



INSURANCE IMPACT OF EARLY REOPENING OR MOVE TO “YELLOW” PHASE

May 15, 2020

To Our Clients:

Several counties in Pennsylvania are considering reopening early or shifting to a “yellow” phase ahead of Governor Wolf’s COVID-19 timeline. Regardless of whether we agree or disagree with such a decision, it is important for you to be aware of potential insurance implications should you choose to reopen ahead of the Governor’s order.

Governor Wolf and the Pennsylvania Insurance Department recently made several public statements regarding provisions in many types of insurance policies that could exclude coverage for businesses or individuals “engaging in illegal acts or conduct”. We believe that most policyholders recognize that insurance, in general, does not provide coverage for illegal or criminal acts, regardless of the current COVID-19 pandemic or measures that have been put in place in response.

We believe that this is not an insurance coverage or insurance design issue. Little has changed in decades with regards to insurance exclusions or policy language that could exclude coverage for illegal or criminal acts. This issue is at best, a legal conflict between the Commonwealth of Pennsylvania and counties threatening early reopening that may result in civil litigation.

If early reopening is found to be an illegal act, then certain insurance policy exclusions may apply. If early reopening is not found to be an illegal act, then those policy exclusions may not apply. Without that basic understanding, insurance agents and insurance carriers are not able to respond to generalized questions about whether coverage will apply during an early reopening. Absent a legal decision on the impasse between the State and counties, and without specific claim details to consider, it is not practical or feasible for the insurance industry to determine whether or not any insurance policy will respond to claims arising during an early reopening. With only a few days remaining before the proposed early reopening, it is doubtful that a legal decision in this matter will be made.

Insurance agents take seriously their role in advising clients about the coverage they have purchased. In this instance, we urge you to seek advice from your legal counsel about whether an early reopening constitutes an illegal or criminal act.

Respectfully submitted,

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