

Coronavirus (COVID-19) – Effects on the Casualty Claim Industry

AHT Insurance Client Resource Team
Commercial Claims Advocacy



Effects on Workers Compensation and Liability Claims

The COVID-19 environment continues to impact organizations and their operations on multiple levels, including their casualty insurance programs. The effect can be seen on many organizations' employees, customers, brand, operations and, ultimately, their bottom line. AHT Insurance is staying abreast of this fluid situation. We remain agile to strategize, adapt and respond to our partners' needs, while continuing to provide our heroic insurance and claims advocacy.

It's obvious to say that COVID-19 is having a drastic effect on the insurance industry and that remains consistent with how it is impacting casualty claims, specifically in the U.S. Employers have increasing challenges to monitor this situation and have many different scenarios to take into consideration. While it might seem like common sense, here are a few initial and ongoing questions they should consider when determining potential of their company, employees, families, customers, vendors, etc. being directly impacted.

- Do they have employees located in, or have traveled to, areas where there are documented, diagnosed cases of COVID-19? This includes other countries, states, cities, facilities, homes, etc.
- Is there an inherent risk from their operations or industry that increases their employees, families, customers and vendors potential exposure to COVID-19? This consideration is expanded with the introduction of "essential" employees and operations, which will be discussed more later.
- Does their business operations and engagement with other parties increase the potential exposure of COVID-19 to their employees, families or customers?

Once these questions are answered, organizations should begin conversations to ensure they have the appropriate risk management strategies in place. The focus of those conversations should be around understanding the exposures and potential mitigation strategies. As with all claims, each COVID-19 related scenario should be reviewed on its own merits. Employers, when possible, should engage all their appropriate partners to assist with these strategies. This would include their AHT team, their carrier/TPA, potentially outside counsel or other identified strategic partners.

The COVID-19 situation is changing hour by hour and we recognize these observations are very fluid. The intent of this document is to provide insight into claims considerations and how the current COVID-19 case could impact them.

Workers' Compensation Concerns and Thoughts

- Each state has specific statutes pertaining to Workers' Compensation (WC) and communicable disease claims and, prior to this outbreak, many states had expanded consideration to first responders and healthcare workers. Historically though, with most industries, these matters would likely not be deemed compensable if the employee was considered at no greater risk than the general public. However, several states have now expanded, or are considering expanding, access to WC coverage for COVID-19 beyond first responders and healthcare workers to include all workers labeled "essential".
- Kentucky and Illinois in the past week have become the first two states to implement emergency orders to provide access to public-facing "essential" workers. New Jersey and Louisiana are considering similar legislation to expand COVID-19 coverage beyond first responders and healthcare workers, as well. We're sure there will be more that follow suit as we draft this paper. The Kentucky order signed by Governor Andy Beshear entitles employees removed from work as a result of COVID-19 exposure, or suspected exposure, to temporary total disability payments during the quarantine period even if compensability is denied.
- In some states, "exposure" signifies the "injury," not the symptoms. This means employees at risk due to their work could be covered by WC during the quarantine/testing period since the "exposure" to COVID-19 would trigger the WC coverage and related benefits and not when later diagnosed with COVID-19.
- These types of unprecedented changes could drastically change the WC landscape. For the most part, there is still the burden of proof for an employee to prove the accident or illness arose out of, and in the course of, their employment and that the condition was caused by their work. It could be legally difficult for an employee to prove where the transmission of COVID-19 actually took place.
- COVID-19 is also having a large impact on non-COVID-19 related WC claims. Delays in medical treatment, decreased return to work opportunities, delays in litigation, etc. all drive up costs of these claims. Telemedicine, which has been around for some time, is gaining momentum and should be considered as an option to keep claims treatment and recovery on track. Tele-Rehab is also gaining popularity to offer physical therapy sessions over the internet. Some states are responding favorably by widening the availability of telemedicine within their state fee schedules (i.e. California and Texas). On the litigation front, we are seeing more video conferences for mediations, arbitrations, etc. With everyone becoming more comfortable with these resources, they could prove to be a more cost effective and efficient tool/solution for future WC claims.

The COVID-19 situation is changing hour by hour and we recognize these observations are very fluid. The intent of this document is to provide insight into claims considerations and how the current COVID-19 case could impact them.

Employer's Liability Concerns and Thoughts

- If an employee contracts COVID-19 through work, or travel related to work, and claims the infection is a result of the employer's negligence, he or she may sue under Employer's Liability. If a spouse, child, parent, brother or sister of that employee is infected by the employee, that family member could also make a claim through the Employer's Liability coverage or the General Liability policy ([see "General Liability Concerns and Thoughts" below](#)).
- An issue that many employers might struggle with during this COVID-19 crisis is the risk to "essential" employees who might feel compelled to report to work. To further complicate this, there was a recent wrongful death suit filed in Cook County, IL (Estate of Wando Evans v. Walmart) alleging the deceased employee contracted COVID-19 while working at Walmart and they did not implement a proper workplace safety measure in response to the outbreak. Mr. Evans' estate is attempting to avoid the exclusivity bar WC has in place in order to sue the employer for negligent actions that were willful, wanton and reckless. The store allegedly failed to clean and sterilize the store properly, failed to promote and enforce social distancing guidelines, failed to provide personal protective equipment (PPE) and failed to address the health concerns of employees with COVID-19 symptoms and warn other workers.
- While this IL suit is the first, it likely will not be the last. These matters are generally difficult to prove but they can be very time extensive and costly to defend and sometimes to resolve. We will continue to monitor this, and any others to arise, for the impact.
- On a more protective aspect, the Equal Employment Opportunity Commission (EEOC) and Centers for Disease Control and Prevention (CDC) have authorized daily readings of employees' temperatures before they enter the workplace. Rigorous daily cleaning and sterilization routines should be implemented and documented. Training about social distancing and personal hygiene should be performed, acrylic shields installed to distance cashiers and customers and employees should wear personal protection equipment (i.e. face masks, gloves, etc.). If apparent that an employee has contracted COVID-19 or has been in contact with someone who contracted COVID-19, there should be immediate steps to remove that person from the workplace and documented as such.
- While this is not an all-inclusive list of measures to implement, these are some valid suggestions and information which is being shared by authorities within the [CDC](#) and [OSHA](#) - those sites should be visited regularly.

The COVID-19 situation is changing hour by hour and we recognize these observations are very fluid. The intent of this document is to provide insight into claims considerations and how the current COVID-19 case could impact them.

General Liability Concerns and Thoughts

- Potential liability claims, for the most part, are likely to be more straight forward. The most probable scenario would be a customer, vendor or third party bringing an allegation that the company was negligent in protecting them or providing a safe environment from being exposed to COVID-19.
- Another scenario could be where an employee's family member, if the employee had a WC claim related to COVID-19 ([see Kentucky and Illinois in WC section](#)), brought an allegation for negligence on the company. They could allege they contracted COVID-19 from the company's employee due to their failure to reasonably protect the workers and their families.
- Many third parties will try to find ways to make claims related to COVID-19. We believe it could be difficult to establish that the company, specifically, was liable for infecting them, given the immense ranges of community exposures for contraction.
- Companies should pay close attention to their General Liability (GL) policy language. There are some policies with varying language within exclusions that could complicate coverage decisions:
 - **Communicable Disease Exclusions** – wording can be different around disease and infections and could take a broader inclusion of COVID-19.
 - **Fungi/Mold/Mildew/Microbe/Pathogen Exclusions** – again, wording and broad definitions could leave the door open to interpretations that might include COVID-19.
 - **Expected or Intended Exclusions** – While the carriers generally have a tough time proving expected or intended actions, it could be something a carrier considers, given the circumstance of the allegations.
- Like the list of considerations shared in the prior section, the organization should take necessary steps to limit and/or prevent exposure to COVID-19 for their employees and other parties. The altering or enhancing of the company's processes and policies should be centered on protecting their organization from potential negligence. This does not take away the ability of a third party to make allegations against the company. However, discussing these issues, putting plans in place, adapting and implementing new strategies will go a long way in defending these allegations.

The COVID-19 situation is changing hour by hour and we recognize these observations are very fluid. The intent of this document is to provide insight into claims considerations and how the current COVID-19 case could impact them.

What's Next?

- AHT will continue to communicate and strategize with our clients and partners to prepare and respond to potential and real insurance and/or claims needs. We expect there will be additional local, state and federal statute changes, which will continue to impact the casualty claims industry. We welcome any questions organizations might have and are ready to assist. Also, please make sure to continue to check and reference the [AHT COVID-19 Information Page](#) and other announcements made by your key partners. Here are a few websites and resources to assist with staying current about information and discussions regarding the COVID-19 exposures:
 - [AHT COVID-19 Information Page](#)
 - [Centers for Disease Control and Prevention \(CDC\)](#)
 - [World Health Organization \(WHO\)](#)
 - [Occupational Safety and Health Administration \(OSHA\)](#)

AHT Insurance

DC Metro: 800.648.4807 | Seattle: 888.807.4018

ahtins.com

The COVID-19 situation is changing hour by hour and we recognize these observations are very fluid. The intent of this document is to provide insight into claims considerations and how the current COVID-19 case could impact them.

