

Directors and Officers Liability in Relation to COVID-19

What is D&O Liability Insurance?

Directors & Officers Liability Insurance (D&O), is coverage designed to protect the assets of a company's directors and officers. This insurance covers these individuals, including their spouses, if a claim is filed against them by their employees, competitors, vendors, customers, investors, or other parties for the actual or alleged wrongful act of effectively managing a business.

This coverage also offers protection for the company overall as well. It takes care of any settlements, legal fees, or other costs. This coverage has always been a standard provision for businesses because it clears officers of losses due to the role they play in the company.

The COVID-19 outbreak has impacted businesses in all industries in more ways than one. Aside from the massive loss all companies are facing because they are no longer open to the public, many businesses are also facing class-action lawsuits from investors and D&O claims from their employees.

Even with the help business owners are receiving from the Federal government and other resources, most companies are still having difficulty trying to make ends meet while most of the country is still on lockdown. Because essential businesses are the only ones allowed to operate, those that do not fall

under that category are forced to drain their savings, and most were not prepared for a disaster as monumental as the Coronavirus pandemic.

Because the entire world is now faced with an issue we have never endured before, many of the experts that company owners would rely on in times of need no longer have all the answers. Therefore, business owners, and workers alike, must conduct their research from reliable sources and obtain as much information as they can to gain a better understanding of what steps should be taken to restore the economy and our world.

For What Reasons Were Directors and Officers Sued in the Past?

Lawsuits from employees and investors related to COVID-19 may be an entirely new situation, but D&O insurance has helped many business owners in the past with many legal issues. Here are some of the reasons why directors and officers have been sued regarding their roles within a company.

- Fraud
- Failure to comply with the laws of the workplace
- Lack of corporate governance
- Theft of intellectual property or poaching of competitor's customers
- Misuse of company funds
- Misrepresentation of assets within the company

The Impact COVID-19 has had on D&O Insurance

With the current pandemic, companies are now facing legal issues that were never a problem in the past. And many of these issues may not be covered under the terms of all current D&O insurance policies. When the SARS and MERS outbreaks occurred in years past, there were no third-party liability claims filed. With COVID-19, however; everything has changed. Investors have become concerned about the extreme dive in stock prices since they are also taking a significant financial hit along with the companies themselves. That means there are more companies than ever before filing third party claims, all because of COVID-19.

With the current pandemic, companies are now facing legal issues that were never a problem in the past.

Concerns About D&O Liability Since the COVID-19 Outbreak

The concerns about Directors and Officers liability coverage have escalated in recent months. Here are some examples of the new claims arising since the Coronavirus pandemic started:

Securities Class Action

Securities class action claims were some of the first to be filed once businesses started shutting down, and stock prices began to drop. That is one of the largest areas of exposure for both public companies, as well as private companies to an extent. Also known as Shareholder Derivative claims, these class actions relate to acts of mismanagement by company leaders or their failure to act quickly enough or disclose information in response to the outbreak.

Norwegian Cruise Lines

Since the outbreak began, several securities class action claims have been filed. One of the most talked-about securities class action claims is the case against Norwegian Cruise Lines brought on by their investors who purchased stock from February 20th and March 12th this year. The plaintiffs stated the cruise line gave false statements during their Security and Exchange Commission filings in February, claiming they remained steadfast and confident financially during the early days of the outbreak and they were taking the appropriate security measures to lower the level of exposure and transmission of COVID-19. According to a representative for the investors, the cruise line's false statements caused their stock price to inflate, and if the investors had known, they would have avoided buying Norwegian securities at such an increased price.

Inovio Pharmaceuticals

Along with the Norwegian Cruise Lines class action, there was another that was making headlines at the beginning of the pandemic. This class action was between Inovio Pharmaceuticals and its investors. The case was against the drug company on behalf of their investors who purchased stock in the company between February 14th and March 9th in 2020. These plaintiffs also state their stocks were purchased at false inflated prices that resulted from false statements made by Inovio's chief executive officer. The officer made claims that the company developed a vaccine for COVID-19. Afterward, their stock prices dramatically increased. Later it was revealed the brand had not developed any type of COVID-19 vaccine, and their stock price quickly dropped. These cases are two examples of the types of security class actions; more businesses are sure to receive shortly. Since March, the stock market has faced drastic times with no resolution to these issues in sight. That means, even more companies could face a suit if they make false statements, which lead to their stock prices inflating and then quickly falling.

Employment Class Action

Employment class action lawsuits are single lawsuits that are made on behalf of several plaintiffs that have identical claims against a single employer. The damages are sought out in a single action for the group instead of each employee in separate lawsuits. If an employer was refusing to pay one worker overtime, for example, it is highly likely that other workers are being treated the same. If so, this would be the grounds to begin a class action case.

Verhines vs. Uber Technologies, Inc.

Since the COVID-19 pandemic, there have been several employment class action cases filed. One that stands out is Verhines vs. Uber Technologies, Inc. This employment class action was one of the first registered that involved COVID-19, and it was consistent with other similar complaints made against the company.

The complaint states that Uber misclassifies California drivers as independent contractors, and because of that, the workers feel they should be paid sick leave. The plaintiffs also claimed that Uber's failure to provide the state-mandated sick leave is harmful. That is especially since the drivers feel the need to continue working to support themselves, even if they are showing possible symptoms of the virus. Therefore, the plaintiffs state that Uber's failure to comply with the labor laws in California created an immediate danger to both the drivers as well as the public who use the service regularly.

This employment class action against Uber is not the only one of its kind. There are businesses throughout the country who are facing the same dilemma with the possibility of sick workers coming into the office because they don't have sick leave or have used up all their days.



While many businesses are currently closed, there are still millions of people out there going to work in industries that have been deemed essential. Restaurants, grocery stores, retail stores, and the like, have remained open to the public throughout the pandemic. Even if the lack of sick leave causes workers to continue showing up to work even if they feel ill, companies and their owners could still be blamed for placing their employees at risk to the public at large.



The Federal government has recently enacted a statute that allows paid leave for many U.S. workers. While it will help, there are still many companies that should be prepared for the increase in employment class action claims.

The language of any exclusion, including bodily injury, fraudulent or malicious acts, should be carefully reviewed to determine if the application needs a final adjudication exhausted by an appeal or only by “in fact” confirmation of the conduct. That could help to clear up any confusion on the specifics of coverage.

What Should Everyone Know About COVID-19 Exclusions in D&O Policies

The level of coverage companies have under their current D&O policies may or may not be enough to protect them from the claims they are faced within the coming months. Therefore, businesses with a D&O plan must examine their terms and take any concerns or questions they may have about their coverage level to their insurance provider.

If you are planning on taking out a D&O policy currently for your business, it's vital to assess all areas of coverage and carefully review the exclusions as well as any other issues.

Overall, the landscape for D&O coverage is constantly evolving. And business owners in all industries must understand the current issues with D&O liability insurance regarding COVID-19 cases.

Does Your Business Need D&O Liability Coverage?

More companies are looking into the benefits of D&O liability coverage than ever before. In the past, many believed D&O claims were a problem that only affected public companies. It was a common misconception private companies didn't have to worry about such claims. The truth is, all companies, private, public, and non-profit, face some type of D&O litigation risk, especially now.

If you are interested in securing your company's future and getting the necessary financial assistance you need to grow from investors, you will need to have a robust D&O policy in place. That will not only protect you, but it will also serve as a stable form of protection for those who are willing to invest in your company.

At the same time, if you would like to attract newly qualified directors and keep them around, a D&O coverage policy will offer protection for directors who may be unsure about putting their assets at risk for your brand.

Any business with a corporate bond or an advisory committee should invest in a D&O insurance plan — even non-profit organizations. With the current issues going on in the world, it is evident that you no longer must own a company that posts millions of dollars in revenues to be sued over how your company is managed. Small businesses that have fewer assets could need the same level of protection today as the much larger corporations. Therefore, all business owners must take the time to learn more about D&O coverage and how they could benefit from it down the road.

While there are many class action claims in process, it is essential to remember that we are only in the early stages of these lawsuits, and they are expected to increase in the weeks and months to come. As the uncertain consequences of the recent pandemic begin to evolve, even more, new cases and theories are sure to come up. These companies must learn from the claims-making headlines at this time and take the appropriate measures to minimize their risks of class action exposure.

Speaking with a business insurance expert who understands what D&O policies cover and what they do not can be extremely beneficial at this time. While they may not be able to give you all the answers you need, these professionals should be able to provide some type of guidance. Expert insight on coverage options could help protect you and your company from a potential class action lawsuit.

Learning as much as you can about Directors and Officers liability insurance and what is covered in similar situations can help you understand the importance of this beneficial coverage.



WINONA

ROCHESTER

SAINT PAUL

LA CRESCENT

WALiveBIG.com

The information contained herein is for informational purposes only. It may not be appropriate for your particular situation and should not be taken as legal advice. You should contact an advisor or legal professional for advice about your situation.