



# Coronavirus (COVID-19) Business Income Losses— Are They Covered?

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The coronavirus pandemic and the resulting efforts to minimize the spread of COVID-19 are wreaking havoc on all of us—individuals and businesses alike. Businesses that have purchased coverage for business income loss as part of their commercial property insurance may well be hoping that they will be able to recover under their policies for income loss due to the coronavirus.

Unfortunately, while a few businesses with exceptionally broad nonstandard policies may be able to do so, a standard commercial property policy probably does not provide coverage. Here are the key issues.

- **Insuring Agreement—Direct Physical Loss or Damage from Covered Cause of Loss**

Under a standard commercial property policy that includes coverage for business income loss, coverage must be triggered by direct physical loss or damage from a covered cause of loss. Most, if not all, insurers would take the position that the presence of a virus, including the coronavirus, on or at the insured's covered property does not constitute direct physical loss or damage to the property. (Still less, they would surely

say, does the fear of the possibility of the presence of coronavirus constitute direct physical loss or damage to property.) Therefore, the policy's business income coverage would not be "triggered" to apply.

- **Virus Exclusion**

Most standard commercial property policies include the "exclusion of loss due to virus or bacteria" endorsement (CP 01 40). This endorsement expressly excludes "loss or damage caused by or resulting from any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease." It applies to "coverage under all forms and endorsement that comprise this coverage part or policy, including but not limited to forms or endorsements that cover property damage to buildings or personal property and forms or endorsements that cover business income, extra expense or action of civil authority." Therefore, even if coverage was otherwise triggered under the insuring agreement, this endorsement will most likely exclude any damages due to the coronavirus.

Attachment of endorsement CP 01 40 is “mandatory” in a majority of states, according to Insurance Services Office, Inc. (ISO), rules for commercial property insurance policies. That means that insurers who elect to adopt ISO policy writing rules for commercial property insurance policies are instructed to attach this endorsement to all such policies covering property in states where the endorsement is approved for use.

## New ISO Coronavirus Endorsements

In February 2020, in response to the coronavirus outbreak, ISO offered two endorsements for optional use by its insurance company customers. They have no form number designations.

- [Business Interruption: Limited Coverage for Certain Civil Authority Orders Relating to Coronavirus endorsement](#)
- [Business Interruption: Limited Coverage for Certain Civil Authority Orders Relating to Coronavirus \(Including Orders Restricting Some Modes of Public Transportation\)](#)

These endorsements are designed to be attached to a commercial property policy that provides business income or extra expense coverage or both. Both of them add limited business income or extra expense coverage for loss suffered if the insured’s business is ordered closed or the described premises are placed under quarantine by a civil authority in an attempt to avoid or limit the spread of infection by the virus. The second endorsement also adds limited business income or extra expense coverage for loss suffered if a

civil authority orders the closure or restricted usage of a public bus, rail, or ferry lines, or related stations or terminals serving the area where the described premises are located in an attempt to avoid, or limit the spread of, infection by a coronavirus.

The two ISO coronavirus endorsements grant coverage for business income loss due to coronavirus without imposing any requirement of direct physical loss to covered property. However, it seems unlikely that many insurers will be willing to attach either of these endorsements to the commercial property policies that they issue with a declared coronavirus pandemic and multiple civil authority orders related to the pandemic currently in progress.

## Conclusion

Since the stakes are so high, there is no doubt that arguments will be made in favor of finding coverage for business income loss due to the coronavirus under commercial property policies that provide business income coverage. In fact, at least one lawsuit seeking coverage for business income loss due to the coronavirus under a commercial property insurance policy has already been filed (*Cajun Conti, LLC, et al. v. Certain Underwriters at Lloyd’s London, et al.*, Civil District Court for the Parish of Orleans, Louisiana). Others are likely to follow. These arguments have a better chance of success with respect to coverage under those commercial property policies that do not contain an explicit exclusion of loss due to a virus. But the requirement of direct physical loss or damage is also a serious impediment to any finding of coverage under a standard commercial property policy.

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