

HUB

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Corona Virus and Claims Management

Frequently Asked Questions





Stephanie Burbage

AIC, CIC, CLCS, LPCS

Claims Manager/Advocate



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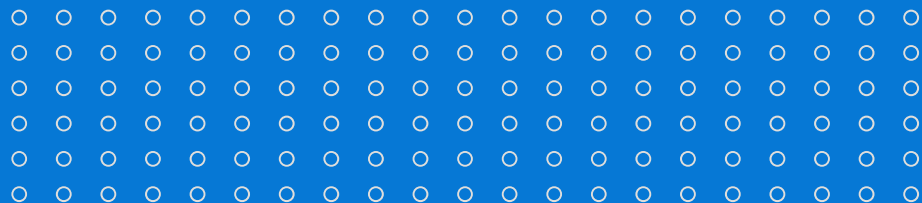
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Agenda

- 1 | Business Interruption
- 2 | Workers Compensation
- 3 | Workplace Considerations
- 4 | Q&A

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My Business Shut Down, Now What?

Business Interruption Claims



Business Income means the Net Income and Continuing Normal Operating Expenses including payroll. Extra Expense means the necessary expenses that you incur during the period of restoration that you would not have incurred if there had not been direct physical loss or damage to your property.

Will business interruption insurance cover coronavirus?

- Generally, coverage for lost business requires physical damage to property and, at this time carriers have indicated contamination from coronavirus is not physical damage to property.
- Business interruption generally does not cover losses stemming from viral outbreaks or pandemics. Nonetheless, we encourage customers to file all claims for carrier review.

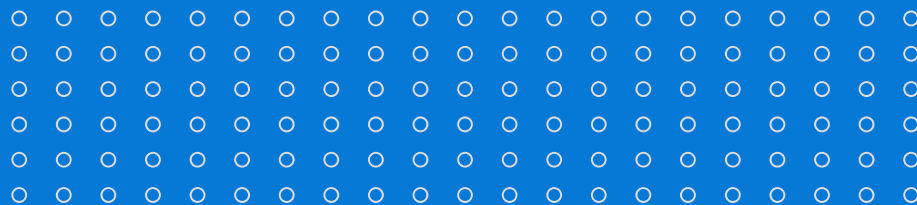
My business was forced to shut down due to a “stay at home” order by the government. Will my business interruption claim be covered?

- You are encouraged to file the claim and allow the carrier to investigate. Coverage typically requires a physical loss and has viral exclusions.

Is COVID-19 a physical loss?

- COVID-19 is not classified as a physical loss, recently two court cases have favored the insurer, determining that the virus did not constitute physical damage, thus the BI claims were appropriately denied.
- <https://propertycasualtyfocus.com/two-early-rulings-in-favor-of-insurers-in-covid-19-insurance-coverage-litigation/>
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- <https://www.businessinsurance.com/article/20200519/NEWS06/912334634/Publisher-appeals-COVID-19-ruling-denying-coverage-coronavirus#>

2



My Employee is Sick, Now What?

Workers Compensation Claims



Workers' compensation is a mandatory type of business insurance that provides employees who become injured or ill while on the job with medical coverage and income replacement . A system of insurance that reimburses an employer for damages that must be paid to an employee for injury occurring in the course of employment

What are coronavirus workers' compensation policies in relation to an employee contracting this illness on the job and taking it home to their family, should they be exposed?

These benefits are being treated differently on a state-by-state basis. For workers' compensation policies to apply, the illness will have to be deemed to have been contracted by the policyholder in the course and scope of employment. Coverage is not being afforded at this time for transfer to a family member, as it is difficult to prove.

Because at-home locations are not a consideration in our workers' compensation policy, how does COVID-19 affect workers' compensation if our employees must work from home?

Workers' compensation policies treat remote employees as if they are in the office. Only illnesses contracted while in the course and scope of employment will be considered. Coverage will be evaluated on a state-by-state basis.

Has the government mandated coverage for workers' compensation?



Certain states (WA, CO, MI) have asked carriers to provide coverage in the quarantine stage for health care and first responder workers.

When would a filed workers' compensation claim be denied?

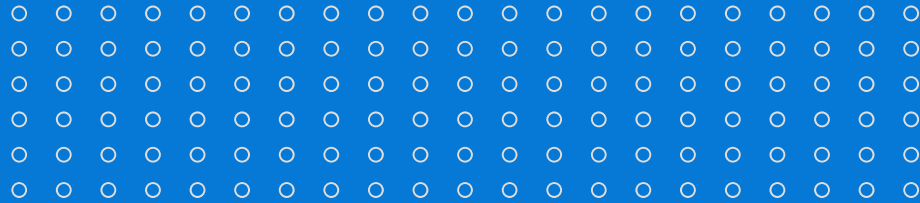
When the contraction is incidental to the workplace or common to all employment (such as an office worker who contracts the condition from a fellow employee), the claim will be denied.

My business shut down and I have lost my job, is this a covered workers' compensation claim?



This is not a covered workers' compensation claim. The worker did not contract Covid-19 while in the course and scope of employment.

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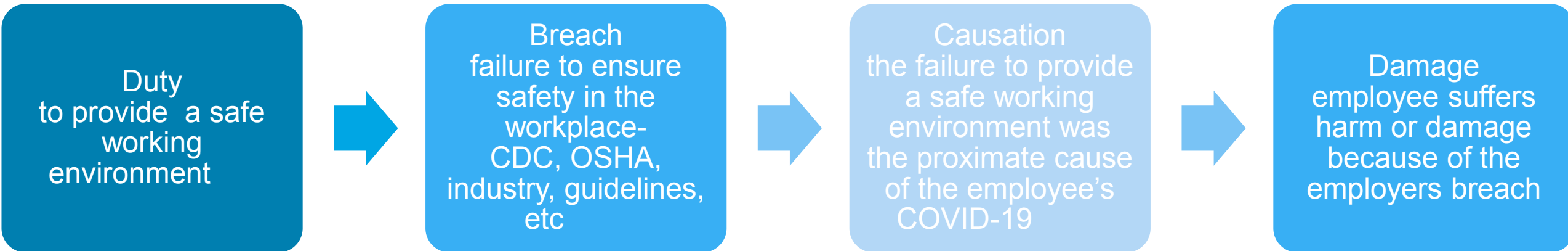
Other Workplace Considerations

Operating in the World of COVID-19,
Living the New Normal



Employment Practices Liability (EPL)
Deals with the wrongful termination, sexual harassment, defamation, discrimination, invasion of privacy, false imprisonment, breach of contract, emotional distress, and wage-and-hour law violations. Liability for employment practices flows from statutes and common law.

Negligence



What is a Plaintiff Attorney's Dream Come True?



- Not having a Safety/HR policy
- Having one but not enforcing

Trending COVID-19 Employment Litigation



- Failure to provide a safe working environment/ Public Nuisance Litigation
 - These claims have been asserted as negligence claims, violations of state or federal workplace safety laws and COVID-19 safety protocols, and even wrongful death claims.
 - Common allegations include failure to provide workers with adequate personal protective equipment and failure to implement customer or visitor policies to protect employees.
- Discrimination Claims
 - Age and disability discrimination claims dominate COVID-19 related filings to date.
 - Example: A 70-year-old was denied a work-from-home accommodation that he requested due to his medical condition and age, which he asserted presented additional risk of complications from COVID-19 .
 - Example: A plaintiff was forced out of a job because of his age due to the employer's concern about exposing an older worker to COVID-19.

Trending COVID-19 Employment Litigation

- Leave Claims
 - Numerous lawsuits have been filed alleging that employees have been unlawfully denied sick leave or family medical leave for reasons related to COVID-19 under the Family Medical Leave Act, the Families First Coronavirus Response Act, state and local paid leave laws, and employer sick-leave policies.
- Retaliation and whistle blower claims
 - Typically asserted in reference to an employee's termination, retaliation claims commonly appear in these early COVID-19 related cases. Frequently these lawsuits assert that an employee was terminated for complaining about workplace safety or working conditions (including complaints about the failure to provide appropriate personal protective equipment or the failure to comply with applicable Covid-19 Safety protocols.)
- Wage-and-hour Claims
 - Cases are disputing compensation practices related to sanitation and hygiene protocols, expanded schedules, and on-call time. In addition, a number of cases asserting an employer's failure to pay contractually-agreed commissions or fees have been filed.
 - Expense reimbursement claims from work-from-home situations have not reached critical numbers but may become a more fertile area for employee-litigants in the coming months.

Proactive Steps to Avoid COVID-19 Litigation

- Have a return-to-work plan that addresses some of the safety concerns
- Prioritize addressing systemic issues that could affect large groups of employees
 - Employers should make time to create solid policies that address and minimize risks and concerns that could impact different employee populations on a collective basis.
- Review existing policies and consider their application in the context of COVID-19
 - Accommodation policies, typically used to provide reasonable accommodations for qualified employees with disabilities, may have broader application in light of the pandemic.
 - Employers should also carefully consider whether any of its efforts to promote a safe workplace – even those intended to protect older workers or workers with a medical condition that heightens risk – could have a discriminatory effect on the basis of protected characteristics.
 - Wage-and-hour policies could also be implicated as workers are asking to and being asked to work in different venues or with different hygiene protocols. Existing policies likely do not address those situations from a pay perspective.

Liability

- Third-party liability claims for bodily injury could be brought against the insured client for failure to mitigate or warn others of risk of contamination and such claims could be covered under general liability policy. Check these policies for pollution, bacteria or virus exclusions.
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Potential D&O claims



Shareholders may sue corporate officers for economic loss resulting from inadequate response to coronavirus. Most D&O policies exclude bodily injury but may apply depending on the wording of the bodily injury exclusion and the specific allegations in the shareholder's complaint.

Conflict De-escalation Amid COVID-19 Restrictions



- *Coronavirus-related restrictions are creating new workplace challenges as businesses and organizations re-open. Staff and customers may have differing views on the importance of personal space and safety, leading to an increased risk of confrontation. Prevent and de-escalate conflict before it turns into violence by learning strategies, tools and resources to use to create a safe space for all.*



Questions??

Thank you.