

How Coronavirus Could Impact Your Business's Insurance



The new coronavirus (COVID-19) outbreak continues to be a top-of-mind concern for organizations and individuals across the globe. As COVID-19 becomes increasingly widespread, it's not only raising fears about the well-being of the general public, but it's also disrupting business operations. It is also causing widespread insurance industry conversation to seek solutions to the mostly uninsured exposure of communicable diseases.

In fact, COVID-19 has already led to business interruptions, supply chain issues and significant liability concerns—all of which could lead to financial loss. As such, it's important for companies to understand how COVID-19 can impact their business and determine what precautions they need to take in order to control their losses.

This document examines potential insurance exposures associated with COVID-19 and how different forms of coverage could respond.

Business Interruptions

As many operations close due to COVID-19 fears, there's a growing question of whether or not business interruption insurance can help policyholders make up for lost revenue.

In the event of a loss, business interruption insurance provides coverage for income a business would have earned had it been operating normally. It can also help pay for expenses like employee wages, taxes, rent, loan payments and relocation expenses.

Typically, business interruption insurance is triggered by a direct physical loss or damage to your insured location. Under this interpretation, contagious diseases like COVID-19 would not be considered a covered loss.

However, some argue that COVID-19 can contaminate physical objects like HVAC systems or assembly lines, which in turn would force businesses to cease operations. In these scenarios, business interruption insurance could provide some protection. We are seeking every angle to identify any responding coverage for our customers. Currently, insurers have determined that there is no trigger of direct physical damage making coverage unavailable.

Many businesses can or could become impacted by the various National, State and Local government mandates. We are exploring whether the Civil Authority section of most business income policies could be triggered but without direct physical damage coverage remains highly unlikely.

Supply Chain Issues

Business interruption insurance is a crucial component of risk management programs, but it does not extend to disruptions to a third party. That's where contingent business interruption insurance (CBI) comes in.

Unlike traditional business interruption insurance that compensates the policyholder for a loss resulting from damage to its own property, CBI lets businesses transfer the risk of certain losses to the property of a third party. CBI is an optional extension of business interruption insurance that reimburses lost profits and extra expenses

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resulting from an interruption of business at the premises of a customer or supplier.

This type of coverage is increasingly important as COVID-19 continues to affect the global economy. Even if a business is not located in an area where COVID-19 has been detected, aspects of their supply chain might be, leading to potential disruptions. In fact, in China—where COVID-19 originated—many workers have been ordered to stay home, forcing some manufacturers to halt operations. Without access to the products or components they need, businesses that partner with these manufactures too must stop distribution.

While CBI could provide coverage in this scenario, there are caveats. With CBI, the covered third-party property may be specifically named, or the coverage may simply blanket all customers and suppliers. Insureds will have to review policy language to ensure their suppliers are included in the policy.

Additionally, like traditional business interruption policies, some form of direct physical damage to your supplier's facility will need to occur before coverage is triggered. Again, contamination may constitute as property damage depending on the policy language and insurer.

Liability Concerns

COVID-19 raises many liability concerns, particularly if guests, customers or employees allege they became sick due to a business's negligence. When it comes to these concerns, it's important to take the following insurance considerations into account:

- **General liability insurance**—General liability insurance, sometimes referred to as commercial general liability insurance or CGL, protects your business from financial loss should you be liable for property damage or personal and advertising injury caused by your services, business

operations or employees. It can protect you from costs associated with bodily injuries, damage to third-party property, personal injuries, medical expenses, litigation and more. When it comes to COVID-19, general liability policies should provide coverage and allow you to defend claims. It should be noted that, in order for a claim to be valid, the claimant would have to allege the virus was contracted due to the insured's negligence and detail how, when and where they got sick—all of which could be difficult to pin down especially in a widespread pandemic. For CGL coverage to apply to claims for bodily injury or property damage arising from coronavirus the plaintiffs would need to allege that our insured was liable and legally obligated to pay for that bodily injury – likely in the form of negligence to prevent infection to someone to whom the insured owed a duty.

- **Directors and officers (D&O) insurance**— Shareholders and other stakeholders could sue a business should they fail to respond appropriately to COVID-19 concerns. Specifically, stakeholders may contend that management failed to develop adequate contingency plans or detail how COVID-19 could impact the company's financial performance. It should be noted that most D&O policies exclude coverage for bodily injuries but may offer some protection depending on the specific allegations. As such, it's important for businesses to review the scope of their D&O policies to confirm they are covered in the event of an incident.

Workers' Compensation Insurance

In instances where an employee believes they contracted COVID-19 at work, several workers' compensation

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considerations come into play. Notably, when it comes to workplace illnesses, most state statutes only pay out benefits if the disease in question is occupational in nature. That is to say that communicable and contagious diseases are generally excluded from workers' compensation policies.

However, coverage may be triggered if the illness arose due to or during the worker's employment. In general, these scenarios are examined on a case-by-case basis, but could include instances when:

- A health care worker contracts COVID-19 at the hospital at which they work.
- An airline employee contracts COVID-19 from a passenger.
- A hospitality worker contracts COVID-19, which is later linked to a large event at which they worked.

Preparing your Business:

While COVID-19 introduces a level of uncertainty when it comes to available insurance protection, there are several precautions organizations should be taking.

- Any sort of communication regarding COVID-19 should be based on fact. That is why we are using the Centers for Disease Control (CDC) whenever possible, as the CDC is the authority in this situation. We should also reference the CDC as the authoritative source for the most current information.
- Insureds may also contact the local health authorities, such as the State/County Health Department and/or the Emergency Response Agency for additional guidance on a broader community response if needed.
- Speed in delivery of notifications to participants will be important, but accuracy of the

information is also very important. Do not sacrifice one for the other.

- Media inquiries must be part of the response plan. Any communication may find itself in the hands of the media. Clients should consider developing a media response and a place for media inquiries to be handled.
- Insureds should revisit Business Continuity Plans including Work from Home Procedures and ensure these are current and communicated to staff and/or volunteers.
- Final drafts of all coronavirus correspondence as well as Business Continuity Plans should be reviewed the insured's Corporate Counsel prior to distribution. Review and modify existing contingency plans, estimating the potential impact of a long-term closure
- Audit existing insurance policies and their provisions to identify potential gaps in coverage.
- Identify equipment, services, and third parties critical for continued operation.
- Have a process in place for responding to a loss, which could include:
 - Detailing how the loss occurred and the impact the loss had on your operations
 - Tracking all losses and expenses associated with the claim
 - Highlighting how the claim could impact third parties, like suppliers and consumers

For more information including risk management guides and various contingency planning documents, please visit our dedicated [webpage](#) to COVID-19 information. For additional questions, please contact Jonathan Theders at 513-680-2801 or jtheders@risksource.com.