

Responding to the Coronavirus (COVID-19)



Food & Agribusiness

03/17/2020



Gallagher

Insurance | Risk Management | Consulting



Gallagher Report: Responding to the Coronavirus

As news headlines about the coronavirus (COVID-19) disease continue to increase, so has concern over its potential to affect employee welfare, disrupt global supply chains and slow business operations. Gallagher's experts are here to support you in the development and implementation of risk management policies and procedures during a pandemic.

With the increased threat in the U.S., the CDC is operationalizing its protection and preparedness plans in communities across the country. As a business leader, you too should take added measures to review key insurance policies and business continuity plans.

INSURANCE POLICIES THAT MAY RESPOND

While specific policies for business loss due to a pandemic are uncommon, you should check with your insurance broker immediately to confirm what key coverages will be provided in a specific event.

Workers' Compensation Policy

Compensability for workers' compensation will truly come down to whether the disease/illness is considered occupational. In order for it to be compensable, the disease would have to be contracted during the course of employment and due to conditions specific to the employees' work. Various statutory intricacies will also come into play depending on the particular state where your business operates. For example, healthcare workers, who find themselves interacting with ill people, are more likely to have workers' compensation compensability.

General Liability Insurance

General liability policies provide coverage for injury to persons (other than your employees) and damage to property of a third party for which you are legally liable. Liability for such injury or damage involving COVID-19 or a similar health emergency will arise chiefly out of a failure to protect others and their property against exposure to infection. Many general liability policies have exclusions that could preclude coverage for this kind of infection. Careful examination of the policy's coverage terms, conditions and exclusions will be necessary to determine if such a limitation applies to you. Additionally, Umbrella and/or Excess Liability policies may contain a communicable disease exclusion.

Property/Business Interruption

Standard property policies require that physical loss or damage to covered property, by an insured peril, occur for coverage to trigger. Contamination of property at an insured's location may constitute physical loss or damage, but policy exclusions for pathogenic organisms, viruses, and disease- or illness-causing agents may restrict or exclude coverage. For business interruption coverage to trigger, the loss or damage must generally occur on the insured's premise. Business interruption extensions such as contingent business income, ingress/egress, loss of attraction and denial of access are subject to the same coverage parameters outlined above, although not necessarily occurring at an insured location.

Limited available coverage for communicable or infectious disease is offered on some property forms. This coverage is likely sub-limited and narrow in its coverage scope, especially outside of an insured location. Covered costs include cleanup, removal and disposal of contaminated property. Any business interruption extension will likely not apply to locations that are not owned or operated by the insured.

Environmental Insurance

In addition to the Property policy, consideration should be given to the environmental liability policy.

Currently environmental liability policy forms do not identify COVID-19 as a pollutant and do not specifically exclude it by name. Some policies, however, do contain communicable disease exclusions that preclude coverage when a disease is transmitted by personal contact. However, they do not exclude transmission of the disease caused by the environment within the insured site.

If a "pollution event" has taken place, or a "pollution condition" exists, coverage may apply in cases of negligence or strict liability. In turn, negligence can be the failure to prevent the spread of the disease on your premises, or the coverage may be triggered by strict liability as the result of a "pollution event" that has taken place, or a "pollution condition" under environmental laws.

Management Liability

Management Liability insurance is being evaluated on a case-by-case basis as the COVID-19 threat is monitored. Many companies have made disclosures that COVID-19 has caused disruptions in production, staffing and sales. Accordingly, we may begin seeing COVID-19-related D&O claims, specifically securities class actions by shareholders to the extent that these disclosures cause a stock drop.* Such disclosures may also bring about derivative action litigation, whereby plaintiff shareholders sue on behalf of the company against the directors and officers alleging that executive mismanagement of the situation cost the company significant revenues.

It remains to be seen whether employment practices liability policies are impacted. Employees impacted by quarantine and unable to work may be seeking accommodations or leaves of absence. It is unclear whether quarantine gives rise to obligations under FMLA or ADA.

*This does not apply to nonprofit organizations.

Travel Accident Policy

The [U.S. Department of State](#) has increased the level of risk for travel to certain countries and continues to update its advisories as they monitor the threat. Some countries have instituted preventive measures for travelers who want to visit their countries, are requiring medical clearance before a traveler is permitted to enter the country, or are instituting other measures, including health quarantines.

As of early February, carriers and underwriters are no longer including the threat of coronavirus as a covered trigger for evacuation, cancellation and interruption benefits. Even the "cancel-for-any-reason" policies available in the market have excluded the coronavirus from their covered triggers. These policies will only cover a traveler who actually contracts the virus. Therefore, it is critical that you discuss this with your risk management team to determine the potential threat before you or your employees decide to travel.

24/7 travel assistance services are still available for travelers around globe to assist in booking passage home at the cost of the traveler.



ACTIONS YOU CAN TAKE NOW

Gallagher's National Risk Control team advises you on five key ways your organization can prepare for a pandemic and help ensure the safety of your employees.

1. Review your business continuity plan and determine alternative business plans.

Check your business continuity and pandemic procedures to ensure your organization is prepared if your employees become ill. Your continuity plan should include the measures you will take if an employee is impacted, how to accommodate employees who don't feel safe working in a communal space or whose home life may be impacted if schools or childcare centers are closed. It should also include a plan to address any employee who is at risk of infection while traveling in quarantined areas.

Identify critical people, processes and technologies that have the biggest negative impact on your business and create recovery strategies to minimize any disruption. This could include outsourcing, allowing more flexible teleworking options or developing commuting alternatives for your employees if public transportation is not available. Work with your supply chain partners to ensure you have a backup plan should there be a breakdown along the line. This may involve increasing inventory levels of high-volume products or services.

2. Communicate with your employees, vendors, partners and customers.

Share information and official updates from organizations like the WHO or the CDC with your employees so they understand the potential threats. Encourage them to speak up if they start to develop symptoms, and reassure them that self-reporting is safe. Ask them to quarantine themselves if they have been to areas where the virus has been reported.

3. Educate your employees.

Be transparent with internal and external stakeholders about how you're handling the pandemic at the workplace. Educate your employees on your continuity plans and procedures so they know what to expect if your company is impacted. Issue travel advisories and make sure they understand the resources available to protect them. Ongoing communication about the pandemic will help your employees feel informed and safe.

4. Prepare your physical workspace.

Review your physical workplace for potential points of transmission of infection like shared desks and telephones, conference rooms, and common areas. Increase the frequency of office cleanings, provide more personal hygiene products like hand gel and/or masks for your employees, review your work-from-home policy and post educational signs on how employees can protect themselves around the office.

5. Contact your local hospitals and officials.

Communicate with the emergency preparedness coordinator at your local hospital to understand what resources are available to you and your employees and to ensure there is a plan in place in case of an emergency. You can also contact the infectious and/or emerging diseases divisions at the Department of Health in your region to organize a response in the event of an emergency.

WHAT THIS MEANS FOR YOUR BUSINESS

We encourage our Food & Agriculture clients to consider all of the above strategies to prevent or reduce the effects of COVID-19. It is a prudent exercise to determine your most essential business activities and how you can operate with 40% employee absenteeism (the guideline suggested by the CDC). Strategies like telecommuting, restricting international travel to affected areas and reducing travel to essential-only trips may be advisable as the effects of this become clearer.

If you are regulated by agencies like the USDA, FDA or governmental organizations, closely monitor their websites for compliance issues and suggested contingency planning. Manufacturing facilities should consider how you to respond if you are required to do a complete facility cleaning as a result of the disease.

Now is also the time to review your crisis management protocols as they relate to public health threats, including food borne illnesses. Gallagher can help with simulation exercises conducted from both an operational and financial/cost recovery standpoint, with a particular focus on supply chain and business interruption.

At this point, it is not believed that this virus can be spread via food borne contamination, according to the CDC. However, we cannot formally count that element of risk out. Noting this and with the imminent and increasing fear within the consumer market, many questions are arising surrounding coverage for business interruption and whether a Product Contamination policy may respond.

The Product Contamination policy is intended to respond to specific types of events, so please closely review your specific policy. At a high-level those include:

- Accidental Contamination which has or will lead to bodily injury or property damage upon use or consumption
- Malicious Tampering which renders your product unfit or dangerous for its intended use or consumption
- Product Extortion being the threat of malicious tampering for ransom monies
- Government recall arising out of an Accidental Contamination resulting in:
 - a recall order being imminent by a national regulatory body; OR
 - a voluntary recall that is classified as Class I/II by a national regulatory body
- Adverse Publicity being the reporting of alleged (but not actual) Accidental Contamination or Malicious Tampering (each as defined with your policy) wherein your product is named

At this point, based on the above and the lack of knowledge as to whether or not this strain can spread via consumption of ingestible or use of topical products, we believe there is a minimal chance (at best) that COVID-19 would lead to a trigger of this policy, however we do not want that to discourage you from reaching out to discuss any potential issues, incidents or events with our team.

This is an evolving risk that Gallagher continues to monitor through the CDC and the WHO. Please visit ajg.com/us/pandemic-preparedness for the latest information, or contact:

Glenn Drees

Managing Director
Food & Agribusiness
513.977.3171
glenn_drees@ajg.com

Gallagher provides insurance, risk management and consultation services for our clients. When providing analysis and recommendations regarding potential insurance coverage, potential claims and/or operational strategy in response to national emergencies (including health crises), we do so from an insurance/risk management perspective, and offer general information about risk mitigation, loss control strategy and potential claim exposures. Any statement or information provided is for informational purposes only and is not intended to be, nor should it be interpreted as, medical, legal or client-specific risk management advice. The general insurance descriptions and other information contained herein does not include complete insurance policy definitions, terms and conditions and should not be relied on for coverage interpretation. Policy-specific terms and conditions dictate whether coverage applies to any particular risk or circumstance, and this information in no way reflects or promises individual client or policy-specific insurance coverage outcomes.

Gallagher publications may contain links to non-Gallagher websites that are created and controlled by other organizations. Gallagher claims no responsibility for or endorsement of the content of any linked website, as we have no responsibility for information referenced in material owned and controlled by other parties. Gallagher strongly encourages you to review any separate terms of use and privacy policies governing use of these third-party websites and resources.

Insurance brokerage and related services to be provided by Arthur J. Gallagher Risk Management Services, Inc. (License No. 0D69293) and/or its affiliate Arthur J. Gallagher & Co. Insurance Brokers of California, Inc. (License No. 0726293).

