Will the Insurance Pay?

Insurance response to COVID-19 claims
Content

- Work injury and illness.
- Increased costs and loss of revenue.
- Management liability.
- Employment practices liability.
- Cyber risk.
- What next?
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Lockton Companies: German Practice

- 50 US offices
- Founded in 1966
- Largest privately held insurance brokerage in the world
- 45 cross-border specialists
- Dedicated German Liaison
- 250+ US clients with German parents
Worker injury/illness during COVID-19

Possible scenarios

- Operations close, employees with current open workers’ compensation claims.
- Essential employee asked to quarantine or self-isolate.
- Employee tests positive for COVID-19.
- Employee alleges or indicates they got the virus from work.
Workers’ compensation response

Scenario: Operations close, employees with current open workers’ compensation claims.

Workers’ compensation response

Employer continues to make workplace/job accommodations.

Or, if the business is closed ...

Statutory wage replacement benefits under the workers’ compensation insurance claim until the employee is released to maximum medical improvement (MMI) or full preinjury duty.
Workers’ compensation response

**Scenarios:** Essential employee asked to quarantine or self-isolate, employee tests positive for COVID-19, and employee alleges or indicates they got the virus from work.

Workers’ compensation response

If a claim is a result of COVID-19 at work, then statutory benefits will apply.

**LEGISLATIVE UPDATE:** Some states, including CA and IL are considering presumptive legislation around WC and COVID-19. Developing...
Worker illness from COVID-19

**Employee benefits response**

- Health insurance: Self-insured plans should verify that the Stop Loss / Reinsurance is aligned with changes to co-pays and furloughs.

- Life insurance: Policies should respond to loss of life resulting from COVID-19.
Lost revenue and accounts receivable

- Possible scenarios:
  - Lost revenue due to customer nonpayment.
  - Increased costs
  - Supplier nonperformance.
  - Work stoppage and lost revenue due to COVID-19.
  - Work stoppage and lost revenue due to government order.
What will the insurer pay for?

**Government response**

- PPP: Paycheck Protection Program

- Government loans:

- Potential pandemic backstop: Theoretical.

**Property insurance and business interruption considerations**

- Is there property damage?
- Pending litigation and political activity.
Lost revenue and accounts receivable

- Why keep track of losses and expenses? There may be tax, loan, contractual or insurance advantages.

**What losses and increased costs should I track?**

- Labor
- Shipping
- Finance charges
- More stringent loan terms
- Performance penalties
- Material substitutions and increased material costs
- Loss of income
## Lost revenue and accounts receivable

### Tips

<table>
<thead>
<tr>
<th>Separate ledger account for COVID-19 losses</th>
<th>Document the date of the order for COVID-19 closure, directives, shelter in place, etc.</th>
<th>Obtain copies of the order.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Note how your company responded to the order and describe costs.</td>
<td>Describe the impact closure has on normal operations.</td>
<td>Describe any preventive measures taken and the costs associated.</td>
</tr>
</tbody>
</table>
Leadership and management

- Directors and officers insurance.
- Employment practices liability insurance.
Directors and officers insurance

**Existing claims**

- Inovio Pharmaceuticals: Allegations of misstatements surrounding vaccine development.
- Zoom: Recent privacy suit with plaintiff’s securities bar trolling.
Directors and officers insurance

COVID-19-related claims against directors and officers of private companies may be brought by:

- Investors
- Business partners, creditors or customers
- Consumers
- Governmental entities

A well-negotiated D&O policy will respond to these circumstances.
Directors and officers insurance

Should I go ahead and file a claim?

- Only if there is a known circumstance.
- Providing a nonspecific notice of circumstances based on the COVID-19 pandemic carries risks.
- We recommend that counsel assist in drafting circumstance notices. They may wish to set the foundation for certain future coverage positions.
Employment practices liability

Existing claims

- Lawsuits alleging failure to provide sick leave to employees in the wake of COVID-19.

- Workers exposed to COVID-19 through their jobs have sued for a 25% increase in pay as a result of working in hazardous conditions.

**Note:** Family and Medical Leave Act (FMLA) or the Occupational Safety and Health Act (OSHA) considerations.
Employment practices liability

Foreseeable claims

Failure to accommodate.
Disclosure of private information or employment-related defamation relating to COVID-19 infection.
Harassment of and retaliation against employees.
Wrongful termination, retaliation or discrimination.

Inconsistent application of workplace policies.
Perceived disparate treatment of employees.
Retaliation claims (whistleblowers and FMLA requests).
Wage and hour claims, particularly for employees in healthcare and essential industries.

A properly negotiated EPLI policy will respond to these matters.
Increasing cyber events

Common scenarios

Bandwidth problems: System failure of the organization’s IT infrastructure.

Hacked home and personal workstations.

Data collection and privacy:
- HIPAA, state laws and company privacy laws.
- Requesting restricted information from customers, vendors and employees.

Phishing: Coronavirus theme for phishing emails or other predatory techniques is prevalent.

Social engineering/invoice manipulation.

Ransomware.

Cyber policies can respond to these events, if desired.
System failure considerations

- Nuances around other related coverages are not as straightforward. While we expect business interruption resulting from a cyber incident to be covered as in normal course, system failures resulting in interruption will depend on the extent of coverage in place as well as the facts around the circumstance.

- Civil actions may exclude coverage, while technology failures under the insured’s control resulting in a system outage will most likely be covered, assuming that coverage is in place.

**Note:** System failure business interruption coverage is not a traditional coverage and usually is sublimited or priced at a high premium, depending on the operations of an organization.
How do we buy insurance going forward?

- Possible shift in strategy for insurance buyers:
  - From property insurance to cyber.
  - From property business interruption to cyber interruption.

- Increased EPLI and D&O focus.

- Renewed focus on health insurance strategies and costs.
Questions?
Our Mission | To be the worldwide value and service leader in insurance brokerage, risk management, employee benefits and retirement services

Our Goal | To be the best place to do business and to work

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