

## Alerts

### California Department of Insurance Issues Notice to Insurers to Comply with their Legal Requirements with Respect to COVID-19 Related Business Interruption Claims

**April 17, 2020**

*Insights for Insurers*

On April 14, 2020, California Insurance Commissioner Ricardo Lara [issued a notice to insurers](#) titled "Requirement to Accept, Forward, Acknowledge, and Fairly Investigate All Business Interruption Insurance Claims Caused by the COVID-19 Pandemic."

The notice did not take any position on business interruption coverage or purport to alter insurance contract language. The Commissioner noted that despite the Department's on-going guidance to businesses statewide during the COVID-19 pandemic, it has received complaints from businesses, public officials, and others, which assert that certain insurers, agents, brokers, and insurance company representatives are attempting to dissuade policyholders from filing a notice of claim under business interruption insurance coverage—or refusing to open and investigate these claims upon receipt of a notice of claim.

The Commissioner put insurers on notice that they are required to comply with their contractual, statutory, regulatory, and other legal obligations, such as those set forth in the California Fair Claims Settlement Practices Regulations in connection with all California insurance claims, including business interruption, event cancellation, and other related claims filed by California businesses. The Commissioner also noted the Regulations require all insurers and representatives to accept any communication from the policyholder or its representative indicating that the policyholder desires to make a claim against a policy that reasonably suggests that a response is expected as a notice of claim. (Regulations, section 2695.5(b).)

As the notice serves as a useful reminder of some applicable claims handling requirements, we quote from it below:

Upon receipt of a notice of claim, subject to certain exceptions, every insurer is required to acknowledge the notice of claim immediately, but in no event more than 15 calendar days after receipt of the notice of claim. (Regulations, section 2695.5(e).) If the acknowledgment of a claim is not in writing, a written acknowledgment of the receipt and date of the notice of claim must be made in the claim file of the insurer. (Regulations, section 2695.5(e)(1).) Failure of an insurance agent or claims agent to transmit a notice of claim to the insurer promptly will be imputed to the insurer, except where the subject policy was

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issued pursuant to the California Automobile Assigned Risk Program. (Regulations, section 2695.5(e)(1).) Upon receipt of a notice of claim, the insurer is required to provide the policyholder with the necessary forms, instructions, and reasonable assistance, including but not limited to, specifying the information the policyholder must provide in connection with the proof of claim and begin any necessary investigation of the claim. (Regulations, section 2695.5(e)(2).) Thereafter, every insurer is required to conduct and diligently pursue a thorough, fair, and objective investigation of the reported claim, and is prohibited from seeking information not reasonably required for or material to the resolution of a claim dispute before determining whether the claim will be accepted or denied, in whole or in part. (Regulations, section 2695.7(d).) After conducting a thorough, fair, and objective investigation of the claim, the insurer must accept or deny the claim, in whole or in part, immediately, but in no event more than 40 days after receipt of the proof of claim. The amount of the claim accepted or denied by the insurer must be clearly documented in the claim file unless the claim has been denied in its entirety. (Regulations, section 2695.7(b).) Notice on Requirement to Accept, Forward, Acknowledge, and Fairly Investigate All Business Interruption Insurance Claims Caused by the COVID-19 Pandemic Page 3 April 14, 2020 If the claim is denied in whole or in part, the insurer is required to communicate the denial in writing to the policyholder listing all the legal and factual bases for such denial. (Regulations, section 2695.7(b)(1).) Where the denial of a first party claim is based on a specific statute, applicable law or policy provision, condition, or exclusion, the written denial must include reference to and provide an explanation of the application of the statute, applicable law, or policy provision, condition, or exclusion to the claim. Lastly, every insurer that denies or rejects a third party claim, in whole or in part, or disputes liability or damages must do so in writing. (Regulations, section 2695.7(b)(1).) Based on the foregoing, every insurer, insurance agent, broker, insurance company representative, and other Department licensees is required to comply with their contractual, statutory, regulatory, and other legal obligations in connection with all California insurance claims, including but not limited to, Business Interruption insurance claims, event cancellation claims, and other related claims filed by California businesses. Additionally, no insurer, insurance agent, broker, insurance company representative, or other Department licensee shall dissuade policyholders from filing a notice of claim under its Business Interruption insurance coverage, or refuse to open and investigate such claims upon receipt of a notice of claim.

As we have [previously reported](#), statutory and common law bad faith claims have been asserted in many of the early COVID-19 insurance coverage lawsuits. It is important for insurers to know—and to have procedures in place—to comply with all applicable claims handling and coverage obligations based upon applicable law, insurance regulations, and policy language.

## Related Content

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- [Additional Insights for Insurers From New COVID-19 Coverage Suits](#), April 9, 2020
- [Insights on the First COVID-19 Coverage Lawsuits](#), April 4, 2020
- [As COVID-19 Coverage Law Suits Are Filed, New Jersey Legislature Considers Mandated COVID-19 Business Interruption Coverage](#), March 17, 2020
- [Insureds Likely Face Uphill Battle in Seeking Coverage for Coronavirus Losses](#), March 9, 2020