

PANDEMIC POSES NEW QUESTIONS ABOUT BUSINESS INSURANCE

Experts: check your policy as LI reopens

By JULIANNE MOSHER

Long Island was anticipating a busy summer, but as the pandemic began and stay-at-home orders were initiated, the doors to many bars, boutiques and businesses had to close their doors.

Before the pandemic, customers could enjoy a coffee at the Bean of Patchogue with a group, but now just one person could enter the village coffee shop at a time.

Masks need to be worn and social distancing is a must. Employers, like Rob Cutrone, who owns of the coffee shop, said they're complying with CDC guidelines to prevent the spread of coronavirus and the liability that potentially can come with it.

"It's going to be a consume-at-your-own-risk way of life," he said.

Mid-pandemic will be intimidating for businesses as they examine whether their insurance will cover so many issues that hadn't been part of pre-pandemic Long Island.

InsuranceQuotes.com recently released a 3,500-word State of Coronavirus and Insurance Report that addresses the impact that is on the horizon.

Michael Giusti, InsuranceQuotes analyst and author of the report, said standard business interruption insurance will not cover claims based on the current pandemic and the ensuing governmental shutdowns. This is because traditional business interruption insurance is meant to be an add-on to a property or casualty policy.

"There are a lot of different policies people need to think about," he said. "The business has to shut down because of the government mandate, but since the disease didn't have any physical damage, they can't be covered under business interruption insurance."

And there are more issues people are facing than just keeping the door closed. Giusti said that the thought of workers compensation while working from home has become a concern, along with breach-of-contract suits. The question lingers: Who is responsible?



Olivia Cienski and Kelly McKendrick behind the bar at the Bean of Patchogue in Patchogue Village.

Photo by Julianne Mosher

"If someone got sick or dies, there's a question of liability and the concept of negligence," he said. "A family could say the business didn't follow duty of care... but if the business can prove that they followed CDC guidelines, they should be in good shape."

As Long Island gears to open up, Guisti recommends employers take a good look at their coverage. "Most of these policies, if you look at the language, do not include biological issues," he said. "A lot of people will be surprised they're not covered."

And that is causing fear for business owners. Cutrone said he and his employees haven't taken every preventative measure in compliance with the CDC, but opening up could spark a concern. "It hasn't affected us too much yet," he said. "But it's something we're going to start looking into."

Some states are trying to change legislation and regulations regarding business interruption insurance, despite the policy language that appears to exclude it. But Guisti said that could take time.

Kyle Strober, executive director of the Association for a Better Long Island, said that ABLI supports the ongoing debate of a business liability shield in the next federal relief bill, which would prevent businesses from being sued by customers if they contract the virus.

"Even if a business follows all the CDC protocols, it is still possible for an employee to contract COVID-19," he said. "Therefore without a business liability shield, business owners will think twice about reopening."

"A suit can cost a business \$27,000, which makes operating not viable," he added.

But Strober thinks business owners should be concerned about reopening and retaining their employees... not about being sued

right now as the economy restarts. "Without a shield, a cottage industry for frivolous COVID-19 lawsuits will emerge, as we are already seeing Coronavirus lawsuit TV commercials take over the airways."

Mary Anne Trasciatti, associate professor of rhetoric and public advocacy and director of labor studies at Hofstra University, believes that employers need to make their workers feel safe, which has been shown in a positive light within the small business sector.

"It's important to everyone that they stay in business," she said. "Nobody wants to see their business go under and they don't want to see their employees get sick or die."

She believes, however, that the larger corporations may not follow the standard protocols for safety and could be susceptible to liability issues. "They need to implement safety measures and ease anxiety in the work place," she said. "You can't expect employees to feel unsafe going to work," she said.

"Post pandemic, many changes and questions will likely emerge moving forward," Giusti added. "For one, no insurance policy is likely to offer pandemic or infectious disease coverage any time soon. Another question is whether states, regulators, and local jurisdictions will step in and try to force insurers to pay for things that they thought were excluded in their policy language."

But he has some advice for employers who are looking to prepare.

"Follow best practices that you can get your hands on," he said. "If you're struggling to pay your bills, call them and work with them... don't just not pay. If you were uninsured, look at the policies and take the time now to prepare."

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