

MANAGING THE HIRED NOT OWNED EXPOSURE

For Dentists' Offices (Use of Personal and/or Rental Vehicles)

Allowing employees to drive for business purposes exposes your organization to liability. This includes those who drive their personal vehicles and those who may drive rental vehicles on behalf of the practice. If you fail to review and evaluate an employee's driving record before allowing them to drive for your organization, and that person has a bad driving record, your liability is greatly increased through the Law of Negligent Entrustment. Not managing this exposure can be very costly to the organization.

As a business owner, you can be held liable under a theory of negligence if you knowingly entrust the use of a 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.

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

The business owner has a legal duty to investigate the driving records and qualifications of all potential drivers (by the exercise of reasonable care) and to take action to prevent incompetent drivers from operating vehicles in the course of business.

When an employee is involved in an accident while driving his/her own vehicle for business purposes, the employee's insurance takes the primary coverage. When the employee's personal auto insurance is exhausted, the business auto insurance can contribute to covering the loss. We suggest monitoring insurance coverage for employees who drive their personal vehicles as a part of their job, and that they obtain a business rating for their auto insurance coverage. Without a business rating, they are not paying the appropriate premium and their insurance company may deny the claim, since the vehicle was being used for business. The compensation paid to the employee for the use of their personal vehicle for company business takes into consideration the increased cost of personal automobile insurance.

Accidents resulting from employees driving rental vehicles and personal vehicles for business purposes have resulted in claims similar to these examples:

- \$565,000 – The employee was looking at a map while driving a rental vehicle and was involved in a collision.

Any publications or forms on this website are for informational and educational purposes only. Nothing contained within this website or on any publications or forms found therein is intended to be legal or dental advice. Accordingly, PPP makes no representations regarding the correctness or completeness of the aforementioned content and accepts no liability for any injury or damage that may arise from its use by persons viewing this website. Any person viewing this website should direct any specific legal or dental questions to a competent attorney or dental professional. In addition, the information contained within this website or on any publications or forms found therein may contain or refer to matters which are outside the scope of your insurance policy, and such information and materials do not create or imply the existence of coverage. Every insured should consult its insurance policy for the specific terms and conditions of coverage.

- \$825,000 – The employee struck a tree while driving a rental vehicle after a business dinner.
- \$1,025,000 – A company driver using his personal vehicle on company business, pulled out at intersection.
- \$1,010,000 - A company driver using his personal vehicle on company business, struck a pedestrian.
- \$776,000 - A company driver used his uninsured personal vehicle on company business.

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

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

1. Those who regularly drive personal vehicles for business purposes as a condition of employment (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 standards.
 - Proof of current insurance.
 - Limits of Auto Liability coverage of at least \$300,000.
 - Endorsement showing the vehicle is rated for business use.
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.
3. Those that occasionally drive personal vehicles for business purposes (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 company MVR acceptability standards.
 - Proof of current insurance.
4. Those that may run errands, etc., or drive incidentally for the practice less than 10% of the time:
 - The best policy is to avoid this practice.
 - If permitted, obtain a copy of the driver's valid license, and place it in their personnel file.

Any publications or forms on this website are for informational and educational purposes only. Nothing contained within this website or on any publications or forms found therein is intended to be legal or dental advice. Accordingly, PPP makes no representations regarding the correctness or completeness of the aforementioned content and accepts no liability for any injury or damage that may arise from its use by persons viewing this website. Any person viewing this website should direct any specific legal or dental questions to a competent attorney or dental professional. In addition, the information contained within this website or on any publications or forms found therein may contain or refer to matters which are outside the scope of your insurance policy, and such information and materials do not create or imply the existence of coverage. Every insured should consult its insurance policy for the specific terms and conditions of coverage.

Although not indicated in the sample guidelines, it is a good idea to require everyone who drives their personal vehicle occasionally on company business to have a liability limit of \$300,000. It does not cost much more to increase the limit to \$300,000, and it will help cover an accident. You want the employee's personal auto insurance to be the primary insurance to help protect the business.

Consider limiting the number of people who drive occasionally and incidentally on company business. The more people that representing your practice on the road, the more chances for an accident that will increase liability, especially if one of those drivers has a poor driving history.

Author

Troy R. Bickerstaff, CIC, ATM

Vice President, Loss Control Manager

Aspen Insurance – US

Any publications or forms on this website are for informational and educational purposes only. Nothing contained within this website or on any publications or forms found therein is intended to be legal or dental advice. Accordingly, PPP makes no representations regarding the correctness or completeness of the aforementioned content and accepts no liability for any injury or damage that may arise from its use by persons viewing this website. Any person viewing this website should direct any specific legal or dental questions to a competent attorney or dental professional. In addition, the information contained within this website or on any publications or forms found therein may contain or refer to matters which are outside the scope of your insurance policy, and such information and materials do not create or imply the existence of coverage. Every insured should consult its insurance policy for the specific terms and conditions of coverage.