



Bulletin

Avoiding Potential Liability from Employees' Use of Company Vehicles

Introduction

Contractors that allow employees to use company vehicles for business (or even home-to-work travel) are exposed to potential liability should an accident occur involving that vehicle. Passenger vehicles used primarily for sales calls and that do not display the company's name and/or logo—rather than logo-bearing trucks, vans or service vehicles—are the main focus of this bulletin.

This bulletin describes the most common types of liabilities that could affect your company should an accident or incident occur involving a company vehicle driven by an employee. The bulletin also offers suggestions to help you reduce the resulting liability to your company.

This bulletin is a general discussion and is not and should not be relied upon as technical legal advice. Consult with your insurance agent and your attorney about steps you should take to minimize your company's exposure as much as possible.

Accidents Happen...

Determining who is at fault for an accident establishes who is responsible for the consequences and associated costs. But, if the vehicle driver (who caused the accident) is not the owner, the question then becomes, "who pays?"

There are at least four ways that your company may be held liable for a vehicular accident.

1. Vicarious Liability

One kind of liability occurs when an employee causes an accident while driving the company vehicle. Even though the contractor did not cause the accident directly, liability for the accident and all its associated costs could fall to the contractor, the vehicle owner.

In most states, the law holds employers liable for wrongful acts committed by their employees, if those acts were committed within the *scope of employment*, otherwise known as the doctrine of *respondeat superior liability*. In other words, if an employee negligently caused an accident while driving a company vehicle to a jobsite (or perhaps during home-to-work travel), the employer could be held liable for the resulting damages. (1) Also the attraction of greater company liability insurance would make the company an attractive defendant for the plaintiff's personal injury lawyer.

The key to managing your company's liability exposure is in the phrase, "within the scope of employment." Answering a claim typically involves one of the following options:

- **Determine whether the employee committed an *intentional* wrong.** Generally, if an employee deliberately commits a wrongful act that results in an accident—such as running a traffic light or a stop sign—it is unlikely that he or she was acting within the scope of employment. However, that defense may not always hold. While running a stop light is an intentional wrong, if the employee did so to reach the hardware store before it closed to purchase items for work, a liability issue could arise. (4)
- **Establish that your company had a policy prohibiting employees from committing the act that resulted in the accident.** This defense may be your best option, but only if it was established *prior to the accident*. A policy that clearly requires employees to obey all traffic laws at all times—regardless of the circumstances—*could* be useful in a case where an employee caused an accident by speeding or running a traffic light. (4)

Enforce preexisting policies.

Otherwise, they are meaningless. (2)
If a suit comes up, and the plaintiff can show you did not enforce policies in the past, that defense is diminished.

- **Make sure your company's vehicle insurance is adequate to cover damages from accidents.** Accidents do happen while employees are using the company vehicle on the job. Adequate insurance coverage, therefore, can help protect your company from a devastating financial loss. (2)

2. Negligent Hiring or Retention

A company could be held liable for an accident involving its vehicle if it was known that the employee who caused the accident had a condition or a tendency (i.e., a behavioral, medical or physical condition) that could cause the accident.

In other words, if the employee had not been hired or was fired after the problem was discovered, the accident would not have happened. (4)

Make sure you can prove one or more of the following:

- Your company performed a background check on the employee.
- The background check revealed no problem with your employee.
- There was no way of knowing the employee had a problem that affected his/her operation of a vehicle.

3. Negligent Lending of a Vehicle

Your company could be held liable for an accident if the employee who caused the accident was allowed to drive the company vehicle even though it was known that he/she was unfit to drive. (4)

To reduce your liability from negligent lending suits:

- **Obtain adequate insurance on all of your vehicles.** Also, enroll employees who drive company vehicles in a safe driving program recommended by your insurance agent.
- **Make sure that employees who use your vehicles have all the licenses and permits required to operate those vehicles and proof of insurance on their vehicles.** Keep these documents filed separately from other personnel records.
- **Enforce vehicle policies when an employee is not fit to drive.** Do not allow an employee to drive a company vehicle if you know or if the employee tells you, that he or she unfit to drive. (4)
- **Establish and enforce a policy prohibiting family members from using a company-owned vehicle.** If a family member is involved in an accident while driving a company-owned vehicle and is found to be at

fault, liability will attach to the vehicle owner (the contractor) and the claim may escalate. The insurance company will likely pay the claim, but will subrogate the costs to the party that caused the accident.

Enforcing such policies could prove challenging, but one suggestion is to have employees sign a form acknowledging and agreeing to the policy prohibiting family members' use of a company vehicle.

4. Negligent Maintenance of a Vehicle

A company will be liable for an accident if the company vehicle was unsafe to drive (*i.e., faulty brakes or a bad tire*) and its condition contributed to the accident. In this situation, the employee *and* anyone injured in the accident could sue your company. (5)

This type of negligence generally is of two types:

Negligence per se is when a vehicle is driven in an unlawful condition. In other words, if a vehicle has faulty brakes or brake lights, bald tires or broken window wipers, it is unsafe or in an unlawful condition. (5)

In many states, once the unlawful condition of a vehicle (negligence per se) is established and that it contributed to the accident, the vehicle owner (your company) becomes *automatically* liable. To reduce your liability, **never allow your company vehicle to be operated in an unlawful condition.**

"Ordinary" negligence. Even if your vehicle is not in a condition that makes it unlawful to drive, it may give rise to an "ordinary" negligent maintenance claim. All of the following must be demonstrated to prove "ordinary" negligence:

- **A reasonable person would have spotted and repaired a given condition in the vehicle that made the vehicle less safe (but not necessarily unlawful) to drive.** For example, maybe a tire showed uneven tread wear and had a small bald spot. **The condition was not corrected or repaired.** The tire was not changed because it was not known that the tire had a bald spot. Remember, it's not what is known, but what a *reasonable person* should have known. (5)
- **The condition contributed to an accident causing bodily or property injury.** If the tire blew out and caused the employee driving the vehicle to lose control, the company could be held liable. On the other hand, if the accident was caused by someone who ran a red light, the fact that there is a bald spot on one tire is less relevant, but perhaps not completely irrelevant. (It could be argued that the employee would have avoided the vehicle that ran the red light if the company vehicle had been equipped with properly maintained tires. (5)

Reduce the likelihood of successful negligent maintenance claims by making sure that your vehicles are adequately maintained and *document* those actions. In addition to having adequate insurance coverage on all your vehicles:

- **Establish vehicle policies that require employees to report any problems with your vehicles immediately, and direct them not to drive any vehicles in an unlawful or unsafe condition.** Take steps to correct the reported problems as soon as possible.
- **Conduct periodic maintenance and safety checks on your vehicles.** Even better, have a qualified third party — such as a certified mechanic — do the checks. Keep files documenting those inspections. (5)

Protecting Your Company ...Next Steps

At a minimum, here are some actions that you can take to minimize your company's liability exposure from employees' use of its vehicles.

1. Establish a vehicle use policy for your employees. First, check out ***MCAA's Guide to Human Resources Policies***. The publication not only outlines a specific set of policies governing employees' use of company vehicles, but also suggests reimbursement schemes for fuel, repairs and other associated costs.

2. Regularly maintain all your company vehicles in a safe, lawful condition. Doing so will help protect your employees as well as your company. Document service orders and repairs.

3. Maintain adequate insurance coverage on all your vehicles. Consult with your insurance agent on coverages for repairs, medical expenses and liability.

4. Require your employees who drive company vehicles to take a safe driving course. Even if your employees have been driving a while, they may benefit from learning road safety techniques that could help them prevent or survive an accident.

References

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