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THE MOST COMMON QUESTIONS ABOUT NON-OWNED AUTO LIABILITY

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A common question commercial insurance brokers get from business owners and risk managers is about employees using their own vehicle for work purposes and whether they are covered by the commercial auto policy.

Your employee's personal liability and physical damage policy is primary protection for the employee and the business. But what if the business has added non-owned and auto liability? If the entity is sued and cannot utilize the employee's personal auto policy for defense and indemnity (employees may neglect to tell their insurance companies they use their vehicles for work purposes and there can be coverage exclusions for business use), then the non-owned coverage will protect the entity if sued.

It is important to note that non-owned auto liability and physical damage on a business auto policy does not protect the employee or fix their vehicle.

Of course, the information above often leads to additional questions.

Q What if the employee who is injured while driving their own vehicle has another employee in the car who is also injured? Where is coverage for the passenger?

A fellow employee coverage endorsement is one option that can be added on a business auto policy. This endorsement can remove the coverage exclusion in the underlying policy for fellow employees. This is an additional coverage that will carry additional premium and is subject to carrier filings in the state.

Q Would employees driving or being driven be covered by L&I (WA) or the business's workers' compensation policy?

While an employee may file and seek compensation from the workers' compensation coverage (L&I in Washington), they may find the carrier

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subrogates the claim back to the employee's personal auto policy. This can leave the employee liable if the claim is denied by their personal auto policy.

Q Why isn't a business able to cover this under their auto policy?

There is an additional endorsement that can be added to a business's auto policy that will provide this coverage, called drive other car coverage. It provides full coverage to listed employees to use a private vehicle for business use. However, this coverage can be difficult to obtain and will incur additional premium.

Q If the employee's personal auto policy is primary, does the business need to check if they have appropriate coverage and certain minimum limits?

The short answer is yes, but this can be very cumbersome to manage internally. It is imperative a business documents and shares an HR policy with employees. Any requirements for use of personal vehicles and necessary insurance limits need to be documented, acknowledged by the employee, and, most importantly, enforced by the company. Many employees only buy state limits because they are not informed about their options, but it would be beneficial to require higher limits. This should be set policy and enforced by the business.

Q Should my employees pay for rental car coverage or does hired and non-owned auto liability provide coverage?

Hired and non-owned auto liability and physical damage coverage will provide similar protection for a rental car. This includes physical damage to another vehicle if at fault, medical expenses for the injured party (not your employee) if they are hurt in the accident, and legal expenses if your company is sued. However, it does not provide physical damage coverage to the car being rented, or your employee's medical expenses (unless added by endorsement).

There are many more questions that are likely to come up as a business explores allowing employees to use their personal vehicles for work purposes. This goes beyond good risk management and protecting the business - it is also about protecting the risk and financial liability of the employee.

Reach out to Parker, Smith & Feek to learn more.