

If we have closed our office and have people work from home, is there insurance available to cover lost productivity?

Updated as of April 21, 2020:

If you have closed your business either because of contamination of your premises with COVID-19 or due to a shelter-in-place or non-essential business order by a governmental authority, then the business interruption coverage in your first-party property policy may apply. Such business interruption coverage covers lost net income during a period of suspended operations due to a covered peril like “physical loss or damage” to tangible property.

Insurers have started summarily denying business interruption claims on the basis that COVID-19 contamination does not constitute physical loss or damage to property because they argue that (among other things) a contaminated surface can be sanitized. But lack of coverage is not the foregone conclusion that insurers would like you to believe. Instead, if anyone who has contracted COVID-19 has entered your premises, or your business has received a package that had the virus on it, surfaces or spaces, including HVAC or elevators, may be contaminated. Coverage has been established in the past without requiring damage to structures to satisfy the physical loss or damage element—for example, damage caused by smoke or Legionnaires’ Disease in HVAC systems. Whether COVID-19 contamination constitutes physical damage is likely to be a hotly contested issue with property insurers and may change depending on the more we learn about the virus.

Civil authority coverage may also apply. This coverage applies when access to your business is prohibited by local order, typically due to a covered loss in the vicinity of your business. So even if you have been fortunate to not have contamination in your building, your business may have been shut down by the local authorities because of such contamination in your area. Indeed, some jurisdictions have asserted in their shelter-in-place orders that COVID-19 contamination causes physical damage.

And if you are in a specialized industry, like hospitality, you may have specific coverage available, like communicable disease coverage.

In addition to arguing that COVID-19 does not constitute physical loss or damage to trigger coverage, insurers likely also will cite the pollution exclusion in most policies, and virus or disease exclusions that appear on some policies. A close review of these exclusions is required, as most pollution exclusions discuss bacteria, and do not refer to viruses.

If your policy period is about to expire, you should seriously consider providing notice of a claim to preserve your rights. Policies may have bacteria and virus exclusions, so you should analyze your coverage carefully.