

## Covid-19 and the exposure to Directors & Officers

**22<sup>nd</sup> May 2020**

Now the Government has begun lifting lockdown restrictions and business owners are focusing on getting their businesses back up and running, we want to share some helpful advice to support you with your preparation. From safety checks to supply chain disruption and security measures to staffing, getting back to business will be far more than just switching the lights back on.

The primary focus is to ensure you create a safe environment for the return of your employees and customers.

This document highlights the exposures that directors, officers and senior managers may face as we return to business, in addition to setting out some considerations you should be taking into account as we enter what can only be described as uncharted waters.

We are all fully aware Covid-19 will continue to present significant risks to business, and directors and officers should be mindful of the claims that could arise from the management of these risks and take note how their Directors & Officers insurance policies may respond to provide protection.

Directors & Officers, also known as D&O or Management Liability policies are intended to protect a company's board of directors and

senior officers against claims, investigations and associated defence costs relating to their decisions and actions in the course of managing the business. Many Covid-19-related claims are expected to fall within the insuring clauses of D&O policies but as all policy wordings are different, there will be subjectivities and limitations.

You should be aware that directors, officers and even employees (normally senior managers), have an unlimited personal liability for decisions and actions they make on behalf of a company. These can be civil, criminal and regulatory, whatever the case, peoples' personal assets are at risk by the decisions they make and the actions they take.

If you buy Directors and Officers Insurance, you should be covered for the costs and liabilities arising from shareholder lawsuits as a consequence of the spread of the Covid-19 virus. Specifically, litigation arising from unreasonable actions (or inaction) by directors & or managers, economic loss from inadequate contingency planning and failure to disclose the risk posed to financial performance.

Where there appear to be gaps or failings in contingency plans or management response, a company's employees, customers, and investors may question whether directors or senior managers failed to plan and respond adequately.



From a Health & Safety perspective, the robustness of your contingency planning will be tested by the comprehensive nature of your Risk Assessments, to minimise the impact of an outbreak at the business premises.

Employment Practices Liability (an extension to D&O policies), is by far the most common type of Directors & Officers liability claim, covering such matters as unfair dismissal and sexual, racial, gender or age harassment or discrimination.

Employment Practices questions may arise as to whether employers have taken sufficiently, timely and appropriate steps to manage their Covid-19 risk, such as enforcing safe social distancing controls in all areas, the supply of PPE, introduction of regular cleaning of all multi-touch surfaces such as door handles, in addition to avoiding all non-essential travel,

Employers will have to evidence they have met their obligations in keeping their employees informed on the Risk Assessment results, how they are managing the ongoing health risks at the workplace, educating them on good infection control, and communicate your planned response in the event of employees testing positive for Covid-19.

Risk Assessments of the workplace is a vital step to ensure the safe return of employees. The government's new [Covid-19 Secure guidelines](#) are consistent with our advice and comprehensive Risk Assessments for all areas of the business will be expected.

However, you should be aware the new [Covid-19 Secure guidelines](#) go even further and state that companies with more than 50 employees should share the results of their Risk Assessments with the public on their websites.

Risk Assessment procedures are likely to be tested and as we face a potential torrent of compensation claims. People's moods may have changed (whether they have been furloughed or working remotely). Understandably, returning employees will be concerned for their safety or their health, feeling generally uncomfortable and maybe even angry, potentially leaving you exposed to claims.

**Should you find yourselves facing a potential claim, it's imperative that you take note; D&O policies will not respond if a claim notification is not reported to your insurer from the outset and/or should you fail to follow prior, written legal advice as laid out in the policy terms.** As previously mentioned, all policy wordings are different, so we urge you to read your policies to ensure you follow the correct procedures

In summary, your insurance policy should be your last line of defence, not your first. Comprehensive Risk assessments, with ongoing reviews (regularly reviewed at board level), must be your absolute priority. If you buy D&O insurance cover, your good business practices will mitigate your exposure to claims; protecting the company, its employees and its customers, not mention its reputation and brand

If, however you do not currently buy D&O insurance, we strongly recommend that you give this consideration.

