

# COVID-19: BEST PRACTICES ON CLAIMS REPORTING

COVID-19 has had a crippling effect on nearly all sectors of the economy. From business interruptions, furloughs, and shutdowns to permanent reductions in staff due to decreased demand, certain industries will be reeling from the effect of the virus for a while. Given the unprecedented way these events quickly transpired over the past few months, companies are forced to contend with increased claim filings from the aggrieved notwithstanding guidance from federal and/or state governments. As such, there are a multitude of considerations to assess in formulating a defense for companies accustomed to operating in a normally litigious environment. With wide-ranging policy implications tied to any claim arising from or related to COVID-19, an analysis of best practices as to claims notice procedures under all potentially impacted policies is of utmost importance.

Insurers have reported an influx in filed claims over the past month. Given the uncertainty many are facing that may inevitably drive them to seek recourse, this increased in filed claims is expected to continue for the foreseeable future. What's more, befitting of these unusual times, insurers are experiencing an increase in the filing of claims with nontraditional fact patterns. For example, the family of a Walmart Inc. employee who died after contracting COVID-19 filed a wrongful death lawsuit in early April. The estate sued Walmart in Illinois state court alleging that Walmart failed to follow guidelines issued by the Centers for Disease Control and Prevention and the U.S. Department of Labor for maintaining safe a workplace (see *Toney Evans v. Walmart, Inc.*). The success the plaintiffs' bar will have in bringing these novel causes of action stemming from the COVID-19 pandemic remains to be seen.

Companies would be best served to proactively review their claims noticing procedures to ensure alignment with their best practices. Most insurance policies contain provisions that require notice be provided within a specific time period, the failure with which to comply potentially barring coverage in its entirety. Furthermore, some policies contain provisions that allow for reporting of Notices of Circumstances, which would preserve coverage for matters that could later evolve into a claim-triggering coverage. As the COVID-19 situation continues to rapidly change, it is recommended that insureds consider the possibility of reporting Notices of Circumstances related to COVID-19.



Some key best practices for claims noticing are as follows:

### **Review your insurance policies for coverage.**

The full effects of COVID-19 provide many uncertainties for companies. Policyholders should review all applicable insurance policies to assess the types and extent of protection they may have arising from potential claims.

### **Review your policy for notice timeframes.**

Be sure to review your policy to see how and when notice must be provided in order to be viewed as timely. Requirements of reporting a claims notice may differ between policies. Being mindful of the notice timeframes may help to preserve coverage for a claim now or in the future.

### **Provide notice as soon as possible.**

It is yet to be seen how insurers will handle the increased volume of COVID-19 related claims. Best practices require providing timely notice of a claim. To this end, if an insured has a claim or believes there to be a potential claim, it is better to file notice early. The consequences of providing late or no notice may be devastating.

During this unprecedented time, we recommend working together with your trusted insurance broker to review the applicable policies and notice provisions.

*Please be advised that any and all information, comments, analysis, and/or recommendations set forth above relative to the possible impact of COVID-19 on potential insurance coverage or other policy implications are intended solely for informational purposes and should not be relied upon as legal advice. As an insurance broker, we have no authority to make coverage decisions as that ability rests solely with the issuing carrier. Therefore, all claims should be submitted to the carrier for evaluation. The positions expressed herein are opinions only and are not to be construed as any form of guarantee or warranty. Finally, given the extremely dynamic and rapidly evolving COVID-19 situation, comments above do not take into account any applicable pending or future legislation introduced with the intent to override, alter or amend current policy language.*