

COVID-19 (Coronavirus)

Construction Industry Update from Cobra Insurance Brokers

The single most important action we can all take, in fighting coronavirus, is to stay at home in order to protect the NHS and save lives.

When we reduce our day-to-day contact with other people, we will reduce the spread of the infection. That is why the Government has introduced three new measures.

1. Requiring people to stay at home, except for very limited purposes.
2. Closing non-essential shops and community spaces.
3. Stopping all gatherings of more than two people in public.

Every citizen must comply with these new measures. The relevant authorities, including the police, will be given the powers to enforce them – including through fines and dispersing gatherings. These measures came into effect on Monday 23 March. The Government will look again at these measures after three weeks, and relax them if the evidence shows this is possible.

Sometimes working from home is not possible. Certain jobs require people to travel to their place of work, such as work in construction, for example. If you cannot work from home then you can still travel to work, provided you are well and neither you nor any of your household are self-isolating. This is consistent with advice from the Chief Medical Officer.

Employers who have people onsite should ensure that employees are able to follow Public Health England guidelines including, where possible, maintaining a 2 metre distance from others, and washing their hands with soap and water often, for at least 20 seconds (or using hand sanitiser gel if soap and water is not available).

Work carried out in people's homes or businesses, for example by tradespeople carrying out repairs and maintenance, can continue, provided that the tradesperson is well and has no symptoms. Again, it will be important to ensure that Public Health England guidelines, including maintaining a 2 metre distance from any household or business occupants, are followed to ensure everyone's safety.

No work should be carried out in any household which is isolating or where an individual is being shielded, unless it is to remedy a direct risk to the safety of the household. In such cases, Public Health England can provide advice to tradespeople and households. No work should be carried out by a tradesperson who has coronavirus symptoms, however mild.

Insurance Update

Employers Liability Insurance

UK Employers' Liability Insurance is designed to provide cover for an Insured's legal liability for injury arising out of the Insured's actions or failures to act where a duty of care is owed.

If an Employee suffers death, disease, illness or injury as a result of an Employers negligence, they may look to bring a claim against their employer. However, the employee in question will need to prove their employer breached that duty of care and that in turn led to said injury, disease or illness.

For example, an employer failing to undertake adequate risk assessments or providing adequate Personal Protective Equipment (PPE).

If a legal liability were to be established, a UK Employers Liability policy is designed to respond in accordance with the terms, conditions and exceptions of the policy.

To protect your employees and your business consider the following points if employees have to work:

1. With the requirement of 2m distancing, can employees travel in separate vehicles?
2. Can you equip your vehicle with suitable hand cleaning products and sanitiser?
3. Do employees have access to suitable rest areas where they can be 2m apart?
4. Have you undertaken adequate risk assessments regarding social distancing?
5. Have you provided and obtained signed acceptance of adequate/suitable PPE to employees?
6. Consider how manual handling of large items can be undertaken to allow for social distancing?
7. Do you have a suitable cleaning regime for shared company vehicles?
8. Can tools and plant be cleaned adequately to protect employees?
9. If employees use public transport can they travel outside of peak times?
10. Is shift working possible to reduce numbers on site at any one time?
11. Do you have suitable systems to dispose of used PPE?

Public Liability Insurance

UK Public Liability Insurance is designed to provide cover for an Insured's legal liability for injury and/or damage to third party person/s and/or their property arising out of the Insured's actions or failures to act where a duty of care is owed.

If a third party such as a customer or member of the public suffers death, disease, illness or injury as a result of a companies' negligence, they may look to bring a claim against the company.. However, the person/s in question will need to prove the company breached that duty of care and that in turn led to said injury, disease or illness. For example, proving that they contracted the disease either whilst at a contract site under the companies control or from the contractor working in their property.

To protect your customers, members of the public and your business, consider the following:

1. Restricting access to contract sites for customers. If access is vital, providing suitable PPE and communicating your safe distancing protocol to them at site induction or before the visit in writing
2. Introduce a safe delivery area, where suppliers can deliver to the site whilst maintaining safe distancing, ensure delivery driver wears suitable PPE before unloading
3. If handing a site back to a customer, ensuring a suitable cleaning regime is introduced to ensure site is clean and safe.
4. Ensure any waste PPE is safely stored away from Public Access and disposed of correctly

Business Interruption Insurance

The core purpose of Business Interruption Insurance is to respond to losses sustained as a consequence of an insured material damage loss, for example, following a fire or flood at an insured premises. Some policies may also include extensions for losses following certain events where there is no physical damage, albeit these are usually subject to lower limits and typically for losses occurring at the insured's premises or within a specified distance thereof.

With the Coronavirus one of the key triggers will be whether the policy includes a "Contagious diseases", "Infectious diseases" or "Notifiable diseases" section/extension of cover. There are two issues, one is that these extensions are rarely included under in a construction policy and secondly if they are included is insurers all having differing definitions / listings of what diseases are included and/or are potentially included.

Many insurers list of specified diseases mirror those listed as notifiable under "The Health Protection (Notification) Regulations" at a particular point in time, and do not necessarily reflect the current list or include Coronavirus (COVID-19). Whilst some insurers have a wider, more favourable definition of notifiable diseases, and will include cover (albeit almost certainly restricted to whatever inner limit is stated in the policy). Any potential cover for a reduction in profit from contract sites would rely upon both a contract site and a notifiable disease extension being included within the extensions on your policy

If in any doubt, contact your insurance broker or insurer to establish the cover you have in place.

Directors & Officers Liability Insurance / Employment Practices Liability Insurance

For any company there is always a possibility that claims may arise against directors and offices in the event a business is considered to have inadequately prepared itself to handle how an outbreak may affect the business. Even prior to the current lockdown in the UK, you may have seen examples of businesses such as Facebook restricting social visitors to its offices, and others such as Pfizer, Microsoft and Apple warning shareholders about the impact Coronavirus will likely have on their operations and results.

Insurers would expect policyholders to take appropriate prudent measures to protect both their employees and the business. For example, organisations should be reviewing their current plans or put plans in place by establishing a pandemic coordinator or team to focus on this issue (including

addressing such issues as protecting customers and staff and securing supply chains where appropriate).

Any claim brought by an employee (against their employer) for breach of employment law would ordinarily be the subject of a claim under an Employment Practice Liability Insurance policy, for example, an employee claiming for wrongful termination. Employers should check whether they have such coverage in place (it may be arranged in isolation or as part of a Management Liability policy).

Construction Site Closures

Whether planned or unplanned, a construction shutdown can have a significant impact on a project's potential for loss. The following resource offers guidance on how to maintain site safety and security during periods of inactivity.

Risk Assessment

Conducting a risk assessment is the critical first step to prepare for a shutdown. The risk assessment helps determine potential exposures to loss and serves as the foundation of your site control plan.

Pre-Shutdown Inspection

The assessment should involve a documented inspection to identify conditions that could result in loss during the shutdown. Examples may include material storage, points of access to the job site and immovable equipment. Be sure to consider different types of losses, including bodily injury, property damage and construction defects. Take photos and/or videos, and keep detailed notes documenting the pre-shutdown condition of the job site.

Site Access and Security

Determine the extent of activity that will need to take place during the shutdown. If work will continue intermittently, create a list of personnel authorised to access the site. Share security and safety protocols with all affected parties. Identify the resources needed during work activities, such as on-site power, water supply, equipment and safety gear.

If no work will be performed during the shutdown, the assessment should provide an estimated site closure and reopening time frame.

Other Considerations

Use and maintenance of surveillance systems; site inspection frequency and responsibility; coordination between trades; emergency communications; location-specific exposures (weather, theft/vandalism, accessibility to emergency responders); anticipated shutdown; and reopening procedures.

Site Control Plan

Once the risk assessment is complete, develop and implement a written site control plan. The plan should address all areas of concern identified in the risk assessment, such as the examples provided below.

Materials and Equipment

Reduce or eliminate material inventory and make alternative storage arrangements. Redirect or cancel incoming deliveries. Materials left on-site should be properly protected, inventoried and catalogued. Use a protective film or wrap over materials stored outdoors to minimize contact with moisture. Protect immovable materials with a secured tarpaulin cover.

Implement enhanced controls when storing critical equipment like switchgear or materials with a long lead time. Secure tools and equipment in locked containers or sheds. Keep high-value commodities out of view. Coordinate with subcontractors to ensure that nonessential tools and equipment are removed from the project, if possible.

Once the site reopens, inspect all materials and equipment prior to use. Dry out or replace materials exposed to moisture. Be sure to conduct a thorough inspection of systems installed prior to the shutdown to verify they are in good condition and operational. Remove or repair damaged materials, as needed.

Cranes

Extended project shutdowns provide unique exposures for cranes. Secure cranes from unauthorised access. Lower lattice boom cranes and fully retract telescopic booms. If booms are left in the air, initiate a process to check for boom creep, eroding ground conditions, vandalism, etc., and monitor weather that may require lowering booms. Tower cranes are required to weathervane unless approved by manufacturer. Don't leave equipment or supplies hanging from cranes. Consider gas tank locks on equipment. Consider returning rental equipment to suppliers. Cranes should be removed from low-lying areas.

Fire Prevention

Review the project's fire prevention plan and document specific actions taken to remove, isolate and protect fuels, combustibles and flammables. Identify sources of ignition such as electrical systems and temporary heating. Ensure that all fire detection and suppression systems are in place and monitored.

Equipment Stability and Ground Conditions

Inspect all excavations, trenches and site drainage areas. Backfill or cover and secure all open excavations. Eliminate any potential for trench collapse. Verify that all scaffolding is secured and inaccessible. A competent person should inspect scaffolding through the duration of the shutdown before and after weather events.

Water and Weather Intrusion

Identify personnel responsible for monitoring weather throughout the shutdown. Establish protocols for weather event responses, including communication to impacted trades.

Confirm that all buildings are weather tight, with windows and doors securely boarded up. Inspect permanent and temporary roofs to ensure that they can properly protect against the elements. Inspect all water removal gutters, downspouts and drainage systems, including drain guards. Seal or install curbs on all slab penetrations to prevent floor-to-floor water transmission.

Documentation

Maintain all documentation related to the shutdown with the job file, including risk assessments, inspections, photos, notes, control plans and correspondence with project personnel throughout the inactive periods.

Other Insurance Considerations

Working from Home

With many employees working from home there are two main issues, one is to ensure you notify your insurers if the employees have taken work property home, to ensure there is cover in place for your property, in the construction industry this could possibly extend to tools, plant and materials. The second is to ensure that if the staff are clerical in nature that their work area is safe and that you check in with them regularly to make sure they are OK, working from home can be stressful especially if the house has many occupants.

Employees should also check that their home insurance does not prohibit home working and/or notify insurers where appropriate.

Tools & Equipment

If employees are not working and unable to return tools and equipment to your premises, ensure the tools and equipment are stored in a safe and secure location and not left in vehicles for a prolonged period of time, establish where they are storing the equipment and that the security is sufficient. Advise your insurance broker or insurer.

NHS Volunteering

Many businesses and employees are offering their services as NHS Volunteers, some will be offering home based calls whilst some will be offering to deliver supplies or food. The latter presents two issues, firstly cover under motor insurance if using company vehicles, some insurers are agreeing to this use as it is voluntary, but suggest you contact your insurance broker or insurer for verification. The second issue is cover for employees carrying third party persons and/or delivering supplies or equipment if done so as part of a company volunteering to help. If they are carrying out deliveries and collections, risk assessments will need to be done for tasks such as manual handling, getting in and out of vehicles, and loading/unloading vehicles. You will also need to notify your Liability insurers, so they are aware of the changes.

Closure of Contract Sites

With many contract sites closing, questions arise regarding insurance cover. Most contract works policies contain two significant areas with regards to this, one relates to cessation of work over 90 days, whilst we are currently looking at only 21 days, this is something which may need further action if we get close to 90 days. The second important area is the reasonable protections condition, which ordinarily would expect plant to be removed from site, ideally to own premises, and hired plant to be off hired to plant hirer, and finally materials stored securely and the site left secure so third parties cannot gain access.

Unoccupied Premises

With own premises left unoccupied whilst people are working from home, you should notify your insurers to ensure that full cover is maintained during this period, and ensure that all other policy terms and conditions applicable (such as security conditions) are met.

Cyber Risks

Cybercrime has been a big topic for the past few years with claims rising rapidly. With many staff working from home, IT security and controls can become relaxed, especially if staff are using their own computers to connect to your systems. Cyber criminals will undoubtedly see this relaxation of security as an opportunity and look to target businesses. Staff should be reminded to vigilant when opening e-mails and also when downloading software or files to equipment which connects to your servers as they could accidentally introduce viruses or malware, crippling your systems at such a critical time. If Cyber insurance is already in place insurers should be advised with regard to any changes to your normal security protections, to ensure this does not compromise existing coverage.