

KEY CONSIDERATIONS DURING COVID-19

Insurance Coverage



Perkins Coie is focused on assisting businesses faced with legal and operational issues arising from the COVID-19 pandemic. This checklist identifies frequently discussed guidance in the insurance coverage space.

☐ Review all policies.

Work with insurance counsel to create a list of potential coverages available for your losses and claims caused by COVID-19. Do not rely on general advice or assumptions.

☐ Determine if you are an additional insured under someone else's policy by reviewing your contracts.

Request copies if that is the case.

☐ Document as much as possible.

That includes any known or suspected exposures to the virus and all forms of damages, costs, and losses related to the virus, such as damage to your property and property of third-parties, costs to mitigate or reduce losses, disinfecting and cleaning costs, lost opportunities, and business interruption. Create procedures so that the same information is gathered company-wide.

☐ Develop and implement loss-mitigation plans as soon as possible as certain coverages require that the insured mitigate damages wherever possible.

It is crucial that your business has a mitigation plan in place in the event of a closure or a confirmed case of COVID-19 at your location.

☐ **Provide notice of claim(s) under any potentially applicable policy as soon as possible and in accordance with the terms of the policies.**

Notice requirements are strictly enforced, and policyholders often lose coverage by failing to notify in accordance with policy terms. Providing notice under your current policies is particularly important if your company is renewing coverage in the near term as we expect insurers will attempt to exclude COVID-19-related claims in all future policies.

☐ **Provide notice of circumstances before your policies renew for possible COVID-19-related claims under expiring “claims made” policies.**

Renewal policies will likely include applicable exclusions.

☐ **Monitor COVID-19 legislation and orders for changes in state insurance laws and regulations.**

For example, several state legislatures, including in Washington, New York, and New Jersey, are considering bills that will expand workers’ compensation coverage for COVID-19 claims. In New Jersey, a bill is before the legislature that would expand business interruption insurance for COVID-19.

☐ **Present the claim in a manner that maximizes coverage and document cooperation.**

Pick your words carefully and ensure you understand all coverages, conditions, and exclusions before filing your claim. Preparing claims in-house has drawbacks, including your employees’ lack of experience with the process and the profound time commitment involved. Legal and forensic experts can assist with preparing claims to ensure maximum insurance recovery. Document your compliance with any insurer requests and do not allow insurers to endlessly delay claims.

☐ **Obtain insurer consent to incur costs, retain experts, or settle disputes.**

Many policies require consent before making key decisions and the failure to do so often leads to insurance disputes and may cause the loss of insurance rights. Read

your policies carefully to understand when an insurer's consent is required and take proactive steps to include insurers in major decisions.

☐ **Protect privilege.**

Communications with your broker and insurers may not be privileged. Work with coverage counsel to develop a nondisclosure and common interest agreement with your broker and insurers to protect privilege.