



The COVID-19 Pandemic and Employment Practices Liability

What you need to know

The unprecedented coronavirus (COVID-19) pandemic has impacted every major economy and industry and the local and global insurance market is no exception. The immediate challenges associated with the pandemic and the resultant economic downturn are likely to bring lasting effects to the insurance marketplace. Insurers are reviewing the coverage provided under their range of products and governments are introducing new laws which directly and indirectly impact risk and insurance. The situation is constantly evolving and Willis Towers Watson is collaborating globally to consider the insurance implications.

In a relatively short time, COVID-19 has significantly impacted many organisations' ability to continue operating, including:



travel bans;



employee self-quarantine obligations;



split workforce or 'work from home' models; and



Government mandated industry closures and social distancing measures

Boards are constantly assessing what steps need to be taken to assist the organisation to survive the economic fallout. Cost reduction measures such as redundancies and standing down large parts of the workforce are becoming commonplace. Both trends are likely to lead to an increase in unfair or wrongful dismissal claims against organisations and care should be taken to ensure that all redundancies are carefully managed within the requirements of relevant employment law. Legal advice should be sought before electing to stand down employees.

Organisations can find themselves facing allegations of discrimination, harassment or retaliation when individuals or groups of employees are targeted or mistreated.

Inadequate or unfair policies addressing access to annual leave, sick leave or personal/carers leave in the event of self-quarantine can also potentially expose the organisation to employment disputes if mishandled.

What is typically covered?

- Compensatory damages and defence costs arising from an actual or alleged employment dispute; and,
- Whilst the policies will typically include some form of bodily injury exclusion, this can often be amended to cover allegations of mental injury.

What is not covered?

Employment Practices Liability risks can be covered as part of a Management Liability policy or insured on a standalone basis. These types of policies typically contain a range of exclusions including:

- the organisation's failure to pay contractual or statutory entitlements (such as payment of sick leave, or providing pre-agreed working conditions) as required under any enterprise bargaining agreement or law; and
- illness, injury or death (if not otherwise covered).

Organisations may wish to consider:

- seeking legal advice when implementing or updating staff policies and procedures to ensure compliance with relevant employment law and work health and safety requirements;
- maintaining clear and frequent communication to all employees (noting that any organisational communication could form part of a subsequent employment claim);
- supporting employees with tools and resources to mitigate stress, anxiety and other COVID-19 related health risks;
- offering virtual safe work assessments for those who have transitioned to work from home environments;
- seeking legal advice before altering employment contract terms and conditions or standing down the workforce; and,
- having effective business continuity and pandemic planning to protect employee health and safety as the COVID-19 landscape evolves.

A reminder about claims

With business changing rapidly in response to the COVID-19 crisis, it is worth remembering that this type of insurance is written on a “claims made and notified” basis.

This means an organisation must notify their insurer of any known claim or any circumstance that could give rise to a claim before the policy period expires. Once the policy has expired, no claims or circumstances can be notified under it.

Please contact your insurance broker for further guidance on how to notify a claim or a circumstance that could give rise to a claim.

For further information

The Willis Towers Watson FINEX team can assist in interpreting coverage and help you manage this risk within your organisation. Please get in touch with your broker or consultant for further information.

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