

RiskTopics

Controlling non-owned vehicle exposures (vicarious liability)

Zurich Resilience Solutions – Risk Engineering

Make sure you've put proper controls in place before you send your employees out on the road on company business in their personal vehicles.

Introduction

Non-owned vehicle exposures (vicarious liability) occur when employees use their personal vehicles on company business. Most organizations experience this exposure when employees run errands, make sales calls, visit job or customer locations, travel to inter-company facilities and related travel on company business. These exposures are becoming increasingly common as more companies offer either mileage reimbursement or a vehicle allowance rather than providing a company vehicle.

Discussion

It's challenging enough to manage non-owned exposures when the employee is being paid directly for that use, but even when an employee is not being compensated for the activity, liability can still fall to the employer. Laws may differ by jurisdiction, but a commonly referred to term is the "going and coming" rule. Under normal circumstances, employers are usually not responsible for losses occurring during an employee's daily commute. However, if the employee uses their own vehicle for an "incidental benefit" for the employer, then the employer may become responsible for an incident. For example, if an employer asks an employee to pick up supplies a few times a week on their way to work using their own vehicle, the employer may become liable during the entire commute to and from work. This is because the vehicle is now being used for regular job activities and may now be a necessary part of the employee's work activities for a given day. The same may be true for employees who travel between job sites or locations in the course of their workday.

Guidance

For employees who might be asked to use their own vehicles in the scope of their employment, companies may be able to reduce the risk of having potential liability for every commute by better defining WHEN the vehicle will be needed. For example, include a statement in the employee policy that indicates if the employee

will need their vehicle for work purposes, they will be notified before leaving for work that day. Avoid open-ended comments noting that an employee may be asked to use their vehicle for work purposes at any time.

Coverage issues — Many employees believe that when they drive their personal vehicles on company business they will be covered by their employer's insurance policy. However, as a general rule, the employee's auto policy provides primary coverage in these instances and the employer's coverage provides excess coverage (depending on the policy and circumstances). Also, the employer's insurance would not cover costs relating to physical damage to the employee's vehicle. Confirm that your employees are aware of these limitations before allowing them to use their personal vehicles on company business.

Employers need to make sure their employees carry auto liability and property damage insurance on their personal vehicles. Otherwise, the employer will be fully exposed if a crash occurs. Even when employees have auto coverage on their personal vehicles, you should be aware some states have very low statutory insurance requirements - at least one state only requires \$15,000 of coverage. In the event of any significant collision, these liability limits may be insufficient and demands for additional coverage may draw on your company's auto insurance policy. Also, it is essential to confirm there is no "business use" exclusion on the employee's personal insurance policy.

Zurich suggests that its customers work closely with their insurance broker in developing a company policy with desired auto insurance limits of a certain amount for bodily injury and property damage, or a combined single limit, that it wants its employees to maintain.

Driver qualification — A best practice for organizations with fleet exposure is to continually try to identify and manage at-risk drivers. When unqualified drivers or drivers with a poor driving record operate their own vehicles on company business and are involved in a collision, the other party may argue that the company should have known about the issues with this driver and should have taken steps to prevent their driving a vehicle on the company's behalf. Sometimes this strategy can result in large punitive awards against the company.

To help protect against this risk, a company should have some way of assuring itself that drivers meet an established minimum acceptable criteria for risk. Some companies run motor vehicle records annually on all non-owned vehicle operators who routinely use their vehicle for company business. An alternate (albeit less effective) strategy would be to require such drivers to annually certify the acceptability of their driving record (in accordance with the established criteria) and commit to notifying their supervisor promptly if they no longer meet the minimum established criteria.

Other uses – With the ever-changing landscape of technology, it is important to consider ride-sharing and other quasi-commercial services that employees could provide with their own vehicle while performing work-related tasks for the company. For example: If an employee was to pick up a ride-share passenger on their way to another jobsite or customer location, it is possible that your organization could be held liable for an injury to that passenger. Additionally, some personal auto insurance policies may specifically exclude coverage when a person is engaged in these activities. That could actually eliminate the employee's primary insurance coverage for that vehicle. These transportation-network services should be specifically addressed and prohibited whenever the employee is using their vehicle for company-related activities. Zurich Risk Engineering has published a separate RiskTopic addressing ride-sharing exposures for both company-provided vehicles and employee-owned vehicles, as cited in the references below.

Appendix A offers a sample policy for organizations with employees who use personal vehicles for business use. Such a policy can be combined with a comprehensive fleet management program to help address some of the exposures presented by non-owned vehicle exposure.

Conclusion

Companies that consider the potential exposures involved when asking an employee to use their own vehicle for company-related business are better able to formulate appropriate controls. Such controls can be used to limit the instances when employees may use their own vehicles. Additionally, policies can address some key practices to help prevent unanticipated exposures, reduce auto liability, and protect employees, the general public and the reputation of the organization.

References

Shubin, Amber, and Tom Wilson, Can Employers Be Liable For Employee's Car Accidents During Employee Commutes? Maybe, Employment Law Commentary. 26 January 2014.

ANSI/ASSE Z15.1 – 2012 Safe Practices for Motor Vehicle Operations. American Society of Safety Engineers, 20 August 2012.

Other related Zurich RiskTopics:

- Share the ride, not the risk – ride-sharing services
- Personal use of company-provided vehicles
- Negligent entrustment

Appendices

Appendix A

Use of personal vehicles on company business policy	
(personal car with limited business use)	
<p>An employee's use of a personal vehicle while on company business must be properly controlled to protect both the company and the employee. This certification confirms that employees understand whether they are permitted to drive a personal vehicle on company business and understand company policies related to that use.</p> <p>_____ I understand that I am not an "authorized driver" for my company and as such am not permitted to operate company vehicles or my own vehicle on company-related business under any circumstances.</p> <p>OR</p> <ul style="list-style-type: none"> • Maintaining auto liability insurance with minimum limits of \$_____ for bodily injury and \$_____ for property damage or combined single limit of \$_____. • Maintaining current state vehicle inspections when required. • Maintaining my vehicle in a safe operating condition when driven on company business. • Proof of insurance (copy of declaration page, certificate of insurance) will be sent to _____. I agree to submit information concerning any changes or cancellation of that insurance and to provide updated evidence of insurance at any future renewal of my policy within three days of the change. • If I am pulling a trailer or hauling equipment/materials, the vehicle that I use must be appropriately designed/rated for the work being done for my company. • Acceptable motor vehicle report (MVR) that meets the policies set by my company (provide company policy reference) • No 'business use' exclusion on personal insurance policy. • No other use of the vehicle is permitted while I am operating for company-related activity. This includes but is not limited to: ridesharing, product delivery and other related services. • I understand that my personal auto insurance is meant to be primary in the event I am involved in a vehicle collision while I am operating my personal vehicle on company business and that I am responsible for liability arising out of the operation of my vehicle. 	
Certification	
I have read the above and agree to abide by this policy statement.	
Employee:	Date:

September, 2021

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