



ACCNJ LEGAL & INSURANCE UPDATE

Troubling Trends for Small and Mid-size Businesses Seeking Cyber Insurance

We typically associate cyberattacks and data breaches with large companies (i.e., [Equifax](#), [LinkedIn](#), [eBay](#) ... the list can go on). From a hacker's perspective, targeting a large company made sense. There was more data to access and higher earning potential from ransomware (a type of software hackers will use to extort money by holding data or locking systems until a ransom is paid). Unfortunately, hackers have begun to target a new victim – smaller and mid-size businesses that might not sport the most robust IT departments or cybersecurity protections. Construction firms can certainly fall within this category, making them a target for the next generation of hackers.

The answer from a risk management perspective was always cyber insurance. Cyber policies often covered the cost of data recovery, legal liabilities and (if necessary) payment of a ransom to stop the effects of ransomware. But changes are coming. Despite a decrease in cyberattacks in 2019, ransomware exposure has grown and [cyber-insurance rates are expected to increase by as much as 25%](#). Insurers have also noted that ransoms have become increasingly disproportionate to the size of the target. Consequently, even a smaller company faces the potential of a hefty ransom.

Insurers will not foot the bill for ransomware for much longer. In addition to rate increases, insurers are expected to decrease exposure by implementing sub-limits and coinsurance provisions that will force policyholders to absorb a portion of extortion losses. The first significant domino to fall was policy changes implemented by AIG on January 1. [According to Insurance Insider](#), AIG will now require policyholders to absorb “half the cost of digital extortion losses that hit primary and excess policies written below the \$30mn mark.” AIG is said to be the first instance “of a lead cyber market imposing ransomware co-insurance across all accounts.”

The changes by AIG follow a trend in the cyber-insurance market of tightening the terms and conditions of policies. Policies are costing more and covering less. Regardless of whether you are an existing or first-time policyholder, it is imperative that you carefully review your policy documents for coinsurance and/or sub-limits related to ransomware.

EEOC Issues Compliance Manual on Religious Discrimination: What it Means for Employer Vaccination Programs

On January 15, 2021, the U.S. Equal Employment Opportunity Commission (“EEOC”) issued an updated [Compliance Manual on Religious Discrimination](#) (the “Compliance Manual”). The Compliance Manual provides a comprehensive overview of Title VII’s prohibition against religious discrimination in employment, including topics such as religious harassment, and workplace accommodation of religious beliefs and practices. Not directly addressed is the issue of religious accommodations for workers who object to employer-mandated vaccinations. The Compliance Manual cites legal precedent that previously dealt with the issue, but falls short of discussing the topic head-on.

Previous [Q&A Guidance issued by the EEOC on the COVID Vaccine](#) reminded everyone that Title VII obligates employers to provide reasonable accommodations for an employee’s “sincerely held religious

beliefs, practices, or observances.” Defining what this means can be tricky. Unlike a medical disability, which can be objectively verified by a medical professional, discerning the existence of a sincerely held religious belief naturally involves a certain level of subjectivity. [The definition section of the new Compliance Manual \(Section A\)](#) makes clear that “mere personal preferences are not religious beliefs,” nor are “social, political, or economic philosophies.” However, the Compliance Manual also highlights that “religion is very broadly defined for purposes of Title VII” and “the presence of a deity ... is not necessary for a religion to receive protection.” Thus, the conflict for employers becomes obvious.

So how can the employer verify whether one’s refusal to receive a vaccine is linked to a sincerely held religious belief or instead a mere personal preference? Both the new Compliance Manual and the previous vaccination guidance indicate employers should ordinarily assume requests for religious accommodations are based on sincerely held religious beliefs. If, however, the employer has an objective basis for questioning either the religious nature or the sincerity of a particular belief, observance or practice, the employer would be justified in seeking additional supporting information. Examples might include whether the employee attends worship services, preaches, prays, wears religious garb or symbols, displays religious objects, adheres to certain dietary rules or refrains from certain activities. ([See Section A1 of Compliance Manual](#)). Ultimately, the analysis focuses on the employee’s motivation and whether the employee’s stance is “part of a comprehensive religious belief system and is not simply an isolated teaching.” Even when an employer determines the religious belief is sincere, Title VII only requires reasonable accommodations that impose no more than a “de minimis cost” on the employer. This is a lower standard for an employer to meet than undue hardship under the ADA, which requires a showing of “significant difficulty or expense.”

The issue of vaccinations, discrimination, and accommodations will continue to develop throughout the year. Lawsuits will inevitably be filed against employers. It is our belief the courts and review boards will provide employers with flexibility – that is assuming of course the employer followed available guidance from state and federal agencies. Staying informed will be your best protection. We encourage members to checkout these helpful resources made available by AGC of America regarding vaccinations: (1) [Vaccination Q&As for Construction Employers](#) and (2) [“Sticking Points: What Construction Employers Need To Know About COVID-19 Vaccines”](#) Webinar. To view the webinar, you will have to register for a free AGC of America account if you do not already have one. Members are invited to reach out to ACCNJ for assistance in registering for an account.

ACCNJ'S LEGAL & INSURANCE WEBINAR SERIES

Upcoming installments of ACCNJ’s Legal and Insurance Webinar Series include:

- Legalization of Marijuana; and
- Vaccinations – Labor & Employment Considerations

Stay tuned for final dates!

EMAIL US

WEBSITE

