
Back to Business: Insurance

Video Transcript

As companies begin to consider returning to work and full operations in the wake of the COVID-19 pandemic, they will need to adapt to new realities. As part of our ongoing series, Back to Business: Considerations in the Wake of COVID-19, we will be exploring current issues related to insurance coverage. Insurance may provide valuable support for both first-party and third-party losses associated with the pandemic. First-party losses are those incurred without a claim being brought against you. So, for example, your loss of business is a first-party loss. Third-party losses arise when a third party brings a claim against you seeking damages or other relief. For example, if an employee sues or a customer sues and claims they contracted COVID-19 at your place of business, that would be a third-party loss.

The following are five different issues related to insurance that may be important for your business.

- Issue number one: If you're involved in putting on or participating in an event which must be cancelled or postponed because of the COVID-19 pandemic, the good news is there is event cancellation insurance, and if you have that insurance, it's frequently very broadly written. Examples of events which may be covered include industry or trade association meetings, concerts or other performances, and sporting events. These policies frequently do not include virus or pandemic exclusions, and we have seen substantial success in achieving coverage under these policies to date.
- Two: Business interruption is a very hot topic now. The main coverage issue for COVID-19 is whether the pandemic meets the common policy requirement or trigger of physical loss or damage. While the issue is undecided by the courts in the context of COVID-19 or viruses, we believe there's a strong argument to be made that shutdowns caused by the virus in a particular government order issued because of the virus constitute covered loss. Moreover, you should look carefully at your policy language. For example, it's possible your policy will exclude loss of use, but only for personal property, and will not contain that same exclusion for real property. If so, this may constitute important evidence of intent to cover loss of use of real property, that is to say, your place of business. Of course, if your policy has a virus or pandemic exclusion, that could be very problematic and may bar coverage, depending on how the exclusion is written.
- Issue three: If you have a pollution or environmental policy, you should review it carefully. Viruses may be specifically covered as pollutants, which trigger coverage under these policies. Even if they're not specifically listed, as long as they are not excluded, they may be covered within the generic definition of a pollutant as, for example, a hazardous substance. We have seen at least one insurance company state that viruses are pollutants for purposes of a pollution exclusion in a general liability policy, and I mention that because insurance carriers need to be consistent. If the virus is a pollutant and is therefore excluded under a pollution exclusion, then the converse should be true, and it should also be a pollutant and therefore covered under an environmental policy. If you do have a pollution policy, they frequently cover business operation problems caused by pollutants, decontamination necessitated by pollutants, and third-party claims due to disease or sickness caused by a pollutant. So, they can be very valuable in connection with the pandemic.
- Issue number four: We believe the next phase of insurance challenges will be third-party claims, and some have already been filed. For example, if a worker brings home COVID-19 and transmits it to her family, is that covered by her general liability or other insurance? These claims could be very significant, particularly with back-to-work efforts getting under way. So, it's very important to know in advance whether you'd be covered when making back-to-work decisions.

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- Five: You should carefully review your DNO policies because, looking toward the future, we see claims against officers and directors arising from the pandemic. For example, does your DNO policy cover you if there's a claim brought against your officers or directors that they breached their fiduciary duties because of the manner in which they responded or failed to respond to the pandemic? Sooner or later, a claim might be brought because of the manner in which your officers or directors set up their supply chain, which may have been adversely impacted by the pandemic. Exclusions in these policies should be carefully evaluated, and, if they are found to be deficient, you should work with your attorneys and your insurance brokers to see if they can be fixed going forward. Many insurance carriers are open to making midstream changes to insurance policies.

In closing, Venable is actively monitoring these issues and working with our clients to evaluate and respond to the business, legal, and operational challenges arising from the pandemic. We invite you to visit Venable's COVID-19 webpage at [Venable.com/COVID-19](https://www.venable.com/COVID-19) to explore our extensive collection of analysis, webinars, articles, and other insights, and to connect with our team. There are valuable materials there dealing with insurance and a host of other issues. Thank you for tuning in, and please, stay safe.

Links

[Venable.com/COVID-19](https://www.venable.com/COVID-19)



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