



Policyholders' Coverage Checklist in Times of Coronavirus

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Every state but West Virginia have reported hundreds of Coronavirus (COVID-19) cases in the U.S. More than half are in California, Washington, New York, and Massachusetts. The unprecedented social and economic impact of the Coronavirus makes it necessary for policyholders to keep open all lines of communications with their insurance brokers, insurance carriers, financial advisors, safety & compliance experts, and insurance coverage counsel even if it is not certain whether they will need to file insurance claims.

As always, the specific terms of the insurance policies and the way losses are documented and presented to insurance carriers will be pivotal in securing coverage for Coronavirus-related exposures, such as jobsite closures, stop-work orders, remote work mandated measures, business interruption, event cancelation, employees' claims, among others.

Policyholders should consider the following checklist of key insurance coverage tasks to be better positioned to face the risks posed by the Coronavirus:

- **Pre-Loss Risk Management:** A careful review of the policyholder's insurance program may show coverage for the Coronavirus outbreak. Now is the time to assess, with the guidance of your brokers and insurance coverage counsel, the specific coverages in place. Policyholders may want to particularly review the terms and conditions of their Property, General Liability, Pollution, Directors & Officers, Professional Liability, Fiduciary Liability, as well as Event Cancelation Insurance coverages, among others depending on their specific business trade. For instance, Policyholders would want to assess, ahead of time, whether there are bacterial/virus/communicable diseases/pandemics exclusions in their policies. It is also relevant to review, with a keen eye, the insuring agreements and pose hypotheticals to stress test them and see how far coverage would go with respect to a Coronavirus exposure;

- **Define the Risk:** Risk managers and/or insurance personnel need to intimately understand the various ways COVID-19 will impact their particular business. Detailed conversations with department heads and chief executives will prove valuable to understand exposure, focus resources and prepare a game plan in the insurance and risk management fronts. Communication should be daily to refine the understanding as the exposure continues to develop. Marrying that knowledge with available insurance coverage will prove fruitful if the risk materializes;
- **Be Fully Engaged with Brokers:** Brokers have firsthand information of the impact of COVID-19 on the insurance marketplace. They know your business and your insurance program and are well suited to keep policyholders advised of potential gaps in coverage as the exposure evolves. Constant and open communication with brokers will make the process of giving notice, and lodging an insurance claim, smoother and will potentially avoid miscommunication issues that can impact the narrative presented to carriers for coverage;
- **Prompt Notice:** Generally, late notice of an insurance claim does not invalidate an insured's rights to coverage unless the insurer proves actual prejudice due to late notice in states like New York, California, Massachusetts, Washington, among others. However, it is best practices to give prompt notice of any claim, and particularly give notice of any circumstance that may give rise to a claim, to the insurance carriers. This will engage the carrier early on as the loss progresses and avoids unnecessary disputes later over issues like late notice, voluntary payments or assumption of liability. This is also a key aspect if the policy is soon to expire or if it is a claims-made basis policy like is often the case in pollution policies;
- **Document Facts/Costs/Losses:** Once prompt notice is given to the carriers, Policyholders should carefully document facts involving any potential or actual losses as well as costs and losses incurred. This is key in all coverages but particularly in property and business interruption coverages;
- **Be Mindful of Applicable Regulations and Laws:** Employer's liability coverage could be also impacted by the Coronavirus threat. As such, Policyholders of all trades should be mindful of their general duty to provide a workplace free from recognized hazards that are causing or are likely to cause death or serious physical harm.

In New York, which has reported so far 938 total Coronavirus cases, the New York Department of Financial Services ("DFS") issued on March 11, 2020 a Circular Letter to the chief executive officers of insurance entities regulated by the DFS. The purpose of the letter is to require insurance companies to, within 30 days, describe to the DFS their plans and preparation to manage the risks arising from the Coronavirus.

Earlier, on March 10, 2020, the DSF, using its special reports power under New York Insurance Law §308, issued a letter to all authorized property-casualty insurers seeking detailed information about their New York commercial property policies with business interruption coverage, including whether business interruption claims resulting from the Coronavirus would be covered. This includes business owner policies, commercial multi-peril policies, and specialized multiple peril policies.

The DFS has requested that insurers offering those policies in New York shall clearly and concisely send an explanation to each of their policyholders regarding what coverage each policy offers in regard to the Coronavirus. Notably, the DSF has asked New York carriers to explain whether contamination related to a pandemic may constitute “physical damage or loss” for business interruption coverage, contingent business interruption coverage, as well as for civil authority and supply chain coverage. If you want more information about business interruption coverage for Coronavirus exposure, [click here](#).

Policyholders are not alone in the battle against the Coronavirus.

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