



■ FAQs for COVID-19 Insurance Coverage

This FAQ is not a substitute for consulting your Risk Strategies team of experts and, if applicable, the underwriter.

Will workers who contract COVID-19 be able to file for Workers Compensation?

Under certain circumstances, depending on the state and the insurer, claims from healthcare providers and first responders involving COVID-19 may be allowed. Claims from others who meet certain criteria for exposure to COVID-19 will be considered on a case-by-case basis.

In most cases, however, unless the individual is in a high risk job (such as healthcare providers), exposure and/or contraction of COVID-19 is not considered to be an allowable, work-related condition. However, some states are looking to adapt to this evolving situation and it is possible some will take measures to expand the scope of work-related conditions.

We recommend that employers file all potential workers compensation claims related to COVID-19 to open all potential paths to healthcare to their employees via their applicable benefits programs, including workers compensation coverage. Many states have enhanced accessibility to unemployment benefits as well.

If you have workers currently out of work due to occupational injuries, it is important to bear in mind that their ability to obtain elective surgeries and rehab treatments may be limited. In the short term, we expect to see some increase in cost on such claims as well as an increased period of time before employers are able to bring workers back on light duty.

What is OSHA requiring from employers when employees contract the virus?

COVID-19 can be a recordable illness if a worker is infected as a result of performing their work-related duties. However, employers are only responsible for recording cases of COVID-19 if all of the following conditions are met:

1. The case is a confirmed case of COVID-19 (see CDC information on persons under investigation and presumptive positive and laboratory-confirmed cases of COVID-19);
2. The case is work-related, as defined by 29 CFR 1904.5; and
3. The case involves one or more of the general recording criteria set forth in 29 CFR 1904.7 (e.g. medical treatment beyond first-aid, days away from work).

Will your property policy cover a Government Mandated Shutdown of my facility for lost revenue under the Business Interruption form?

This depends on many factors. Certain things should be considered to assess each specific situation.

- Always refer back to actual policy terms. Many policies have a virus and bacteria endorsement that excludes losses caused by or contributed to by a virus like COVID-19.
- In general, Business Income (aka Business Interruption) coverage on a property policy is typically triggered in the event of a Covered Cause of Loss (such as a fire) **at/on an Insured Property that results in physical loss or damage.**



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- Within Business Income cover, The Civil Authority extension could apply if the insured can prove that an order of civil authority to shut the insured's location was directly due to a Covered Cause of Loss **at or near the insured's location (depending upon distance requirements)**.
- At this time, COVID-19 is still being assessed on a case by case basis, but many insurers have stated publicly that COVID-19 will not be considered a Covered Cause of Loss. Accordingly, for companies with standard ISO Property policy forms, Business Income and Civil Authority coverage **would probably not apply**.
- Will business interruption due to COVID-19 be considered a physical loss or damage? It is possible that business interruption due to COVID-19 could be considered a physical loss or damage, but many insurers have already stated that there must be an **actual, NOT suspected, disease present at that insured location for BI coverage to be triggered**.
- In the event a business is shut down by an executive order (civil authority) prior to the discovery of COVID-19 at the insured location and the virus is discovered **after** the shutdown date, carriers may take the position that the shutdown was not due to COVID-19 and disclaim coverage.

Should you file a Property/Business Interruption claim despite the potential lack of coverage?

We recommend that all potential claims be reported to the applicable carrier, as the circumstances of each claim may be different and will likely be considered separately. All coverage determinations under the applicable policy will ultimately be made by the insurance carrier(s).

Please also note that COVID-19 has the attention of insurance regulators across the country and it remains possible that some form of guidance, regulation or legislation will be issued by various state or federal authorities, which could impact the manner in which insurance carriers might respond to a COVID-19 related claim.

What are the “Property Claim Chain” and “Business Interruption Chain” and how can you use it to understand how/if my claim is covered?

A “claim chain” is a process of analyzing a “typical” situation that can lead to a favorable determination of coverage:

- **Property Claim Chain - At a minimum, for property damage coverage to apply there must be:**
 1. Physical loss or damage
 2. To property not otherwise excluded
 3. By a peril not otherwise excluded

If the above chain is not broken, coverage is triggered subject to additional policy terms like deductibles, limits, and coinsurance for example.



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- **Business Interruption Claim Chain – At a minimum, for Business Interruption to apply there must be:**

1. Physical loss or damage
2. To property not otherwise excluded
3. By a peril not otherwise excluded
4. Which causes an interruption in business operations

If the above chain is not broken, then coverage is triggered subject to additional policy terms as noted above for the defined period of indemnity.

The Business Interruption chain rule applies to Contingent Business Interruption as well. However, the physical loss or damage needs to occur at a supplier, customer or other key business partner's property to trigger coverage.

- **Contingent Business Interruption Claim Chain – At a minimum, for Contingent Business Interruption to apply there must be:**

1. Physical loss or damage
2. To a supplier's, customer's, or other key business partner's property (which can be specific or blanket)
3. To property not otherwise excluded
4. By a peril not otherwise excluded
5. Which causes an interruption in business operations

If the above chain is not broken, then coverage is triggered subject to additional policy terms as noted above for the defined period of indemnity.

What information should you provide to your broker/agent/insurer in order to file a claim?

If you want to file a claim, we suggest you provide the following to your broker/agent/insurer (assuming a specific claim form is not already in use):

1. Client Name (as it appears on your policy)
2. Policy Number / Insurer
3. Date business operation ceased
4. Reason for closure (Example: Mayor issued a city-wide mandate closing all restaurants effective 3/16/2020)
5. Location (s) if known
6. Claim Description (Here's an example: Due to the government ordered shutdown, the insured had to cancel performances starting on 3/13/20 and performances will remain cancelled until the order is lifted.)



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What happens if you are sued by an employee or a third party for contracting COVID-19 on your premises?

A general liability policy responds to allegations of negligence which lead to Bodily Injury or Property Damage. The definition of Bodily Injury typically includes "Disease" as a covered item. However, many policies now include a broad exclusion for Virus as a response to the SARS outbreak. Please check with your agent/broker if you do not know if your policy includes the Virus exclusion. In all cases, it will be up to the plaintiff in any such litigation to prove that you acted negligently in allowing the alleged infection to spread to the third party.

As always, the insurer will ultimately determine whether coverage applies.

What steps should you take to protect yourself from potential liability in connection with COVID-19?

We advise all of our clients to take the following steps whenever and where ever possible:

1. Clean their premises as frequently as possible, documenting the steps taken.
2. Track all visitors and staff that come onto your premises. Consider limiting vendor and/or 3rd party access to your sites.
3. If an employee tests positive for COVID-19, make sure you do not disclose the name of the applicable employee to other parties, as such information is protected under HIPPA (and other) laws, unless disclosure is otherwise required by law (i.e. disclosure to the CDC).
4. Where applicable, ensure the proper Personal Protection Equipment (PPE) is available and in use in line with CDC and OSHA guidance, which will likely change frequently. Depending on the situation, there may be a need to make available / use items such as gloves, protective eyewear and respirators/masks.
5. Establish guidelines for those on or entering your premises to maintain the required minimum 6 feet clearance.
6. With regards to your independent contractors and employees, be sure to encourage/require that if they show any symptoms of COVID-19 that they stay home.



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If you are designated as an “Essential Business” and will remain operational, are there any concerns?

If you are designated as an “Essential Business” and your employees and independent contractors are accordingly required to continue working during these uncertain times, they may have concerns. If any employee has a concern about possible infection at work, we encourage you to consider the suggested steps outlined above as well as to:

1. Require all food brought in by employees to be sealed.
2. Stress to all employees, if they feel sick or have any symptoms of COVID-19 such as coughing, sneezing, sore throat or temperature they should stay home and should not return to work until all symptoms have subsided.
3. Require that employees disclose whether they have been around anyone infected with COVID-19 and, if so, do not permit the employee to come to work until they have been free from exposure for at least 14 consecutive days.
4. Encourage your employees to follow the CDC Guidelines found here regarding protecting yourself from infection:
<https://www.cdc.gov/coronavirus/2019-ncov/prepare/prevention.html>, including, specifically:
 - a. Washing hands frequently
 - b. Avoiding close contact
 - c. Cleaning and disinfecting frequently touched surfaces daily
 - d. Covering mouth and nose when coughing or sneezing
 - e. Not sharing supplies including gloves, tools, etc.