

COVID-19 and Insurance Considerations for Independent Schools April 30, 2020

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PPP Loans and Title IX

- Many independent schools have secured Payroll Protection Program loans. As a result of accepting federal financial assistance, schools may now be subject to federal civil rights laws, including Title IX. Claims brought against a school for violations of these laws can be non-monetary in nature. Directors & Officers and Educators Legal Liability insurance policies often limit coverage for non-monetary claims. We recommend that you review your obligations under these laws with counsel and consult your insurance broker as to the coverage in your policies.

Coverage and Discounts

- Insurance companies have taken the position that Business Interruption losses are not insured due to virus exclusions and/or the lack of direct physical damage to facilities, which is a requirement of the policy to trigger coverage. Government ordered shutdowns are not covered for similar reasons. Throughout the country, many policyholders – including some of high profile – have brought lawsuits against their insurance companies contesting that COVID-19 does in fact amount to direct physical damage. These lawsuits will be defended vigorously by insurance companies as they will be precedent setting. Also, there have been efforts in various state legislatures to require insurance companies to retroactively cover business interruption losses attributable to COVID-19, even if specifically excluded by the policy. This is something to monitor, though the insurance industry will undoubtedly challenge the constitutionality of any such laws, if enacted. It is likely that any relief offered by the insurance industry would necessitate the backing of the federal government. There are various proposals surfacing that advocate for the establishment of a pandemic insurance backstop, like the Terrorism Risk Insurance Act implemented after 9/11. Such a public/private partnership would likely be the only way to economically address the catastrophic nature of a pandemic.
- Insurance commissioners in some states have issued advisories to carriers and agents that all inquiries regarding Business Interruption must be fairly investigated and answered. If you believe your school has sustained a loss of business income, it is advisable to make a claim with your insurance carrier for their formal review and determination.
- Most insurance policies designed for educational institutions have other coverages that sometimes “fly under the radar,” but are important to be aware of and could be applicable depending on your circumstances. Variations of the following coverage may be included in your policy:
 - Adverse Event/Crisis Management/Public Relations Expense – Expenses incurred to respond to an adverse event. The definition of an Adverse or Crisis Event will vary by insurance company - your policy should be consulted.

- Contamination cleanup – Costs to clean up communicable disease contamination from the premises and resulting loss of business income.
 - Emergency Evacuation – Expenses incurred for emergency vacating of your premises.
- As you have likely seen in the media, many private passenger automobile insurance companies are providing discounts as compensation for the reduced miles driven and fewer accidents with drivers staying at home. Some commercial carriers are implementing similar discounts. Check with your insurance company to determine if:
 - Discounts will be automatically applied to the school’s automobile policy.
 - Coverage can be suspended on your fleet while it is not in use during the shutdown (subject to the motor vehicle insurance regulations of your state).
 - A credit will be issued on General Liability coverage in recognition of the decreased activity on campus.

Distance Teaching

- It is critical for schools to communicate to all members of the community that computer usage and online standards, along with the school’s Code of Conduct, applies equally while remote as when on campus.
- If not already in place, schools should purchase Cyber Liability insurance. Coverage must apply both to school-owned equipment and non-owned equipment used in the furtherance of school activities. “Social Engineering” coverage should be considered as part of a well-rounded Cyber Liability or Comprehensive Crime policy.
- An effort should be made to remove any exclusions on General Liability and Umbrella policies pertaining to Electronic Chatrooms or Bulletin Boards.
- Review your Abuse & Molestation coverage to ensure it applies to online and off-premises activities.

Looking to the Fall

- “Stay at home” orders or campus closures due to isolated outbreaks could continue into the fall semester. Unless a federal backstop is implemented, it is very unlikely that insurance companies will expand their cover to include business interruption caused by a virus, bacteria or other pandemic. Without the availability of insurance, schools will be reliant upon the provisions of their enrollment contracts to protect their income. Now is the time to ensure your contract adequately addresses the issue. You will have to be realistic about your willingness to enforce the terms of your contract with families who become economically distressed after enrollment.
- Consider adding Terrorism insurance to your policy in the event future outbreaks are determined to be caused by an act of terrorism.
- Prior to COVID-19, the insurance market had been “hardening.” Pricing was increasing (up 7.5% on average¹) and coverages were being restricted, particularly for abuse & molestation and traumatic brain injury. These dynamics continue, so schools will need to proactively collaborate with their insurance brokers to adjust exposures (i.e., enrollment, faculty count, etc.) and consider other techniques to manage premiums going forward.

¹ Source: Council of Insurance Agents & Brokers, Commercial Property/Casualty Market Index Q4 2019.