

RICARDO LARA

INSURANCE COMMISSIONER

California Department of Insurance

**Notes – City of Alameda Small Business Insurance Tele Town Hall
Tuesday, May 12, 2020**

California businesses of all sizes are suffering great losses because of the COVID-19 Pandemic. While we have encountered business interruption questions in the past following wildfires or other disasters, we have seen nothing on this scale – with thousands of businesses closed and drastically reducing payroll. Insurance Commissioner Ricardo Lara hosted the following members and business association to address issues faced by California’s small businesses:

- Sarah Henry, Public Information Officer, City of Alameda (Moderator)
- Alameda City Council members
- Kathy Weber, Downtown Alameda Business Association
- Bryant Henley, Deputy Commissioner and Special Counsel
- Tony Cignarale, Deputy Commissioner for Consumer Services and Market Conduct

California Insurance Commissioner Ricardo Lara

Thank you to Alameda City Council members and the Downtown Alameda Business Association for hosting.

Our local leaders are making critical decisions as we look ahead to getting our economy back on track.

I have taken a number of steps to help our small businesses:

On April 13, I ordered insurance companies to return a portion of premiums to businesses and drivers affected by the COVID-19 pandemic.

This order covers at least six lines of insurance where the risk of loss has fallen as a result of the pandemic: private passenger automobile insurance, commercial automobile insurance, workers’ compensation insurance, commercial multi-peril insurance, commercial liability, and medical malpractice insurance.

As a business owner, you should not have to do anything to receive the refund, and companies must provide this relief as soon as possible.

This could be in the form of a premium credit, reduction, return of premium, or other adjustment that gets funds back to you or reduces what you owe in the future.

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The amount you get back will vary by company and policy. In many cases, it will be a percentage of your premiums for March and April – now likely May as these stay at home rules continue.

This builds on an action that I took in March to request insurance companies give, at minimum, a 60-day grace period for businesses to pay premiums. Many insurance companies have honored that request by offering flexibility to consumers and businesses during this national emergency.

The Department has also received a number of complaints regarding business interruption insurance.

I learned that some insurance companies are denying business interruption claims without a thorough investigation or discouraging you from even filing a claim. That is simply unacceptable.

On April 14, in response to numerous complaints from businesses, public officials, and other stakeholders, I required companies to comply with their contracts and California law by fairly investigating all business interruption claims caused by COVID-19 – just as they would for any disaster.

The Department will be watching to make sure they do.

I also want to urge all businesses to be on the lookout for fraud and insurance scams – and report any suspicious activity to the Department of Insurance.

The Department has 300 sworn investigators and enforcement personnel, with 9 regional offices – Alameda is served by our Golden Gate office in Benicia.

Here are some points for small business owners and managers to keep in mind to help protect your interests as you do business during the uncertainty surrounding COVID-19.

- Be on the alert for those offering bogus workers' compensation policies. Verify the legitimacy of the selling agent and the policy offered. You can verify the agent's license on our website and contact the insurance company directly to verify the policy.
- Be on the alert for fraudulent workers' compensation claims by employees that may occur as the result of layoffs or COVID-19 related illness.
- Report suspected insurance scams and fraud by calling CDI at 800-927-4357 or through our website at insurance.ca.gov.

While we have transitioned a majority of staff to telework in support of the Governor's "stay at home" directives, we continue to provide essential services for California consumers and we are available via phone at 1-800-927-4357 (HELP) and through our website – insurance.ca.gov -- to assist you with your claims.

You can talk to an actual person – not just a recording.

Today two of our Department staff are on this call to answer questions: Deputy Commissioners Tony Cignarale and Bryant Henley.

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Questions

1: Is there a risk to holding off submitting a Business Interruption claim if at this point there is no clear indication of coverage or loss?

Commissioner Lara: My recommendation is that you should not wait to file your claim. There could be deadlines to file and you don't want to miss them.

While many commercial policies have terms and exclusions that create a challenge to getting claims paid under your Business Interruption coverage, not all policies are the same. The Department would need to look at the specific policy to better understand that coverages and exclusions may exist.

If you have Business Interruption coverage, but your insurance company is telling you that these losses are not covered due to exclusions in your policy, we recommend that you file a formal claim with your insurance company.

Insurance companies are legally required to fairly investigate your claim and formally respond back to you with their coverage decision and the reason for any denials they may make.

Tony Cignarale, Deputy Commissioner: While it is more complicated than this, many commercial policies have exclusions for loss due to contamination by virus and similar perils. Many policies also require that your loss be caused by direct physical damage or loss to the insured property that results from a cause covered by the policy. These conditions and exclusions do create hurdles to obtaining coverage. However, as Commissioner Lara mentioned we would need to see the entire policy as well as the circumstances applicable to your loss event to know what conditions or exclusion may or may not exist for a particular business.

If a business has not filed a formal claim, it should do so immediately. If the business has filed a formal claim and that claim has been denied, we recommend you to file a "Request for Assistance" with CDI at 1 (800) 927-4357 or through our website at: www.insurance.ca.gov.

We will look at the facts of the claim, the policy provisions, and contact the insurance company if we determine there is an issue with their determination. While it is true that many commercial policies have provisions that may exclude coverage for business interruption under the circumstances, the CDI will review the claim to ensure that your insurer is properly investigating your claim and following all laws and the provisions in your contract.

2: Please comment on the insurance companies' denial of "Business Interruption" claims and the class action suit filed by insurers.

Commissioner Lara: In addition to the challenges in getting coverage for business interruption that were mentioned in the last question, we know there are several lawsuits in this state and other states. We are closely monitoring these cases, which require our courts to be the fact-finder and analyze the terms in each unique insurance policy – and determine what caused a business to suffer losses.

It would be inappropriate for me to comment on any particular pending lawsuit – these cases will be determined in a court of law. In general, this litigation is a stark reminder to us all to read the insurance policy you decide to purchase, and if necessary consult with an insurance specialist to make sure your policy fully covers the business risks you assume you are insured against.

Bryant Henley, Special Counsel: The Department has seen dozens of lawsuits around the nation concerning business interruption insurance and California is no exception. As is true in other states, a substantial majority of commercial insurance policies sold here specifically exclude viruses from the scope of covered events. Although this is true for most policies, it is not true for all. Indeed, the terms of some insurance policies raise an open question about whether COVID-19 and the “stay at home” public health orders properly trigger coverage under a business interruption policy. Because these are questions of contract interpretation, if an insurer asserts that a policy does not cover a particular business loss, our courts must ultimately determine whether coverage exists under a given policy.

3: Do you think it is useful and would you support, recommend and encourage the Alameda City Council as well as other California Cities and County Board of Supervisors and the California State Senate to pass a resolution about Business Insurance Interruption similar to the one below?

The resolution to be sent to the members of California Congressional Delegation, to the majority and minority leaders of both Houses of Congress and the White House.

Where As: Many Small Business have been paying for Business Interruption Insurance

Where As: Many Small Business face total failure because of the catastrophic losses due to COVID-19

Where As: Insurance companies refuse to cover losses caused by COVID-19 under our Business Interruption Policies

Therefore we Downtown Alameda Business Association recommends

Congress to enact a Resolution similar to the Terrorism Risk Insurance Act (TRIA) that was passed after 9/11 to:

1: Have Insurance Companies provide coverage for Business Interruption Losses caused by COVID-19 and Government Shelter in Place Orders

2: Involve Government, Insurance Industry and FEMA in assisting in the survival of our small business

3: Pass a Stimulus Bill to provide assistance to Insurance Industry in order to cover Small Businesses who employ less than 100 people and have Bill to collect.

Commissioner Lara: I respect the authority of our local leaders to determine what is best for their communities. Whether Alameda should issue a resolution, and what the contents of that resolution should include are questions for your local leadership. These are important policy decisions that can have consequences for your community and we do not want to tell our local governments what to do.

But we will tell you that this is a major problem not just here in Alameda but nationally.

All levels of government are grappling with these questions. In our capacity as government officials, we need to work together to help our businesses and their workers. Early in this crisis I wrote a letter

urging federal stimulus funds be used to support small businesses. The Department staff can share that with you.

We wish there were an easy solution, but we are going to need federal and state action in many areas to support small businesses.

4. Can you share concerns of other residents that you are hearing?

Tony Cignarale, Deputy Commissioner: The primary concerns raised by residents are regarding business insurance interruption claims from small businesses and some non-profits who seem to be experiencing the brunt of financial losses. However, we are also hearing about health insurance claims issues relating to COVID-19 testing and treatment. Additionally, we have been receiving complaints about affordability and availability of all types of insurance, from commercial to life and other types. We are hearing that due to COVID-19, premiums are higher if you can even get renewed. Many riskier types of businesses (like hotels/motels, dry cleaners, construction, etc) find it hard to get insurance in the “admitted” market here in California, so they are forced to buy insurance in what is called the non-admitted (or surplus lines) market. While these non-admitted insurers are willing to write these riskier businesses, they also tend to charge higher rates. As for workers’ compensation issues that may arise, it will take time to see the impact of COVID-19. Residents are encouraged to contact the Department with any questions or concerns they are seeing.

Additional Resources

Request Assistance with the Department of Insurance:

(800) 927-4357 www.insurance.ca.gov

FAQs and complete Paycheck Protection Program information can be found here:

<https://home.treasury.gov/policy-issues/cares/assistance-for-small-businesses>

Small Business Administration:

<https://www.sba.gov/local-assistance>

Check Status of my Economic Injury Disaster Loans: (800) 659-2955

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