

FINPRO Insurance Considerations in light of COVID-19

D&O	<ul style="list-style-type: none"> ▪ Given the volatility in the stock market the possibility of a stock drop after an announcement relating to the effect of COVID-19 is more than plausible. Such stock drops could attract securities class actions alleging disclosure deficiencies, breaches of fiduciary duty and corporate mismanagement, which may trigger coverage under D&O insurance. ▪ Furthermore the possibility of a derivative actions and/or regulatory investigation also remain a real possibility. ▪ Bodily Injury Exclusion: At this time there is no exclusion for COVID-19 but both public company and private company D&O policies have some form of a bodily injury (BI) exclusion.
Fiduciary	<ul style="list-style-type: none"> ▪ Fiduciary claims may become more likely as a result of the market turbulence caused by COVID-19 if there is company stock in plans. ▪ Quickly changing work roles may lead to issues surrounding plan eligibility. Health plan coverage uncertainty may lead to allegations of poor plan design.
EPLI	<ul style="list-style-type: none"> ▪ Clams by employees alleging discrimination or harassment against protected classes as a result of HR policies implemented in response to the COVID-19 outbreak. ▪ Claims under the Americans with Disabilities Act (ADA) could also arise if employers are not careful about their questioning of employees relating to COVID-19. ▪ There is typically a bodily injury (BI) exclusion in an EPL policy but bodily injury claims by employees arising out of possible infection at work may fall under the company's workers' compensation policy. ▪ Although claims under OSHA, the NLRA and many other workplace statutes are excluded under a typical EPL policy, a claim for retaliation (regardless of which statute the employee is proceeding under) would be covered.
Wage & Hour	<ul style="list-style-type: none"> ▪ For many companies faced with drastically reduced business, employers must ensure they are in compliance with all of the wage and hour laws as they consider reduced hours, furloughs or reduction in pay. ▪ On the other end of the spectrum for those companies experiencing an extreme surge in business, employers must be equally vigilant in ensuring all employees are being compensated properly, especially with regard to overtime pay. Additionally it is critical that proper meal and rest breaks are being implemented.
Cyber	<ul style="list-style-type: none"> ▪ COVID-19 outbreak has resulted in one of the largest work-from-home situations in history, cybersecurity will likely be stressed to a level never experienced before by corporations around the globe. ▪ To the extent cyber criminals are able to exploit weaknesses from this surge in remote connections, claims under cyber policies may arise. ▪ With everyone working remotely, there could be a higher propensity for Social Engineering Fraud type situations as people may be less likely to follow standard protocol given the remote access.

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