

COVID-19 AND BUSINESS INTERRUPTION CLAIMS



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COVID-19 AND BUSINESS INTERRUPTION CLAIMS

COVID-19 has affected lives, businesses, and communities around the world. Many businesses have temporarily closed due to law, choice, or economic conditions in order to protect our communities from this pandemic. As a result, some businesses have been forced to lay-off or furlough employees.

This pandemic has raised many questions regarding business interruption coverage. Are policyholders able to file business interruption claims due to COVID-19? How are insurance companies treating COVID-19? This eBook will address these questions and provide helpful information for affected policyholders.

WHAT DOES MY BUSINESS INTERRUPTION INSURANCE COVER?

We recommend checking your policy to determine which business interruption coverage you purchased, if any. The policy will list the events covered. Pay attention to any coverage limits, exclusions, or deductibles that apply to specific circumstances. Determine whether there is a clause that requires a specific amount of time that your business must be interrupted for you to receive coverage benefits.



HOW IS COVID-19 BEING TREATED BY INSURANCE POLICIES?

This depends on the policy. Unless you have purchased your policy very recently, you likely will not see any specific mention of COVID-19. But there may be language in the policy relating to incidents triggered by a pandemic or epidemic. Whether such events are included or excluded causes of loss will depend on the individual policy. If you are unsure whether your policy excludes a pandemic as a covered cause of loss, consider consulting with a property insurance attorney.



CAN BUSINESSES RELY ON THEIR INSURANCE TO COVER LOSSES FROM COVID-19?

There is no universal definitive answer to this question. This is an unprecedented situation for purposes of insurance coverage, and terms and conditions differ among policies. Given the scale of losses suffered worldwide, insurance companies may balk when claims are filed, but this does not necessarily mean that a business's losses are not covered. Insurers may initially deny or delay business interruption claims, and policyholders may have to fight for the coverage they purchased. This doesn't mean business owners shouldn't at least attempt to file claims of potential merit.

The first step is determining whether your business purchased business interruption coverage. Some policies exclude this type of coverage. If the business purchased business interruption coverage, the next step is to determine what triggers coverage. In some policies, business interruption coverage is triggered only in the event of direct physical damage. If this is the case, whether contamination constitutes physical damage may be a matter for the courts to decide.

WHICH LOSSES ARE ASSOCIATED WITH COVID-19?

Our friends at United Policyholders, a non-profit dedicated to providing helpful information for consumers of all types of insurance, outlined a list of losses that may be associated with COVID-19. This list includes:

- Business interruption costs
- Supply chain disruptions
- Lost revenue or income
- Closure related costs
- Blocked access to a plant or facility
- Event cancellation
- Costs related to COVID-19 lawsuits (including defense costs and third-party liabilities)
- Losses related to customers unable to purchase goods or services

ARE LAWMAKERS WORKING ON INSURANCE PROVISIONS RELATED TO COVID-19?

We have seen legislative action in some states that points toward a possible resolution to all the potential business interruption claims. The New Jersey General Assembly has been floating a bill that would mandate coverage for business interruption due to global virus transmission or pandemic be among the covered perils in policies. The bill also includes a recovery fund for affected businesses that would be paid into by insurance companies. Ohio and Massachusetts followed suit with similar bills of their own.

Pennsylvania has taken it a step further by including provisions in their proposed legislation that would see the Commonwealth pay any claims that were denied by insurance companies as part of a grant. The Pennsylvania bill has certain caveats, such as the business must remain open and business owners shouldn't lay off any employees. The South Carolina version is more complex and is reserved for businesses with less than 150 employees.

While it is presumptive to think these bills will make it out of their respective committees without any changes, if at all, these actions demonstrate that lawmakers recognize that insurance coverage will be critical to local economic recovery.

DO STATE OF EMERGENCY ORDERS AFFECT MY BUSINESS INTERRUPTION COVERAGE?

If your Governor declares a state of emergency, it should not affect the terms of your business interruption coverage. As almost every state has declared a state of emergency, it will be interesting to see how lawmakers and insurance companies approach business interruption claims filed in localities that have state-mandated business closures. In such an instance, a state of emergency declaration may fall within the civil authority provision of business interruption policies.





DEBATE OVER LOSS

Perhaps the most significant debate around COVID-19 as it relates to insurance claims is whether a viral outbreak constitutes a 'physical' loss for business interruption purposes. In other contexts, courts have determined that property can sustain physical damage without structural alteration. Some commercial policies include civil authority coverage for business closures due to civil orders made in anticipation of a catastrophe. Historically, states have taken different viewpoints on this issue. For example, Georgia courts have ruled that business income loss resulting from a mandated evacuation for a hurricane was a covered loss. Texas courts, on the other hand, have ruled that a civil order issued in anticipation of a disaster did not trigger business interruption coverage.

PROMPTLY REPORT ANY LOSSES

When reporting a loss to your insurance company, you typically need to contact your designated insurance agent to do so and file it in writing. Insurance policies often contain a provision that typically requires a prompt reporting or notice that a loss occurred. This provision can arguably be used by insurance companies for a reason of denial in many states. Our experience shows that being safe is better than being sorry when it comes to reporting losses and we strongly advise any businesses attempting to file a COVID-19 business interruption claim to formally report it to their insurance company sooner rather than later. In doing this, businessowners can avoid being prevented from collecting for failing to provide prompt notice of loss in the event that coverage is afforded by favorable case law, retroactive legislation, or a fund that may be established through litigation or government interaction.



BE AWARE

COVID-19 presents novel challenges for business owners, state governments, and insurance companies alike. It will take time to clarify how these claims should be handled. Policyholders should not be discouraged from filing business interruption claims with potential merit stemming from this pandemic. We urge policyholders to pay attention to their state lawmakers and potential bills that can influence insurance companies' actions. We also urge policyholders to review their individual business

interruption policies and to seek assistance if they have questions.

Unlike previous disasters, this pandemic is affecting businesses and people nationwide. It has demonstrated the extent that our communities and economies rely on our local businesses to thrive and survive. Business interruption coverage is purchased to lessen the risk to both from disasters. Hopefully, it will provide some relief from this disaster.

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