

Review Your Insurance Policy

This is the most important step, as the insurance policy will tell you what kinds of damages are covered, whether there are any exclusions or deductibles, and what notice provisions and other requirements are applicable to the filing of a claim. Please note that many policies have specific policy exclusions for losses arising from infectious diseases or viruses. Unless the policy clearly excludes coverage for infectious disease or viruses such as Coronavirus, we would still recommend filing a claim.

In addition, most policies that provide business interruption and related coverage in the event of a natural disaster require that the business suffer “direct physical loss.” Insurers will most likely take the position that unlike a hurricane, Coronavirus is not a “direct physical loss,” and therefore their business interruption policies don’t provide coverage for Coronavirus. We believe it is still unclear whether courts will find that Coronavirus is a “direct physical loss” and this question will almost certainly be litigated.

While the requirement of “direct physical loss” may not be met (until and unless the court(s) decide otherwise), we recommend that you still provide notice of loss to your insurance carrier in order to preserve any possible coverage that you might have under your policy. Below please find a step by step outline for how to review your policy and file a claim.

Determine What Your Insurance Policy Covers

- **Business Interruption:** Covers lost profits resulting from property damage that prevents you from running your business.
- **Civil Authority:** Covers lost profits in the event the government shut downs your business in response to a “direct physical loss”
- **Extra Expense:** Covers additional costs incurred to avoid or minimize a business interruption, such as the cost of renting a temporary facility and transporting equipment to this facility, as well as mitigating damages.
- **Event Cancellation:** Covers losses arising from the cancellation or postponement of a scheduled event.

As you review your insurance policies, please note that many business interruption policies have a waiting period (e.g., 72 hours) before coverage can be triggered, and some policies have a time limit capping the number of days for which you can claim business interruption losses.

Provide Written Notice to Your Insurer

Written notice of a potential claim typically should be provided to your insurer as soon as possible. Insurance policies commonly contain language requiring notice to be given “immediately” or “promptly” following the incurrence of damage. The failure to provide timely notice as required by the insurance policy may prevent recovery under the policy.

Who Can File an Insurance Claim?

The holder of the policy (the entity who pays the premium for the policy) can file a claim under that policy. In addition, if an entity is named as an “additional insured” in the endorsements of a policy of an affected entity, it may also file a claim under that policy. While a tenant can only file a claim under its landlord’s policy if it is named as an additional insured, it may be able to sue the landlord if the landlord failed to adequately avoid or mitigate damages, a claim which may be covered by the landlord’s policy.

Mitigate Damages

Many insurance policies and New York state law require the policyholder to mitigate damages – take reasonable steps to minimize the damage caused to the property. This can involve trying to keep your business running in any manner, even if not at full capacity. You should talk to your insurer about what steps should be taken to mitigate damages. Insurance policies often cover any reasonable expenses you may incur in mitigating damages.

Document the Damage to Your Property

Make a plan for quantifying your losses, and preserve all information needed to calculate those losses. This includes saving all receipts, purchase orders and invoices of expenses necessary as a result of the damage or the mitigation of damage. Expenses incurred in preparing an insurance claim or responding to an insurer’s requests may also be recoverable.

Beware of Deadlines Under the Insurance Policy

Common deadlines relate to when a signed and sworn proof of loss must be submitted and when a lawsuit against the insurer must be filed. Make sure you are aware of these deadlines and ask the insurer for extensions if any of these deadlines cannot be met. It is important to bear in mind that deadlines vary from policy to policy, and a failure to file a claim in a timely fashion has the potential to compromise an entire claim. It may be appropriate to issue a notice of circumstances to preserve coverage.

Work with brokers

Contact your insurance broker to see what claim advocate resources they might have available. Your broker can help you identify and assess coverage that might be available to you.

Navigating the Insurance Adjuster Process

There are three types of adjusters: “company adjusters,” who are employed by the insurance company, “independent adjusters,” who are hired by the insurance company, but are not full-time employees of the insurance company, and “public adjusters,” who policyholders can hire to evaluate and pursue claims on their behalf. Public adjusters are paid a fee of 10-15% of the claim and can help prepare documentation

and negotiate the claim with the insurer. Hiring a public adjuster may be advisable if the insurer's liability is clear, but the amount of damages is in dispute.

If the Insurer Rejects Your Claim...

Do not take no for an answer! Request that the insurer provide you with reasons why your claim is denied. Under New York state law, once the insurer provides its reasons for denial, it cannot come back with new reasons if it is determined that your claim cannot be denied for the reasons originally provided. To appeal a claim that is denied, submit a written explanation detailing why you believe your claim should be approved, making specific reference to the sections of your policy you believe cover your damages. If your appeal is denied, you should consult an attorney to determine if you have sufficient cause to sue the insurance company. In addition, the New York State Department of Financial Services (DFS) will help contact insurers and answer questions about insurance policies.

This is for informational purposes only and is not legal advice or counsel regarding your actual circumstances. If you have any questions or need legal assistance for your small business or not-for-profit organization please contact The Legal Aid Society's Community Development Project at (212) 426-3000 or communitydevproject@legal-aid.org