LOCKTON

UNCOMMONLY INDEPENDENT

COVID-19 questions and answers for U.S. employers:

Business risks

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Please note: *The spread of the coronavirus (COVID-19) is a quickly changing situation. For the most up-to-date information and resources, visit the Centers for Disease Control and Prevention's National Institute for Occupational Safety and Health (NIOSH). The CDC should be your primary source for emergency preparedness and response to the coronavirus. The below information is designed to guide businesses to known, credible online resources covering the coronavirus and does not constitute medical advice.*

Employers with offices outside the U.S. should review their statutory obligations for reporting suspected cases and paid time off policies with employment counsel to ensure compliance with local and national legislation.

Sections:

Business risks

- General insurance
- Property and business interruption
- General liability, excess and umbrella
- Pollution legal liability
- Workers' compensation
- Workers' compensation payroll
- Occupational Safety and Health Administration (OSHA)
- Cyber
- Future pandemic-related coverage

Business risks

General insurance

What insurance premium payment options might be available to support my company's cash flow needs?

Some insurers are proactively making corporate-level decisions on payment terms leniency in the wake of the coronavirus. In addition, certain state insurance commissioners are on record asking all insurers to show leniency. Your Lockton team will work with you to advocate to insurers on your behalf.

Third-party premium finance companies may also be approached for renewal premium financing terms. This process requires credit underwriting and may take longer than usual following an anticipated increase in volume of policyholder applications. Contact your Lockton team to learn more about this potential option.

Property - business interruption coverage

Are business interruption claims related to the coronavirus covered under a property policy?

Most property policies will also require that *physical damage to property* be present to trigger coverage for potential losses involving business interruption or civil authority. The policy may also include "contamination" exclusions that could also further restrict or exclude coverage. An individual review of your specific policies forms will be crucial to properly evaluate potential coverage application. Please contact your local Lockton team for any assistance that may be needed.

Are there any coronavirus-specific policies being offered in the marketplace?

We continue to monitor the marketplace daily. At this point, all virus-specific coverages are being offered on *future* pandemics only.

Is there any insurance coverage that would provide business interruption/extra expense coverage for a non-physical damage shutdown of operations related to the coronavirus or other future pandemics?

Pandemic cover can be obtained from Swiss Re's nonphysical damage product, Munich Re's pandemic product, Zurich's supply chain product, and Kiln's trade disruption product. Note: These products are available for *future* pandemic outbreaks and will not

cover the current coronavirus pandemic. We also don't know how these markets will address appetite or coverage triggers for future events given the current outbreak.

All markets will have intense underwriting processes, be location specific, tend to be in the 10-20% on line, and limits will most likely be cut back.

To reiterate, there is no known coverage for the current coronavirus pandemic.

Is there any legislative intervention that is expected regarding expanding coverage related to COVID-19?

This is an ongoing process. Several states are starting to look at developing legislation related to business interruption and COVID-19. Lockton continues to monitor this situation on a daily basis.

Could vacancy and unoccupied terms within property policies be raised by carriers as a coverage defense in some situations?

It is typical for property policies to contain provisions that exclude coverage for situations where properties are vacant or unoccupied. Usually these terms are undefined in the policy form. Vacancy is typically defined within the insurance context as premises without any furnishing or related contents. Unoccupied is generally defined as a lack of individuals within the property (living or working). Some policies may have a time period attached to these provisions (such as a property vacant for more than 60 days).

Actual loss situations and a review of individual policy forms will be a crucial step to properly evaluate potential available coverage application. Insurance carriers have the ultimate authority in determining coverage for presented claims and apply their interpretation of terms such as vacancy and unoccupied. Any suspected coronavirus-related losses should be reported per the policy guidelines. Some policies may require specific time frames to notice a potential claim, such as 48 hours.

General liability, excess and umbrella

Are there exclusions being applied upon program renewals related to general liability, excess or umbrella coverages?

We are aware of a growing number of carrier markets that will be attaching a communicable disease exclusion on policies with an effective date of April 1, 2020, and thereafter. In addition to individual carrier endorsements, ISO also has a 2009 exclusion

(attached), which may be adopted by ISO form-based markets and/or inspire drafting of additional carrier-specific versions.

Are there any coronavirus renewal extensions that may be applied to general liability, excess or umbrella coverages?

Organizations that have *extreme circumstances* related to the coronavirus that will prohibit facilitating their excess casualty program renewal may have the option of a policy extension if they have the "business continuity renewal endorsement" that affords this. Endorsement wordings vary, but if triggered it could afford a 30-day policy extension at pro-rata additional premium. Limits are not typically reinstated under these endorsements. Without the endorsement, an extension may still be available depending upon individual circumstances. Please contact your local Lockton team to discuss in detail.

If my umbrella policy has a catastrophe management endorsement, might it apply to coronavirus-related business expenses?

Also referred to as "crisis response," this coverage grant and financial allowance is designed to offer flexibility to suit a policyholder's most urgent needs (both first and third-party expenses) in the aftermath of a potentially catastrophic liability event. While language varies, the provision typically requires an occurrence (as defined in the policy) that has the potential for both (1) covered damages that will reach the umbrella attachment, and (2) reputational risk exposure for the policyholder. This coverage part often has its own notice requirements given its inherent urgency. Please reach out to your Lockton team with any questions.

Do circumstances arising from COVID-19 trigger the force majeure clause in contracts?

Force majeure clauses often specify the particular events that constitute a "force majeure" which would serve to excuse a party's performance under the contract (e.g., "pandemic", "disease", "epidemic" or "quarantine") for so long as the as qualifying event exists. In the event the clause does not contain any specific language around pandemics, the law of the jurisdiction that governs the contract will apply and should be checked for interpretation and application of force majeure clauses. Many jurisdictions/courts construe these clauses narrowly. Courts will evaluate application of force majeure by judging foreseeability of events and impossibility of complying with contractual terms as opposed to conditions which merely render contract duties prohibitively difficult to perform.

Companies need to be proactive in reviewing their contracts to identify applicability of force majeure and what notice and reporting obligations around force majeure may be required.

For more detail on force majeure and strategies companies can follow, click here.

Pollution legal liability

Is there any exclusionary language that carrier markets are starting to introduce within pollution policies?

Some carrier markets are beginning to attach a full communicable disease exclusion on their environmental policies moving forward.

Several organizations are exploring expanding the scope of their operations to offer disinfection services for COVID-19 incidents. Will their current insurance programs provide pollution legal liability coverage for this work and related exposure?

It depends. A contractor's pollution policy is underwritten based on what revenue for disclosed services is detailed within the coverage application. Typically, the policy is issued with a definition of covered operations as "all services performed under a written contract." Due to the hypersensitivity in the insurance industry with regard to COVID-19, if disinfection services are not listed on the application, organizations may be creating an unwanted exposure for themselves related to coverage implications. To be prudent, organizations should confirm with their insurance carrier that their expanded scope of services are in fact disclosed and proper coverage grants are in place.

Workers' compensation

We have an employee on-site showing fever and flu-like symptoms; are the workers' compensation doctors able to assess and test for the coronavirus?

Under such a scenario, employers should follow both the CDC and a qualified physician's guidelines for coronavirus treatment and prevention. The situation may not be a viable claim under a workers' compensation policy. Proper treatment and prevention should be the first priority.

https://www.cdc.gov/coronavirus/2019-ncov/index.html

Refer to this FAQ document regarding employee showing symptoms on the job.

How will it be determined whether an employee was exposed to the virus while at work, making workers' compensation liable?

Each injured employee situation will be evaluated on its own individual merits. Workers' compensation insurance covers employees who suffer injury or illness "arising out of or in the course of their employment." Many factors will be considered to determine if presented coronavirus claims are work related. These include, but are not limited to, the following:

1. The timing of when the loss occurred.
2. The location(s) where the injured worker was present leading up the injury or exposure.
3. The activities the injured worker was engaged in leading up to when the loss or exposure took place.
4. The specific nature of the loss.

We are having many our employees work remotely. How is this evaluated if they are hurt during the telecommuting period?

In most states it will be the burden of the injured employee to show they were injured "arising out of or within the course of their employment." An employer raising the defense that they are not in control of the remote employee at the time of the injury, is typically not recognized by most states.

In an attempt to create specific time frames around business-related periods, employers can potentially consider setting fixed work hours, including (if applicable) break times for remote workers.

Workers' Compensation Payroll

The current CARES ACT is rolling out a "Payroll Protection Program" (PPP) for small business. Are the premiums paid for towards Worker's Compensation Insurance part of this program?

It was the original intent to include them into the program, but insurance premiums (other than group healthcare costs) were dropped in later versions. Time will tell if these costs will be included in future legislation.

The following information is courtesy of NCCI FAQ.

A business has suspended operations due to COVID-19, but continues to pay employees, although they are at home and not working. Is this payroll included in the premium calculations for workers compensation?

Although a pandemic is not specifically listed within the manual rules, the existing rules for wages will still apply for this type of event, and payroll should be included in the premium calculation.

Wages or salaries paid to employees while they aren't working because of the suspension of the employer's operations due to COVID-19 could be included in payroll in accordance with Rule 2-B-1-a in NCCI's ***Basic Manual***.

In addition, ***Basic Manual*** Rule 2-F-1 addresses wages for time not worked, or "idle time."

For the two rules above, these wages would be assigned to the classification for work normally performed by the employee.

An employer has limited operations due to COVID-19. As a result, some employees are placed into new roles for the duration of the pandemic. What classifications could be assigned to these employees?

As stated in ***Basic Manual*** Rule 1-A, subject to certain exceptions, it is the business of the employer within a state that is classified, not separate employments, occupations or operations within the business. Therefore, the classification of the employees working in new roles might not change. However, there may be situations where a change in classification could occur, such as when:

- The employer's operations have changed to a different classification, or
- An employee's occupation for the employer has changed (similar to when an employee receives a job promotion) to a different classification that may be applied to the employer's policy (e.g., an employee changes to a clerical position and Code 8810—Clerical Office Employees NOC may be applied to the policy).

In accordance with ***Basic Manual*** Rules 1-D-3 and 2-G, the employer would be responsible for maintaining separate payroll records for the change in operations or the wages earned for an employee whose occupation has changed. If these records are not maintained, then all payroll would be assigned to the highest rated applicable class code. See footnote. [1]

Does *Basic Manual* Rule 1-F, Changes or Corrections in Classifications, provide guidance for employers impacted by COVID-19?

NCCI's ***Basic Manual*** Rule 1-F-1 addresses changes or corrections in classifications due to changes in an employer's operations. The temporary interruption or suspension of normal business activities caused by COVID-19 may qualify as a change in operations. For example, if an employer continues to pay its employees while they are working out of their homes (telecommuting) rather than an office, carriers may consider a change from the employer's governing classification to Code 8810—Clerical Office Employees NOC or Code 8871—Clerical Telecommuter Employees, or other appropriate classifications based on the duties of the employees while normal business operations are interrupted or suspended. Once normal business operations resume, appropriate classifications should be applied

OSHA issues

How would an employer determine if an employee contracted the coronavirus in the course of their employment, for OSHA 300 log purposes, versus contracting it under nonindustrial circumstances?

The OSHA reporting requirements are intended only to record cases that are caused by conditions or exposures arising in the work environment. As a result, individual factors of the worker's job functions and location(s) need to be evaluated to determine if it was possible the exposure of the virus was directly linked to their work activities. Given the complicated nature of this type evaluation, it is recommended employers retain legal counsel that is familiar with the OSHA requirements and record keeping rules.

Business liability issues

Is there liability potential for not restricting employee travel?

Possibly. The restriction of employee business travel may help in reducing the coronavirus exposure workers could experience. Affected individuals could allege their virus-related injuries were due to the lack of any policies restricting employee business related travel.

Would businesses have liability associated with the coronavirus?

Possibly. Allegations could be made that an organization was aware of the dangers from the virus and did not properly protect their workers, customers, general public or

products. The burden of proof of establishing liability would be upon the potential plaintiffs.

Cyber

How can we protect our company and employees from phishing emails?

Refer to Lockton's COVID-19 Cyber Risk Update.

Preparedness planning issues

How do we create a coronavirus preparedness plan?

Any preparedness plan should be evaluated and established based upon an entity's unique situation. The CDC has various guidelines businesses can follow as they evaluate their own exposure situations: https://www.cdc.gov/coronavirus/2019-ncov/index.html

Lockton and FDI Consulting have also partnered to create a document on business continuity planning.

Please contact your local Lockton team to discuss the potential use of these preparedness plans.

Where can an organization be provided with copies of business continuity plans?

Business continuity plans should be created around the unique needs of individual organizations. Sample plans can only provide a broad perspective of potential risks and exposures. Lockton can collaborate with outside vendors like FDI Consultants and others to develop a plan to address your specific needs.

A few firms:

- Everybridge
- Avalution
- FDI Consulting

We are evaluating the use of a crisis management firm for help in managing the effects of COVID-19 on our organization. Which entities would you recommend?

Please contact your local Lockton team to review your excess policy for any crisis management coverage that may be included (depending on potential third-party claims that may trigger coverage). Lockton has some experience with the following crisis management firms:

- Sensis (PR and response)
- Motion Agency (PR and response)
- FDI Consulting (business continuity with access also to clinical experts)

Future Pandemic Related Coverage:

Is there any availability of pandemic type insurance coverage for future events?

Yes. As businesses are affected by the coronavirus, many are asking questions about insurance coverage for the pandemic. The following is information provided by Miller Insurance Brokerage. Please contact your local Lockton team member for the best potential fit related to your future exposure needs.

In this very informative podcast, we speak with Richard Coyle from Miller about Epidemic Risk Insurance. Miller offers a product, which obviously will not cover the COVID19 outbreak, but the policy could provide coverage for future outbreaks. Attached is the Miller flyer and a CRC-branded questionnaire, as well as a link to the Miller/CRC Podcast www.crcgroup.com/covid19

Miller has provided the following key points about this product:

- *Underwriter focus is on the following sectors:* ***Hospitality & gaming, restaurants, travel & tourism, aviation, education, healthcare, mining, retail, sports/events****.*
- *Limits up to USD $50M readily available, up to USD $100M may be discussed.*
- *Premium rating likely in the 1.5% to 5% of limit range.*
- *Deductible is negotiable, coinsurance of 10% is typical.*
- *Minimum premiums are currently quite high (USD $150K-$200K+), although multiyear policies are possible.*