

Civil Authority, Riots & Insurance

In light of recent demonstrations across the country, we've put together some common examples of how insurance policies will respond to damages caused by rioting and actions of civil authorities.

DAMAGE TO BUILDINGS AND PERSONAL PROPERTY

Property damage caused by rioting, civil commotion and vandalism are typically covered under standard insurance policies. However, there may be some limitations to these coverages for trees and shrubs, and limitations and/or exclusions based on vacancy that could suspend these coverages. Rioting, civil commotion and vandalism are also covered perils under a majority of business owner and commercial insurance property policies—both named perils and 'all risk' policies.

Damage to windows, doors, light fixtures and other structures that are part of a building should be covered under the building property coverage included in the policy. Glass that is part of the building structure (i.e. store windows and plate glass on office fronts) is typically included as covered property and built into the base rates. It is important to check your policy to see if glass is covered or if you need to request a glass endorsement.

DAMAGE TO VEHICLES

Automobiles may also be covered under the optional comprehensive portion of a business automobile policy. Business automobile insurance coverage provides reimbursement for damage to a vehicle and its contents in the event of a fire, falling objects, vandalism or rioting. Most comprehensive business automobile policies cover both personal and business-owned vehicles.

BUSINESS INCOME COVERAGE

Businesses that have coverage for the loss of income under business income insurance (also known as business interruption) will most likely be covered if they are forced to suspend operations or limit hours due to rioting, vandalism or civil commotion. Business income coverage is part of property policies, which pay for lost profit and certain expenses associated with supporting revenue due to an interruption or temporary suspension of normal operations. Expenses such as ordinary payroll, lease obligations, utility payments and loan interest may be included in the limit/coverage of insurance. However, some insurance carriers require an endorsement to either include or exclude ordinary payroll from business income.

Companies that incur extra expenses to continue operations while the insured premise is being repaired or replaced, such as temporary relocation expenses, may be insured under the extra expense coverage provided in most property policies. Coverage may also extend to other expenses incurred as result of a covered loss. Your insurance advisor is your best resource to review business income coverage limitations and/or enhancements available under your policy.

Business income coverage is often subject to a 72-hour waiting period (a type of deductible), which applies to income losses, including those insured under civil authority coverage. You will also need to verify the period of time that your policy language specifies because there are often limitations.



CIVIL AUTHORITY INSURANCE

Business income coverage typically includes civil authority insurance¹. Civil authority insurance provides coverage for loss of income that occurs when access to your premises has been prohibited by civil authority, such as a government entity. If civil authorities prohibit access to an area because of direct physical losses caused by a covered peril—in this case rioting—coverage should apply.

There is often a caveat with civil authority insurance in which access must be prohibited due to damage by a covered peril to property not located at your premises. Some carriers may also specify the radius in which civil authority will be covered (e.g. within one mile). Furthermore, civil authority insurance usually has a time period limitation for lost income coverage, typically four weeks.

Civil authority coverage for business income generally begins 72 hours after the time of the first action of civil authority that prohibits access to the premises. You can extend this time period by paying an additional premium. Civil authority coverage for extra expense typically begins immediately after the time of the first civil authority action.

CIVIL AUTHORITY PROVISIONS

Civil authority provisions that are typically included within business interruption coverage will generally protect against losses from civil authority actions for lost business income and extra expense. Actions that commonly give rise to these claims include curfews and other restrictions on access to places of business by customers, employees and owners.

Insurers pay for the actual loss of business income the insured sustains any necessary extra expense caused by action of civil authority that prohibits access to the described premises, provided:

- ▶ Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage and the described premises are within that area but are not more than one mile from the damaged property; and
- ▶ The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the covered cause of loss that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the damaged property.

It's also worth noting that civil authorities can bar you from entering your business in situations that are not related to protests, riots or civil unrest. For example, if there is a fire, the fire inspector may require you to stay out of the building until it has been deemed safe, which could take days or weeks.

After a heavy rain with widespread flooding², local municipal authorities may not allow you to return to your business or home until the floodwaters recede and the area is deemed safe. This compels the need to have a remote work access plan in place plus redundant data storage and backup in other locations.



1. <https://www.propertycasualty360.com/2020/05/13/business-interruption-how-does-civil-authority-coverage-apply/?slreturn=20200530122158> | 2. <https://www.propertycasualty360.com/risk-management/weather-risk/> | The information contained is not intended to be exhaustive nor should any discussion or opinions be construed as professional advice. Coverage depends on actual facts of each case and the terms, conditions and exclusions of the issued policy. Insurance products and services are offered by BOK Financial Insurance, a subsidiary of BOK Financial Corporation. BOK Financial, a division of BOKF, NA. Member FDIC. Equal Housing Lender.

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Frequently Asked Questions

Q If I board-up my windows to prevent damage, is that covered?

A The cost to board them up is not covered, but you may receive underwriting credits/discounts that could help offset the cost. If you board-up broken windows after a loss, your insurance carrier may reimburse these expenses under the property insurance coverage at the time of final settlement. However, this is subject to the total limit of insurance spelled out in the “Duties in the Event of a Loss” portion of the policy.

Q When I remove the boards, if there is damage because I had to screw the boards into the material around my window, will the insurance company cover that damage and repair it since I protected the windows?

A No, and the damage will most likely fall under the deductible.

Q If I don’t protect the windows and they are broken/damaged, are they covered?

A Normally yes. Verify this coverage in your policy. You may also be required to board up the windows after they are broken in order to mitigate further loss. Failure to do so in a timely manner may negate any coverage if there is further damage or loss.

Q Do I need lighting around my property and if so, what kind?

A Most insurance carriers will offer to perform a loss control assessment on your property and provide the business owner with suggestions for improving the safety of their workplaces. The improvements will be at the owner’s expense, but will make the business a better risk to insurance companies, which could result in more favorable premiums.

Q Do I need security cameras (inside and/or outside)? Are they even helpful? What about alarms?

A Security cameras and alarms are helpful, and oftentimes carriers will give underwriting credits or premium discounts to risks that practice good loss control.

Q Can I hire security service under my policy?

A No. However, if you do not secure your property after a loss, you may reduce the amount of compensation to which you were entitled. If you have suffered damage from rioting, it is the business owner’s responsibility to protect the property from further damage, once it is safe to do so. Again, if you fail to secure your property, you may reduce the amount of compensation to which you are entitled.



Q Can I defend my property if someone breaks in?

A Please refer to the state-specific laws and regulations below.

In **Arizona**, you can use self-defense to protect yourself against an intruder in situations where it is proportional, reasonable and immediately necessary. However, you cannot use physical force in all situations. Arizona state courts use the objective reasonable man test to ensure that you used physical force in a situation that was reasonable, proportional and immediately necessary. First, the jury in your case will determine what the reactions of a reasonable person would have been in your situation. The jury will discuss whether you reasonably believed that you were in danger, or at risk of serious physical injury or death. You cannot use an unreasonable amount of force in combating the intruder – for example, you can only shoot the intruder if he or she had a gun or you had reason to believe that he or she had a gun.

Arkansas law requires the duty to retreat before using deadly force. However, Justia.com states that “a person is not required to retreat if the person is: (i) In the person’s dwelling or on the curtilage surrounding the person’s dwelling and was not the original aggressor; or (ii) A law enforcement officer or a person assisting at the direction of a law enforcement officer; or (2) By surrendering possession of property to a person claiming a lawful right to possession of the property.”

Colorado law does not require a duty to retreat before using deadly force. Instead, the occupant of any dwelling may use deadly force against an intruder if the occupant thinks the intruder has committed or intends to commit a crime or might use physical force against the occupant.

Kansas Stat. Ann. 21-5222 (b) states that when and to the extent a person reasonably believes that the use of deadly force is necessary to prevent imminent death or great bodily harm, deadly force is justified. Keep in mind the term “reasonable.” If you use deadly force, your conduct will be measured by a reasonable person standard, that is - would a reasonable person under the same or similar circumstances have a legitimate fear of being killed or sustaining great bodily harm? Regarding property, the same essentially applies; theft, trespass, or vandalism is not a threat to your safety, there is no imminent threat to life or of severe bodily harm. However, aggravated burglary, sexual assault, aggravated assault, or home invasion (forcible entry) may justify the use of deadly force.

In **Missouri**, according to the current self-defense statute, you have a right to “stand your ground” in the face of an attack in any location “you have a right to be in?”. “Stand your ground” used to just be about your home. Eventually, stand your ground moved from just being about standing your ground at home or on your property to standing your ground anywhere you lawfully are.

Oklahoma law does not allow the use of deadly force to protect your property alone, but it does allow the use of deadly force to protect yourself and others. A trespasser can quickly become a dangerous threat, and the confrontation with a trespasser may quickly and violently escalate.

Texas law allows you to use deadly force to protect property if you would be justified in using force, and you reasonably believe it is immediately necessary to prevent the imminent commission of specific enumerated property crimes.