

EL and PL claims in a COVID world

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Overview

- COVID-19 has become an issue of unprecedented concern for business
- It continues to evolve and we are facing a second surge
- Impact on businesses has been and will continue to be significant
- Employers will need to respond robustly to protect their employees and minimise their exposure to further commercial risks

Today

- Claims environment
- Claims seen and anticipated
- Employers' duty of care
- Key actions for employers
 - Infection
 - Home workers
 - Physical injury and stress from overwork



A volatile claims environment



- Human impact of COVID-19 beginning to recede for now
- Country beginning to return to a new normal
- Growth in the number and categories of related claims
- Potential socio-economic effects with impact on claims volumes and defensibility
- Fraudulent claims activity inevitably echoes economic downturn Businesses' spending is likely to be less on risk assessments despite needing to do more
- Lack of spending on PPE
- Failure of H&S administration during disruption and possible period of cost cutting could impact on the ability to defend claims
- Agile claims farmers will move swiftly to exploit new claim categories
- Developing legal and policy interpretation

Claims already seen and anticipated

- Business interruption
- Professional indemnity claims against brokers relating to cover sold
- Work related stress claims
- EL and PL claims arising from alleged failures to protect employees and customers from COVID-19.



Claims already seen and anticipated

EL considerations include

- Adequate health surveillance, including identification of vulnerable individuals
- Provision of suitable PPE
- Assessment and management of workloads in the anticipation of reductions in available employees through sickness/self-isolation
- Health and safety of home workers
- Risks associated with individuals covering for missing colleagues



Claims already seen and anticipated

- Vicarious liability matters have been seen to include:
 - Those infected as a consequence of the decision of an infected employee to continue interacting with customers, contrary to government and employer advice to self-isolate in such circumstances
 - Claims relating to negligent actions arising from employee fatigue
 - Claims relating to employees negligently, and contrary to employer instruction, operating vehicles / equipment they are not trained to operate due to colleague absence
- Given the cancellation of many events, we are already being advised that contingency claims are set to rise dramatically
- There is the potential for public liability claims to be generated by the particular impact of the pandemic on care homes



Employers Liability

- Employers have a legal duty to take reasonable care for the health and safety of their employees
- Risk assessment - undertake a suitable and sufficient risk assessment to identify risks to the health and safety of their employees to which they are exposed whilst at work, and the risks to the health and safety of persons not in their employment arising out of, or in connection with, the conduct by them of their undertaking
- Employees are under a duty to take reasonable care for their own health and safety and that of those they work with
- Wilful disregard for an employer's instructions may provide a defence or, at least, the basis for a finding of contributory negligence

Key actions for employers

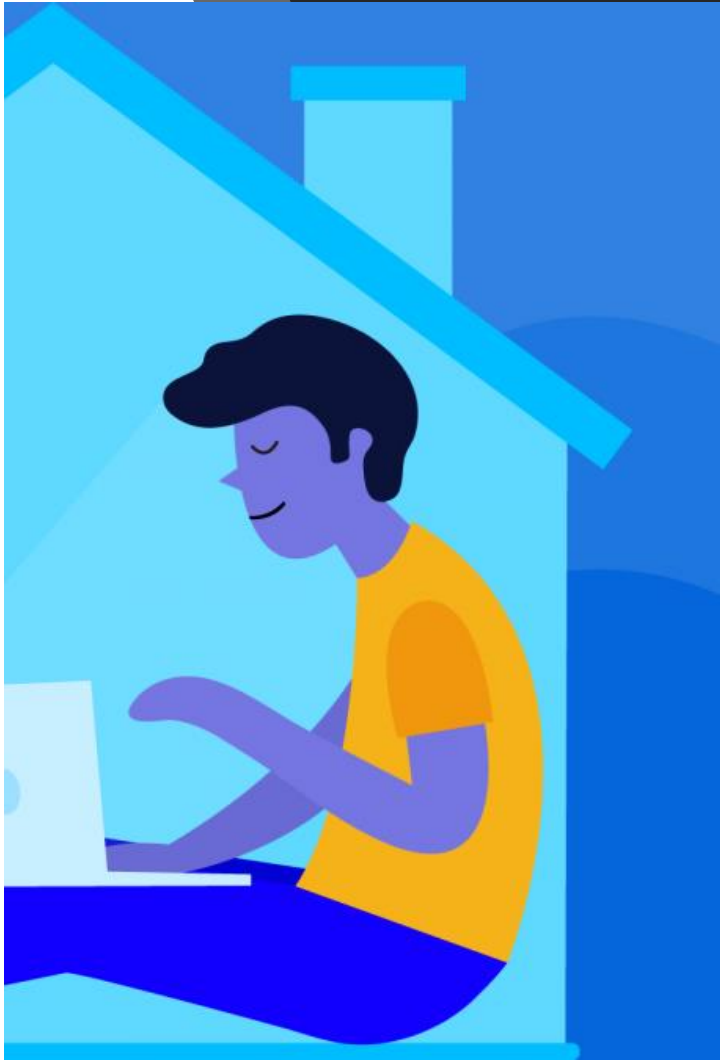
Infection



- Approach this risk as they would any other
- Start with the current government advice – review regularly
- Provide PPE where appropriate
- Identify vulnerable individuals
- Ensure the infected feel able to report symptoms and self-isolate
- Instigate sensible home working policies where possible
- Introduce appropriate social distancing measures
- Ensure appropriate facilities are available to wash/disinfect hands
- Ensure suitably robust and regular cleaning of premises

NB. likely to be extremely difficult for claimant

Key actions for employers **Home working**



- Ensure home workers are properly equipped
- Recognise potential difficulties faced by those who would not be working from home normally
- Undertake risk assessments or train staff to identify risks with duty to report any concerns or needs
- Ensure staff are made aware of the importance of working at a proper workstation, to avoid long term physical injuries such as upper limb conditions and/or back complaints
- Consider, even remotely:
 - Workstation/risk of musculoskeletal disorder and appropriate advice and support where appropriate
 - Increased stress on employees
 - New desk assessments
 - Whether work equipment used by staff is adequate and/or whether further PPE is necessary

Key actions for employers: **Stress**

Do not ignore potential impact on employees

- Undertake and evidence:
 - Sensible planning
 - Workforce review
 - Work distribution
 - Clear leadership
 - Ongoing risk assessment
- Recognise signs of stress in employees
- Monitor and control workloads and capacity
- Maintain contact
- Review and adapt processes to ease pressure – flexible working, redistribution of work where possible
- Consider all communications carefully to avoid allegations of harassment or bullying due to misunderstandings born of remote communications



Questions?

