

January 17, 2023

**RE: DFS REQUIREMENTS REGARDING WORKPLACE VIOLENCE/  
ACTIVE SHOOTER POLICIES -- UPDATE**

This Bulletin replaces and supersedes Bulletin No. [2022-13](#). That Bulletin, issued June 23, 2022, outlined Department of Financial Services requirements for excess line workplace violence/active shooter insurance policies. Those requirements are clarified and augmented here.

Following extensive review and discussion, the New York State Department of Financial Services (DFS) has advised ELANY to suspend any excess line workplace violence/active shooter insurance policy or transaction that does not meet the following requirements.

First, a workplace violence/active shooter policy may include medical payments (including counselling), death benefits and/or funeral benefits for invitees, customers, and guests on the premises during a workplace violence incident. However, the policy must cover third-party liability. For a policy to be a liability policy, it must provide a limit of coverage for losses for which the insured is, or may be, held legally liable and that the insurer will pay on behalf of the insured. Additionally, employees cannot be covered for these benefits under a workplace violence/active shooter policy.

Second, a liability policy, including workplace violence/active shooter policies that cover third-party liability, must provide “pay on behalf of” defense as well as “pay on behalf of” losses. Defense and losses may not be provided on an indemnification basis except in the case of directors and officers liability insurance. Note that there must be a duty to defend; the policy cannot omit defense coverage. Liability coverage can be excess of underlying insurance and contain a defense within limits offset provision.

Third, the insured can be an entity, or an entity and its affiliates and/or subsidiaries. Insureds that are unrelated to the named insured and share no insurable interest with the group are impermissible. Including entities “for which the Named Insured has the responsibility of placing insurance” as insureds is an example of unacceptable language. Invitees, customers, and guests who may be eligible for medical payment, death, and/or funeral benefits should not be described as insureds in the policy since they are potential third-party claimants under the policy. Employees are insureds for liability coverage purposes.

Fourth, business interruption and extra expense (first party) coverages must be triggered by physical damage to property. Therefore, triggers such as closing an insured’s premises due to a credible stalker or active shooter threat, or an actual active shooter event that causes loss of rents or use of premises, are not permitted in the absence of physical damage or loss to property. Examples of extra expense coverages that ELANY commonly sees are security, forensic and public relations consultants.

Should you have any questions regarding the content of this bulletin, please direct them to Howard Greene at [hgreene@elany.org](mailto:hgreene@elany.org) or (646) 292-5591.

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