

# Insurance Buyers' News



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MOC Insurance Services  
Maroevich, O'Shea & Coghlan Insurance

Divisions of MOC Insurance Services  
Farallon Associates Insurance Brokers  
San Francisco Insurance Center

44 Montgomery Street, 17th Floor, San Francisco, CA 94104  
Toll Free (800) 951-0600 | Main (415) 957-0600 | License # 0589960



Administration

September/October 2020

Volume 31 • Number 5

## Operating Your Business During the Pandemic

Many businesses have adjusted to the pandemic by implementing work from home arrangements for their employees. This is often an incomplete or inadequate solution though.

**T**he results can be less than ideal for the business, its employees and customers. Some businesses cannot even survive let alone thrive under these conditions and reopening at least to some extent is important for their survival.

If your business is taking steps to reopen during COVID-19, you will need to adjust your operations in certain ways to prevent the spread of the virus. Your main goals will be to implement effective sanitation practices and devise ways to accomplish physical distancing between people, both between employees



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## This Just In...

**T**he recent case of *Cook v. George's* illustrates not only how employers need to make a reasonable accommodation for people with disabilities, but also the importance of "maintaining personal medical files, including information and documentation related to disability accommodations, separate from an employee's personnel file," according to Roger Achille, an attorney and a professor at Johnson & Wales University in Providence, R.I., in a commentary written for SHRM.

The plaintiff Jerry Cook had mental and physical impairments that made it difficult for him to communicate with others and lift heavy objects. But by making "reasonable accom-

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and, if you are a retail operation, customers.

Different states have different regulations regarding how businesses, especially retail businesses, can conduct themselves during the pandemic. We refer to a couple of sources for detailed information by state at the end of this article. But here are some general, common sense approaches most businesses should take when they open their doors again during the pandemic.

### Sanitation

- ✱ Encourage staff to follow hand washing protocol
- ✱ Provide hand sanitizer in washrooms and throughout the premises
- ✱ Clean busy areas more regularly
- ✱ Clean and disinfect objects that are touched regularly. Retail operations should wash down surface areas where customers make frequent contact. For example: checkout screens and touch-screens should be washed every half hour.
- ✱ Set clear use and guidance for cleaning toilets
- ✱ Provide hand drying facilities if you don't have them already like paper towels or electric hand dryers.

In addition, retail operations should:

- ✱ If necessary, shorten hours, but take time to deep clean your premises daily or bring in outside contractors to do so
- ✱ Remove sample offerings and install plexi-glass shields and sneeze guards to separate cashiers from customers.

### Social Distance

In businesses where employees are being allowed to come into the office again, most employees are probably choosing to stay home anyway (usually an option). That means those who go into the office should be able to practice social distancing more effectively. Still, you should reevaluate your office layout and determine ways to minimize contact between people.

Consider these suggestions:

- ✱ Put up signs to remind people of social distancing guidelines
- ✱ Mark six-foot distances on the floor
- ✱ Arrange one-way routing through the premises if possible, so that foot traffic always flows in the same direction, avoiding contact between people crossing paths.
- ✱ See visitors by appointment only if possible.

For activities that require people to work side by side:

- ✱ Determine whether the activity needs to continue for the business to operate
- ✱ If so, keep the activity time as short as possible
- ✱ Use screens or barriers to help protect people from each other
- ✱ Stagger arrival and departure times
- ✱ Reduce the number of people each person has contact with through fixed teams or partnering.

Retail businesses should reduce store oc-

### *This Just In*

**modations" for his disability, he was able to the job.**

Cook left the job at George's Inc, a poultry and food products producer, prior to October 2015 and was assigned "code 333" by the HR department there, which meant that he was not eligible for rehire because of a known or perceived mental condition.

When Cook later reapplied for the same job several months later, he was scheduled an interview, which he did not appear for. When he called the next day to reschedule, he was refused an interview based on the code 333 in his file, although Cook was told he would not be rescheduled because he had missed the interview appointment.

In his suit against George's, Cook pointed out that George's had rescheduled interviews with others who had missed an appointment and that its refusal to do so for Cook was discriminatory and a violation of his rights under the Americans with Disabilities Act.

Although the case was decided against Cook in the lower courts, the decision was overturned in the 8th Circuit (*Cook v. George's Inc.*, 8th Cir., No. 18-3294 (March 11, 2020).

For more information about the Americans with Disabilities Act, see the sidebar on p. 4.

cupancy maximums, which many states now mandate anyway. Restaurants, for example, may be limited to 25 to 40 percent of their usual capacity. Most grocery stores have reduced their occupancy to 50 percent or less.

Retailers should also continue to offer curbside pick-ups, encouraging customers to buy online and pick-up at the store or restaurant.

### How the Pandemic Prompts Innovation

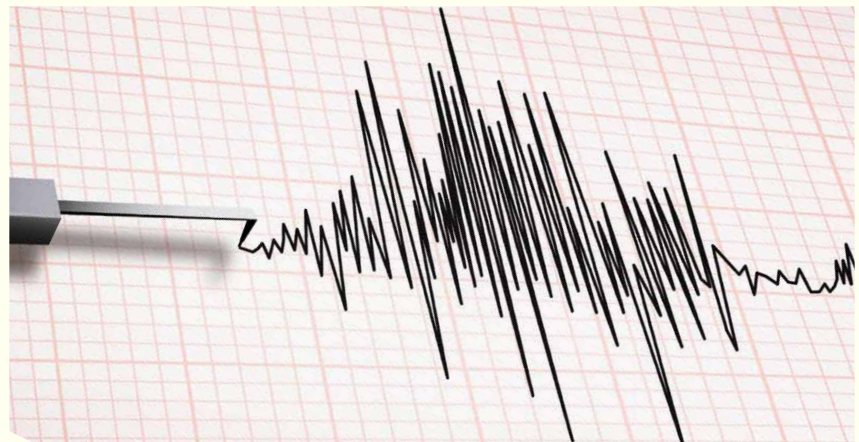
The pandemic has changed the way many businesses operate. Consider, for example, the use of contactless payments. “On March 27, Walmart began to provide options for no-contact payment, pickup and delivery, giving customers the option to use QR codes synched with the Walmart Pay app to purchase goods,” according to business consultancy Clarkston Consulting. “While already adopted by many retailers, contactless payment now is playing a bigger role as consumers are less likely to want to use cash or to touch the pin pad.”

Some retailers, such as Krogers, have adapted their in-store surveillance equipment to monitor how well customers are maintaining distance between each other. Loss prevention and shopper engagement technology company Indyme offers a system called SmartDome which understands when shoppers are too close to one another and alerts them with audio reminders to maintain a six-foot separation.

Ideally everyone would work from home in isolation until the pandemic is over. But that’s neither practical nor socially acceptable for many people and in many situations. Although there are general guidelines for businesses that are reopening, there is no uniform set of standards. Each state is different, so check out the requirement for your business in your state with these resources: <https://www.stateside.com/blog/2020-state-and-local-government-responses-covid-19>. Retailers in particular should refer to <https://nrf.com/resources/retail-safety-and-security-tools/coronavirus-resources-retailers/state-resources> ■

## Get Ready for Parametric Insurance

Parametric insurance is a type of insurance that does not indemnify the actual loss, but pays when something related has occurred with sufficient intensity to justify payment of a loss.



Imagine an insurance policy that pays policyholders not because of damage to their property but due to wind velocities reaching a certain level or an earthquake hitting at least 7.1 on the Richter Scale.

That’s how parametric insurance works. For instance, Swiss Re has just introduced an insurance product called FLOW that works on this principle. When water levels decline to a certain level in European rivers, the company pays out fixed amounts each day to its policyholders. This coverage is important for the shipping industry because ships can’t be loaded to full capacity when the waters are too shallow and there is not enough draft in them (distance from the waterline to bottom of the hull).

Another recent parametric insurance product is PathogenRX, created by risk

modeling firm Metabiota, which protects against the economic impact of infectious disease outbreaks. It was developed to help industries that rely on people showing up, such as hotels and entertainment venues. If the product is triggered by an outbreak, data such as fatality counts are used to measure how much is paid out. It's essentially a business income risk tool.

Insuring against business interruption is also the objective of what's called non-damage business interruption (NDBI) insurance, which is designed to protect the income streams of companies like Uber or AirBNB against threats such as terrorism or bad weather that does not necessarily cause physical damage. STR Global also has a product that benchmarks hotel attendance and pays out when occupancy numbers drop below a certain level.

"The face of terrorism has changed," said Joey Sylvester, regional director of specialty programs at Gallagher, in an interview with *Risk Management* magazine. "It is no longer about a building being blown up anymore, but rather people driving cars through crowds of pedestrians. Few of the buildings in the vicinity of the 2013 Boston Marathon bombing were directly damaged, but all the buildings had to shut down for a significant period."

To cover future losses like that, the parametric insurance product Public Sector Terrorism Plus was created. It insures against acts of terrorism occurring anywhere within the borders of a public entity — or within a radius of 10, 25 or more miles — that cause

a loss of tax revenue or extra expense. "If the attack occurs anywhere within the radius chosen by the insured, coverage is triggered. Capacity is provided by specialty insurers within Lloyd's syndicates."

As more data is collected about events and how people act, there could be an even greater variety of parametric insurance products. Insurance against reputation risk, for example, could be written based on measuring the amount of negative social media created against a business or person.

One of the problems associated with parametric insurance is finding trustworthy third parties whose data could be used to trigger a policy. One expert, Christopher Sheehan, CEO of WorldCover, pointed out to *Risk Management* that although The National Weather Service might be a good source of truth for measuring the impact of a hurricane in the U.S., finding a reliable third party to rely upon for measuring drought in Ghana could be more difficult.

The most obvious limitation for expanding parametric insurance at this point is lack of awareness. Even sophisticated risk managers require a lot of convincing. It's also hard to see how it could be used outside of property and business interruption scenarios, as with casualty events. It's also not necessarily any cheaper than a regular indemnity product.

It is, however, an interesting concept that we may see more of in the future. It certainly would have been a good coverage for many businesses to have during the pandemic. ■

## Don't Forget Your Umbrella

If your business is the typical small or mid-sized business, you probably have somewhere between \$500,000 and \$2 million in liability coverage under your business owner policy (BOP) or commercial general liability policy. How does umbrella coverage work with these policies to provide extra liability protection?

In addition to your BOP, you might also have liability coverage under other policies, such as an automobile liability policy or employers liability policy. Sometimes, a liability claim will exceed the limits of these policies. When that occurs, you'll be glad to have an umbrella liability policy. Umbrellas provide coverage when you exhaust the limits of your "underlying" liability policy.

Umbrella coverage can be attached to commercial liability, employers liability and automobile liability policies. It has three main functions:

- ✦ to provide excess coverage for underlying liability policies (for example, increasing cov-

ered loss limits from \$1 million to \$5 million)

- ✱ to “drop down” and make payments when underlying policy limits have been totally or partially exhausted (such as when maximum aggregate limits have been reached before the end of a policy term or when liability awards consume limits of other layered policies)
- ✱ to provide broader scope of coverage than primary policies offer (for instance, covering damage to property belonging to other parties but in the care, custody and control of the insured).

Although you might hear the terms “um-

brella” and “excess” used interchangeably, these two types of policies differ significantly. Excess insurance simply provides higher limits than your underlying policy. An umbrella policy not only increases your limits, it increases the scope of your coverage as well. In other words, an umbrella policy can protect you from some losses excluded by your primary policy. Policy terms vary, but umbrellas can cover claims filed outside the U.S. or Canada; claims of contractual liability (for both written and oral contracts); liability for items in your care, custody and control; and watercraft or aircraft liability — all excluded by the standard commercial liability policy.

Before your umbrella activates this “drop

down” coverage, an insured must pay a self-insured retention (SIR—usually \$10,000 or \$20,000) that acts as a deductible.

### What to Look for in Umbrella Policies

Most umbrellas furnish broader coverage and fewer restrictions than general liability policies, but if yours doesn't, consider adding “broad as primary” or a “following form” clause in the contract. This will indicate that your underlying policy's conditions will automatically be included in the umbrella coverage. When possible, amend the language to go beyond the underlying policy's conditions, by agreeing that exposures not covered by the underlying policy will be picked up by the umbrella after your claim costs exceed the SIR. Anniversary dates of all underlying and umbrella coverages should coincide, to avoid potentially damaging coverage gaps or overlaps.

When your organization has several layers of insurance, be certain that covered losses and “drop down” language are identical. Some policies have separate limits for legal defense costs. If your umbrella includes defense costs within its policy limits, you might want to purchase higher limits. If the policy covers more than one company, be certain to insert a “severability of interests” clause; this will treat each company as a separate insured if an employee of one company makes a claim against another insured company.

Umbrella insurance can save the day when a major claim puts your company's finances at risk. Please call us to evaluate your liability exposures today. ■



## What is ADA?

**T**he Americans with Disabilities Act (ADA) and amendments, which applies to employers with 15 or more employees, says employers cannot discriminate against individuals with disabilities in hiring, promoting, retaining and other aspects of employment. The ADA requires affected employers to provide a “reasonable accommodation” to allow these individuals to perform their job duties. Employers do not have to provide accommodations if doing so would be an undue hardship.

A reasonable accommodation is any change in the workplace, or the way things are customarily done that provides an equal employment opportunity to an individual with a disability. While there are some things that are not considered reasonable accommodations (e.g., removal of an essential job function or personal use items such as a hearing aid that is needed on and off the job), reasonable accommodations can cover most things that enable an individual to apply for a job, perform a job, or have equal access to the workplace and employee benefits.

An employer’s obligation to provide accommodations begins at the very start of the employment process. Employers with 15 or more employees must ensure applicants with disabilities can apply for jobs. This makes employers that recruit at locations that are physically inaccessible open to possible discrimination charges. In addition, employers that have online applications should also provide alternative



means for people with disabilities to apply, unless they can show that doing so would create undue hardship.

Employers must also provide the accommodations necessary for an employee to perform the essential functions of the job, to gain access to the workplace or to enjoy “equal access to the benefits and privileges of employment,” such as trainings and office-sponsored events.

As illustrated in the court case cited on p. 1 of this edition of Insurance Buyers' News, it is important when making accommodations to not let an employee’s personal medical information subvert the intention of the ADA. ■

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