

Commonly Asked Coverage Questions related to COVID-19

Workers' Compensation Claims

What if an employee is exposed to COVID-19?

It is unlikely that the Workers' Compensation Statute will cover workers who contract the coronavirus, except those few workers who get the virus as a natural consequence of their jobs, such as emergency responders. Exposure to COVID-19, including a quarantine, is similar to exposure to other illnesses such as tuberculosis or the flu in that exposure does not constitute an injury. Simply stated, an evaluation of compensability begins with a diagnosis; then an investigation can ensue to determine if contraction of the virus is related to a work event.

The investigation will hinge on whether the worker experienced a work-related exposure. As noted above, workers such as first responders are at a greater risk than the ordinary public and may be able to identify exactly when they were exposed. Ironically, the more widespread the outbreaks are then the less likely a specific time, place and event can be established for a single exposure. Other employees, such as those who primarily work in an office, will have a more difficult time demonstrating their jobs put them at a higher risk than the ordinary public. As employees go to public places like the grocery store, pharmacy, etc. the greater chance employees could be exposed during their time away from work. A workers' compensation investigation for benefits will ask those types of questions. An additional factor is the incubation period of up to 14 days, which will make it more difficult for anyone to identify exactly where they were during the 14 days.

What if an employee is injured while working from home?

The claim would be investigated and evaluated similar to a claim that occurs in the workplace. A determination must be made as to whether the injury occurred while furthering the business of the employer.

Real and Personal Property Coverage:

Is there any coverage for loss of revenue due to COVID-19?

In order for coverage to apply, there must be loss due to a covered peril. In other words, a direct physical loss must occur at a covered location in order for coverage to apply. COVID-19 does not qualify as a covered peril, so loss of revenue or other business interruption expense cannot be applied.

Liability Coverage

What if an entity receives a claim by an individual who asserts that they contracted Coronavirus while at a city-sponsored event?



The Risk Pool cannot provide an opinion regarding any potential liability (or waiver of governmental immunity) the City may or may not have for claims made by individuals who contract the coronavirus at a City sponsored event. That analysis will need to be completed by the city attorney or an attorney the City directly contracts with.

With respect to any applicable coverage, it is difficult for the Risk Pool to answer abstract questions about the applicability of certain coverage. That is because the Risk Pool's obligation to provide a defense or pay damages is determined by the particular facts of each individual case. The Risk Pool's obligation to provide its Members with a defense is determined by comparing the allegations in the Plaintiff's pleadings (or demand letter) with the terms of the Liability Coverage Document. Without specific facts about an incident, the specific causes of action plead, or the specific damages sought, it is not possible to conclusively make any assurances the Risk Pool will provide the City with a defense or pay damages on its behalf.

A general interpretation of the Liability Coverage Document can assist, however, in anticipating the type of protection provided by the various liability coverages.

The general scope of coverage is established in Section I Insuring Agreement of each of the various Coverage Parts. An example that might be applicable to the above scenario, Sec. I Insuring Agreement of Part III General Liability Coverage extends protection for "occurrences" (accidents or events neither expected nor intended by the City or its employees), which results in bodily injury, property damage, or personal injury, as long as the Plaintiff is seeking "damages." Another example, Sec. I Insuring Agreement of Part VII Errors and Omissions Liability Coverage extends coverage for "wrongful acts" (any actual or alleged error, misstatement, misleading statement, act or omission, neglect, or breach of duty including misfeasance, malfeasance, or nonfeasance) which result in "damages." If the particular facts of a claim fall within the scope of an "occurrence" or "wrongful act" and seeks "damages," then the City would be covered unless there is a specific exclusion.

One specific exclusion that may be applicable is Exclusion X, which states coverage does not extend to claims or suits that "...do not seek civil damages or monetary relief other than costs of court or attorneys' fees for prosecuting the suit, such as, but not limited to:...actions for injunctions or declaratory judgments... ."

The two most likely causes of action a plaintiff may bring against a city if they contract the coronavirus at a city sponsored event are negligence and premises liability. If a plaintiff brought either one, or both, of these causes of action, and sought monetary damages, then it is likely the claim would be covered by the Risk Pool.

