



WORKMEN INSURANCE AMIDST COVID-19 PANDEMIC

COVID-19 pandemic has opened several battles for employers at one go. As they struggle to cope with business uncertainty on account of the pandemic, employers are required to continue to pay their employees regular wages during the lockdown. Employers also face the situation where the employees may have contracted COVID-19, prior to notification of the lockdown or otherwise, and may face claims from such employees. Therefore, it is essential for establishments to reassess their risk exposure and explore risk management strategies, including reviewing their liability risks under various types of insurance policies, including workmen compensation.

Employers are legally required to ensure that workplaces are safe, hygienic, and in such condition that an employee is able to discharge

his/her duty without any detrimental effect to his/her health and well-being. However, in situations like the present pandemic, it may be beyond the control of the employers to keep the workplace immune from the reach of the pandemic. In such situations, employees must also take necessary precautions to avoid contracting the virus. However, if a personnel still contracts the virus arising out of and in the course of their employment, the employee may move a claim against their employer under the Employees Compensation Act, 1923, which may result in the employer claiming any losses under the workman compensation policy.

In this note, we try to assess the key aspects of coverage, exclusions and other concerns that arise in relation to the workmen compensation policy in the wake of this global pandemic.

WHAT IS A WORKMEN / EMPLOYEE COMPENSATION POLICY / WC POLICY?

A WC policy is procured by the employer to secure and safeguard themselves against legal liability toward their employees/workmen with respect to injuries, disablement and diseases arising out of and in the course of the employment.

We have seen a few policies where the wording can subject the cover to a very narrow interpretation, thereby not covering many usual losses. An example would be that the liability

of the Insurer is contingent on and equivalent to the liability of employer, which usually lowers the pay-outs. Most WC Policies extend only to employees, and therefore, do not cover all other category of personnel like contractors, sub-contractors, and contracted labourers, unless they are included by specific endorsement.

Another aspect restricting liability under a WC policy are the exclusions, which can be very wide. Some of the standard exclusions



that allow Insurers to take a wide view and escape liability are (i) occupational hazard (ii) contributing cause by Insured and (iii) medical expenses exclusion. More often than not, an Insurer argues that the loss was caused due to the attempted commission of, or wilful participation in, an illegal act or any violation or attempted violation of the law by the employees, and seeks to use the contribution to cause exclusion. The practical difficulty in such situations is the limited measures to prove otherwise, which allows an Insurer to lower the settlement or renege liability altogether in some cases.

We have also seen a few other issues that emerge out of a WC policy. In most standard policies, any change in the limitation of liability

of employer specifically does not impact the liability of Insurer unless specially agreed upon. Therefore, in view of the lockdown directives, although employers may be bound to pay employees the said compensation or any increased element thereof, an Insurer might be able to seek protection from any increase in their liability. Most policies also record that compliance with technical policy conditions including informing the insurer of change in number of employees (which most insured) is a condition precedent to Insurer's liability. This enables the insurers to use it as a technical objection to commencement of liability. Similar technical conditions include, reasonable precautions to prevent accidents and diseases, compliance with all statutory conditions, to name a few.

WHAT CAN ORGANISATIONS DO?

Due to this first-time and unforeseen outbreak of such a pandemic in recent times affecting individuals and corporations alike, on a global level, the employers must examine their existing policies and ascertain the scope of their workmen compensation insurance. While the law envisages that injuries, disablement, illness

or disease must arise out of or in the course and scope of employment, which will normally come down to whether an employee/workmen was “working” when exposed to COVID-19, it will be difficult to determine the exact moment when the disease was contracted, thereby creating a tougher burden of proof.



Further, caution ought to be exercised (i) to ensure that all reasonable protective/preventive measures that are prescribed are being taken to prevent the contraction of COVID-19; (ii) to comply with all statutory obligations prescribed; (iii) to maintain workplace hygiene and observe all the directives prescribed by the world health organisation and other statutory authorities to minimise the exposure of the pandemic; (iv) to seek counsel with consultants regarding the terms and conditions of their existing insurances to determine how the coverage and exclusion responds to any claim made against the company i.e. claims for bodily injury (v) to

strategize a streamlined notification process towards the insurer in case of any future exposure.

It is time to take out the policies from the shelf and examine them to ensure preparedness to deal with a potential claim, and make use of the policy to mitigate losses.

ABOUT PRUDENT INSURANCE BROKERS PVT LTD

Industry leading expertise in designing and managing insurance programs to address the unique requirement of your organization. We have a client centric service infrastructure that delivers proactively & passionately in a highly systematic manner

Prudent's Liability team comprising of ex-underwriters and the largest number of legally qualified professional can help you with

- ✓ Identifying and addressing gaps in your current insurance programs
- ✓ Arranging the most cost-effective cover from Indian and international markets
- ✓ Ensuring contract compliance for your insurable indemnities
- ✓ 360* claims management by the largest claims team across any broker in India
- ✓ Global solutions through the strongest International Alliances





www.prudentbrokers.com

PRUDENT INSURANCE BROKERS PVT. LTD.

Registered Office 101, Tower B, Peninsula Business Park, G.K. Marg, Lower Parel, Mumbai - 400 013, Maharashtra, Tel: +91 22 3306 6000
CIN No.: U70100MH1982PTC027681 | License No. 291 (18th February 2020 to 17th February 2023)

Insurance is the subject matter of solicitation.

This report and any recommendations, analysis or advice provided herein, are based on our experience as insurance and reinsurance brokers or as consultants, as applicable, are not intended to be taken as advice or recommendations regarding any individual situation. (ii) The opinions expressed herein are valid only for the purpose stated herein and as of the date hereof. We are not responsible for the consequences of any unauthorized use of this report. (iii) Prudent does not accept any liability for the consequences arising from the application, use, or misuse of any resources contained on or made available through this communication, including any injury and/or damage to any person or property as a matter of product liability, negligence, or otherwise. (iv) To the maximum extent permitted by applicable law and with respect to products in no event shall Prudent its employees, officers, directors or partners be liable for any direct, indirect, special, punitive, incidental, exemplary, or consequential damages, or any damages whatsoever resulting from use of this communication, purchase of goods, or services because of this and other related communications, in no event shall Prudent be liable for any direct, indirect, special, punitive, incidental, exemplary, or consequential damages, or any damages whatsoever, resulting from any loss of use, loss of profits, litigation, or any other pecuniary loss, whether based on breach of contract, tort (including negligence), product liability, any defects in the service or otherwise, arising out of or in any way connected with the provision of or failure to make available any such products, goods, or services, even if advised of the possibility of such damages. (v) Prudent makes no representations or warranties of any kind, express or implied about including but not limited to the completeness, accuracy, reliability, suitability or availability with respect to the contents of this communication or the information, products, services or related graphics contained in this communication for any purpose. Any reliance you place on such material is therefore strictly at your own expense and risk. (vi) Prudent's service obligations to you are solely contractual in nature. You acknowledge that, in performing services, Prudent and its affiliates are not acting as a fiduciary for you, except to the extent required by applicable law, and do not have a fiduciary or other enhanced duty to you. (vii) For more details on risk factors, terms and conditions please read sales brochure carefully before concluding a sale.