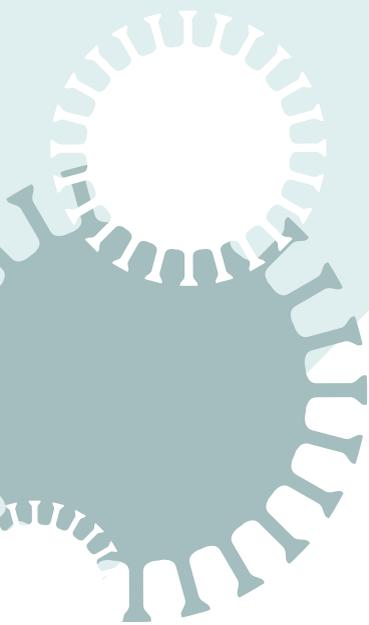


NJSBA

PANDEMIC TASK FORCE

Considerations for Insurance Policyholders



**NJSBA: HERE FOR
YOU**

COVID-19 raises a number of insurance issues for businesses. Your firm may need to update various policies to preserve your rights to coverage. Every firm should discuss their insurance needs with their broker and also conduct their own review of all policies to ensure that insurance protections and coverage gaps are understood and evaluated as part of your ongoing business plans. An overarching maxim to keep in mind is this: READ YOUR POLICY FIRST, THEN MAKE YOUR DECISIONS.

GENERAL SUGGESTIONS

- Obtain and review complete copies of all insurance policies your firm has purchased with an eye on how your business has changed and to identify any potential coverage “gaps.”
- Clearly communicate with your insurance broker about changes in your business and how best to update insurance carriers. Document these communications.
- Carefully read insurance renewal notices and policy applications to ensure that all statements about your firm, business and cases are accurate and up to date.
- If your firm has property coverage, consider submitting a claim for any business interruption losses you may have suffered due to COVID-19.

WORKER'S COMPENSATION INSURANCE COVERAGE

- The Insurance Information Institute predicts that workers' compensation (WC) insurance providers will be one of two categories of insurers to experience the greatest impact from the coronavirus pandemic (along with health insurers).
- Firms may need to update WC carrier with any changes in workforce.
- WC carriers may have different classifications for “work from home” employees than for employees working in office.
- Workers' compensation policies are often state specific for coverage and based upon where the main office is located; however employees may now be working from home in two or more states, implicating WC laws for multiple states and requiring policy updates.
- Communicable diseases are not typically covered by WC, however they can be if the worker can show the disease was contracted in the work place.

- Work relatedness: How do you prove it was contracted at work? This may be easier for first responders to prove and harder for non-medical personnel.
- Certain states are in the process of passing laws stating that health care workers and first responders who get COVID-19 are presumed to have contracted it through work and eligible for WC, with the burden shifting to employers to prove the disease was NOT contracted at work.
- This is an area of law evolving daily so keep an eye on latest to see if it impacts your business.

Note: Waivers of WC benefits arising from contracting disease in the workplace are not enforceable.

EMPLOYMENT PRACTICES LIABILITY INSURANCE (EPLI) COVERAGE

- As firms change their employment practices, steps need to be taken to ensure they are not discriminatory.
- Consider consulting with an employment lawyer to protect against discrimination claims.
- Consider consulting with EPLI insurance carrier re: best practices to prevent claims. “
- Promptly notify EPLI carrier if any claims/complaints are raised.

GENERAL LIABILITY INSURANCE COVERAGE

- Law firms and clients could face claims if management is aware that someone in office area has COVID-19 symptoms and does not take steps to protect others.
- Review your liability policy, examine the scope of liability coverage and whether policy has strong virus exclusion. Note: insurers will likely try to raise pollution exclusions and other arguments when presented with COVID-19 liability claims even in the absence of an explicit virus exclusion.
- Cleaning services require additional considerations:
 - When hiring cleaning service for office request copy of liability policy
 - Consider whether cleaning service liability policy contains virus exclusion or broad pollution exclusion that might bar coverage if your workers or clients are exposed to cleaning agents and solvents.

CYBER LIABILITY RISKS AND INSURANCE COVERAGE

- Remote work environments still present cyber dangers and vulnerabilities.
- Take proactive steps to secure all computer systems and storage. “
- Cyber insurance coverage policies are NOT uniform and should be reviewed very CAREFULLY.
- Cyber insurance needs to fit your firm and business model.
 - Example: If your firm does real estate, may want to check for wire fraud coverage.
 - Example: If your firm does class actions, protecting client ID and SSN's can be important—make sure coverage applies if data breach and includes payments for notices and corrective measures.

PROPERTY COVERAGE

- Make sure policies are updated for new locations.
- Many property policies only cover property within particular office locations.
- If employees have property of your firm at their homes, this should be explicitly added and covered in policy.

PROFESSIONAL LIABILITY (MALPRACTICE) COVERAGE

- Keep in mind when economy is in decline, malpractice claims usually increase.
- Review your limits of coverage to ensure they are appropriate for your practice.
- Update your coverage if the number of covered employees has changed.
- If firm attorneys are considering changing practice areas make sure that all renewal notices are filled out accurately and new practice areas are disclosed to insurance carrier.

DIRECTORS AND OFFICERS (D&O) COVERAGE

- Many attorneys sit on boards of other entities.
- Request D&O Policy to review coverage.

- Consider various risks including:
 - Response plan;
 - Monitoring and compliance;
 - Lack of plan to mitigate loss;
 - Financial disclosures or misleading statements re: COVID impact; “
 - Breach of fiduciary duty; and
 - COVID-19 as reason for failure of business transaction to close.
- When reviewing policy, consider the following questions:
 - Does it cover government investigations and audits?
 - Is there an exclusion of coverage for alleged criminal acts or does the policy require a “final adjudication” of criminal conduct to void coverage?
 - Does policy exclude coverage if alleged misstatements were made recklessly or does it require knowledge that statement by officer was false?
 - Does policy allow repayment if loan principal must be repaid due to misstatements in application? Note: could apply to Paycheck Protection Program loans.

EVENT CANCELLATION COVERAGE

- Attorneys may be involved in events which have been cancelled. “
- Event cancellation coverage may be available.
- Many policies require that the policyholder make a good faith effort to reschedule the event in order to access coverage.
- General “concern” about COVID-19 may not be accepted by insurance carrier as a legitimate reason to cancel so policyholder may need to show government order, etc., causing cancellation and preventing rescheduling. “
- As a reminder: **READ YOUR POLICY FIRST, THEN MAKE YOUR DECISIONS.**