



RiskBox



COVID and Liability Insurance

A RiskBox Guide

COVID and Liability Insurance

A basic guide to how Coronavirus has affected Commercial Liability insurance coverage.

What obligations are being imposed on businesses and what steps can be taken to protect against potential claims.



Where We Are Now

It hasn't taken long to start seeing Coronavirus running riot across the insurance industry. We've seen the initial influx of claims under commercial travel, or from postponed shoots and events.

Then we've seen the (start of) conflict over business interruption claims play out in the courts, with the FCA centre stage.

Now we are seeing insurers begin to shift their policy coverage, both for new policies and renewals.

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For aspects such as business interruption or event cancellation, we have literally found no insurer willing to include COVID cover since the start of lockdown. Other insurers are amending cover for the knock on effects of the disease, such as the reluctance of some Directors & Officers Liability insurers to include Employment Practices cover, anticipating a tsunami of redundancies.

This guide is solely focused on Commercial Liability insurance, and in particular - Employers Liability and Public Liability

As with other types of insurance, insurers are varying their stance on COVID related risks.

- Some still cover the liability of the business without applying any changes to policy terms and conditions
- Others will continue to cover the company against potential liability for alleged negligence leading to COVID, but impose certain explicit obligations onto you through policy conditions, the failure to adhere to invalidating cover
- Still others will remove any form of liability arising from COVID and/or pandemics as standard, but are be willing to put it back into the policy if certain conditions are met

Any insurer that is unwilling to provide the opportunity to include this cover under the Employers and/or Public Liability sections should be avoided.

Although it will be really tough to prove that your business was liable for someone catching COVID, that doesn't prevent people trying.

It also doesn't prevent the raft of ambulance chaser solicitors trying to fill a PPI sized hole

Please see overleaf an outline of the things we have seen applied from insurers, along with some easy steps to help your business adhere to the requirements.

We've also specifically commented on how simple positive risk management will help you, and your insurers, bat away illegitimate claims



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Government Advice

Follow and act upon any advice the Government provides regarding health and safety in relation to Coronavirus. As this changes frequently it is imperative to keep up to date with any changes and be ready to adapt as appropriate.

Unfortunately for some businesses this will include temporary closures or ceasing certain activities, sometimes only due to being in the wrong location geographically. No matter how harsh, you won't be insured if you ignore this advice

Risk Management Documentation

Whilst not always explicit within most insurance policies, keeping formal written health and safety documentation, such as appropriate risk assessments, is a must. Some insurers are explicitly demanding that the insured business carries out COVID specific risk assessments.

Even where that is not the case we strongly recommend all businesses do so as it will be vital to defend any claims successfully. Don't forget these assessments are not just for employees, but also for temporary hire, sub-contractors and volunteers, as well as visitors to your premises

PPE

We've seen a few insurers add in conditions making it a condition that employees must have access to, and use Personal Protective Equipment. The latter is harder for an insurer to enforce, but makes sense, as if they are careless, catch COVID and spread it to others then you could have both an Employers and Public Liability claim on your hands.

Add to that how your position becomes weaker when the claiming visitor states your employee did not have a face mask or wear gloves. Similar to the Risk Assessments above, even if its not explicit within the policy it is essential if you are to defend any liability claim that full and effective PPE is both available and its use is mandatory

Employee Training

It is not enough for management to understand the risks. This knowledge needs to be cascaded down and out through the entire organisation. You need to provide employees with information and training relating to Coronavirus.

From knowing the key symptoms to look out for through to the steps to take should anyone they live with becomes ill with suspected COVID. Failing to do this will seriously hinder an insurer being able to defend your business against even spurious claims

It is important to note that additional measures may need to be taken for vulnerable employees

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Social Distancing

As with all areas of insurance, you are expected to mitigate your risk wherever possible. Social distancing is a perfect opportunity to do just that. As an office based business it might be that you can work effectively remotely without disruption to operations, ticking the box quickly and possibly saving other overheads.

That doesn't work for everyone though, as not all businesses can work remotely for long periods, and not all staff are mentally comfortable doing so, therefore some middle ground can be needed

We've not seen any explicit policy conditions on this issue as yet, so our advice for businesses is to just do their best to reduce the risks. This might be mixing up how many days are worked remotely and how many in the office, keeping the numbers of people in at any one time low. It might include staggering start and finish times, implementing a rota system, segregating staff to keep good distances between individuals or avoiding face-to-face working wherever possible

Premises

Providing a safe working environment is a statutory obligation, so it is already something that cannot be ignored irrespective of the insurance implications. Failing to adhere to this leaves the business open to liability claims which will be extremely hard to defend against

On the personal level, the business needs to provide facilities for both hand washing and sanitisation, both for staff and visitors. Providing this is such a simple way to reduce risk, and also to demonstrate how you've done all you can should anyone allege they have caught COVID due to your business

Machinery that is shared should be kept to a minimum where possible, which could be as simple as designating printers to specific members of staff, or only allowing a small number of people access to physical servers

Any machinery that is used must be regularly and thoroughly cleaned, and it should be a mandatory and communicated requirement that all staff follow this procedure. Again, doing this will enable you to defend against spurious liability claims

Visual

Important for all businesses, but even more so for those with high numbers of visitors, such as venues or retail establishments. Taking reasonable steps to provide individuals who visit your premises with appropriate information is key.

The use of visual signage is probably the easiest way to do this for things such as reminders of the need to socially distance, however communicating certain rules by email to visitors beforehand is also a good idea. This is especially true for any visitor attraction from a restaurant to a music venue

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Work Away

Any obligations at your own premises need to be applied for employees working away at third party premises. This is true even for simple meetings.

Work at a third party premises can mean relinquishing an element of control, so you need to do all that you can to mitigate the risks to staff. Never assume that a third party will have adequate PPE or washing facilities, so make sure staff have the equipment required to be safe

Communicate to staff when they are not allowed to visit a premises, such as whenever they know someone there has coronavirus, or when the visit is non-essential and there is a local lockdown in place

It is also necessary to take steps to reduce your liability to those you are visiting, so again, making the proper use of PPE is a must

Doing this will enable you, and your insurers, to defend any unfounded allegations of liability should someone catch COVID

Conclusion

As with any area of insurance right now, this is a watching brief and quite likely to change at any moment

For now, most Commercial Liability insurance cover remains reasonable which is really positive. There are few policies with specific conditions imposed, and an even lower number of policies removing the protection itself

This never absolves a business of the responsibility to check their cover is sufficient, or the need to comply with policy conditions. Those obligations will always remain

Following the simple steps in this guide should help your organisation comply with most policy conditions, and help position you to defend against spurious claims that may arise



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