

Responding to the Coronavirus (COVID-19)



Transportation

3/30/2020



Gallagher

Insurance | Risk Management | Consulting

Gallagher Report: Responding to the Coronavirus

As news headlines about the coronavirus disease (COVID-19) 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 an 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.

WHAT THIS MEANS FOR YOUR BUSINESS

The coronavirus pandemic is affecting multiple segments of the transportation industry in different ways. Here is what you should expect as this situation unfolds:

- **Van and refrigerated carriers** are seeing increased freight tenders between 25%-40% over the past two weeks.¹
- **Flatbed carriers** are beginning to see slowdowns as demand for construction equipment and supplies begin to decrease.
- **Companies in the business of transporting people** are struggling due to the nationwide travel restrictions and as the work-from-home model takes hold.
- **Railroads:**
 - » U.S. freight-rail traffic tumbled 8.6% to 459,966 carloads and intermodal units during the week ending March 21, compared with the same week in 2019, according to Association of American Railroads (AAR) data.
 - » The coronavirus pandemic may be influencing rail traffic patterns, as railroads logged 224,048 carloads, down 5.4%, and 235,918 intermodal containers and trailers, down 11.4% during the week.²
- **Independent contractor considerations:**
 - » Occupational accident coverage is designed to provide benefits for "injury." Typical policies generally exclude "sickness or illness," as these are normally covered through health insurance.
 - » If an independent contractor gets infected with COVID-19, they should submit a claim to their occupational accident policy and allow the insurance carrier to determine whether the benefits are payable.
- **Transportation related to the auto industry** is seeing an impact as specialty carriers are seeing sharp declines after major auto manufacturers announced earlier than normal shutdowns. Also, specialized van and flatbed carriers are attempting to partner with diversified van and refrigerated carriers due to increased demand in consumer products.

¹ <https://www.freightwaves.com/>

² <https://www.aar.org/>

Important Information Affecting the Transportation Industry

Federal Motor Carrier Safety Administration (FMCSA) Updates

The FMCSA continues to react to the COVID-19 pandemic. On March 13, they issued an [emergency declaration](#) temporarily suspending some federal safety regulations to keep up with the demand of delivering critical supplies, as well as a [limited waiver](#) on March 24 for commercial drivers whose CDLs, CLPs, operator's licenses, and/or medical cards have expired or are set to expire after March 1, 2020. The waiver, which is effective immediately and valid through June 30, 2020, comes in response to state DMV and medical clinic closures that have made it difficult for commercial drivers to renew expiring licenses and medical cards.

The FMCSA has also [relaxed regulations](#) such as waiving hours of service for essential businesses in order for necessary supplies to be distributed throughout the country.

Recordkeeping and Reporting

COVID-19-related claims should be done in accordance with [Occupational Safety and Health Administration](#) guidance. Here are some helpful tips from OSHA:

- Make it clear when you report a claim that it is a COVID-19-related accident to ensure the proper protocols are followed.
- Check to see if other employees/claimants or immediate family members are showing symptoms of COVID-19.
- Document when the person was diagnosed and when symptoms started.
- Find out if the person was in contact with someone known to be infected, and when and where that contact happened. This includes whether they or their family recently traveled to infected locations.
- Determine if the infected person has been in contact with healthcare providers and if the facility has been notified.

Guidance on conducting DOT drug-and-alcohol testing given concerns about the coronavirus can be found [here](#).

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 premises. 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 sublimited 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.

Cyber Insurance

As the COVID-19 situation continues to develop, employees across the nation—including those involved in the transportation industry—will alter the ways in which they work, including increasing working from home and the use of other remote electronic access. These changes are not lost on cybercriminals, who will undoubtedly look to exploit the situation. Therefore, enhanced cyber vigilance is encouraged at this time, including reinforcing cybersecurity and making sure employees are reminded of best practices.

Suspected cyber incidents should immediately be reported to the institution's cyber insurance providers. Gallagher's article, "Data and Network Security Risks Relating to the Coronavirus Outbreak and Response," particularly highlights risk management measures in response to cybersecurity risks arising from a sudden increase in your remote workforce. You can access this article [here](#).

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 traveler's expense.



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:

Gallagher provides insurance, risk management and consultation services for our clients in response to both known and unknown risk exposures. 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 broad information about risk mitigation, loss control strategy and potential claim exposures. We have prepared this commentary and other news alerts for general informational purposes only and the material is not intended to be, nor should it be interpreted as, legal or client-specific risk management advice. General insurance descriptions contained herein do not include complete insurance policy definitions, terms and/or conditions, and should not be relied on for coverage interpretation. The information may not include current governmental or insurance developments, is provided without knowledge of the individual recipient's industry or specific business or coverage circumstances, and in no way reflects or promises to provide insurance coverage outcomes that only insurance carriers control.

Gallagher publications may contain links to non-Gallagher websites that are created and controlled by other organizations. We claim no responsibility for the content of any linked website, or any link contained therein. The inclusion of any link does not imply endorsement by Gallagher, 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).

