



**TARPEYGROUP**

## **COVID-19 Coverage and Policy Implications**

**March 2020**

The World Health Organization (WHO) has designated the current novel coronavirus (COVID-19) outbreak as a global public health emergency. For the most up-to-date information, please refer to the WHO and the Centers for Disease Control and Prevention (CDC). Those updates and information can be found on the WHO website (<https://www.who.int/>) and CDC website (<https://www.cdc.gov/>).

With regard to the impact of COVID-19 on insurance, it is important for clients to consider all potentially applicable insurance policies when evaluating coverage for COVID-19-related claims and losses. Consulting with Tarpey Group can put clients in the strongest position to maximize their insurance recovery in the event of a loss or claim resulting from COVID-19. However, it is important to note that the carriers alone make coverage determinations on the unique facts of the claims presented under the applicable policy language. Tarpey Group is not in a position to offer specific opinions with regard to coverage but can assist clients through the claims process.

For any claims under any type of policy, clients should provide notice to the carriers directly. Tarpey Group may assist in this process by outlining the likely information needed for the submission and any supporting documentation. Tarpey Group will want to retain a copy of that notification submitted by the client. This process ensures the most expedient and streamlined process for submitting the claim to carriers.



# TARPEYGROUP

## **Property Policies**

In an effort to curb the spread of COVID-19, governments and authorities globally have closed venues such as theaters, museums and gyms, among others. This is a unique situation in which closures and “social distancing” will impact businesses directly and indirectly. As a result, impacted clients will likely look to a variety of first-party coverages for relief. Property policies are primarily meant to cover direct physical loss or damage to policyholder’s insured property. Since the social and economic impacts of COVID-19 would not constitute direct physical damage to property, it is likely that most property policies will not cover the impact of COVID-19 in any meaningful way. Specific wording will have to be reviewed to make a proper determination and, as with all policies, specific exclusions may apply that prevent coverage. This is a determination made solely by the carriers.

Policyholders will need to work with their respective brokers and risk management teams to assess anticipated loss exposures and potentially relevant coverages. In the event there is a potential recoverable claim, it is important to document and maintain detailed records of interruption causes, impacts and related expenses and report it directly to the insurer.

## **Business Interruption**

It is anticipated that most claims will likely be tied to income losses from indirect exposures such as supply chain or civil authority-related impacts. This includes the disruption of supply chain, slowdown, or in some instances, complete breakdown. Unless there is physical damage to the supply chain (e.g., plant, property and equipment of a supplier), other supply chain-related claims may not qualify for related business interruption coverage.

Many property insurance policies may also provide contingent business interruption coverage, triggered by damage to or disruption of a business’s suppliers, customers, or other key partners. For this to apply, however, the policyholder does need to have coverage for the type of damage that affected its suppliers, business partners, or customers.

Mitigating the disruption of COVID-19 and associated losses as it continues to spread and impact businesses globally is crucial. Organizations must continually evaluate the impact of these developments to their existing business as well as their business continuity response plan. In order to effectively mitigate the risks of supply chain disruptions, businesses should consider reprioritizing product lines in order to effectively respond to market impacts associated with COVID-19, increase stockpile resources and supplies as needed, and consider alternative domestic suppliers, international suppliers, or outsource vendors, as back-up.

Because policies may not cover COVID-19, policyholders should adopt as proactive an approach to risk mitigation as possible, and begin documenting the business impacts of the outbreak that fit within the parameters of policy wording and the carriers’ requirements. Even if policies do not ultimately cover all



## TARPEY GROUP

documented costs, these records can inform future risk mitigation strategies and prompt conversations about expanded coverage.

In the event of a claim involving COVID-19, as with any other, it will be evaluated on its own merits by the carrier and adjusted based on the applicable policy wording and specific details driving each loss. Your broker can assist in the claim process by providing guidance on what information and documentation the carrier may need a policyholder to submit in order to evaluate coverage for a claim.

### Management Liability

In addition to general liability coverage, many companies may hold errors and omissions (“E&O”) coverage or other professional liability coverage. These specialized insurance policies are meant to protect against damages arising out of the provision of, or failure to provide, certain services. Although E&O policies typically exclude coverage for bodily injury to employees occurring during the course of their employment, some policies – particularly hospital professional liability policies – may respond with coverage for COVID-19-related bodily injury claims of non-employees. Coverage for bodily injury to employees, however, may be covered under workers’ compensation insurance policies. Clients should review all management liability policies to understand their risk exposure and coverage.

There may be implications for directors and officers (D&O) and employment practices liability insurance (EPLI) as well. Clients should work closely with HR, legal teams, communications teams and brokers to communicate changes in company policies and plans to stakeholders – both internal and external. Employer’s enforcement of specific corporate and human resources policies during an outbreak could give rise to claims of discrimination against protected classes that could trigger coverage under an EPLI policy. Shareholder litigation alleging a lack of preparedness for the potential effect on corporate operations and earnings might be covered under a D&O policy – but many such policies exclude coverage for certain misconduct by the insured, which can include deliberate fraud, dishonesty, and willful violations of the law. The particular language of these “conduct exclusions” can become significant if company management’s response to COVID-19 risk becomes the subject of shareholder litigation. (Note, at the beginning of March, the SEC [issued an order](#) intended to provide some regulatory relief to public companies and boards. That said, businesses may still face risks as the outbreak persists.)

### Workers’ Compensation & Employer Liability

Claims related to communicable and contagious diseases are not generally the intent of workers’ compensation coverage and related statutes. Exceptions may occur depending on how a disease like COVID-19 is contracted. Similar to other areas, each situation will have to be examined on a case-by-case basis.

Employers’ liability coverage provides protection for employees’ work-related bodily injury or disease, other than liability imposed by a state’s workers’ compensation law. With COVID-19 exposures, negligence



## TARPEY GROUP

outside of the liability of statutory coverage might stem from injury or damages stemming from an employer's failure to provide mandated personal protective equipment, exposure to other employers, or allegations from employee family members that they were exposed to the virus from the employee's work-related exposure.

At the core of sustainability for all businesses in a pandemic situation is balancing business continuity and employee wellbeing. To limit exposure and mitigate risk, consider potential workplace or policy changes, such as remote work, sick leave, staggered shifts, protective gear, etc. Though not all employers can be so flexible, review policies and assess feasible workplace changes to limit or contain workplace risks.

### **Employee Benefits**

Companies should be as proactive as possible in addressing and minimizing risks for their employees. The Occupational Safety and Health Administration (OSHA) recently published [Guidance on Preparing Workplaces for COVID-19](#), categorizing workplaces according to risk and outlining steps employers can take to help protect their workforce.

COVID-19-related employee benefit claims may include health insurance, leaves of absence, or paid leave. Employers should keep up-to-date on health carrier responses, modifications and updates related to testing and treatment. Even before the virus impacts their employees directly, employers should evaluate state laws and policies to determine whether employees with COVID-19 symptoms, exposure, or sick family members qualify for mandated or employer-sponsored leave. In addition, paid leave may be available under a city law, collective bargaining agreements, etc. Employers should also evaluate whether employees with COVID-19 qualify for unpaid FMLA leave due to the employee's own serious health condition. Further, an employee may qualify for unpaid FMLA leave due to a family member's serious health condition. Whether an employee on a non-FMLA leave is eligible to continue benefits will depend on the benefit plan and applicable law.

### **Life Insurance**

Most life insurance policies will not be impacted by COVID-19. Once a life insurance policy is in force and premiums are paid, the policy will pay out to beneficiaries for most types of death, including death from COVID-19.

The outbreak of the global pandemic may affect the application process for applying for life insurance as well as the policy itself. Similar to any other medical diagnosis, the severity of any illness may impact life insurance rates when applying. It is also important that potential policyholders disclose any important information related to travel, especially recent travel to a country that is heavily impacted by the disease, as it will impact application status.



# TARPEYGROUP



## Commercial Auto

Thus far, it appears that COVID-19 is having more of a social and economic impact than it is direct physical damage on commercial autos. While current commercial auto policies will cover physical damage on cargo and commercial autos, including the driver, it is likely that most commercial auto policies will not cover COVID-19 impacts in any meaningful way. Majority of claims will be tied to business income losses from indirect exposures such as trade and supply chain disruptions. While insurance may cover direct exposures such as physical damages or loss (i.e., on the goods), most insurance generally excludes loss or damage due to delay. Some policies may include specific language such as “trade disruption” which may provide coverage for loss of earnings, extra expense and contractual penalties due to delays or disruption of trades arising out of government-mandated closure of borders and ports. As with any claim, specific wording will have to be reviewed to make a proper determination.

Given the ongoing developments to government restrictions on border or port and disruptions to supply chain in response to COVID-19, it is crucial to keep up-to-date on the latest news and begin documenting the business impacts of the outbreak that fit within the parameters of policy wording and the carriers’ requirements. Even if policies do not cover all documented costs, these records can inform future risk mitigation strategies and prompt conversations about expanded coverage.



## Aviation

COVID-19 is having a significant impact on the aviation industry as private and public sectors impose travel and flight restrictions to curb the spread of the virus. This is a unique situation in which restrictions and interruptions are primarily impacting businesses financially.

Current aviation policies are not designed to protect against financial losses or non-damage attributed to business interruption. Standard aviation policies will cover direct property damage to aircraft and related equipment and/or facilities. Since the social and economic impacts of COVID-19 would not constitute direct physical damage to airlines and its properties, it is likely that most aviation liabilities and policies will not cover COVID-19 impacts in any meaningful way.

As with any claim, specific wording will be reviewed by the carrier to make a proper determination, especially as the impact of COVID-19 on the aviation industry continues to develop with additional restrictions imposed by the private and public sectors. Policyholders will need to work with their respective brokers and teams to discuss anticipated loss exposures and potentially relevant indirect coverages. In the event there is a potential recoverable claim, it is important to document and maintain detailed records of interruption causes, impacts and related expenses.



## TARPEY GROUP

### **Surety**

In the surety market, underwriters are likely to reduce their support for companies that are unable to sustain themselves through this period of business interruption, particularly if the return to normal economic activity is delayed. Businesses with exposure to countries with compromised supply chains can also expect extra scrutiny by surety markets.

### **Renewals**

The longer the persistence of the COVID-19 threat, the more likely it will be a consideration during renewal or buying discussions. Brokers and underwriters should be aware of the changing market dynamics related to any potential impacted coverages.

### **Understanding, mitigating and managing potential risks**

In addition to following the CDC's interim guidance, organizations should proactively identify the concerns of their clients and ensure that the organization has done all that it can to ensure the safety of their clients and consistent delivery of product or services they need and expect. As COVID-19 continues to develop daily, employers must make sure clients are informed with any updates.

Organizations should consider the following best practices to help prevent the spread of COVID-19:

- Utilize CDC materials, closely monitor for updates and educate employees on the signs and symptoms of COVID-19 as well as the precautions that can be taken to minimize the risk of contracting the virus, without causing panic. For example,
  - appoint a single individual or department as the point of contact within an organization for related questions;
  - consider an FAQ document with questions clients will likely ask and keep abreast of updated information;
  - provide resources for additional online information.
- Review safety programs and emergency action plans to ensure that they include infectious-disease protocols.
- Review current work-from-home or remote working policies, including related technology needs.
- Implement revised travel guidelines and/or limitations based upon CDC and other guidelines



## TARPEYGROUP



### Stay informed

On March 11, 2020, the World Health Organization (WHO) declared COVID-19 a pandemic. It is important to understand that this situation is evolving and changing daily with local governments and employers taking various measures to help contain the spread. To assist in locating the most up-to-date information, the following includes a roundup of online resources to assist in monitoring the most up-to-date information available:

- World Health Organization: [Information and guidance on coronavirus \(COVID-19\)](#)
- CDC
  - [Guidance on Exposure & Reporting](#)
  - [Business Pandemic Influenza Planning Checklist](#)
  - [Coronavirus Information for Travel](#)
  - [Health Alert Network](#) - CDC's primary method of sharing cleared information about urgent public health incidents with public information officers; federal, state, territorial, tribal, and local public health practitioners; clinicians; and public health laboratories.

In addition, there are other trusted sources for information that may include press releases and information issued by local health departments and municipalities as well as legitimate media reports that can be verified and cross-checked against other sources.