

CORONAVIRUS GUIDE FOR BUSINESSES

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As the outbreak of the 2019 novel coronavirus (COVID-19) spreads, breaking down global supply chains, choking travel and shutting down long-planned events, employers are at a crossroads on how to respond while at the same time ensuring they can continue their operations.

Businesses have a number of responsibilities, including taking steps to protect their workers and customers while fulfilling their legal obligations. Employers are in a difficult position because the workplace has the potential to be a significant source of transmission.

There are also liability issues to consider and some businesses will file claims against their insurance policies for lost business, event cancellations and liability if it is alleged that a third party contracted coronavirus at their facility.

If you have employees in occupations that may be of higher risk of contracting the virus, you could be required to take certain measures to comply with OSHA's General Duty Clause. There are also workers' compensation implications to consider.

Finally, if you have workers who come down with the virus, you will need to consider how you're going to deal with sick leave issues. Additionally, workers who are sick or have a family member who has been stricken, may ask to take time off under the Family Medical Leave Act.

BUSINESS INSURANCE IMPLICATIONS

COVID-19 is forcing businesses to face a number of risk, liability and insurance implications.

Companies could seek coverage for a variety of claims stemming from the outbreak, including workers' compensation, business interruption, liability and more. And, now that the World Health Organization has upgraded coronavirus to a pandemic, the economic fallout may be expansive - hitting your company's sales or supply chain.

Businesses should act now to be prepared as well as understand which of their insurance policies could come into play. Claims payouts will depend on the terms of the policies, exclusions and local laws, as well. Here's a look at the policies that could be affected.

Workers' compensation

Workers' compensation policies generally extend insurance benefits to employees for injuries and illnesses "arising out of or in the course of employment."

That wording makes it difficult for most workers to file a claim if they suspect that they got the virus at work, presumably from another employee, a customer or visitor to the workplace.

Workers' compensation laws vary from state to state, but typically, communicable diseases are considered non-compensable since it would be nearly impossible to say if an employee contracted the ailment at work or in another setting altogether.

The presumption is that a coronavirus claim is not compensable, except for these situations:

- Anybody working in a setting where there are patients being treated and tested for the coronavirus would have a strong claim if they contracted the virus. This would include clinics, doctor's offices and hospitals.
- Personnel who have traveled abroad on business and upon return discover that they have fallen ill and contracted COVID-19. They could file a workers' comp claim since they likely caught it while on the trip, which would technically be "arising out of or in the course of employment."

State laws governing workers' compensation insurance limit how a policy can apply coverage to employees outside the U.S. If you have employees that are traveling extensively or are working on assignment abroad, you may find they are not covered by your workers' comp policy.

General liability

Policy exclusions may exist for claims arising from a pandemic, virus, bacteria, etc. And where the coronavirus is not necessarily excluded under commercial general liability, for coverage to apply, a third party would need to establish that you were negligent in some way that created a risk of contraction.

Your main defense in these cases is to be able to show that you took the appropriate steps to reduce the chances of transmission in your facilities (like policies and procedures and regularly cleaning surfaces and screening people who enter your worksite). It is thought that if the exposure at work is no greater than the risk of contraction to the general public, then your company can not be held liable.

Business interruption

Business interruption coverage replaces income that was lost due to a disaster, such as a fire on the premises of the company or one of its suppliers, or a hurricane that hinders a company from operating.

It is a common coverage on a business owner's policy or commercial property policy. Most policies require there to be some type of direct physical loss or damage to either your premises or some part of your supply chain in order to trigger business interruption coverage. Without that trigger, insurers would likely argue that a virus in your facility is not physical loss or damage.

Additionally, viruses and disease are typically not an insured peril. In many cases, viruses and disease may be expressly listed as an ex-

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clusion to your policy.

There is potential coverage through communicable disease coverage under proprietary insurance carrier forms if the insured is closed by a “public health authority” order for closure, decontamination, etc. It’s worth noting that these usually require the order to happen, so the insured cannot voluntarily decide to close and then claim coverage. Also, the coverage that is available under these circumstances are often times sub-limited to a very low level.

Event cancellation

Authorities are starting to announce bans on public events, City of Austin, San Francisco, and Seattle are amongst a growing number of cities taking action and creating new public gathering policies. Prior to that a number of seminars, trade shows and conferences have been cancelled around the country.

If your organization had been planning to hold an event – a seminar, convention, summer activity, summer camp or concert – you might be able to recoup your losses if you had bought event cancellation insurance.

This insurance protects event revenues and related expenses against the risks of cancellation, postponement, curtailment, relocation or abandonment of the event for unforeseen circumstances beyond the control of the event organizer.

Beyond the lost revenue, the costs of canceling a large event can run into the tens of millions of dollars, if not more. While the specific terms of event cancellation policies vary, many offer broad “all-risk” or “all-cause” coverage that is triggered by any unexpected cause that is not expressly excluded under the policy.

Other policies, however, are written such that only specific causes or risks (like terrorism or natural catastrophe) trigger coverage.

While some event cancellation policies include exclusions for infectious or communicable diseases (which would include COVID-19), some policies may not.

Business travel insurance

Business travel accident insurance would likely offer protection for those who travel on business domestically or internationally, foreign employees of U.S.-based businesses and U.S. employees on offshore assignments. This relatively inexpensive policy covers:

- Traditional accidental death & dismemberment coverage.
- Emergency evacuation, repatriation, and out-of-country medical benefits that cover costs for the treatment and transportation of sick or injured employees.
- Optional coverage for unexpected medical expenses.
- Again, your policy exclusions would need to be reviewed to see if any coverage is available.

EMPLOYMENT ISSUES

Employers will have to start considering what steps they can take to protect their workers while fulfilling their legal obligations.

And if you have employees in occupations that may be of higher risk of contracting the virus, you could be required to take certain measures to comply with OSHA's General Duty Clause.

On top of that, if you have workers who come down with the virus, you will need to consider how you're going to deal with sick leave and Family Medical Leave Act issues.

Employer regulatory/legal concerns

OSHA - OSHA's General Duty Clause requires an employer to protect its employees against "recognized hazards" to safety or health which may cause serious injury or death.

According to an analysis by the law firm Seyfarth Shaw: If OSHA can establish that employees at a worksite are reasonably likely to be "exposed" to the virus (likely workers such as health care providers, emergency responders, transportation workers), OSHA could require the employer to have developed a plan with procedures to protect its employees.

Although OSHA does not have any regulations concerning pandemic preparedness, it did issue a guide on pandemic preparedness in 2013. In that guide, OSHA recommends that employers develop and implement plans to reduce the risk of infection among employees by:

- Limiting employee contact with infected individuals,
- Allowing infected employees to take sick leave,
- Allowing staff to telecommute, and
- Using phone or teleconferencing instead face-to-face meetings.

OSHA in mid-March released guidance to help employers prepare their workplaces for an outbreak of COVID-19, along with a reminder that any incidents of employees contracting the novel coronavirus at work are recordable illnesses, subject to the same rules and failure-to-record fines as other workplace injuries and illnesses.

While OSHA specifically exempts employers from recording incidents of employees contracting common colds and the flu in the workplace, COVID-19 is not exempt.

Protected activity - If you have an employee who refuses to work if they believe they are at risk of contracting COVID-19 in the workplace due to the actual or probable presence of the virus, what do you do? Under OSHA's whistleblower statutes, the employee's refusal to work could be construed as "protected activity," which prohibits employers from taking adverse action against them for their refusal to work.

Family and Medical Leave Act - An employee working for an employer with 50 or more workers is eligible for up to 12 weeks of unpaid leave if they have a "serious health condition."

The same applies if they need to care for a family member with a serious condition. The virus would likely qualify as a serious health condition under the FMLA, which would warrant unpaid leave.



Discrimination laws – If you plan to require employees to work from home, make sure that everyone is treated equally and that you are not giving anybody preferential treatment. Be especially attuned to making decisions based on age, gender, race or national origin.

If you impose reasonable restrictions that treat all workers in a certain class the same, you can put standards in place that require anybody who has potentially been exposed or was sick and has recovered, to be cleared for duty by a doctor before returning.

Developing new policies

You should consider reviewing your sick leave and paid-time-off policies to allow for more flexibility. A sick employee who has exhausted their sick leave should not return to work if they haven't recovered, as they would be a danger to both themselves and others.

You do not have to be confined to your standard operating procedures during a health crisis. You have the option to loosen your employee benefit reins, including:

- Granting additional sick pay and sick days.
- Assisting employees in paying fully or partially for group health plan copays and out-of-pocket expenses if they fall ill.
- Creating policies that give employees confidence that they will not be penalized for taking sick leave. If they are not afraid of losing their jobs, they will be more likely to self-report, and thus reduce the likelihood of potential exposure or spread.

BUSINESS CONTINUITY

During times of crisis one of the main concerns is business continuity. How will you keep operations going if you have trouble getting the supplies you need or if a large portion of your staff is unable to work due to quarantining, or if they have fallen ill?

If you plan ahead now, you may be able head off problems before they become unmanageable, or at least cushion the blow.

To start, appoint a team of department heads who will be responsible for creating your plan. They should meet to plan their agenda. They can start by considering all of the possibilities that may occur and how you can respond. These may include:

- The government requires people to self-quarantine.
- A suspension of air travel, both domestic and international.
- Inability to get supplies, parts or merchandise.
- Employees are unable to work.

First the team should:

- Identify the organization's key functions and the staff needed to perform those functions. These would be operations that are vital to keep operations going.
- Identify which of these functions can be done from home, and arrange telecommuting options for those staff.
- Identify which functions can be transferred to another facility, if you have more than one location.



- Identify functions that can be put on hold and are not critical to day-to-day operations.
- Appoint one or more point-persons for dealing with related issues, such as monitoring for announcements by local and state health authorities, as well as by the Centers for Disease Control, for guidance or general orders.

Once you have done this exercise, the team can start working on continuity plans. While every business has its unique dynamics, there are some general aspects that are typical in most businesses:

Supply chain and logistics

- Identify alternative vendors in areas that your current suppliers are not operating in. Reach out to them so you have a contingency in case your main suppliers are unable to fill your orders.
- Build up stock to insulate your operations from supply disruptions. Consider stockpiling essential raw materials, parts and supplies that are critical to keeping you in business.
- Establish a system for regular and frank communications with your vendors, customers and suppliers to share information on how their and your operations are being affected.

Communications, data and tech

- Stop holding face-to-face meetings and start teleconferencing.
- Inform workers you have chosen for remote work, and make tech arrangements for them (VPN, high-speed internet, etc.).
- Ensure your phone system has the capability to transfer high numbers of calls to employees in different locations.
- Distribute a master list of key personnel for employees to contact in case they have questions and concerns

Policies and procedures

- Establish procedures for employees to contact a company point-person who can answer their questions regarding work and requests for telecommuting.
- Establish procedures for what employees should do if they feel sick.
- Suspend all international business travel, and limit domestic travel to critical functions.
- Require any staff that travel on vacation to a country that has had a high number of COVID-19 cases to self-quarantine for 14 days before returning to work.
- Develop procedures for your staff to limit contact with the public, customers and vendors. This would include social distancing when dealing with them. This may however be difficult to implement in an establishment that deals with customers such as retailers, restaurants and hotels.
- Require key personnel to write a “beer truck memo” that details all of their responsibilities and step-by-step instructions for doing their jobs. This way, someone else should be able to use the memo to at least perform their key functions if that employee were to be hit by a “beer truck” – or the coronavirus, in this case.



KEEPING THE WORKPLACE SAFE

Since most people go to work five days a week and often work in close quarters with others, be they customers or colleagues, it's an employer's duty to do all it can to make sure the possibility of coronavirus transmission is as low as possible.

That can be done by proper planning, training and safeguards – both physical and procedural. To safeguard your employees and facilities you need to first understand the coronavirus.

According to the Centers for Disease Control (CDC), the virus is transmitted between humans from coughing, sneezing and touching, and it enters through the eyes, nose and mouth.

Reported illnesses have ranged from mild symptoms to severe illness and death for confirmed COVID-19 cases.

The following symptoms may appear two to 14 days after exposure:

- Fever
- Cough
- Shortness of breath
- Body aches
- Gastrointestinal distress
- Diarrhea

For the protection of your staff as well as for legal reasons, you will need to be able to show that you have provided your employees with accurate information along with prudent safety procedures to help prevent the spread of infection.

You should also provide them with a means to act on that information (such as ensuring you have enough soap in your restrooms and hand sanitizer throughout your facility).

Start now by educating your employees about how the coronavirus spreads, as well as symptoms. Provide them with specific public health guidelines created by the CDC or the World Health Organization.

Reducing risk of transmission

To reduce the risk of COVID-19 spreading in your workplace, the CDC recommends:

- Checking all employees, customers and vendors for fever with an infrared temperature gun when they enter the workplace. You can buy one online for less than \$100.
- Ensuring that employees have easy access to handwashing facilities with stocked soap dispensers.
- Placing hand sanitizer in strategic places throughout the workplace.
- Asking employees to wash their hands or use hand sanitizer if



they have been out for lunch or have come into contact with others.

- Cleaning and disinfecting surfaces, workstations, handrails, countertops, elevator buttons and doorknobs routinely.
- Providing tissues, no-touch disposable receptacles and hand sanitizer throughout the workplace.
- Asking employees to cover their coughs and sneezes with a tissue. Everyone should wash their hands after they cough, sneeze or blow their nose.
- Asking employees to stay home if they have respiratory symptoms (coughing, shortness of breath) and/or a fever.
- Asking employees who can work remotely to telecommute. If remote work isn't possible, allow workers to stagger shifts and rearrange the office to increase social distancing.
- Discouraging employees from using co-workers' phones, desks, offices or other work tools and equipment.
- Avoiding shaking hands. But if you do, wash your hands immediately afterwards.
- Minimizing situations where groups of people are crowded together, such as in a meeting. Consider holding a walking meeting outside, a Skype conference call or an e-mail to communicate with each other.

If you fail to provide this guidance, you could open yourself up to liability should employees become infected in the workplace and they can show that you failed to communicate and implement this policy.

Individual prevention tips

Your employees should be trained in the following prevention tips:

- Don't touch your face.
- Wash hands frequently throughout the day for 20 seconds at a time. That's about as long as singing "Happy Birthday" twice.
- Clean your cell phone after washing hands with an ethylene or isopropyl alcohol mixture of at least 70%.
- Avoid crowded settings and other situations that increase the risk of exposure to someone who may be infected.



Sick employees

The CDC recommends requiring sick employees to stay home until they are free of fever or other symptoms for 24 hours. If they are diagnosed with COVID-19, they should stay home until they are cleared for duty.

If you have temporary workers or contract employees, ask the staffing agencies to require the same of the workers they are supplying you with.

If an employee comes to work with a fever, cough and shortness of breath, they should be isolated and sent home as soon as possible. Make sure they are supplied with tissues that they can sneeze and cough into if they must. Ask them to make an appointment to see their doctor and report their symptoms.

Communications

As the coronavirus spreads, so will the rumors surrounding it, which can frighten workers.

You should have a communication plan in place so that you are able to reach all workers with updates about infection control and company policy whether they are at work or home. We suggest checking and updating all of your employees' contact information like personal e-mail addresses, home addresses and mobile phone numbers.

These communications should come from or be cleared by your coronavirus team and coordinated to avoid sending out conflicting information. Even the CEO or president should work with the team before sending out messages, so as to ensure continuity and accuracy.

