

Exposures to loss from employees renting cars or driving their own cars for company business are often overlooked. It is easy to forget about these exposures because drivers are not operating “company vehicles”. However, operation of hired and non-owned vehicles in fact can present significant exposure to a company, not only from bodily injury or property damage loss, but also potentially from reputational harm.

What exactly does “hired auto” mean?

When a company rents, hires, leases, or borrows a vehicle other than a vehicle belonging to an employee or partner of the company, a hired auto exposure is created. Examples include a marketing manager renting a car while on a business trip or a software company leasing a truck to move property from one building to another.

What does “non-owned auto” mean?

When a vehicle is used for company business that is not owned, leased, rented, hired, or borrowed, a non-owned auto exposure is created. A sales representative operating their own personal vehicle to drive to customer sites on behalf of the employer is a prime example. This is commonly referred to as use of a personal car for company business.

How can hired or non-owned vehicle exposure impact the company?

Legal liability is created for a company with the operation of hired, owned, and non-owned vehicles principally under the common-law doctrine of *respondent superior* (Latin for let the master answer) or through the concept of *negligent entrustment*.

Under *respondent superior*, an employer can be held liable for the actions of an employee when the actions take place within the scope of employment. If, for example, an employee rear ends another vehicle with his personal auto while driving to a customer’s place of business, the employer may be liable for the injury to the vehicle occupants as well as the property damage of the other vehicle.

An employer may be found liable under the theory of *negligent entrustment* as a result of an accident caused by an employee driving a vehicle (regardless of ownership) with either the employer’s direct or implied permission. State law governs the elements a plaintiff must prove in order to win a personal injury case on this theory. Generally speaking, the following elements must be proven:

1. The employer entrusted the employee to use a vehicle for company business
2. The driver was incompetent, reckless, or unlicensed
3. The company knew, or should have known, that the driver was incompetent, reckless, or unlicensed
4. The driver’s actions caused the injury or damage

Incompetence can be evidenced by a history of crashes or violations, lack of qualification of skills to drive a particular vehicle, lack of a valid operator’s license or inability to drive a vehicle safely.

In order to help reduce exposure to loss from hired and/or non-owned vehicle operations, all drivers should be authorized and qualified by the company to drive for company related business. Additionally, the following sections provide best practices related to rental car usage (hired auto) and use of personal vehicles for company business (non-owned).

DRIVER AUTHORIZATION AND QUALIFICATION

Any employee driving for company business should be authorized and qualified by the employer. Details and guidance relating to driver qualification programs and criteria are outlined on the Risk Control Topic: Fleet Safety – Driver Qualification/MVR's available in the Risk Control section of the BTU website at www.berkley-tech.com.

RENTAL CAR USAGE (HIRED)

The operation of rental vehicles for business use presents a significant risk of injury for the driver and liability for the company. The employer should develop formal guidelines for employees renting cars, and consider incorporating the following practices:

- ✓ Employees or others seeking to rent a vehicle for business use must receive prior authorization from a responsible manager.
- ✓ All employees renting a vehicle for business use must have a current and valid driver's license and an acceptable driving record as determined by the company.
- ✓ The company must establish procedures to assure proper insurance coverage for each vehicle rental. This may require proof of personal auto insurance with adequate limits by the driver, the purchase of additional insurance from the rental company, or provision of coverage by the commercial auto policy of the company. Personal auto insurance and additional rental insurance limits would be required to meet or exceed those of the companies' commercial / business auto policy. The following are common insurance coverage offerings:

- Collision Damage Waiver/Loss Damage Waiver – Collision Damage Waiver (CDW) or Loss Damage Waiver (LDW) ("the Waiver") is an agreement option that relieves the renter of financial responsibility if the vehicle is damaged (or stolen in some cases). Contract wording is not standard so a renter should carefully read the agreement. It is common for the Waiver to not be honored by the rental company if a renter is in violation of the rental agreement. The Waiver may have limits but typically covers up to the full value of the vehicle. Renters should verify whether the Waiver will cover "loss of use" which represents the amount of lost rental income when a vehicle is being repaired as a result of an accident.

A renter's personal auto insurance policy may grant coverage that includes the waiver amount. Further, some credit card companies offer CDW/LDW coverage as a cardholder benefit. Some restrictions can apply and it may be supplemental to a primary or other coverage.

- Personal Accident Insurance – This covers the renter for accidental death and medical coverage for the renter and passengers during the time of the rental and while operating the vehicle. Personal auto policies or personal accident insurance may provide this same coverage.
- Personal Effects Coverage – This coverage provides protection against loss or theft of personal belongings from the rental vehicle. Personal auto policies may also provide this coverage. Many commercial business property policies will provide protection for business contents and equipment (such as laptop computers) used by an employee during a trip.
- Additional Liability Insurance – Renters are generally responsible for injury or damage to third parties as a result of a collision, so this optional insurance provides protection for the renter and other authorized operators against third party claims for bodily injury/death and property damage caused by the renter during the use and operation of the rental vehicle. Again, credit card providers and personal auto policies may also provide some level of coverage in this area.

Drivers renting vehicles should:

- ✓ Follow basic safe driving practices, which include use of seatbelts by all occupants, avoidance of impaired and distracted driving and observance of local traffic laws.

- ✓ Rent a car of similar size and performance to what they typically drive and are capable of controlling. Avoid expensive and high-performance vehicles even if offered at the same price.
- ✓ Spend a few minutes getting acquainted with the rental car. Identify location and proper operation of critical features such as: lights, wiper and washer, mirrors, seat, heat and AC, defroster, etc. Adjust mirrors and seat before beginning to drive.
- ✓ Familiarize themselves with the dashboard, particularly the speedometer, temperature gauges, and fuel gauge.
- ✓ Visually inspect the vehicle before leaving the rental car lot. If the vehicle is damaged, make a notation on the contract. Don't assume tires are inflated, fuel tank is full, or the wipers have fluid. Make sure the spare tire and tools are where they are supposed to be.
- ✓ Test the brakes – with engine running – to get a feel for them. At the same time, get the “feel of the wheel” by testing the play in the steering wheel. Make sure the hand or parking brake works.
- ✓ Plan ahead. Bring a map of the area or get electronic/internet directions before starting your trip. If you are driving in a country with laws different from yours, make sure you become familiar with them or let someone drive who is. Take extra caution in reading road signs and follow the speed limit. You may not have a feel for a different vehicle and not be aware of its capabilities or limitations.
- ✓ Avoid storing luggage or valuables in the interior of the car. Place these items in the trunk.
- ✓ Read the rental agreement for instructions on how to report an accident. Place rental agreement and other rental evidence in the glove compartment.
- ✓ Keep the fuel tank at least half full of fuel to avoid roadside emergencies. You may not know how the fuel gauge represents the remaining fuel. Make sure you know which side of the car the fuel fill is on before you start the vehicle. The dashboard often includes an indicator arrow next to a fuel dispensing icon on the fuel gauge.
- ✓ Keep keys with you at all times. Renters are typically provided only a single set. Losing keys can cause stress and contribute to distractions and accidents.
- ✓ Avoid the use of cell phones while driving. Pull over to a safe location to make or receive a call or text message.
- ✓ Contact the rental company immediately if the “check engine” or other trouble light activates.
- ✓ Consider seating capacity and cargo space of the rental vehicle, especially if you will be transporting passengers or materials.
- ✓ Write down the make, model, color and license number of your vehicle. Keep this information with you at all times and give a copy to those individuals who have your travel itinerary.
- ✓ Always wear the seat belt.

USE OF PERSONAL VEHICLES FOR COMPANY BUSINESS (NON-OWNED)

The following practices and policies have been used to manage the risk associated with the use of personal vehicles for business use.

- ✓ General
 - The driver must receive pre-approval for business use of a personal vehicle.

- No passengers, except those associated with business travel, are permitted in the car when it is being operated for business use.
 - No hazardous materials should be stored or transported while the vehicle is used for business.
 - All occupants of the vehicle must wear seat belts while it is being used in the course of business.
 - The vehicle must be operated in accordance with all applicable rules, regulations, laws and ordinances.
 - Any change in vehicles to be used for business must be approved by the fleet manager/supervisor within 10 days.
 - A travel plan must be submitted via email or fax for all business related use of personal vehicles.
- ✓ Driver
- Must have a current, valid state driver's license with a minimum of three years driving experience. Loss of license must be reported to the fleet manager / supervisor immediately.
 - The driver must know and follow the traffic laws of the states of operation including DUI / DWI laws.
 - Motor Vehicle Record will be checked on annual or more frequent basis and must meet the driver qualification requirements established by the company.
 - All drivers must have completed an orientation program and defensive driving class.
 - At least once every 4 years, the driver must attend a defensive driving class.
 - Cell phone use must be in accordance with stated company policy and the laws of the state where the motor vehicle is being operated.
 - Understand and abide by the provisions of the Company Fleet Safety Program.
- ✓ Traffic Offenses
- Driver is responsible for all fines and other expenses associated with traffic or parking tickets.
 - The driver must notify the fleet manager or supervisor within 48 hours of any conviction of an offense that carries more than 4 points according to the company's point system.
- ✓ Insurance
- Driver must supply evidence of an inforce personal auto policy for the vehicle used for business. A copy of the declarations page and certificate of insurance must be provided to the employer as of the policy effective date.
 - The policy must be in the name of the employee.
 - There must **not** be a *business use exclusion* on the personal auto policy. The vehicle used by the employee for company business must be rated as "business use" on the employee's personal auto policy.
 - The personal auto policy must have minimum limits of \$100,000 per person, \$300,000 per occurrence and \$100,000 property damage. In the case of combined single limits, at least \$300,000 is required.
 - The personal auto policy must include coverage for Under / Uninsured Motorists (UM/UIM) at the above limits
- ✓ Accidents during business use
- Report any accident to the employer that occurs during use of the vehicle for business purposes.
 - The driver must follow proper procedures at the scene of the accident and provide proof of insurance
 - Any driver that is charged with an "at-fault" accident must attend an appropriate defensive driving program within 3 months of the accident.
- ✓ Vehicle
- The vehicle must be maintained in safe condition according to the operator's manual and pass required state and / or company required inspections.
 - The vehicle must be properly licensed and titled with all required documents available.
 - The vehicle must be registered in the name of the employee.