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COVID-19 Guidance for Business Owners During the Phased Restart Vermont Initiative

May 4, 2020

COVID-19 modeling continues to indicate that Vermonters are significantly slowing the spread of the virus by adhering to the Governor's Stay Home, Stay Safe guidelines. While the order remains in effect, the Administration is taking a phased, cautious, and evidence-based approach to putting Vermonters back to work.

Accordingly, the Department of Financial Regulation (DFR) is providing the following insurance guidance for businesses affected by COVID-19, and for those that remain closed or operating with limited capacity.

Liability of business owners for COVID-19 transmission to customers

Commercial general liability (CGL) insurance is often part of a business owner's policy (or BOP). This type of insurance helps protect your business from financial loss due to claims for injuries to customers, damage to property owned by others, and personal and advertising injury (libel, slander, etc.)— the insurer will defend your business from these claims and pay on your behalf if you are found legally liable for damages. However, many CGL policies contain express exclusions for communicable diseases.

Although many CGL or BOP policies would not cover pandemic/virus claims, you should closely review your policy to be sure. Please note that DFR has required that all direct medical costs for COVID-19 testing, diagnosis, treatment, and (when available) prevention be covered in the majority of health insurance plans without cost-sharing, so a customer who contracted COVID-19 would likely have limited or no damages for direct costs even if they prevailed in a suit against your business.



Liability of business owners for COVID-19 transmission to employees

If an employee were to contract the virus and had documented, occupational exposure in the course of your employment, Vermont workers' compensation would be the employee's exclusive remedy, and, in most cases, they would not be able to sue you, the employer.

Recommendations for businesses

For business to mitigate any additional liability during the phased reopening of Vermont, it is necessary for them to complete the required [VOSHA health and safety training](#) related to COVID-19. In addition, the CDC has issued [resources for businesses](#) to plan, prepare, and respond to COVID-19. Although the court process is unpredictable, it appears that a potential claims for contracting COVID-19 would have several obstacles, including proof that a business was negligent, which would likely be difficult if the business was operating in accordance with government guidelines mentioned above.

Claims for loss of income

Business income insurance covers loss of income and expenses if a business is temporarily forced to close due to physical damage to business property caused by a specific covered peril (e.g. fire, wind, vandalism, etc.). Most policies explicitly exclude loss or damage resulting from viruses like COVID-19. You should closely review your individual policy and, if you believe your claim was wrongly denied, please contact the DFR Consumer Services Division.

Because policies require physical damage to property and typically exclude virus coverage, insurers have not underwritten the risk of lost income due to pandemic. This means that your insurance company has not priced the cost of such coverage into the premium charged for your policy. Had it done so, the cost of your insurance would have been considerably higher (or you may not have been able to obtain coverage at all given the unpredictability of exposure and losses).

Vermont is not requiring insurance companies to pay claims for lost income due to COVID-19. As an insurance regulator, the department's mission is trifold: protect consumers; ensure access to a robust, competitive, and affordable insurance market; and monitor the insurance companies' solvency. Retroactively requiring coverage on something that was not contemplated to be covered for an event this large would challenge the solvency of many insurers. Simply put, insurance companies do not have enough money in reserves to cover the extent of the damage currently being experienced by businesses.

It is, in part, due to the sheer scope of uninsured losses that the federal and state governments have stepped in with substantial stimulus funding. Business owners are encouraged to take advantage of resources available through other agencies such as the [Vermont Agency of Commerce and Community Development](#) and the [Small Business Administration](#).

Resources

<https://labor.vermont.gov/VOSHA>

<https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/businesses-employers.html>

<https://accd.vermont.gov/covid-19>

<https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program>

