

A photograph of three business professionals (two men and one woman) sitting around a conference table in a modern office setting. The man on the left is gesturing with his hands while speaking. The woman in the center is looking towards him. The man on the right is looking forward. The image is partially covered by a blue and black geometric overlay on the right side.

COVID-19: Civil Authority Coverage

Does your business have insurance coverage if a government entity requires you to close?

As COVID-19 continues its spread across the United States, we have seen unprecedented action taken by federal, state and local governments, with more measures sure to come. Businesses are being required to close or have shifted employees to work remotely where possible. The negative financial effects will impact many businesses, including retailers, restaurants, bars, and the broader hospitality sector, just to name a few.

Will your insurance policy provide business interruption coverage if a civil authority advises you to close your doors or modify the way you conduct your business? The answer depends on your insurance policy's coverage, terms and conditions. In general, it appears there will be limited coverage available.

The coverage that addresses these types of scenarios is called Civil Authority coverage. There are generally two versions of Civil Authority coverage, with one being more liberal than the other.

Version one is more widely used on commercial insurance policies and is more restrictive in nature. In this version, the insurance company will pay for the actual loss of business income sustained and required extra expenses caused by a civil authority action that prohibits access to commercial premises. In general, there are three conditions that must occur in order for coverage to be available: (i) the disruption must be due to direct physical loss of/or damage to property, other than at your physical location, (ii) the disruption must be caused by/or resulting from any Covered

Cause of Loss (as defined in the insurance policy) and (iii) the prohibition of access to the commercial premises must be the direct cause of the loss of income.

Generally, the biggest challenge with COVID-19 is that there is no direct loss to property. The loss of income results from the closure of businesses to reduce the spread of COVID-19.

It is possible that a commercial insurance policy may have a "more liberal" version of Civil Authority coverage. In this scenario, two conditions must be met to effect potential coverage. The policy covers the business income loss sustained during the time when access to property is prohibited by order of civil authority. As in the above scenario, this must be the result of a peril that is not excluded under the policy. However, in general, in this situation, direct physical damage is not required in order to trigger coverage.

It should be noted that accommodations under rules and laws may complicate coverage issues. For example, a state or local rule permitting restaurants to remain open on a "take-out" or delivery basis will permit the owners to continue to generate revenue, albeit on a reduced basis. However, this ability may prohibit recovery under a commercial policy.

Like in any claim scenario, it is imperative to consult with your agent or broker and review the coverage, terms and conditions provided in your specific insurance policy.