

# Hired / Non-Owned Exposure Management

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## Use of personal, borrowed and/or rented vehicles

Authorizing or allowing employees to drive for your company exposes your organization to liability. This includes not only exposures from those who drive company vehicles but also includes those who drive their personal vehicles (or borrowed vehicles) on company business and who are subject to drive rental vehicles on company business. If your organization fails to review and evaluate an employee's driving record before allowing them to drive for your organization, and that employee has a poor driving record, your liability is greatly increased through what is known as Negligent Entrustment. Not managing this exposure can prove very costly to the organization.

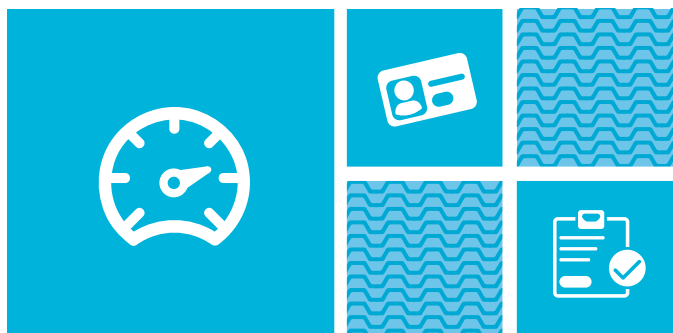
As an employer / owner, you can be held liable under a theory of negligence if you knowingly entrust the use of a company vehicle to a person who is intoxicated, incompetent, reckless, irresponsible, or otherwise unqualified or incapable of safely operating the vehicle, and an accident occurs as a result.

Negligent entrustment claims arise when an unlicensed, incompetent, or reckless driver causes damages while driving a motor vehicle owned by someone else. A party injured by such a driver must generally prove five components of this tort:

1. that the owner entrusted the vehicle to the driver;
2. that the driver was unlicensed, incompetent, or reckless;
3. that the owner knew or should have known that the driver was unlicensed, incompetent, or reckless;
4. that the driver was negligent in the operation of the vehicle; and
5. that the driver's Negligence resulted in damages (*Amaya v. Potter*, 94 S.W.3d 856 [Tex. App. 2002]).

If a plaintiff proves these elements, an owner may be liable for the full amount of damages caused by the driver. In some instances, the plaintiff may also recover Punitive Damages from the owner, particularly if the owner himself acted recklessly in entrusting the vehicle to the driver (*Allstate Ins. Co. v. Wade*, 579 S.E.2d 180 [Va. 2003]).

(<http://legal-dictionary.thefreedictionary.com/Negligent+Entrustment>)



The liability imposed is based on the company's negligent act in making the vehicle available to such a person. It must be established that the organization knew, or should have known, of the incompetence of the driver and that the insured consented to the use of the vehicle by that person.

The employer or business owner has a legal obligation to investigate the driving records and qualifications of all potential drivers (due diligence) and to take action to prevent incompetent drivers from operating vehicles for company business purposes.

When an employee is involved in an accident while driving his/her own vehicle for company business, the employee's insurance assumes the primary coverage. When the employee's personal auto insurance is exhausted, the business auto insurance can contribute to covering the remaining balance of the loss, up to the limits of the policy. It is recommended that employers monitor insurance coverage for employees who drive their personal vehicles as a part of their job, and that they obtain business use coverage. Without business use coverage, they are not paying the appropriate premium and their insurance company may very well deny the claim, since the vehicle was being used for business purposes. The compensation paid to the employee for the use of their personal vehicle for company business should take into consideration the increased cost of personal automobile insurance.

A company's exposure can actually become greater when drivers use rental vehicles. Many states make the rental company's insurance excess, so the driver's coverage (the Company's auto policy) becomes primary. Even if a state does accept the rental company as primary insurer, they likely have only minimum limits.

The following guidelines should be implemented to decrease the liability exposure.

**Any employee who uses his or her personal vehicle on company business or who drives rental vehicles on company business should have their personnel file enhanced using the following baseline:**

1. Those who regularly drive personal vehicles on company business as a condition of employment (for example outside sales staff, or those employees whose position requires them to be driving more than 40% of the work day) should have the following included in their personnel file:
  - Copy of valid driver's license.
  - Copy of Motor Vehicle Record (pre-hire and annually thereafter) that has been reviewed based on company MVR acceptability criteria.
  - Proof of current insurance.
  - Limits of Auto Liability coverage, of an adequate amount to provide a layer of from losses breaching the company's auto policy.
  - Endorsement showing the vehicle is rated for business use.

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2. Employees who drive rental vehicles should have the following included in their personnel file:

- Copy of valid driver's license.
- Copy of Motor Vehicle Record (pre-hire and annually thereafter) that has been reviewed based on company MVR acceptability standards.

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3. Those that occasionally drive personal vehicles on company business (10%-40% of the work day) should have the following included in their personnel file:

- Copy of valid driver's license.
- Copy of Motor Vehicle Record (pre-hire and annually thereafter) that has been reviewed based on developed company MVR acceptability standards.
- Proof of current insurance.

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