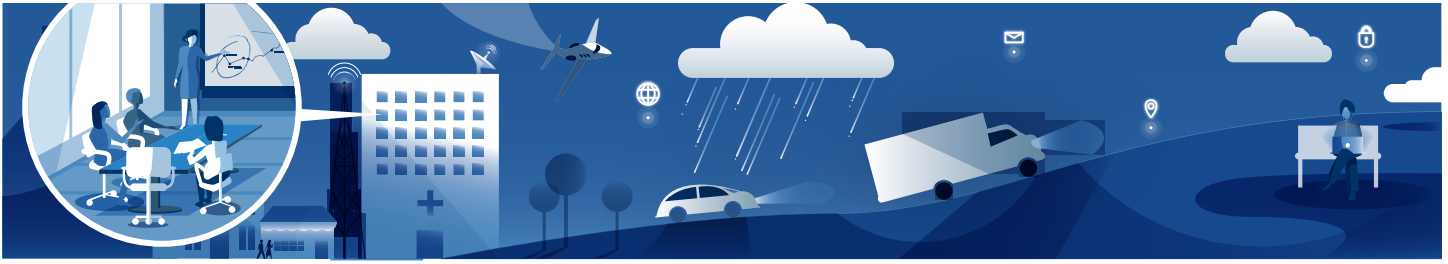


BUSINESS INSURANCE & CORONAVIRUS:


HOW WILL YOUR POLICIES RESPOND?



The applicability of the analysis below is subject to the specific terms and conditions of your insurance policies and contracts.

PROPERTY & BUSINESS INTERRUPTION

Typically requires a physical loss or damage caused by an insured peril. *Diseases and viruses are generally not insured perils.*



Example: A manufacturer is unable to operate due to 35% of workers being sick.

- **No coverage**

Example: You're a vendor for the NBA and are affected by the season postponement.

- **No coverage**


Example: A senior living center has been cordoned off by police and only key employees and medical staff may enter.

- **Civil authority coverage still needs a insured peril**

HEALTHCARE PROFESSIONAL LIABILITY

Protects against damages that the health care provider is required to pay for bodily injury arising out of the provision of, or failure to provide, medical services and to defend against such allegations.

- **Dependent on policy language**
- **Potential defense based on certain allegations**




Example: Multiple residents at a senior living center contract COVID-19 and pass away. Suit is brought forth for negligence among other allegations.

- **Dependent on policy language**
- **Potential defense based on certain allegations**

GENERAL LIABILITY

Businesses could face claims by infected guests that they allegedly failed to exercise reasonable care in guarding against, or warning of, the risk of exposure to coronavirus.


Example: A server at a restaurant coughs in the direction of a guest. That guest later is diagnosed with the coronavirus and files a claim for damages.

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- **Dependent on policy language**
 - **Potential defense based on certain allegations**

DIRECTORS & OFFICERS LIABILITY

A company's directors and officers may be subjected to shareholder lawsuits alleging that their unreasonable actions (or inaction) in response to coronavirus or other infectious disease epidemics caused the company economic loss.

Example: Company disregards CDC warnings and sends employees to Wuhan, China on business. When they return, they transmit virus to large portion of workforce and revenue decreases.

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- **Dependent on policy language**
 - **Potential defense based on certain allegations**

WORKERS' COMPENSATION

Question: Could COVID-19 be classified as "Occupational Illness" & trigger workers' compensation (WC) coverage? Two conditions must be satisfied for illness or disease to be compensable under WC:

- **The illness must be occupational meaning it "arose out of and was in the course and scope of employment"**
- **The illness or disease must have been derived by conditions distinctive to the work conditions**

CONDITION 1:

Course and Scope of Employment

- Was the employee advancing the business interests of the employer at the time of exposure?
- Mandatory travel to, or permanently stationed in, high risk exposure areas?
- Healthcare workers have the greatest risk
- Subject to varying state laws

CONDITION 2:

Distinctive to Work Conditions

- Disease is exclusive to a certain field/industry (coal miners, etc.)
- Increased exposure to the disease due to working conditions

Answer: Not Likely

Despite its increasing attention, it is no more occupational than the flu.

Example: A registered nurse who cares for patients daily in a nursing home facility contracts coronavirus from a patient who tested positive for the virus.

- **Likely Compensable**

Example: An office employee at a manufacturing plant attends a gathering over the weekend and is in contact with the disease. She begins exhibiting symptoms on Monday morning at work.

- **Not Compensable**

Example: An administrative employee of a hospital, who does not interact with patients as part of her normal working conditions, tests positive for the virus.

- **Compensability would depend on a variety of factors considered by the court of jurisdiction**



HOW TO HELP MITIGATE RISK:

Your best course of action is to follow guidelines set forth by the Centers for Disease Control and Prevention, World Health Organizations and/or other governing bodies. Continue to clean and sanitize work premises and keep your staff informed of any developing information. When in doubt, report any claims and make sure to document any communication or actions taken.

MORE TO COME

BKS-Partners is staying abreast of the situation. This has been an especially challenging time for the commercial insurance industry and there are growing calls on Capitol Hill for a federal guarantee of payments by insurers for business interruption claims regardless of viral exclusions. We expect more legislation is to come and will keep you informed as we learn more.

