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CORONAVIRUS BUSINESS INSURANCE FAQ

Coronavirus's impact on business may soon eclipse in severity any previous economic downturn in U.S. history, even the Great Depression. With many firms shuttered and workers furloughed, business owners quite naturally are concerned about whether their insurance covers COVID-19 claims.

In this FAQ, we address some of the questions you've asked about various types of coverage. If you have specific questions about your policies, contact your independent agent. Please understand there is a great deal of confusion and misinformation today on what a policy might cover. Many policies were not priced with COVID-19 claims in mind.

For specific help with the following questions, talk directly with your Trusted Choice® Independent Insurance Agent.



Q. THE GOVERNMENT HAS ORDERED MY BUSINESS TO CLOSE. WILL MY INSURANCE COVER MY LOST INCOME?

Many state and local governments have ordered nonessential businesses to close for varying lengths of time to reduce the spread of coronavirus. If you are one of these businesses, you may be thinking your insurance can tide you through this difficult period. Unfortunately, that is not the case.

Even specific business income policies (also known as loss of use or business interruption) do not cover viruses.

First, such policies are designed to cover property damage leading to a business closing. Policies typically state that the "suspension" of business "must be caused by direct physical loss or damage to the property." Physical or property damage is generally evidenced by changes in the physical characteristics that require repair. With coronavirus, there is no property damage. Second, and more to the point, most policies specifically exclude bacteria and viruses.

One exception: Let's say your business sustained physical damage during a government-imposed closure. On the fifth day of a 30-day mandatory closure, a fire destroyed your property. Your policy likely would cover your lost income during the restoration period (subject to your policy limits), minus any income lost during the government-mandated closure. So, if it took six months to rebuild, you would receive payments for those six months, minus the 25 days your business closed due to the order.

To understand your business income policy, always consult with your independent insurance agent.

Q. WHAT ABOUT THE “CIVIL AUTHORITY” PROVISION IN A BUSINESS INCOME POLICY? WOULDN'T THAT APPLY TO THOSE BUSINESSES FORCED TO CLOSE?

It's true, these policies often include income protection stemming from the actions of civil authorities. The provision is triggered when property damage or the threat of damage is so great that authorities order an area closed or evacuated. The order essentially blocks access to property and thereby suspends the business, even though it may not have sustained any physical damage. The classic example is a fire or hurricane.

Does coronavirus meet the test for this provision? A lot depends on the nature of the government order and whether it truly prohibits you from accessing your premises. More importantly, is a virus covered under the policy? Business income policies are limited to property damage, so it is unlikely that coronavirus can meet that requirement.

The courts ultimately may decide the limitations of these policies. The first lawsuit to test the civil authority provision was filed by a New Orleans restaurant on March 13. Ocean Grill, located in the French Quarter, says that its “all risk” policy with Lloyd's should cover lost income since the policy does not exclude viruses or global pandemics.

In a rather novel argument, the restaurant says the policy's requirement of “direct physical loss” is satisfied by the fact that coronavirus can remain on surfaces for days. “The virus is physically impacting public and private property, and physical spaces in cities around the world,” the restaurant argued.

It's interesting that Ocean Grill's lawsuit was filed before a claim was filed with the insurance company. Such claims are analyzed on a case-by-case basis, so it's too early to draw any conclusions. But it's safe to predict that the “physical loss” test will be hard to pass. Some mitigating circumstances may be how long the virus survives, whether a property is contaminated or is likely to be recontaminated, and whether the government's order to close a business was made to protect physical property.

Your Trusted Choice agent can help keep you up to date as coronavirus-related insurance issues evolve.

Q. WILL MY BUSINESS INSURANCE COVER CLAIMS BY CUSTOMERS WHO SAY THEY WERE EXPOSED TO CORONAVIRUS ON MY PROPERTY?

A customer may claim they contracted coronavirus while on your property. But does an infection meet the definition of harm in common business insurance policies — called commercial general liability (CGL)? For most policies, the answer is no.

CGL policies cover bodily injury or property damage caused by an “occurrence” that takes place in the “coverage territory.” An occurrence is defined as an accident, including continuous or repeated exposure to substantially the same general harmful conditions. So, the first test would be to prove that the spread of coronavirus is an occurrence.

An injured party would then have to prove they contracted the virus on your premises or that it arose from your operations. This is a high bar to meet, but let’s assume the injured party is able to prove liability. Maybe you failed to follow health and prevention guidelines, or remained open when the authorities ordered your business closed.

The next question is whether your policy excludes certain things. A likely example is “expected or intended injury.” If a reasonable person would expect the virus to spread because of your action, you would not be covered.

Even if, first, you are legally liable; second, the incident qualifies as an occurrence; third, the injured party can prove the exposure is from your actions; and fourth, the claim is not excluded by “expected or intended injury,” you still may not be covered. This is because CGL policies commonly have communicable disease exclusions. If the exclusion is endorsed to your policy, your insurance simply won’t cover any injuries from coronavirus. Your independent agent can help you better understand your own CGL policy and what it covers.

Q. MY RESTAURANT WAS ORDERED CLOSED, BUT WE ARE ALLOWED TO DELIVER TAKEOUT FOOD TO OUR CUSTOMERS. ARE MY EMPLOYEES COVERED BY OUR BUSINESS INSURANCE IF THEY USE THEIR OWN CAR? ARE THEY COVERED BY THEIR PERSONAL AUTO POLICY?

Unfortunately, the answer is not a simple yes or no, and the reasons behind the answer can seem confusing. Your independent agent is your trusted ally and can help you understand your options and liabilities.

Generally, the driver's personal auto policy will cover the use of the vehicle to deliver food. Personal policies do exclude "public or livery conveyance," but delivering food is not considered a public conveyance. And courts seem to agree that livery conveyance doesn't apply to food delivery. Still, some insurers have rewritten their policies to specifically address and exclude food delivery. So, employees using their own vehicle to deliver food should make sure their policy covers this type of use.

Many business auto policies will cover employee use of a personal vehicle, but it is only to protect the business. Your independent agent can extend your business auto policy's coverage to your employees through an endorsement. As discussed below, the endorsement extends the policy's excess coverage, not the primary coverage.

The driver's personal policy will always be the primary coverage for a claim. In the case of an accident caused by the driver, the driver's personal policy would cover liability for both the driver and the business. If the driver's limits are exhausted, the business auto policy can provide secondary coverage—but only for the business if the policy is unendorsed. If the business policy has an "employees as insured" endorsement, the employee is protected by the business auto policy over and above his or her personal auto policy. An endorsement also protects against the possibility of the business owner's carrier taking legal action against the employee to recover the excess liability costs—known as a subrogation action.

If your employees are delivering food and you don't have a business auto policy, you could be exposing yourself to liability for damages caused by an employee. Ask your independent agent about obtaining business auto coverage. You should also make sure the employees who are delivering food have a personal auto policy with high coverage limits.

Once again, be sure to consult with your Trusted Choice Independent Insurance Agent.

Q. CAN MY EMPLOYEES APPLY FOR WORKERS' COMPENSATION AS A RESULT OF CORONAVIRUS INFECTION?

The test for whether coronavirus or any disease qualifies for workers' compensation is that it must be "occupational," meaning that it arose out of and was in the course of employment. And, it must be caused by conditions "peculiar" to the work.

The occupational test is a rather low hurdle. Depending on the state, it can be as simple as asking, "Was the employee benefiting the employer when exposed to the illness or disease?"

The higher hurdle is the "peculiar" test. If the illness or disease is not peculiar to the work, it is not covered under workers' compensation. An illness or disease is peculiar to the work when it is found almost exclusively in workers in a certain field. Or if there is an increased exposure to the illness or disease because of the employee's working conditions.

For example, black lung disease in the coal mining industry is a disease that is peculiar to a miner's work. Coal miners are subject to prolonged exposure to higher-than-normal concentrations of coal dust.

Another example: A healthcare worker contracts an infectious disease such as HIV or hepatitis as a result of contact with infected blood. The worker's peculiar exposure to such diseases results in an illness that is occupational and compensable.

Qualifying an illness or disease as occupational ultimately may require regulatory or legal intervention to sort medical opinion from legal facts. No one test is available to declare an illness or disease compensable or non-compensable; each case is judged on its own merits and surrounding circumstances.

Here are typical questions that come into play:

- What is the timing of the symptoms in relation to work?
- Have coworkers shown or experienced similar symptoms?
- How common is the illness among workers in this industry?
- Is the employee predisposed to this illness?
- What are the employee's personal habits and medical history?

At this point, it seems unlikely that contracting coronavirus will be covered by workers' compensation. To be occupational and compensable requires something peculiar about the work that increases the likelihood of getting sick. It's probable that the vast majority of employees won't be able to pass both the occupational and "peculiar" tests that would make getting sick with coronavirus compensable under workers' comp.

However, certain occupations, such as hospital workers, may be able to meet the occupational and peculiar tests. Ask your independent agent for help with your questions about workers' compensation, and for additional information about workers' comp and coronavirus, read [this article](#) in the Big "I" Virtual University.

A few things to keep in mind, which apply to all workers' compensation claims:

- The policy in effect at the employee's last exposure applies, even if the employee is working for another employer or retired when he or she gets sick with COVID-19.

Workers' compensation doesn't cover exposure that occurs off the job or traveling to or from the job.

Q. WE ARE REQUIRING OUR EMPLOYEES TO TELEWORK AT THIS TIME. WHAT IF ONE OF THEM GETS INJURED AT HOME? ARE THEY ELIGIBLE FOR WORKERS' COMPENSATION?

Coverage varies by state, and it can get complicated when employees are required to work from home. Their residence may be in a different state than where your company is located. So, you should check with your carrier or your independent agent to see which rules apply to you.

More importantly, questions may arise as to whether the employee was performing work or doing something for their own benefit when they were injured. Compensability is heavily fact-based, especially in work-from-home situations. Claims are thoroughly investigated, and the employee must be found to have been acting in the interest of the company when they were hurt.

You can limit workers' compensation liability for work-at-home employees by following some basic practices recommended by the [Society for Human Resource Management](#):

- Create a telecommuting policy that outlines your expectations for teleworkers.
- Establish guidelines for a home office, such as a designated work area, and provide training related to workstation setup and safety measures.
- If appropriate, periodically check home offices to help identify and eliminate safety hazards.

Set fixed work hours, and meal and rest periods.

For more help, make an appointment today with your Trusted Choice agent.

Q. WHY WORK WITH AN INDEPENDENT INSURANCE AGENT?

Independent insurance agents have access to multiple insurance companies, so they can find you the best coverage, accessibility and competitive pricing while working for you. And as the coronavirus pandemic evolves, they'll be there to help you adjust your coverage, up or down, to make sure you're properly protected without overpaying.

And most importantly, they can help you navigate the coverage that you have today, so you'll know where your insurance coverage might be able to help you through this difficult time.