

COVID-19

COVERAGE UPDATE

COVID-19 continues to disrupt and impact the global and domestic business markets. The rapidly developing situation has required businesses to quickly respond to protect their employees and customers. Due to this dynamic environment, many clients have requested information about potential coverage for losses related to COVID-19. A formal coverage assessment by the appropriate carrier is critical to optimize potentially available coverage. Coverage for COVID-19 can potentially be found across multiple insurance product lines, but a thorough review of the policies and endorsements included in your insurance program is necessary.

Please allow the following to serve as a general guide of how common commercial coverages may respond in the event of a claim related to COVID-19. Please note that the following is intended to be used for general guidance purposes only — it is not intended to constitute legal advice, nor is it a dispositive position on coverage. Each claim is subject to review by the applicable insurer and coverage is dependent upon the terms and conditions of your specific insurance policy.

Policy Type	Coverage Considerations
Commercial Property	There is a high degree of variability across commercial property policies. Property policies can be individually negotiated based on the unique needs of the client. Generally, however, a standard policy would probably not cover losses resulting from the spread of COVID-19.
Business Interruption	Business interruption coverage normally flows from property policies with a physical damage trigger. Commercial property policies will often include business interruption coverage to pay out lost income and extra expenses incurred from a covered loss to the insured property. In the case of COVID-19, without the physical damage trigger, the business interruption coverage probably does not extend to disease outbreaks. However, some property policies contain business interruption wording associated with communicable disease as a sub-limit.
Workers' Compensation	Workers' Comp coverage presents a more nuanced coverage discussion due to differences based on state, worker's role and industry. Workers' compensation insurance responds when an employee is injured during the course and scope of their employment. For COVID-19, most workers would not be exposed in the course of their employment under a strict interpretation of their job role, unless they were working in the health care /medical field and would be exposed to the disease through the course of the job. Workers' compensation may be available for COVID-19 in other circumstances, to the extent exposure occurred in the course of employment, however, any coverage available would be dependent on the facts and circumstances involved.

Policy Type	Coverage Considerations
Casualty	For casualty-based claims, the primary factor is negligence in a company's handling of customers or invited people on their premises. For most organizations, the coverage would not respond for a customer or invited person who contracted COVID-19 unless it was shown the business acted negligently in some capacity that caused the person to contract the virus. Health care and hospitality industries are likely to be most vulnerable to third-party claims.
Environmental	Some insurers provide limited coverage for disinfection as a result of the dispersal or escape of viruses. However, the mere existence of COVID-19 is typically not enough to trigger coverage. Proactive risk assessment of the environmental exposures presented by your vendors and contractors, along with indemnity agreements tailored to address these exposures, can serve as a potential source of recovery in the absence of responsive environmental coverage.
Event Cancellation	Event cancellation insurance commonly provides coverage if an event is cancelled, postponed or otherwise affected as a result of a "Covered Event." "Covered Events" are defined by each policy, but typically include the practical or legal inability to hold the event. Insurers have added an exclusion for COVID-19 on policies moving forward, but policies bound prior to the COVID-19 outbreak may have coverage. You must carefully review your policy to ensure that coverage for communicable diseases is not excluded.
Cyber Liability	Networks may be more vulnerable to network security data breaches if more employees begin working remotely. Additionally, we have seen reports of spam emails preying on the public state of unrest surrounding the spread of COVID-19. These emails contain attachments that purport to contain vital information surrounding COVID-19, but actually contain malicious code that harvests personal information. Further large-scale cyberattacks are predicted.
Directors' & Officers (D&O)	D&O coverage will generally provide coverage for costs arising from shareholder lawsuits alleging that officers and directors unreasonably responded to the COVID-19 outbreak. This could include claims alleging that you failed to: 1) consider alternative sources for materials; 2) disclose risks that resulted in a loss to the company; or 3) prepare for the potential impact on operations and/or earnings. Note that the Securities Exchange Commission is encouraging reporting companies and their auditors to disclose the impact of COVID-19 to their investors. They have also stated that they will be monitoring COVID-19 activities.
Employment Practices Liability (EPL)	Generally, EPL provides coverage for alleged discrimination based on the origin or medical status of an employee. In this regard, if an employee or potential employee alleges that they were terminated or not hired as a result of being suspected of having contracted COVID-19 or originating from an area where COVID-19 is prevalent, coverage may be triggered under your EPL policy.

How to handle a potential claim:

You should report any claims to your insurer(s) pursuant to the terms, conditions and reporting provisions of the policy or policies under which you believe you may be covered. For more information, email MDP at info@mdpins.com or contact your representative directly.