

COVID-19 Claims Considerations for Pools

As of March 31, 2020



For the past several weeks, AGRiP has been tracking inputs and questions from pool members about how COVID-19 might impact pool operations and underlying member public entity needs, coverage and claim considerations.

There are more unknowns than there are knowns.

As your pool considers claim issues it might anticipate, knowing what other pools are thinking about may be useful.

For an even more comprehensive review of resources within the pooling community and about COVID-19's impact on pooling, visit our [Pooling Community COVID-19 Resource Center](#). Materials are updated regularly.

If you have issues you suggest be added to this list of considerations, questions about the considerations outlined or pooling-related COVID-19 issues, contact Executive Director [Ann Gergen](#).

Liability Claim Considerations

- Changes to statute of limitations and tort claim notice provisions may be considered, tolling such time periods during states of emergency.
- Potential for liability claims against local governments for enforcing executive orders on closing various businesses, claiming substantive due process, takings and equal protection violations of the Constitution. For instance, some stores that sell food and OTC medication (for instance a local dollar store) may be forced to shut down while arguably similar stores are not.
- Conversely, possible liability claims for failure to enforce executive orders on closing various businesses, if there is an outbreak that might arguably have originated at the facility.
- Possible liability claims against local government agencies or schools for failing to shut down their own operations or to take appropriate precautions for those under their care at facilities. For instance, consider corrections facilities and jails, public transit, public health facilities or nursing homes, daycares, parks or recreation centers. Also consider public activities like elections, and whether there may be liability implications of holding elections during a pandemic outbreak. And consider liability for events hosted at public facilities during which an exposure may have occurred.



- Liability questions may arise if local government operations are reduced or cease, for instance in a crisis where employees are entirely unavailable there could be failure to supply water or electricity. There could be claims from this for loss of business income to local private businesses unable to continue operating, or for public health endangerment.
- Local government licensing and inspection activities may be changed during the crisis period. There could be claims for failure to inspect or license adequately, and/or delays caused by inability to inspect and license. Similarly, there could be allegations and claims for failure to meet other essential duties such as child protection or other social services.
- Given school closures, there could be claims for failure to educate required under mandate for nontraditional learners, special education students, or those without distance learning accommodations.
- Mandates to provide lunches through school programs could lead to food safety claims.
- Local governments could be operating with reduced staff due to illness or other disruptions. There could be claims for errors in operations, for instance if an unfamiliar water plant operator made an error in the water treatment process and improperly treated water was distributed and caused illness. Or there might be claims for endangering public health by failing to pick up garbage.
- Public buildings and facilities (including open structures) could be closed for extended periods of time, leading to claims of attractive nuisance for injuries.
- Liability questions may be brought about by mixed, shared, or mutual aid use of facilities among local governments and/or schools. Imagine a vacant school building being used as an overflow medical facility to house COVID-19 patients upon a shortage of hospital beds at the county medical facility.
- Liability questions may arise through shared services and mutual aid response. Common examples would include emergency response assistance from one local government to another, but depending on the number of local government or school employees who fall ill there could be unexpected ways in which communities lend assistance to one another.
- Local public health agencies may have more direct medical and care-related liability considerations when testing or treating patients, and related to patient and provider safety.
- There could be employment actions generated by layoffs or furloughs, such as allegations of discrimination in making such decisions. There could also be employment actions arising out of chain of command questions, non-traditional job assignments, remote work changes, etc.



- There could be employment issues arising out of the use or charging of paid time off, vacation, or sick leave, in conjunction with or independently of federal and state laws or regulations concerning family leave.
- There could be employment issues arising from either a quarantine or failure to quarantine employees who may have had exposure to COVID-19.
- There could be liability considerations for failure to protect public workers, beyond remedies under workers' compensation. For instance, failure to provide appropriate PPE or requiring reuse of PPE.
- Changes in open meeting practices during remote work and emergency proceedings could create new or additional claims, such as violation of open meeting laws, Americans with Disabilities Act claims, and others. If electronic meeting venues are not adequately secured, there could also be issues of and claims arising out of actions from First Amendment activists.
- Due process violation claims could arise out of land use or other discretionary decisions when a public hearing is required within a certain time period.
- There could be liability claims arising from disruptions in data retention practices and other public records issues, including the inability of local governments and schools to respond in a timely fashion to open records act requests.
- There could be liability considerations due to requirements that schools provide childcare services for first responders. Staffing such services may occur using a variety of existing workers, not all of whom have the same training and experience.
- Increased remote work environments could create additional cyber liability considerations and claims.
- In some cases, associated fines and penalties against local governments and schools would also be a consideration in overall liability costs.

Workers' Compensation Claim Considerations

- Expansion of workers' compensation laws to include COVID-19 diagnosis and/or quarantine as a compensable benefit for emergency responders and health care professionals. (As of March 30, this new provision already exists in several states and is being considered by others.)



- Similar workers' compensation presumptions could also be expanded beyond first responders to other local government roles operating where exposure is possible, for instance payroll processors.
- There could be workers' compensation considerations for employees who are still working and required to share vehicles or other close working spaces.
- There could be workers' compensation considerations for employees working remotely without appropriate equipment and ergonomic office spaces, as well as other safety considerations in a home office environment.

Employee Benefits Claim Considerations

- Mandated coverage of COVID-19 diagnosis and treatment without copays or coinsurance (already required under HR 6021).
- Expansion of FMLA leave (already required under HR 6021) may create ongoing benefit obligations.
- Telehealth benefits are allowed and expanded.
- Mental health needs and services may be more in demand.
- Relaxed eligibility and/or continuation requirements may be implemented so employees and dependents can stay on coverage even though they are not actively working.

Property Claim Considerations

- Although no physical damage may be present, there may be claims for loss of fee-based revenue (or even sales tax revenue) to local government agencies and schools as a result of closing operations due to COVID-19.
- There could be claims for costs of cleaning and disinfecting all local public entity facilities before they reopen. Similarly, there could be claims for cleaning and detailing fleet vehicles, squad cars, etc.
- Ongoing maintenance and routine upkeep of facilities and infrastructure may be deprioritized amid crisis work, creating other property hazards.



Other Claim Questions

- What impact will pressures toward commercial insurers have on public entity pools? For instance, if insurers were required to extend coverage or waive exclusions (such as for communicable disease or business interruption), what would be required of pools?
- What impact will pending reinsurance renewals, including coverage terms, have on how pools respond to claims?
- What would happen if a state or federal agency seized control of a local public facility for emergency use?
- What would happen if a state or federal agency mandated local public employees staff a facility to assist in COVID-19 response, for instance school nurses or paramedics required to staff a field hospital or testing center?

