

SDIS Liability Insurance Coverage

Will my district have insurance coverage from SDIS if it elects to defy the governor's orders regarding masks (all employers) and vaccinations (employers with healthcare workers)?

Liability insurance does not provide liability coverage for intentional violation of federal, state, or local statutes, ordinances, rules or regulations. This coverage restriction is not unique to SDIS. This is part of any liability insurance policy, and this coverage exclusion has been part of SDIS's liability insurance since its inception in 1985.

In addition, SDIS has an exclusion in its liability coverage for alleged or actual transmission of a Communicable Disease (COVID-19 included). This is also an exclusion that has been added to liability insurance policies worldwide and is not unique to SDIS. SDIS purchases insurance from over 15 different companies and all of them have implemented such exclusions.

So, if a decision not to enforce the vaccination or mask mandate results in a lawsuit for someone becoming ill from COVID-19, there would likely not be insurance coverage for defense or damages, because of the following exclusions:

Exclusion S: Any liability for Damages brought about or contributed to by any dishonest, fraudulent, criminal, bad faith or malicious act or omission of a Participant or arising from the deliberate violation of any federal, state, or local statute, ordinance, rule, or regulation committed by or with the knowledge and consent of the Participant. The actual or alleged conduct of any Participant shall not be imputed to any other Participant for the applicability of this exclusion.

Exclusion AS. Any liability for Damages, including any expense, cost, loss, legal fees, liability or legal obligation that in any way, in whole or in part, arises out of, relates to, or results from any alleged or actual transmission of a Communicable Disease.

This exclusion applies even if the claims against any Participant allege wrongdoing in the:

- 1. Supervising, hiring, employing, training or monitoring of others that may be infected with or spread of a Communicable Disease;*
- 2. Testing for a Communicable Disease;*
- 3. Failure to prevent the spread of the disease; or*
- 4. Failure to report the disease to authorities.*

The Trust shall have no duty or obligation under this Coverage Document to defend, respond to, investigate, or indemnify any Participant against any injury or damage, loss, claim, suit, or other proceeding alleging Damages to which this exclusion applies. This exclusion also applies to any obligation to defend, to share Damages with, repay, contribute, or indemnify anyone else from which Damages are sought.

Will your insurance be canceled if you elect not to follow the governor's mask and vaccination mandates?

No, SDIS will not cancel your liability insurance for failure to follow the mandates. But as described above, you would likely not have liability insurance coverage for legal defense or financial damages for any lawsuit resulting from a decision not to follow the Governor's order.

If you follow the mandates and someone gets ill and sues, alleging that vaccinations or masks contributed to their illness, do you have insurance coverage from SDIS?

As described above, you do not have any insurance coverage for damages that may result from the actual or alleged transmission of COVID-19, whether or not you follow the mandates. Also as described above, this is not unique to SDIS. No matter who you are insured with, there is no liability insurance coverage available for a Communicable Disease (COVID-19). However, if your district is following the mandates, SDIS does have limited defense coverage (\$50,000 per member with a total of \$2 million for all members combined) to defend from the allegations.

If someone sues, claiming that they became ill from something that's not a Communicable Disease because you enforced the mandates, then you would most likely have insurance coverage from SDIS for defense and indemnity of the allegations. For instance, if someone claims that the vaccine made them sick and sues for mandating the vaccine, you would be covered by SDIS for the allegations because the vaccine is not a Communicable Disease.

If someone sues claiming discrimination because you enforced the mandates, then you would most likely have insurance coverage from SDIS for defense and indemnity of the allegations because discrimination has nothing to do with actual or alleged transmission of a Communicable Disease.

Because the state has imposed the mandates and the courts have upheld their constitutionality, successfully pursuing a lawsuit for complying with the mandates will be difficult.

Questions?

Please contact SDAO at help@sdao.com or 800-285-5461.