



COMMERCIAL INSURANCE

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## UPDATE – PREPARING FOR AND RESPONDING TO THE SPREAD OF NOVEL CORONAVIRUS (COVID-19)

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Novel coronavirus (COVID-19) continues to spread globally, nationally, and locally, causing many organizations to face the reality of temporarily closing their doors or halting operations. It will be imperative that organizations take steps to prepare for and respond to disruptions from COVID-19.

### EDUCATION

Educate employees on the symptoms of COVID-19 (fever, cough, and shortness of breath). If an employee feels sick with any of these symptoms, encourage them to stay home, seek medical care, and work remotely if possible. Currently, the WHO believes that symptoms can appear between one to 14 days after exposure, most commonly around five days. Concerned employees should first call their healthcare provider and communicate their concern about possibly having COVID-19. This will help the provider take steps to prevent further spread or exposure to other patients.

Ensure your sick leave and FMLA policies are flexible and consistent with public health guidance. Recommend that affected employees consider the use of telehealth to further limit exposure. If you have King or Snohomish

### QUICK FACTS

#### Symptoms

Patients with confirmed COVID-19 infection have reportedly had mild to severe respiratory illness with symptoms such as fever, cough, and shortness of breath.

#### Who is most at risk?

Older people and those with immune deficiencies

#### How long am I contagious?

14 days

#### What about wearing a mask?

Face masks should be used by people who show symptoms of COVID-19 to help prevent the spread of the disease to others. The use of face masks is also crucial for health workers and people who are taking care of someone in close settings (at home or in a health care facility).

County locations, immediately notify your local health department for guidance on employees with suspected COVID-19.

### PERSONAL PROTECTION

According to the CDC, spread from person-to-person happens most often among close contact, at a range of

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about six feet via respiratory droplets (a cough or sneeze). Businesses should consider offering tissues and no-touch disposal receptacles. Face masks are not recommended as a protection measure; they should only be used by people who have a confirmed COVID-19 case and are showing symptoms to prevent spread to others, or when recommended by a healthcare professional. Healthcare facilities should ensure proper personal protective equipment is used in accordance with the CDC's [infection control recommendations](#).

#### CLEANING/DISINFECTION

Provide employees with access to soap and water or 60%-95% alcohol-based hand sanitizer. It is still unknown how long COVID-19 remains infectious in the air and on surfaces. Regularly clean and disinfect all frequently touched surfaces in the workplace, such as doorknobs, countertops, and workstations. [Surface disinfection solutions](#) with 0.1% sodium hypochlorite, 0.5% hydrogen peroxide, or 62%-71% ethanol have been shown to reduce infectivity of coronaviruses within one minute. Refer to the [CDC's guidelines](#) on prevention and treatment for more information.

#### TRAVEL

Minimize chances for exposure by restricting employee travel to those areas most impacted by COVID-19. Inquire with customers/patients/vendors about their recent trips to affected areas. The WHO [maintains up-to-date](#) information on the locations of confirmed cases, and the CDC has provided [helpful information](#) for healthcare professionals on how to identify and assess possible COVID-19 illness.

#### REGULATIONS AND COMPLIANCE CONSIDERATIONS

##### HIPAA

HIPAA Privacy Rule protections are not set aside during an emergency: "In an emergency situation, covered entities must continue to implement reasonable safeguards to protect patient information against

intentional or unintentional impermissible uses and disclosures. Further, covered entities (and their business associates) must apply the administrative, physical, and technical safeguards of the HIPAA Security Rule to electronic protected health information."

<https://www.hhs.gov/sites/default/files/february-2020-hipaa-and-novel-coronavirus.pdf>

##### OSHA

Further, The General Duty Clause of the Occupational Safety and Health Act (OSHA) requires employers to provide "employment and a place of employment which are free from recognized hazards that are causing or likely to cause the death or serious physical harm to ... employees."

<https://www.osha.gov/SLTC/covid-19/standards.html>

##### ADA

The Americans with Disabilities ACT (ADA) protects employees from disability-related inquiries or medical examinations, except in certain circumstances:

- The inquiry or examination is job-related and consistent with a business necessity, or
- The employer has reasonable belief that the employee poses a direct threat to the health or safety of themselves or others.

The Equal Employment Opportunity Commission has stated that sending an employee home who is displaying symptoms of a contagious illness, such as COVID-19, would not violate these restrictions. If the illness turns out to be mild, the action is not considered disability-related. Even if the illness does become serious, it would pose a direct threat and be permissible. Either way, employers are allowed to send employees home, or allow them to work from home, if they are symptomatic.

<https://www.eeoc.gov/policy/docs/guidance-inquiries.html>

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### Employees caring for others

Employees who are well but have a sick family member at home with COVID-19 should notify their supervisor and refer to CDC guidance for how to conduct a risk assessment of their potential exposure. Family medical leave or other legal contracts may apply.

Once again, employers should ensure their sick leave and FMLA policies are flexible and consistent with public health guidance in order to allow employees to properly care for themselves or family members.

### WHAT ORGANIZATIONS SHOULD CONSIDER TO IN REGARD TO BUSINESS CONTINUITY PLANS AND INSURANCE COVERAGE

As the number of confirmed cases and deaths continue to rise, especially in the Northwest, many organizations may experience some type of business interruption. Understanding the potential drivers of COVID-19-related losses, their financial impact, and what exactly is covered under your insurance policies, will be imperative to reduced interruption and a quick recovery.

- **Workers' compensation** - The difficulty with this coverage is determining where the employee was infected, and whether that was related to their job or employment. Employees traveling abroad may also involve accident insurance policies in addition to workers' compensation coverage. Should an employee file a claim, it would be recommended to report the matter to your workers' compensation carrier or claims administrator for coverage evaluation.
- **General liability** - Although most general liability policies provide coverage against third-party "bodily injury" or "property damage," most insurers will evaluate each claim based upon its merits and could potentially reject claims from anxious customers or alleging fear or disturbances to mental wellbeing. In addition, most general liability policies will also have exclusions for pollution, defining the virus as a "contaminant or irritant."
- **Management liability** - Directors and officers (D&O) policies are designed to provide defense and indemnity for actions taken (or inaction) by directors or officers that negatively impact the operations of the firm. While D&O policies also carry pollution exclusions, most policies will provide an exception to the exclusion for alleged wrongful acts taken by the entity or directors that affect the organization. In other words, claims for financial damage to the organization and shareholders may be covered, but bodily injury or property damage to third parties arising out of the pollution exposure may not.
- **Property coverage** - Property insurers intend for their policies to cover direct, physical damage to property and could extend to cover time element, business income, or extra expense exposures from a covered loss to property. As an epidemiological outbreak is usually considered a human injury and doesn't involve property damage, it is likely the property coverage will not respond to a COVID-19-related shutdown to businesses, unless there is a specific endorsement to cover a pandemic event. Similarly to the general liability policy, insurers may also point to the pollution exclusion contained in property policies to decline coverage.
- **Event cancellation** - To reduce public exposure and the spread of COVID-19, many organizations have made the decision to proactively cancel their events. However, while these policies are intended to reduce losses from events cancelled for an act of god, damage to the venue, or something beyond their control, communicable disease coverage may be excluded from your policy.
- **Trade disruption** - With the government shutdown in Wuhan, China, many organizations are feeling the effects of global supply chain disruption, product shortage, and reduced customer volume. Trade disruption policies are designed to cover losses arising from embargoes, exportation, nationalization, and interference with transportation. Similarly to property insurance, coverage may vary depending on the jurisdiction, circumstances, and voluntary vs involuntary government closure.

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To learn more about ways to prepare for and protect your organization against COVID-19-related losses, please consult with an experienced insurance broker.

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### Disclaimer

This article is provided for informational purposes only and is not intended to provide legal or actuarial advice. The issues and analyses presented in this article should be reviewed with outside counsel before serving as the basis of any legal or other decision.

### State health departments with updated resources:

- [Washington](#)
- [Alaska](#)
- [Oregon](#)
- [Hawaii](#)

### Other resources:

- <https://www.who.int/emergencies/diseases/novel-coronavirus-2019>
- <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/guidance-business-response.html>
- <https://kingcounty.gov/depts/health/communicable-diseases/disease-control/novel-coronavirus.aspx>
- <https://www.snohd.org/484/Novel-Coronavirus-2019>