



Higher Education

Coverage and COVID-19



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As COVID-19 continues to spread across the United States, higher education institutions across the country are looking for additional insight into the extent of possible insurance coverage for claims related to COVID-19. Following is a brief discussion of potential sources of coverage.

Since many higher education institutions purchase manuscript policies for any given line of coverage, it would not be prudent to make broad coverage statements as individual policy forms have their own unique coverage terms and conditions. **We offer the information below as a guide to where institutions and their broker may go to look for coverage.**

General Liability

GL policies may respond to allegations that your institution/your employees were negligent in failing to take appropriate steps to protect others from exposure to this virus and such failure caused bodily injury or death. Pollution exclusions that include the term virus or specific communicable disease exclusions contained in some GL policies may limit coverage. Careful review of coverage terms is essential.

Let's review an example to explore how coverage may apply: A student returns from an overseas trip. Student exhibits no symptoms upon her return, but 8 days after arriving on campus, tests positive for COVID-19. After her return, she attended classes and went to the dining center on several occasions. In the following weeks a number of students and dining workers test positive for COVID-19.

In this "worst case" example, should those infected by the virus bring suit against the institution alleging negligence related to their response, we believe the duty to defend provision in a general liability policy could be triggered as well as indemnification provisions in the event the college is found negligent for their failure to protect students and the public.

Excess Liability

Should follow form GL coverage provisions unless a specific exclusion has been added.

Environmental Liability

Environmental liability policies may respond to mandated clean up and disinfecting of facilities arising out of exposure to COVID-19.

Student Health/Medical Professional

Whether coverage for operations at the student health clinic are written on a stand-alone basis or included in your GL policy, coverage may exist for the failure of "professionals" to treat, diagnose or follow up with patients being tested for or treated for COVID-19. Vicarious liability of the institution arising out of services provided by contracted medical professionals may also be covered. In our opinion, this is an area of risk that, due to the limited capacity of student health facilities, may present an elevated risk should the spread of COVID-19 begin to accelerate. Plans should be made now for how overflow treatment needs will be met.

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

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Educators Legal Liability/Directors & Officers Liability

The most likely exposure for institutions in this area arises from allegations of event-driven failures. These include such allegations as the failure of the institution to adequately prepare for a pandemic resulting in educational pursuits being interrupted, delays in graduation, lost earnings, loss of tuition and fees, etc. While damages related to loss of tuition and fees is a common exclusion in most ELL policies, we believe defense costs could be extended and coverage for other damages such as lost earnings could be included.

While we find discrimination claims arising out of COVID-19 to be a remote possibility, coverage may exist under traditional ELL/D&O policies.

Property

Property policies *may* contain limited coverage extensions for decontamination, cleanup and business interruption related to communicable disease. When available, this cover extension is subject to a sublimit (normally \$250,000 to \$1,000,000) with specific exclusions and definitions applying to this extension of coverage.

Foreign Liability

Similar to institutions domestic GL coverage, coverage may respond to allegations of illness to third parties arising out of the institution's negligence in operations outside the US and its territories.

Workers' Compensation Policy

Compensability for workers' compensation will truly come down to whether or not 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 employee's 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.

Travel Accident Policy

The U.S. State Department 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 preventative measures for travelers that want to visit, are requiring medical clearance before the traveler is permitted to enter the country, or are insinuating other measures, including a health quarantine.

As of early February, carriers and underwriters are no longer including the threat of COVID-19 as a covered trigger for evacuation, cancellation and interruption benefits. Even the cancel-for-any-reason policies available in the market have excluded the COVID-19 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.

Twenty-four seven travel assistance services are still available for travelers around the globe to assist in booking passage home at the cost of the traveler.