

# Risk insights: Negligent entrustment

Protect your business from legal and financial peril from employees not qualified to drive your vehicles

The behavior and actions of your employees can have a direct impact on you and your business. You can be held legally and financially responsible, including punitive damages, for accidents and injuries caused by employees while operating your vehicles.

## What does this mean for employers?

Negligent entrustment, giving or entrusting your vehicle to a person who is incompetent or cannot operate the vehicle safely, can put you at risk of legal and financial peril. A company may be held liable if the owner knew, or should have known, that their employee-driver was unlicensed, incompetent or reckless.

The increasing use of telematics makes it easier to document negligent entrustment than ever before, and, in the event of an accident and lawsuit, vehicle telematics data, driver qualification records and human resources policies and procedures are all discoverable.

### Common examples of negligent entrustment:

- A company has been receiving telematics data that shows negligent activity on the part of its drivers and has not acted on it.
- A company has policies in place that state that driver qualifications will be reviewed against a set criteria and that drivers failing to meet the criteria will be disqualified, but drivers continue to drive for the company despite failing to meet the criteria.
- An employee-driver has a suspended license and the company knows or should have known that the license was suspended.

Most insurance policies don't cover punitive damages. Beyond punitive damages, a negligent entrustment judgment could easily exceed your automobile liability/umbrella liability policy limits.



### **A 2018 court case handed down a judgment of more than \$100 million against an oil services company.**

The oil services company had strict policies regarding employee selection and motor vehicle record (MVR) reviews, but didn't enforce them. At the time of the incident, the driver had multiple violations which would have precluded their operation of a company vehicle under company policy. These violations would have been revealed if routine MVR checks had been run and analyzed. In this case, the company failed to take the most basic steps required to ensure those driving on their behalf met their minimum requirements.

### **Let's look at how it could happen to your dealership.**

A great general manager that a dealer has known for years leaves a competitor, is contacted immediately, a deal is made and he's hired at the new dealership that same day. The new GM is welcomed into the new operation, given keys to the dealership and a shiny new demo.

All is well for a month or two until one afternoon, while driving to the bank to make a deposit, the GM runs a red light, hits a small car and kills two people. The police, in the course of the investigation, check the GM's motor vehicle record and discover a very poor driving history, including multiple moving violations, a suspended license and a motor vehicle accident.

Did the dealership check the GM's driving record prior to hire and ignore the violations and accident history because of the GM's great sales record? If so, the dealership could be exposed to negligent entrustment.

## What can you do to prevent a negligent entrustment situation?

### **Before hiring someone:**

- In accordance with applicable laws, check employment references, criminal records and motor vehicle records.
- On the written job application, require the applicant to report:
  - All driving violations or accidents for the past five years
  - All states where they have held a driver's license for the previous five years
- Any aliases ever used
- Secure an authorization to obtain an initial MVR and run MVRs for each state where the employee has held a valid driver's license.
- Have applicants and employees provide proof of a valid driver's license. Inspect and keep a copy in the driver or personnel file.<sup>4</sup>
- Establish criteria to evaluate MVRs (i.e., determine what constitutes an acceptable driving record.)
  - Inform all prospective new hire drivers of the policy and obtain acknowledgment of their understanding and acceptance.
  - Ensure that management follows the criteria fairly and consistently.

### **After hiring:**

- Do not allow employees who have known current substance abuse problems or poor driving records to operate company vehicles.
- Verify that your policy concerning use of company vehicles is being followed.
- Prohibit employees with suspended licenses, even for administrative reasons (i.e. failure to renew license prior to expiration, etc.), from operating company vehicles.
- Check MVRs at least annually for all employees authorized to operate a vehicle for the company, whether company owned or otherwise. Important: This review of MVRs must be completed by the company, not by a broker or insurance agent. Third parties are not permitted to share the information obtained on the MVR. Any company that allows others to perform their due diligence puts themselves at risk.
- If telematics data is collected, download weekly reports from the telematics provider. Formally document at-risk driving behaviors derived from the telematics alerts, as well as the intervention completed with the driver.

# Risk insights *Continued*

## Negligent entrustment coaching and training solutions

- Prohibited actions
  - Cell phone policy
  - Drug and alcohol use
  - Seat belt usage
  - Required licenses
  - Company owned vehicles/driver agreements
  - Personal vehicles on company business
  - Permitted users and use
  - Offering assistance
  - Distracted and defensive driving
  - Company and personal policy
  - Inspection and maintenance
  - Garaging and storage
  - Accident scene procedures
  - Driver recruitment, selection and assessment
  - Driver training and orientation
  - Driver eligibility
  - Telematics
  - Coaching and disciplinary action system
  - Reward/incentive programs
- Provide all drivers with annual training that reviews all of the policies listed above.
  - Require drivers to sign an acknowledgement form, as part of the annual driver training program. The acknowledgement should indicate that the employee has reviewed, understands and agrees to comply with the policies.
  - Most important, perform the necessary checks to ensure employees are in compliance with the policies. Consistently enforce the rules and document any progressive discipline or interventions.
  - Negligent entrustment can also extend to those driving personal vehicles on company business. Be sure to apply the same policies and training to those using personal vehicles

Developing policies and publishing them in an employee handbook is easy. The difficult part is implementing and enforcing these policies. However, be aware that failure to follow these policies can be used against you.

Zurich  
7045 College Boulevard,  
Overland Park, Kansas 66211-1523  
800 840 8842 ext. 7449  
[www.zurichna.com/automotive](http://www.zurichna.com/automotive)

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