

COVID-19 Related Business Interruption Coverage

Businesses across the country are temporarily closing their doors to customers, clients and employees to enforce social-distancing in an effort to slow the spread of the coronavirus. Some have done so voluntarily, asking employees to work from home or closing their store fronts and asking customers to order on-line. Others have closed completely or modified their service mechanism at the instruction of state and local government. Restaurants, bars, entertainment venues and others in the retail, hospitality and service industries have been hit particularly hard by these necessary steps to reduce the public exposure.

The economic impact of these unprecedented steps immediately raises the question: *Am I insured for this?* The answer is that it will likely be difficult to obtain coverage, unless you have an insurance policy specifically designed to provide coverage for business interruption from pathogens or pandemics. Such policies exist, but coverage for these risks is generally not available under the standard property insurance policies most businesses buy. Here's why.

The standard commercial property insurance policy requires the insured premises to be actually damaged by a covered loss to trigger business interruption coverage. Standard business interruption coverage requires a suspension of operation caused by "direct physical loss" to the insured premises.

Theoretically, because the virus can live on surfaces for a period of time, there could be an argument for necessary suspension from "direct" damage if there is evidence of actual contamination. Some courts have reached similar conclusions in other circumstances. But most businesses will close or limit operation to *avoid* contamination and spread, not because of it. Even if there is some contamination, the coverage would likely be limited in time. Business interruption policies only cover income loss during the period of restoration. That period ends when the property is or should be restored. A business can be decontaminated fairly quickly, so any damage caused by "contamination" would not require a long suspension. Many policies also require a waiting period of up to 72 hours before coverage starts, so coverage would be further limited by this waiting period.

Civil authority is a separate type of business interruption coverage that applies when a business is closed or limited by governmental action. However, the governmental action must stem from direct covered damage to another property near the insured premises which prohibits access to the insured business. Some policies require damage in the "immediate" surrounding area, while some give a set distance away. In any event, there must be some relationship between an otherwise covered loss at nearby property and the limitation of access to the insured business. A general lockdown would likely not be sufficient.

Even if there is contamination at the insured business or closure based on actions of civil authority from contamination, damage from the virus will be explicitly excluded under many policies. Exclusions for viral contamination were placed in many policies more than 10 years ago following other pandemics. Older policies or non-traditional policies may not have this exclusion, so always check the policy language to see if there is an argument for coverage.

Although coverage for this event is unlikely under standard policies, coverages vary based on the form used and the carrier. We always recommend having a professional review the specific policy language to determine if there is a potential for coverage. Because the policy will limit the time for making claims, insureds and carriers should always review specific scenarios against the policy language and applicable law and timely make a claim if there is the potential for coverage.

We also expect policyholders to challenge some of these provisions in court. At least one suit seeking coverage for a restaurant closed by the actions of the State of Louisiana has been filed in New Orleans. HAHS will monitor the progress of this and other coverage suits as the law regarding coverage for this pandemic develops.

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INSURANCE Alert

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