

Road rules

Avoiding negligent entrustment of company vehicles **Interviewed by Elizabeth Grace Saunders**

Responsible parents make their children prove they're ready to operate a vehicle when they get their license. In the same way, companies need to ensure their employees are prepared to drive safely before they hand over the keys.

"Permitting someone to use a vehicle for company business without checking his or her driving competency can lead to a claim of negligent entrustment," says Mitchell Maddox, risk control manager at Westfield Insurance. "An injured third party can take legal action against the company for not exercising reasonable care in checking the experience, driving record, training, prior accidents or license of the driver."

Smart Business asked Maddox about preventing negligent vehicle entrustment.

What are the consequences of negligent vehicle entrustment?

Negligent entrustment claims have been increasing in frequency and can result in multimillion-dollar lawsuits. These settlements not only require payment for damages and injuries caused by the accident, but can also result in punitive damages for not assigning duties responsibly. Companies need to proactively avoid this situation to prevent a potentially dramatic negative effect on their bottom line. Most importantly, developing and implementing effective fleet safety programs can prevent the pain and suffering caused by accidents.

What types of situations could lead to negligent entrustment?

Allowing a person to operate a company vehicle, as well as use of a personal vehicle for business purposes, could lead to a negligent entrustment claim.

For example, a service representative operating a company van stops after his last service call for dinner and drinks. He gets into an accident on the way home and seriously injures another party. After the accident, investigators discover that the driver has a suspended license from a prior DUI. The company had not run a motor vehicle record (MVR) or required the driver to report violations, so the court rules negligent entrustment against the company. Other possible scenarios may involve:

- Company-owned vehicles and pool cars
- Delivery vehicles



Mitchell Maddox
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- Personal vehicles used regularly for company business, such as outside sales
- Personal vehicles used occasionally for company business, such as going to the bank or picking up mail
- Rental vehicles employed for company business
- Vehicles loaned to others, such as security guards or temporary employees
- Use of company vehicles by nonemployees

How can employers check for problems during the hiring process?

Employers are responsible for ensuring a driver is competent and skilled to perform expected tasks. Lack of action by the employer may be the link to establishing negligent entrustment, so businesses should start the evaluation immediately. Here are some hiring best practices that should be done prior to allowing driving privileges:

- Require a list of all driving violations or accidents for the past five years.
- Include with the application a waiver authorizing the employer to obtain MVRs on a periodic basis.
- Verify and make a copy of the individual's driver's license. Require a license from the state where the job is located.
- Obtain a current MVR covering the past five years and review against established company standards.

■ If candidates have lived in other states, check the drivers' records for those states.

■ Perform a background check.

■ Obtain certificates of insurance with established limits and be listed as an additional insured for employees operating their own vehicles.

■ Compare drivers to established standards that qualify them to drive, such as age, experience, MVR criteria, prior accidents, regulatory requirements, etc.

■ Consult with appropriate legal council and HR when establishing driver policies.

The same guidelines that apply for qualifying a new hire should be in place for current employees. The main difference is updating information to keep a current profile. A key step of this process is ensuring that MVRs are obtained and reviewed at least annually.

What are some steps in building an effective fleet safety program?

A clearly established and properly implemented fleet safety program offers the best protection against negligent entrustment claims.

■ Make someone accountable for this program and equip him or her with the tools to manage it.

■ Determine who operates company vehicles and any vehicle in relation to company business.

■ Develop a fleet risk management program that covers driver recruitment and selection, new hire evaluation and training and ongoing driver reviews.

■ Implement a written policy noting specific restrictions on personal use of company-owned vehicles.

■ Periodically review safe vehicle operating criteria and behavior with drivers.

■ Develop a driver orientation and training program appropriate for your class and use of vehicles.

■ Follow a specific procedure to investigate accidents and monitor trends to proactively manage vehicle-related losses.

■ Establish a formal vehicle safety inspection and maintenance program.

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