

ICF COVID-19 Insurance Summary

The insurance market is reacting strongly to complaints levied against it for failing to provide relief to insureds in the wake of coronavirus disease (COVID-19). With COVID-19 having impacted a growing number of businesses, many are looking to their insurance company for financial assistance. An insurance policy is a contract that explains what each party to the contract must do in the event of a loss. The insured must notify the company of the loss, and the company must determine if coverage is available based on policy language, including exclusions. **The following is for informational purposes only—every policy is unique and should be reviewed independently to determine if coverage is available.**

With ever-increasing changes in technology, manufacturing, aviation, and other industries, insurance policy forms are updated to address new risks. With the outbreaks of severe acute respiratory syndrome (SARS) in 2002, the market responded by adding exclusionary language to policies for viruses, illnesses, and so forth. As a result, most commercial insurance policies specifically exclude coverage for a pandemic. This exclusionary language made its way into property insurance policies in 2006 and is referred to as **Exclusion of Loss Due to Virus or Bacteria**.

With the economic impact of COVID-19, businesses are looking for ways to remain profitable. Affected companies are facing many financial implications, including the following:

- Loss of revenue from forced government closings
- Loss of revenue due to loss of supplier(s)
- Cost of employee wages, which, in many cases, continue to be paid
- Cost to decontaminate the physical building
- Increased costs to comply with social distancing
- Spoilage costs for goods unable to be used due to closure

Reviewing standard commercial insurance policy language

The Insurance Services Office, Inc. (ISO) develops policy forms for use by the insurance industry, including Commercial Property (CP) policy forms. Commercial Property insurance provides coverage for a **specified peril** (e.g., fire, wind, flood, earthquake) listed under the policy that **damages covered property**. Some policies list the covered perils, while others only list excluded perils. **Every policy is different, so it is important to understand which Commercial Property policy form is included in your business policy.** There are several policy forms, including the following:

- **Basic**—Covers fire, lightning, explosion, smoke, windstorm, hail, riot, civil commotion, aircraft, vehicles, vandalism, sprinkler leakage, sinkhole collapse, and volcanic action (ISO form CP 10 10).
- **Broad**—Covers those perils in the Basic Form plus falling objects; weight of snow, ice, or sleet; water damage (in the form of leakage from appliances); and collapse from specified causes (ISO form CP 10 20).
- **Special**—Covers all perils unless specifically excluded (ISO form CP 10 30).
- **Named Peril**—Covers only those perils specifically listed.

Is there coverage for Business Income and Extra Expense for COVID-19?

Business Income coverage is an additional coverage that may be provided under your Commercial Property insurance and provides coverage for the loss of income when a covered peril damages covered property and operations are suspended. This coverage is tied to the perils a business may be insured against. If Business Income is provided for in the policy but coverage for the peril of pandemic or virus is excluded, then there is likely no coverage unless the policy has been endorsed otherwise.

Business Income coverage may also include coverage for Extra Expense, which provides coverage for the costs incurred by the insured to reestablish services and lessen the loss. Because this coverage is part of the Commercial Property policy, it is also dependent upon whether there is property damage and coverage for the peril that caused the damage.

Is there coverage when a governmental agency orders your business to close?

In the insurance industry, this type of action is referred to as Civil Authority.

A pandemic is **not** listed as a covered peril in any of the above policy forms unless it is specifically provided for in a Named Peril policy. It is important to consider if there is broader language in the policy allowing property coverage for damages caused by COVID-19.



This coverage is included under the Business Income coverage form and provides for governmental-forced closings due to physical damage to property not owned by the business (e.g., adjacent property); however, for coverage to be considered for the peril that caused the damage to the neighboring property, it must be a covered peril under your business Commercial Property policy. For example, if your neighbor's building is damaged by fire and your business is closed by order of the local authorities, coverage may be extended if you have Business Income coverage and if your policy provides coverage for the peril of fire.

So what happens next?

ISO responded in February 2020 with two new forms for Business Interruption losses and Civil Authority Orders, both specifically related to COVID-19. Both forms grant limited coverage for COVID-19 when there

Business Income coverage is leading the discussion in the insurance market. Many affected businesses contend that COVID-19 has caused damage to property and if it is not specifically excluded, then it must be included.

While policies are unique and must be looked at independently, several provisions should be reviewed.

Which policy form do you have? Is the peril of pandemic specifically excluded? Is virus specifically excluded? What about illness or disease? These questions need to be analyzed on a case-by-case basis.

Does your policy contain the specific Exclusion of Loss Due to Virus or Bacteria (ISO form CP 01 40)? This endorsement reads that the insurance company will not pay for loss or damage caused by or resulting from any virus, bacterium, or other microorganism that induces or is capable of inducing physical distress, illness, or disease.



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is no direct physical damage to covered property; however, it is unlikely that any insurance company will be willing to endorse a current policy with an ongoing pandemic.

Insureds are in an economic crisis and are looking for insurance to respond. In New Jersey, legislation was introduced to attempt to force insurance companies to provide Business Income coverage for COVID-19. The insurance market fought back against this legislation, as it would essentially undo efforts the industry made in 2006. The legislation was withdrawn. Other states have introduced similar legislation, including Ohio and Massachusetts. Likely others will follow. Further, a restaurant in New Orleans has filed a lawsuit against its insurance company, claiming that its property has been damaged by COVID-19.

One issue that will be looming over the industry is the compensability of a Workers' Compensation claim for an employee. Workers' Compensation law is unique in every state; however, most state laws require a causal connection between the injury/illness and the individual's work. There are many cases in which an individual can prove that, more likely than not, the disease was acquired at work. While some work environments, such as healthcare, have greater exposure to COVID-19, the courts will likely determine if the illness/disease arose out of the work done by the employee. South Carolina, Minnesota, and Alaska are among some of the states that have introduced presumptive Workers' Compensation legislation supportive of health care workers who are on the front lines caring for infected patients and who subsequently develop the virus.

While we are not in uncharted territory regarding these issues, we are in uncharted territory relative to the number of impacted businesses, communities, and individuals. The impact of COVID-19 on the insurance industry will be significant; many coverages—such as General Liability, Workers' Compensation, Professional Liability, Employment Practices Liability, Property, and many more—will be put to the test regarding coverage for a pandemic. Just some of the changes that will follow this devastating pandemic include higher premiums for companies that remain in business, broader coverage imposed by states, a significant rise in the number of claims, and an increased drain on our judicial system. COVID-19 will result in a new norm for the insurance industry, communities, and businesses.