



## Are Directors & Officers Exposed with COVID-19?

### *Directors and Officers Liability Insurance*

Directors and officers' liability (D&O) insurance is intended to provide protection for directors and officers from investigations and claims that may arise from decisions taken by them in their capacity as a director or officer of the company. The policy will be triggered by allegations that a director or officer has committed a "wrongful act".

In the case of **COVID-19**, if a director or officer faces a claim alleging their contingency planning was unsatisfactory or that inappropriate management decisions were made, any **D&O** policy in place might be triggered.

While **D&O** insurance policies will often exclude cover for claims for bodily injury and property damage, these exclusions are generally narrowly drafted so that claims arising from or relating to bodily injury or property damage will still attract cover under the policy. Also, the exclusion will often not apply to claims for emotional distress or mental anguish in any event. However, the specific terms and conditions of any such policy should be considered, to determine whether any claim against a director or officer relating to management decisions arising from the **COVID-19** pandemic may be covered under the policy.

### **Employment Practices Liability Insurance**

While companies put their contingency planning to the test, they will be considering whether they have adequate resources to sufficiently address risks to individual employees. In particular, businesses may find themselves exposed in the steps they take, or fail to take, to protect employees.

Employment practices liability (**EPL**) insurance provides cover for claims alleging employer or third-party violations of employment law. This includes any type of discrimination, sexual harassment, wrongful termination or deprivation of a career opportunity brought by employees, former employees, or potential employees. An **EPL** policy will likely cover investigation and defence costs, along with compensation that may ultimately be payable.

An **EPL** insurance policy will generally have a bodily injury and property damage exclusion, so it should be reviewed to determine whether it is widely drafted to include any claim that "relates to" such injury or damage. Broadly drafted exclusions could mean that cover under an **EPL** policy for claims relating to the **COVID-19** pandemic is limited. However, the specific terms and conditions of any **EPL** policy should be considered carefully to determine whether cover is available.

In terms of employment practices, questions may arise as to whether employers have taken sufficiently timely and appropriate steps to manage risk, such as by cancelling meetings, events, and non-essential travel, particularly to international locations. Also, whether employers have met their obligations in keeping employees informed on risks, educating them on good infection control, and encouraging and enabling them to work from home. There are also risks of adopting differing approaches with employees located in different jurisdictions or working in different parts of the business in order to address the health risks.



Claims may therefore arise with allegations including:

- ***Distress caused by lack of proactive management of the crisis within the business.***
- ***Bodily injury if the employee becomes infected with COVID-19.***
- ***Discrimination if the company is managing risks differently in different locations, teams, and so on.***
- ***Financial loss arising from enforced self-isolation.***

**COVID-19** presents significant risks for normal business operations. Companies and their directors and officers should be mindful of potential claims that may arise from the management of these risks.

If you would like to discuss any aspect further, then please contact us.

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