

## COVID-19 (“Coronavirus”) Information as of 3/18/2020

### **Please Read All Information Below**

#### **How will my insurance coverage respond to a coronavirus claim?**

- As with every insurance claim, the applicability of a given insurance coverage is a fact-specific inquiry.
- Each claim requires an investigation conducted by an adjuster in the Claims Department who applies **facts** of claim to the **specific language** within your specific policy, as interpreted by the laws of the state in which the policy is issued, in order to reach a conclusion as to what, if any, coverage is applicable to a given loss.
- Hypothetical claims questions cannot be accurately answered without the benefit of all the facts surrounding the incident that are obtained during typical claims investigation.
- **If you sustain a loss as a result of the coronavirus, we encourage you to promptly report the matter to us or your insurance carrier’s claims department for an investigation into the loss by an adjuster who can promptly extend, if any, insurance benefits that may be owed under the policy. Don’t Delay!**

The following is intended as a general overview of potentially applicable insurance coverage that may apply to respond to a claim involving coronavirus.

#### **Worker’s Compensation**

If an employee is alleged to have contracted the coronavirus at their workplace, an investigation would be done to determine if there was an increase risk or hazard of the employment as defined by the specific state statutes deeming it a compensable work injury or not.

What would not be provided is the defense and indemnification (50% of an applicable permanent disability award) for allegations of Serious and Willful related to the disease. Although this is remote and would be difficult to support, an argument could be made that an employer is responsible if they failed to take “appropriate steps” to warn and encourage potentially impacted employees to stay home.

**Don’t Delay!** California Code of Regulations (CCR) Section 9812 instructs that the claims administrator must accept or deny the injury claim within 14 days. Alternatively, the claims administrator may delay the decision for up to a total of 90 days.

#### **Property**

**Business Income/Extra Expense coverage may be available if your operations are suspended, but only if the suspension is caused by “direct physical loss” to the property** caused by or resulting from a Covered Cause of Loss. *The mere fear that the coronavirus may spread at your facility, and thus a reduction of customers/income, would likely not qualify as a “direct physical loss”.*

## Civil Authority

**If your premise is closed as a result of civil authority prohibiting access to your premises due to a “direct physical loss” from a Covered Cause of Loss, Civil Authority Coverage will be determined by an adjuster.**

In this Additional Coverage, Civil Authority, the described premises are premises to which this Coverage Form applies, as shown in the Declarations.

When a **Covered Cause of Loss** causes damage to property other than property at the described premises, we will pay for the actual

loss of Business Income you sustain...caused by action of civil authority **that prohibits access to the described premises**, provided that

both of the following apply:

(1) **Access to the area immediately surrounding the damaged property is prohibited** by civil authority as a result of the damage, and

the described premises are within that area but are not more than **one mile** from the **damaged property**; and

(2) The action of civil authority is taken in response to **dangerous physical conditions** resulting from the damage or continuation of the

Covered Cause of Loss that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the

damaged property.

Civil Authority Coverage for Business Income will begin **72 hours after the time of the first action of civil authority** that prohibits access

to the described premises and will apply for a period of up to four consecutive weeks from the date on which such coverage began

and will end:

(1) **Four consecutive weeks** after the date of that action; or

(2) When your Civil Authority Coverage for Business Income ends;

whichever is later.

### Highlights:

- Must be a covered “cause of loss.”
- Access to the area must be prohibited. You can still get into the area you just can’t go into the building (maybe).
- Must have been property damage within 1 mile of insured’s premises.
- The civil authority must prohibit access due to dangerous physical conditions. Is it the property or the people that might lead to a civil authority decree?
- 72-Hour “deductible”/waiting period

*Keep in mind most policies have exclusions or exclusion endorsements for “any virus, bacteria or other microorganism that induced or is capable of inducing illness or disease”. Such exclusions may bar coverage for damages arising out of the coronavirus.*

**The specific terms of your policy must be consulted by your carrier’s adjuster in the event of a claim arising out of coronavirus for final determination.**

## **Liability**

Liability coverage could potentially apply if a claim is brought against you by a 3<sup>rd</sup> party (example: a customer) stating that your negligence resulted in “bodily injury”, which includes sickness. In order to recover, a 3<sup>rd</sup> party would have to show that your negligence in the ownership, maintenance or use of the property cause them to sustain a “bodily injury”.

Remember that, no fault Medical Expense Coverage may also potentially be available to reimburse a 3<sup>rd</sup> party for medical expenses incurred as a result of “bodily injury” caused by an accident at your property. Exclusions for communicable diseases may also result in no liability coverage.

The above information includes only a general description of insurance coverages and does not include all terms, conditions and limitations.

## **What You Should Think About**

The Centers for Disease Control and Prevention (CDC) has recommended a number of strategies for employers that include:

- Actively encourage sick employees to stay home and not come to work until they are free of fever (100.4° F [37.8° C] or greater using an oral thermometer), signs of a fever, and any other symptoms for at least 24 hours, without the use of fever-reducing or other symptom-altering medicines (e.g. cough suppressants). Employees should notify their supervisor and stay home if they are sick.
- Limit non-essential travel and even then re-evaluate any travel to see if the purpose of the trip can be achieved via teleconference or web meetings.
- Ensure that your sick leave policies are flexible and consistent with public health guidance and that employees are aware of these policies.
- Do not require a healthcare provider’s note for employees who are sick with acute respiratory illness to validate their illness or to return to work, as healthcare provider offices and medical facilities may be extremely busy and not able to provide such documentation in a timely way.
- Employers should maintain flexible policies that permit employees to stay home to care for a sick family member. Employers should be aware that more employees may need to stay at home to care for sick children or other sick family members than is usual.
- Employees who appear to have acute respiratory illness symptoms (i.e. cough, shortness of breath) upon arrival to work or become sick during the day should be separated from other employees and be sent home immediately. Sick employees should cover their noses and mouths with a tissue when coughing or sneezing (or an elbow or shoulder if no tissue is available).

- Place postings that encourage [staying home when sick](#), [cough and sneeze etiquette](#), and [hand hygiene](#) at the entrance to your workplace and in other workplace areas where they are likely to be seen.
- Provide tissues and no-touch disposal receptacles for use by employees.
- Instruct employees to clean their hands often with an alcohol-based hand sanitizer that contains at least 60-95% alcohol, or wash their hands with soap and water for at least 20 seconds. Soap and water should be used preferentially if hands are visibly dirty.
- Provide soap and water and alcohol-based hand rubs in the workplace. Ensure that adequate supplies are maintained and place hand rubs in multiple locations or in conference rooms to encourage hand hygiene.
- Routinely clean all frequently touched surfaces in the workplace, such as workstations, countertops, and doorknobs. Use the cleaning agents that are usually used in these areas and follow the directions on the label.

Make sure the confidentiality requirements of Americans with Disabilities Act (ADA) are adhered to when notifying other employees of possibly impacted employees. Employees exposed to a co-worker with confirmed COVID-19 should refer to CDC guidance for [how to conduct a risk assessment](#) of their potential exposure.

Strongly consider consulting with an HR Attorney regarding terminations, reduction of staff, best HR practices as needed.

### **A Final Note from Angela Papastathis**

At such a time of uncertainty, we will continue to do our best to provide the service and support that you, our valued clients, have come to expect from us.

As of now, our office will remain open with our regular business hours. We will let you know if changes occur.

We ask for patience as we address everyone's questions, emails, and concerns.

*Please check your emails regularly for updates as we weather this storm together as a community.*

**Stay Safe and Healthy!**