



Covid-19 Business Interruption Q&A

Want to know if, and if so, when to file claims resulting from Covid-19? Below are answers to some common questions.

Want to know more? See our detailed [Covid-19 Coverage and Claims Guide](#) for a deeper dive.

Need help in preparing to file a claim? See our [Covid-19 Claims Reporting Worksheet](#) to help you gather facts and create your narrative.

COVERAGE

Are business interruption losses related to the Covid-19 virus covered by insurance?

We want them to be, but persuading insurers to pay won't be easy. As your insurance broker, it is our job to get losses paid wherever possible.

So far, every insurer has strongly stated that Covid-19 business interruption claims are not covered. Insurers contend that claims related to business interruption must be triggered by direct physical loss or damage at an insured location. Insurers maintain that viral contamination or lockdown due to the fear of viral contamination is not direct physical loss or damage.

What if my policy does not have a “virus” exclusion?

After the SARS epidemic in 2004, some insurers filed virus exclusions with state regulators. In those filings, insurers stated that contamination from viruses was not covered, but the exclusion simply reinforced that fact. Insurers' positions remain unchanged, with or without the exclusion.



What if attorneys or accountants tell me that my losses are covered and are citing cases?

In a handful of cases, contamination has been ruled to be physical loss, but the cases we've seen are from lower courts and tend to be anomalies. The strength of several legal theories and claim scenarios is laid out in our Covid-19 Coverage and Claims Guide.

Can insurers afford to pay?

Maybe. Analysis shows that insurers might be able to cover a few weeks' or even a month's worth of claims (loosely estimated at \$400 billion) before exhausting their surplus' and becoming insolvent.

What is the path to coverage through litigation?

Several businesses have filed suits against their insurers. We are watching these cases closely, but they are unlikely to be resolved for years. Given the financial impact to the industry of losing a precedent-setting case, insurers will almost certainly appeal any unfavorable court decisions until all options are exhausted.

Some attorneys are attempting to create class action lawsuits. We see class action certification as a long shot, but it would allow claimants to easily join litigation at no upfront cost.

We have not heard of any attorneys taking cases on contingency, so plaintiffs will have to fund their own litigation.



What is the path to coverage through state legislation or regulation?

In the days after lockdowns in New York and New Jersey, legislators began considering bills to force insurers to pay losses for business interruption. Both bills have stalled, and our contacts in the NY State legislature have told us they have abandoned the bill. The reasons they give are (a) it is unconstitutional to retroactively change a contract between parties, and (b) the bill would instantly destabilize the insurance market and create insurer insolvencies.

What is the path to coverage through Federal legislation or regulation?

The United States House of Representatives is actively crafting legislation to set up a Federal backstop, similar to the Terrorism Reinsurance Act, that will provide coverage in the future. While there is the possibility of retroactive coverage, it appears that the legislators believe there are quicker ways to distribute emergency funds.

In a recent press conference, President Trump said insurers should pay on losses related to Covid-19. Note that the states regulate insurance companies; therefore, a Federal declaration or law would run into the same constitutional issues stated above.

WHEN TO TELL YOUR INSURER ABOUT LOSSES

Do I need to put my insurer on notice immediately?

No. Closures and losses are ongoing, and there could be some downsides to putting in a notice or claim right away unless you plan to start litigation against your insurance company immediately.



What are the downsides to “putting the insurer on notice”?

The insurer will quickly follow up for the specifics of the claim. If you provide the specifics, the insurer will provide a coverage determination. To our knowledge, insurers have denied every claim submitted.

The exact circumstances of the claim will be on file with the insurer, limiting your ability to better present a case for payment in the future.

The insurer is required to, and will follow up. If the insurer’s follow-ups are ignored, it will close the claim for non-cooperation.

Do I need to get in line?

No. If an insurer becomes insolvent, regulators distribute the money pro rata to all eligible claimants.

WHAT YOU SHOULD DO

Right now, we recommend you run your business and preserve records. Some believe that the likelihood of payment is too small to make pursuing a claim worthwhile. Others believe the effort is worthwhile.

Whatever your decision, please refer to Foa & Son’s [Covid-19 Coverage and Claims Guide](#) and [Covid-19 Claims Reporting Worksheet](#) for help.