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COVID-19 recovery claims: Can insurance avoid the predictable?, *PropertyCasualty360*

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The insurance industry can expect a 'tail' of COVID-19 claims as businesses reopen and the economy springs back to life.

Last April, I wrote for PropertyCasualty360.com about the tsunami of claims expected to occur because of COVID-19. In some segments of the economy, the prediction has, regrettably, proved correct; in others, it has been forestalled and perhaps avoided through government largess of over $3 trillion so far.

As businesses reopen and the economy comes off life support, we may anticipate a "tail" of COVID claims, plus a new type of claim that arises from the unequal speed of the recovery. Whether these recovery claims are covered under liability insurance is beyond the scope of this article. As in 2020, we can dodge some of these bullets if we're ready for them.

Employment practices claims

On June 29, 2020, following Memorial Day's big surge in coronavirus infections, David Rocklin of the brokerage firm Woodruff Sawyer predicted four main COVID impacts on employment practices liability (EPL) claims: alleged discrimination, retaliation, wage and hour infractions, and violation of then-new Families First Coronavirus Relief Act (FCRA), which was recently extended to March 31, 2021, though only as of the cutoff date for employees who have not exhausted their leave. As with the maze of federal, state and local wage and hour laws, the FCRA's complexity may give rise to EPL claims, including class actions.

These four claim types do not include unemployment benefits for the 10.1 million Americans who were officially unemployed in mid-February 2021, according to the U.S. Department of Labor, though 18.3 million were actually receiving unemployment payments at about that time, down from over 30 million at the pandemic's peak.

EPL claims tend to track unemployment statistics. As a result of the Great Recession's mass layoffs, beginning in 2007 and 2008, U.S. unemployment rose nearly a third while EPL claims jumped 13%. Laid-off workers still need to make ends meet and may turn to thoughts of discrimination to answer the question, "Why me?"

Disputes about returning to the workplace, combined with patchy access to the approved vaccines, pose new opportunities for EPL litigation. San Francisco County, where my empty office is, recently came down from the highest tier of COVID restrictions, purple, to the next-lowest, red. By the time this article is published, the county expects to be in the orange tier, with non-essential businesses allowed to open under certain restrictions.

The level of restrictions in a given county depends on its increasing or decreasing rates of new coronavirus cases, which means that franchise restaurants in one county may be open for inside seating at 50% occupancy, while their counterparts across the county line are still in take-out-only mode. This makes for uneven personnel policies and difficult decisions for managers who might want to recruit laid-off employees from other locations.

If a business insists that its workers all return to the office, can an employee whose religious beliefs prohibit vaccinations be penalized for not coming in? If the employee does come in, potentially exposing other unvaccinated workers to the virus, has the employer

provided a safe business premise? If the employee wants to return and is not allowed, has he or she been discriminated against on the basis of religious beliefs?

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