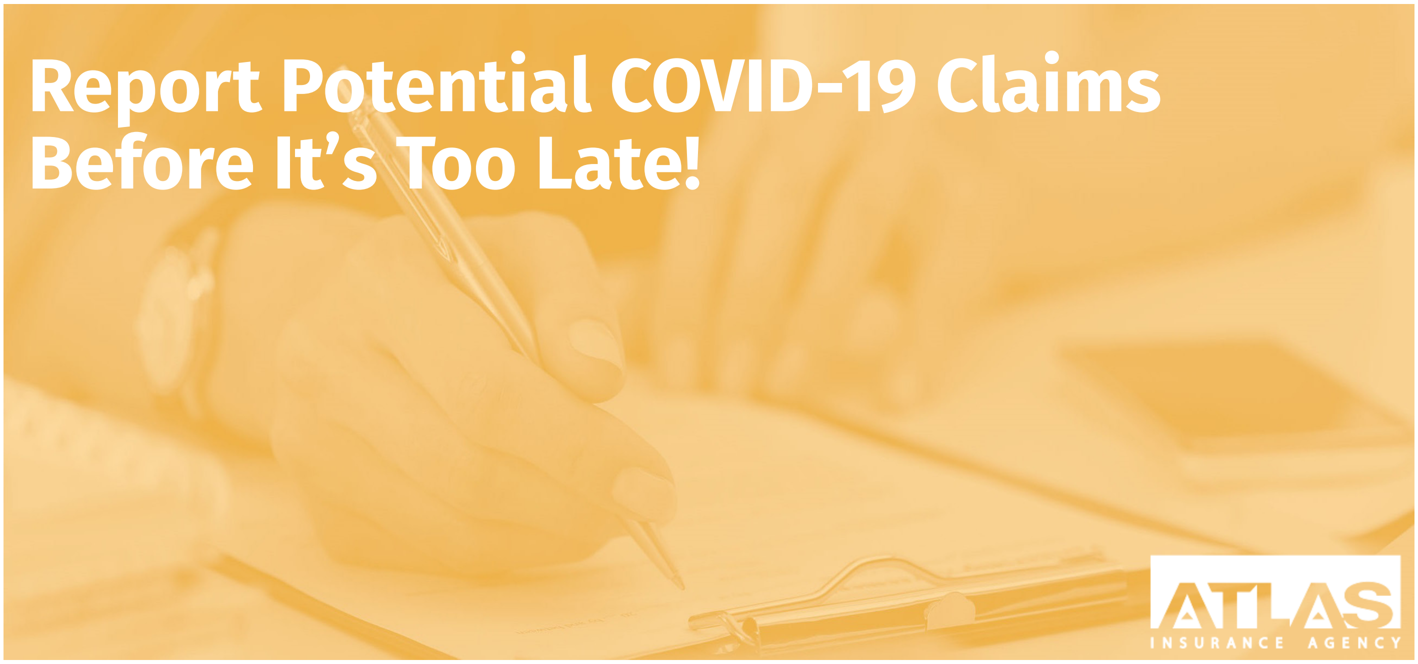
# Report Potential COVID-19 Claims Before It's Too Late!



The abundance of uncertainty surrounding COVID-19 has wreaked havoc across all sectors of the economy, posing more questions than answers. Insurance carriers in particular are determining how they will respond to insurance claims linked to COVID-19 and their next course of action.

Through various discussions with industry colleagues and information released by insurance focused media outlets, there are early indications that insurance carriers will likely mandate a virus or contamination disease exclusion of some sort on renewal policies. It has been reported that many insurance carriers are in the design phase or are jumping through the necessary hoops to get virus exclusion language approved for use in renewal policies. As a result, policyholders may no longer have liability protection under directors' & officers' liability, employment practices liability, and professional liability for claims stemming from COVID-19.

If there is going to be an exclusion on the renewal policy and you cannot avoid the exclusion by moving the policy to another insurance carrier (often for a higher premium), then be sure to report any potential claim that you or your management staff are aware of to the insurer on the expiring policy *while you still can!*

Most policies have a requirement that claims or potential claims must be reported by the expiration date or shortly thereafter (eg. within 30 days). This type of policy is called a claims-made policy. Unlike an auto or property policy wherein the *loss occurrence must happen in the policy period*, a claims-made policy requires that the *claim or potential claim against the policy holder (you) be reported in the policy period.* Subject to some restrictions, it doesn't matter when the loss event occurred.

Reporting a potential claim on an expiring policy is nothing new—it should already be a standard practice recommended by your insurance agent. It's a requirement in the policy now, but many policy holders don't take the time to read their policy or understand how it works. In fact, often there is a requirement that you must report a claim to the insurer within 30/60/90 days of when you first become aware of it.

The directors' & officers' liability, employment

Practices liability, and professional liability policies are all usually provided on a claims-made basis. So if the virus liability protection is going to expire, it's a no brainer to make sure you get any potential claim reported and covered while you can.

Most of these policies allow the policyholder to report a fact or circumstance that may give rise to a claim at some point in the future. If it does evolve into a claim at a later date, the insurer to whom the incident was first reported will treat the claim as if it were first made during the policy term of the report.

Some policyholders go too far and submit a "laundry list" of far-fetched potential claims. To avoid this, insurers require substantial details of a potential claim or claim including:

1. Details of the event that led to the current loss circumstances.
2. The loss or potential loss that arose as a result of the circumstances.
3. The details and facts on how the insured first became aware of the negligent act or circumstances.

So what type of potential claims should you query your management team about? Here are a few examples that have already taken place in other parts of the country and are likely to happen in Hawaii, as well:

- **Employment Practices Liability:** An employee is laid off and felt they shouldn't have been since others with less seniority and qualifications were not. They sue their employer for back wages for discrimination, wrongful termination, and pain and suffering.
- **Directors' & Officers' Liability:** The management team does not take proper precautions in requiring employees to work with face masks and maintain six-foot social distancing after it was widely accepted and/or mandated. Management is accused of failing to fulfill their fiduciary responsibilities when an employee contracts the disease and dies and his/her estate brings a claim for the economic loss to the family. There already have been multiple lawsuits similar to this against Walmart. As if that wasn't enough, shareholders can sue the directors and officers for the reduction in the share price because of the oversight.
- **Professional Liability:** A property manager has a tenant with an employee that dies from Coronavirus. The employee did not know that a neighboring tenant had tested positive for the virus prior and they strongly suspect that is where the employee contracted COVID-19. The neighboring tenant notified the property manager, yet the property manager was not prudent in notifying all of their tenants properly. The estate of the deceased employee sues the property manager for failure to fulfill his/her professional responsibilities.

These claim scenarios may not be valid in a pandemic where it's difficult to determine what is reasonable and prudent. However, triggering coverage, will at least allow for your policy to pay to defend you. Taking the time now to investigate and report potential claims could save you a lot of money later. Regardless of whether you end up reporting any potential claims or not, keep any virus exclusion in mind when making operational or HR decisions that could result in your organization's potential liability, before it's too late!

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