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PREVENTING NEGLIGENT ENTRUSTMENT WITH FLEET SAFETY POLICIES

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Fleet safety policies have been receiving especially close scrutiny by insurers over the last few years. You may have even had your fleet safety policy reviewed and recommendations submitted by your auto insurer. This increased attention on driving safety is a result of higher costs facing insurers due to increasingly expensive automobile accidents. More and more vehicles contain high-cost parts (such as proximity sensors), medical costs for injured occupants are increasing, and distracted driving definitely is not helping reduce accident rates in our constantly connected world.

What is negligent entrustment?

One key item insurers are reviewing in written fleet safety policies is whether systems are in place to ensure only qualified employees are driving on the company's behalf. Drivers must be licensed, have the necessary skills, and have an acceptable driving history to avoid negligent entrustment. Negligent entrustment refers to entrusting someone with a company vehicle, or company driving duties in a personal vehicle, and the entrusted party negligently causes injury, loss, or harm to another party.

But what kinds of companies actually have this exposure, you may ask? Many employers don't hire professional drivers, but they do hire employees who need to drive in order to complete other tasks. You don't have to be a professional driver in a long-haul truck, or a delivery driver in a box truck for it to count as driving for the company. Sales staff driving to a client's facility or dropping off a package for work at the post office qualifies as driving on the company's behalf.

Many employers wonder how it affects their liability when employees drive their personal vehicles instead of driving a company owned vehicle. In this case, the

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employee's personal vehicle insurance policy provides the primary coverage. However, if the limits on that policy are exhausted, the additional costs roll up to the employer's policy. And in cases of negligent entrustment, the employer is named specifically. Take the following cases as examples of those who should not have been approved to drive on company business[1]:

1. The driver of the at-fault vehicle was a sales representative for a pharmaceutical company and, prior to the accident, had received 15 tickets for speeding. In the incident in question, he rear-ended a vehicle at 70 mph as the other vehicle slowed for a stoplight, resulting in a fatality and several serious injuries. The settlement amounted to more than $15 million from the company.
2. The driver of the at-fault vehicle had a long history of license suspensions, felonies, and drug abuse prior to being hired as a driver for a distribution company. In the incident in question, the driver rear-ended another vehicle at a red light while going 55-60 mph while under the influence of drugs. The other driver suffered serious brain and other bodily injuries. The settlement amounted to more than $2 million from the company.
3. The driver of the at-fault vehicle had been fired from his previous job due to his poor driving record, but lied about the cause, saying he'd been laid off. The current employer claimed to have reviewed his driving record, but was confident that he would be a good driver after passing a drug test and driving test. In the incident in question, he rear-ended a vehicle, resulting in head trauma to a 4-year-old boy. The settlement amounted to more than $5 million from the company.

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Protecting against negligent entrustment

Simply stated, negligent entrustment is allowing someone to drive who is unqualified. It means that you as a business owner are liable for what you should have known about your drivers.

Following these steps can help protect you against negligent entrustment:

1. Establish a written fleet safety policy and consistently apply it across your workforce that drives. It is key that you also communicate the policy to those who drive and establish expectations.
2. As part of your fleet safety program, establish a standard, such as a point system, against which drivers' MVRs (motor vehicle records) will be compared.
3. Determine which work positions in your organization require someone to drive.
4. At time of hire and annually thereafter, review each driver's MVR and compare it against your standard. Remove driving privileges from those who do not meet your standard.
5. As part of your MVR grading process, institute thresholds of acceptable, borderline, and poor. This enables you to give the driver a warning and provide an opportunity for retraining if their record is declining.
6. For those whose driving records are heading in the wrong direction, notify the employees that you've noticed the trend and what consequences they face if improvements aren't made. This is a time to educate and provide retraining.

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Obtaining MVRs

Employers are able to obtain MVRs for their drivers directly from the state in which they operate, or through a third-party vendor. Using a vendor can ease the process of obtaining records from multiple states, especially when dealing with a large employee group. Some states, and most vendors, also provide a "watch," or alert service, which notifies you more frequently than the minimum annual review standards require, allowing you to take more timely action and hopefully prevent further escalation. Note that some states require release forms to be signed by employees prior to obtaining these records.

Negligent entrustment is a serious risk when a good fleet safety program is not in place. However, having a standardized process in place for the hiring, training, and ongoing managing of those who drive on company business greatly reduces this risk. If you need guidance on developing your fleet safety program, contact an experienced risk manager or insurance broker to learn about ways to mitigate this risk.

References and Resources

1. Advisen.com; Recent Loss Cases 438788, 893530, and 414610