

[best practices]

How **COVID-19**

is Affecting Liability for

Employers

By Ross Conner, Hotchkiss Insurance Agency, LLC



In a previous article, we discussed several precedent-setting cases with respect to making claims on Builders Risk policies for business interruption due to Covid including the direct damages wording on some policies that states that in order to file a valid claim, your property has to have suffered direct damage. Courts have

consistently failed to agree that COVID-19 constitutes "direct damage" to a facility or project. Besides watching out for Builders Risk policy loopholes, here are some other areas of potential liability necessitating additional risk mitigation tools that you need to take a look at:

Employment Practices Liability Issues (EPLI)

Wage and Hour claims are on the rise with respect to how furloughed and terminated employees are paid. Many employers across the country have been sued by employees alleging violations of the Minimum Wage Act due to their effective payment falling below the Federal Minimum Wage requirement in their particular state. EPLI insurance protection helps with defense costs in these situations. Wage and Hour damages are low but defending them is always expensive.

Work Comp

How Work Comp carriers are treating Covid-related illnesses creates another increased risk factor for employers. Since "ordinary diseases of life" are not normally included under Work Comp coverage, it is generally understood so far that Work Comp is not the typical protection for employees who contract the Covid virus. However, if workers are deemed to be "essential" and they "get Covid in the course of employment," then there could be a "presumption" of Work Comp coverage. Generally-speaking, most medical plans cover many of the expenses associated with COVID testing, treatment, deductibles and co-pays. But be sure to check the details. Apparently, Medicaid does not pay deductibles and co-pays for COVID.

Cyber Security

Be aware that cyber exposure is increased for employers due to the need to have remote access in place for employees so that they can work virtually from home. Each remote workstation creates an entry-point that potentially might allow hackers to access your company systems. One example is Zoom-bombing. The increased use of Zoom as an alternative to face-to-face meetings creates widespread exposure to hackers and Internet trolls, who exploit and work around the application's security features to disrupt Zoom sessions, often hijacking the teleconferences and inserting material that is lewd, obscene, racist, etc. Twitter accounts have been used to advertise passwords for sessions that are vulnerable to being joined without authorization. Regularly scheduled Cyber Security Assessments are vital to ensure that your systems are up to date, and Cyber insurance is now considered a necessity to handle first and third party damages due to breaches.

General Liability

GL protection can come into play with Covid if a company is found negligent in an "occurrence" as defined in their GL policy, and others get sick as a result of its negligence. To protect themselves, all business owners need a written COVID Safety Management Plan that is in accordance with CDC guidelines. Holding your employees to this plan and following local guidelines for operational hours and standards for your specific industry is key to reducing your liability. Note that many carriers are adding the "CG 21 32 Communicable Disease Exclusion" to their GL policies to protect themselves against Covid exposure claims. Look for a policy that does not have this exclusion.

Laws, regulations and agency guidelines continue to evolve and increase as Covid lingers, and we must continue to watch and analyze new and different types of claims arising as a result.

It is an essential best practice for business owners and their insurance advisors to anticipate potential exposure and be sure that the wording in their policies are written such that they provide the best protection against ever-increasing business risks.