[Sports Organizations and Coronavirus (COVID-19): Cancel or Mitigate the Risks?](https://www.sadlersports.com/coronavirus-risk-management-in-sports/)

Applying Risk Management to Address Coronavirus Risk

The [coronavirus threat](https://www.cdc.gov/coronavirus/2019-ncov/summary.html) and the ultimate impact on society and the sports community is unknown at this time. The situation is fluid with new information being released almost hourly regarding the progression of the COVID-19 outbreak and what steps various sports organizations are taking to address the situation. The current trend is from risk mitigation to cancellation but the situation may reverse in the weeks or months to follow. However, any significant threat should be taken seriously and treated with the application of the [risk management process](https://en.wikipedia.org/wiki/Risk_management).

There is safety in following the lead of authority sources

In order to prove negligence in failure to cancel or mitigate risks, courts will look to authority sources to determine the standard of care that is owed to sports organization staff, participants, and spectators. Therefore, sports organizations should pay close attention to the mandatory governmental regulations and/or recommended guidelines published by the various authority sources:

* **Federal/State/Local government:** Constantly monitor governmental health agencies such as U.S. Center for Disease Control and Prevention [(CDC)](https://www.cdc.gov/), your state’s public health department, and other county/local authorities.
* **School Districts:**School districts provide localized advice based on the levels of coronavirus risk in a particular community. However, the risk components of school sports may be different than those posed by local, community-based sports organizations.
* **Sports Governing Bodies:**Monitor the website, emails, and social media from the sports governing bodies that oversee your sport. Examples of sports governing bodies include [USOC](https://www.teamusa.org/), [NCAA](http://www.ncaa.org/), [NFHS](https://www.nfhs.org/), and [USA Baseball](https://www.usabaseball.com/).

Potential liability exposure exists for sports organizations

Below are the most common legal theories of recovery for a claimant who has been allegedly exposed to coronavirus with resulting sickness or death:

1. Negligent failure to cancel event resulting in COVID-19 transmission.
2. Negligent failure to take mitigation steps if events are not cancelled resulting in COVID-19 transmission.

It’s one thing to allege negligence, but it must be proved by showing:

1. Duty owed to the claimant (may be different for participants vs spectators)
2. Breach of duty by not following mandatory regulations and/or guidelines on cancellation or mitigation from sources as CDC, state health departments, and county/local authorities.
3. Breach of duty was the proximate cause of the sickness. How do you prove the transmission occurred at the sporting event as opposed to the grocery store? It’s possible to trace the transmission of  COVID-19 if multiple people who attended the same event become infected.
4. Damages (medical bills, loss of income, loss of companionship, disability, pain and suffering, etc.)

And then there are legal defenses to negligence such as the assumption of a known risk. And who in society has not been warned of the Coronavirus transmission risk by the media?

Does General Liability insurance provide coverage for sports organizations that are sued for failure to cancel or mitigate risk?

[General Liability policies may provide coverage](https://www.natlawreview.com/article/coronavirus-factors-insurance-industry-to-consider-part-3-liability-and-workers), but it depends on whether an infection event is considered to be an occurrence and the existence of certain policy exclusions. An exclusion means that a particular type or cause of injury is not covered. General Liability policies cover certain lawsuits alleging bodily injury or property damage caused by an occurrence and personal/advertising injury, subject to standard exclusions (built into the policy form) and non-standard exclusions (added by endorsement).

In the context of coronavirus, it is clear that disease falls under the definition of “[bodily injury”](https://www.irmi.com/term/insurance-definitions/bodily-injury). However, if coronavirus becomes widespread, there is an argument that infection does not fall under the policy requirement of an [“occurrence.”](https://www.irmi.com/term/insurance-definitions/occurrence) Some authorities argue that an occurrence must be an accident or unexpected. This will undoubtedly be tested in the courts.

Below are some possible non-standard policy exclusions that could result in a coronavirus claim denial:

* Communicable Disease Exclusion: In my experience, most sports organization General Liability policies don’t include this exclusion. However, it is seen on some sports facility General Liability policies such as fitness centers and martial arts studios.
* Pandemic/Virus/Bacterial/Fungus Exclusion
* Pollution Exclusions: Some absolute pollution exclusions may be worded broadly enough to define a pollutant as a bacteria or virus.

Different levels of transmission risk factors for different sports organizations

The following factors should be considered when a sports organization makes decisions regarding cancellation or how to best mitigate coronavirus risks. Know the risk factors for your particular sports organization and tailor a plan to fit your specific needs. For example, the transmission risks of many local sports organizations may be lower than that of high school, college, or professional sports teams.

* What is happening in your specific community. If coronavirus is present or widespread in your community, you should increase your level of aggressiveness in applying risk management.
* Analyze separately the risks from the perspective of staff, participants, spectators, and third-party vendors. Mitigation plans may need to be customized for each group.
* According to the [**CDC**](https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/high-risk-complications.html), the risks to older adults and those with serious chronic medical conditions are elevated. According to [**U.S News & World Report**](https://health.usnews.com/conditions/articles/how-does-the-coronavirus-affect-children-and-infants), children and teens are at a lower risk and typically have milder symptoms or none at all and the death rate is much lower than middle aged and older populations. Exposure transmission to seniors may occur in their role as sports participants, coaches, spectators, or parent/guardians. Mitigation plans should be adopted to protect those with the highest level of risk.
* Playing locally vs travel: Local play entails less transmission risk than air, bus, or train travel. Staff and participant travel to out-of-town conferences or competitions is a higher risk activity.
* Spectators: Higher spectator transmission rates can be expected when spectators are indoors, confined in a small enclosed space, seniors, or have compromised immune systems.
* Crowd size: The larger the crowd size, the greater the transmission risk. Currently many authority sorces are recommending that crowd sizes be limited to 10 or fewer.

How to mitigate liability risk by common sense risk management practices

* **Risk Warning:**Sports programs should disseminate information to all staff, coaches, players, parents, and spectators about the coronavirus risk and practices that should be undertaken to mitigate risks. Information should be disseminated by way of email, social media, coach talks, and public announcements.
* **Coronavirus Warning Signage:** Post conspicuous signage at sports facility warning of coronavirus risks and what steps can be taken to reduce suck risks. Here is some sample language that should be reviewed by local legal counsel:
	+ **Coronavirus Risk Warning**
		- It is suggested that seniors or others with compromised immune systems not attend this event due to risk of infection.
		- Do not enter if you are exhibiting any signs of illness such as sneezing, coughing, sniffles, have fever, or don’t feel well.
		- Do not enter if you have recently visited any country with coronavirus travel restrictions to the U.S. or have been contact with someone who has.
		- If you are repeatedly sneezing or coughing, you may be asked to immediately leave the premises.
		- It is suggested that you don’t shake hands, hug, or otherwise come in close contact with any other attendees.
		- Wash your hands and/or use hand sanitizer upon entrance, during the event, before and after you eat, and as you leave. Hand washing and hand santizer stations are provided.
		- Avoid touching your face including your eyes, nose, and mouth.
* **Hygiene/Hand Washing/Touching Face/Laundering:**Players and coaches should practice proper hygiene, wash hands frequently with soap and water for at least 20 seconds, use alcohol-based hand sanitizer (with at least 60% alcohol), abstain from touching their face (mouth, eyes, or nose), and cover their cough or sneeze with a tissue and throw tissue in the trash. Facilities and sports organizations should provide hand washing and hand sanitizer stations and should schedule mandatory use at breaks. Carry small bottles of alcohol-based disinfectant when hand washing facilities are not available. Clothes should be laundered after all workouts.
* **Healthy Practices:**All players and coaches should practice healthy habits including adequate hydration to keep mucous membranes moist, consume a varied, vitamin-rich diet with sufficient vegetables and fruits, and get adequate sleep.
* **Cleaning/Disinfecting:** Sports Facility owners/operators and team staff should use disposable disinfectant wipes on all training areas, equipment, common areas, door handles, water fountains and bathrooms, etc. on a regular basis.
* **Self-quarantine:**Players, coaches, parents, or supporters with any symptoms should not attend any training sessions or competitions.
* **Water Bottles:** Water and sports drink jugs should no longer be provided by sports facilities or sports organization. Athletes and coaches should bring their own water bottles to all team activities to help to reduce transmission risk. Individuals should take their own water bottles home each night for cleaning and sanitation. Visiting teams should also bring their own water bottles.
* **No Handshakes/Celebrations:**Players and coaches should refrain from handshakes, high fives, fist/elbow bumps, chest bumps, group celebrations, etc.
* **Sports Organization Staff:**Many sports organizations are limiting staff exposure by limiting working at the office and non-essential travel. Staff is encouraged not to come into the office if they are not feeling well. Remote working from home is promoted as an alternative.
* **Returning From Out of Country:**Those returning from a country with ongoing COVID-19 infections should monitor their health and follow the instructions from public health officials.
* **Meetings:** Many sports organizations are cancelling in-person meetings and conferencing by telephone.
* **Conferences:** Many sports organizations are changing member conference participation from in-person to video.
* **Limiting Spectator Attendance:**Some sports organizations may choose to limit spectator risk by limiting attendance to essential staff and limited family members.

Other insurance policies that may apply to coronavirus

[**Event Cancellation Insurance**](https://www.sadlersports.com/eventcancellationinsurance/) is a stand-alone policy that pays for certain financial loss if an event is cancelled, postponed, curtailed or relocated beyond the control of the policyholder. Covered perils may include, but are not limited to, hurricanes, earthquakes, severe/adverse weather, outbreak of communicable disease, terrorism, labor strikes, non-appearance of key people, and unavailability of the venue due to fires, floods or power outages

Though outbreaks of communicable disease are commonly covered under Event Cancellation policy forms, the two leading carriers have recently started to exclude (not cover) coronavirus on newly issued policies. One carrier is issuing a specific coronavirus exclusion, whereas the other considers it to be an excluded pre-existing condition. However, Event Cancellation policies issued prior to the addition of the recent coronavirus restrictions may not have a coronavirus exclusion.

Also note that even if a coronavirus exclusion does not exist, a claim would only be covered if it is not possible for the event to move forward due to travel restrictions, state or local ordinance restrictions, or the suspension of facility operations. These factors are beyond the control of the insured. It is not enough that the attendees or event organizers have a fear of traveling or of catching the virus and voluntarily make the decision to cancel or alter the event.

[**Directors & Officers Liability**](https://www.sadlersports.com/directors-officers-liability-insurance-for-sports-recreation-organizations/)covers the business entity and its directors and officers against certain lawsuits alleging managerial negligence that results in economic damages or the violation of rights of others under state, federal, or constitutional law. It is possible that a decision involving the failure to anticipate the financial impact of coronavirus and to take appropriate action could result in economic damages to the business and a subsequent lawsuit by shareholders or other stakeholders against the negligent directors and officers. However, D&O carriers may attempt to deny such a claim because of the “bodily injury” exclusion that is found in D&O policies. Many claims adjusters will take the position that economic damages arising out of bodily injury (i.e. coronavirus sickness) are excluded. However, this position is already being challenged in the courts in other contexts and the ultimate results are unclear.

[**Worker’s Compensation / Employer’s Liability Insurance**](https://www.sadlersports.com/workers-compensation-for-sports-recreation-organizations/)covers certain on-the-job injuries and occupational diseases to employees and uninsured subcontractors, including medical bills, lost wages, and disability awards. It’s possible that an infected employee could file a Workman’s Compensation claim. However, Worker’s Compensation Commissions in some states may take the position that a covered occupational disease must be one that is specific to employment and not an ordinary disease to which the general public is exposed outside of employment. An exception may be health care workers who are exposed as part of their employment.

**Business Interruption.**Sports facility owners and other sports organizations that own buildings or insure contents may carry a Commercial Property policy. Commercial Property policies often include Business Interruption / Extra Expense insurance which provides coverage for loss of business income (lost profit plus continuing operating expenses) while operations are totally or partially shut down as a result of a covered loss to insured property.  Also provided is Extra Expense coverage for the additional and necessary expenses after a loss to the extent that they offset the Business Income loss. In order for Business Income coverage to be triggered, there must be a direct physical loss to the property that is being covered, whether it is building or contents.

Some Property policies may include a coverage called Contingent Business Interruption which can trigger coverage in the event that there is a covered loss to the premises of suppliers, customers, or key partners. This coverage does not require any such loss at the insured’s own premises.

It is doubtful that contamination of building and contents would be considered a direct physical loss that would trigger business interruption coverage. Also, many property policies include a virus or bacteria exclusion which would further restrict coverage.

In addition, the Property policy may include coverage for acts of civil authorities that restrict access to an area. If such coverage exists, this may trigger a covered Business Interruption claim.

Coverage for any of the above-referenced Business Interruption coverages is not certain. Each case will depend on its own unique facts. Furthermore, the outcome will be dependent on the policy form and the existence of certain bacteria or virus exclusions that may apply. However, these claims may at least be worth discussing.

Conclusion

This coronavirus resource page will be updated frequently as new information comes to light. The purpose is to provide a framework to think through the risks to help each sports organization make an informed decision regarding cancellation and/or mitigation of risk. In addition, any potential coronavirus claims should be turned into the insurance carrier so that the claims department can make the coverage determination.