

Negligent Entrustment – Is your company at risk?

According to the National Highway Traffic Safety Administration, highway accidents accounted for 37,461 deaths across the U.S. in 2016. In fact, motor vehicle accidents are the leading cause of workplace fatalities, accounting for 40% of all occupational fatalities and costing employers an estimated \$56.7 billion in 2017.

Whether you're a trucking company with more than 100 drivers, a contractor with 15 vehicles, a restaurant with 10 delivery drivers operating their personal vehicles, or an office with one employee who occasionally goes to the store for breakroom bagels, your company is at risk for an auto-related loss so negligent entrustment is important to you.

Negligent entrustment, in legal terms, is defined as:

"It is negligent to permit a third person to use a thing or to engage in an activity which is under the control of the actor, if the actor knows or should know that such a person intends or is likely to use the thing or to conduct himself in the activity in such a manner as to create an unreasonable risk or harm to others."

Negligent entrustment, in simpler terms, is defined as:

"To confer a trust upon someone with inherent failure to exercise proper care in this delegation."

"To carelessly permit (entrust) someone to use an instrument that could cause harm."

"The principle of negligent entrustment is not founded upon the negligence of the driver of an automobile, but upon the primary negligence of the entrusted by supplying an automobile to an incompetent driver."

In order for your organization to be held responsible for negligent entrustment, a court must determine:

- Your driver was incompetent (lack of skill in the job or lack of physical, mental, or emotional qualification).
- Your organization knew or should have known of his or her incompetence.
- You entrusted the vehicle to the driver (with permission, as part of his or her job).
- The driver's negligence caused the accident.

In addition to injuries, loss of life, negative publicity, vehicle/property damage, and downtime, your business is exposed to significant loss from "punitive damages" assessed by the courts. Each state has its own interpretation of negligent entrustment, so case law varies by jurisdiction. These cases often take years to reach a conclusion and jury verdicts can be quite large. In July 2018, a jury in Texas awarded a plaintiff \$101 million in punitive damages for a crash that occurred in 2013. (Keep in mind, your insurance coverage does not typically include punitive damages.)

Your organization is responsible for screening drivers who are given a vehicle to use. To protect yourself and your company, processes and standards must be in place to review motor vehicle records (MVRs) and to monitor driver qualifications. Your best defense is to maintain up-to-date driver records and respond quickly if one of your employees is in an accident while on the job. A written fleet management plan that addresses the use of both owned and non-owned (personal and rental) vehicles and includes these elements will help you avoid, or at least defend, a negligent entrustment claim.

- Pre-hire procedures that include a motor vehicle record (MVR) check for all prospective employees who are expected to drive a company or their own vehicle for business purposes.
- Written driver eligibility guidelines that describe an acceptable, borderline, and unacceptable MVR
- Written fleet safety program with clear expectations for driving behavior related to seat belt use, following the rules of the road (including speeding), cell phone/mobile device use, impaired driving, notifying the company of any change in license status or moving violation received, and personal use of company vehicles

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- Identification of any family members also authorized to drive a company vehicle assigned to an employee
- Post-hire MVR checks for any additional authorized family members who may drive a company vehicle
- Periodic supervisory road tests (either riding with the driver or shadowing them)
- Training expectations for all drivers
- Annual (at a minimum) driver MVR checks
- Disciplinary actions if a driver moves from acceptable to borderline or unacceptable, is witnessed driving unsafely, or is otherwise out of policy compliance
- Minimum inspection and maintenance requirements for all vehicles
- Proof of personal insurance from those employees driving a personal car for company business
- Documentation procedures for fleet policy enforcement (MVR status, supervisory road tests, policy acknowledgment forms, trainings, disciplinary actions, proof of insurance, and maintenance records)
- A DOT commercial fleet has additional fleet and driver management requirements, including but not limited to drug testing, hour of service logs, vehicle inspections, and medical certifications.

Managing a fleet may not be the primary mission of your company. It is, however, an extremely important function in protecting your organization. A well-thought-out and managed program can save lives and money. The policies and procedures your company develops must be regularly communicated and reinforced with all employees.

Additional resources are available on our website to help you with fleet management issues:

Commercial Fleet Safety Program
 Motor Vehicle Driver Eligibility Guidelines
 Motor Vehicle Driver Safety Policy
 Motor Vehicle Safety Condition Report (2 samples)
 Motor Vehicle Supervisor's Investigation of Accident
 Driving Safely technical bulletins
 Motor Vehicle Records technical bulletin
 Distracted Driving
 Tips for Cellular Phone Safety
 Guidelines for Employers to Reduce Motor Vehicle Crashes
 Pool Vehicle Policies and Procedures Manual