careful records regarding all forms of damages, costs, and losses related to the virus, including damage to your company's property and property of third-parties that others may seek to impose on your company, costs to mitigate or reduce losses, disinfecting and cleaning costs, lost opportunities, and business interruption (i.e., lost revenue and profits). Also, ensure you are keeping full records regarding any loss of use of property or loss of rents—including closures for disinfecting and cleaning, and closures mandated by government orders.

DEVELOP PLANS TO MITIGATE LOSSES AND IMPLEMENT THEM PROMPTLY

Certain coverages require that the insured mitigate damages wherever possible, and it is crucial that your business have a mitigation plan in place in the event of a closure or a confirmed case of coronavirus at your location. Taking prompt steps to mitigate loss is vital and precludes insurers from making arguments that a lack of mitigation should decrease payouts.

PROVIDE NOTICE OF CLAIM TO YOUR CARRIERS

Provide notice to your insurance companies in accordance with the terms of the policies under both your company's policies and any policies under which your company is an additional insured. Notice requirements are strictly enforced, and policyholders often lose coverage by failing to notify in accordance with policy terms. Providing notice under your current policies is particularly important if your company is renewing coverage in the near term. We expect insurers will attempt to exclude coronavirus-related claims in all future policies.

PROVIDE NOTICE OF CIRCUMSTANCES BEFORE YOUR POLICIES RENEW

Provide "notice of circumstances" for possible coronavirus-related claims under expiring "claims made" policies. As noted above, your company's renewal policies will most likely have specific coronavirus exclusions.

MONITOR CORONAVIRUS LEGISLATION AND ORDERS

Stay informed on changing state insurance laws and regulations and executive orders regarding coronavirus. For example, several states, including Washington, New York, and New Jersey, are considering bills or executive orders that will expand workers' compensation coverage for coronavirus claims. In New Jersey, a bill is before the legislature that would expand business interruption insurance for the coronavirus.

□ PRESENT THE CLAIM IN A MANNER THAT MAXIMIZES COVERAGE AND DOCUMENT COOPERATION

Pick your words carefully and ensure you understand all coverages, conditions, and exclusions under your policy. Consider whether to hire a professional to assist in claim preparation. Preparing claims in-house has drawbacks, including your employees' lack of experience with the process and the profound time commitment involved. Legal and forensic experts can assist with preparing claims to ensure maximum insurance recovery. Document your compliance with any Insurer requests and do not allow Insurers to endlessly delay claims.

□ OBTAIN INSURER CONSENT TO INCUR COSTS, RETAIN EXPERTS, OR SETTLE DISPUTES

Many insurance policies require insurer consent in advance of making key decisions. Failure to obtain permission from an insurer often leads to insurance disputes and may cause the loss of insurance rights. Read your policies carefully to understand when an insurer's consent is required, and take proactive steps to include insurers in major decisions.

□ TAKE STEPS TO PROTECT PRIVILEGE

Communications with your broker and insurers regarding claims may not be privileged. As many claims are likely to result in litigation, communications to a broker through coverage counsel may retain the privilege. At a minimum, work with your coverage counsel to develop a non-disclosure and common interest agreement with your broker and insurers to protect privilege.

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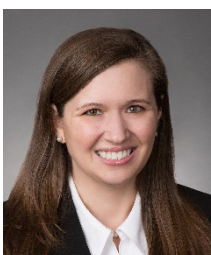
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