

Understanding Negligent Entrustment Issues When Employees Drive on Company Time



A whitepaper by:

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Compendium Software Systems, LLC

325 South McGee Ave, Suite 16

Apopka, FL 32703

407-545-2200 / 866-706-2499

<http://www.CompendiumUSA.com>

<http://www.BrightFleet.com>

Introduction

Negligent entrustment is a problem for companies and organizations that employ or allow individuals to drive company-owned vehicles. To help prevent negligent entrustment claims you must first understand what it is and who is accountable. Negligent entrustment is a problem that branches out far beyond the accountability of your company drivers. It is a problem that can be traced to other areas of the company, all of which play an important role in not only keeping employees safe, but your customers and the general public as well.

What is Negligent Entrustment?

Negligent entrustment is typically known as a “charge of carelessness”. It is a term most commonly used in regards to commercial vehicle operations, and the liability that lies in entrusting employees to drive company vehicles. It means holding a company, or (owner) of any company vehicle responsible for their driver's actions. What this boils down to is, if a driver is proven to be responsible for damage or injuries caused while driving a company vehicle, especially if it was a preventable action, the employing company may be charged with negligent entrustment.

Any company that uses drivers as part of their operations is at risk of negligent entrustment charges for the actions of their drivers while driving on company time.

You may think that you are hiring well trained, top quality drivers by looking at their resume. However, unless you perform certain procedures before hiring, as well as continue to perform certain procedures during employment, your risks for negligent entrustment will remain high.

Elements that Create Fleet Negligent Entrustment Claims

- The driver is ultimately proven to be incompetent or negligent
- The owner of the vehicle was aware of, or should have been aware of the driver's lack of ability to operate the vehicle
- The owner of the vehicle gave permission for the employee to drive the vehicle
- The vehicle was being driven in pursuit of company business and on company time

Responsibility Lies With Your Company

Negligent entrustment claims can do severe damage to a company. Companies that hire drivers for their vehicles are always at risk of being charged with negligent entrustment. This can be especially true if records prove that the driver was not screened properly before entrusting a company vehicle to him, or if it was a known fact that the driver was in some way irresponsible. By not properly screening a driver prior to entrusting him with one of your vehicles, this can put your company at risk for being responsible for personal damage expenses, damage to property, as well as punitive damages.



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As the owner of a fleet of company vehicles, it is your responsibility to find out as much information about your employees and drivers as possible. It is your responsibility to thoroughly investigate your drivers; such as their driving record and background information. It is also your responsibility to make sure they have been thoroughly evaluated and get proper training to operate your vehicles.

When a company fails to do any one of these steps, it can have devastating repercussions, especially if there are known reasons as to why a vehicle should not have been entrusted to them.

Fleet Negligent Entrustment

- There are certain elements that can create a negligent entrustment charge; such as, a company or employer can be found guilty of fleet negligent entrustment, if:
 - The driver of the vehicle is found to be incompetent - In some cases, an employer can be found guilty of negligent entrustment without their driver being found incompetent. Not every case has an incompetent driver, but certainly the risks go up "if" the driver is incompetent.
 - The driver was negligent - If it's proven the driver was negligent at the time of the incident, a company may be charged with fleet negligent entrustment.
 - The driver was not legally authorized to drive the vehicle - Drivers must be specially licensed to drive certain vehicles. Legally unauthorized drivers pose a great risk for negligent entrustment charges, or additional criminal or civil charges.
 - The driver was proven to be inexperienced - Proper training is required for drivers to operate certain vehicles. Without proper training, risks of negligent entrustment go up.
 - On a positive side, there are ways to help lower the risks of negligent entrustment issues. By putting certain practices and policies into action, you can help reduce your risk of fleet negligent entrustment charges. So what are these practices and policies? Let's examine them one by one.



Driver Selection Process

The process of selecting drivers for your company takes care, and diligence. This procedure should never be rushed nor should you skip any steps. When you create procedural guidelines for selecting and hiring drivers, you can ensure that you are hiring competent drivers with clean records. Following each step will help lessen your chances of the possibility of having to one day face negligent entrustment charges.

1. Driver background checks - Choosing drivers with a clean driving record should be priority. Review your driver's prior vehicle reports and perform background checks. Driver background checks are one way to find out if your potential employee is a safe and responsible driver. When selecting drivers for your fleet, make sure to do a thorough background check on each driver. Traffic violations of any kind can mar a driving record. Indications of irresponsibility may include: traffic tickets, parking tickets, accidents, DUI's, or repossessed vehicles.
2. Clean bill of health - Each potential driver should be thoroughly examined by a physician and receive a clean bill of health before having a set of keys handed over to him for your company's vehicle. Making sure your drivers are healthy, is an excellent way to ensure that you have chosen physically fit drivers for your fleet.
3. Drug screening - By requiring your drivers to get an initial drug screening test and random screenings thereafter, you can reduce the risk of hiring a driver that has a problem with substance abuse and could pose a risk to your company.
4. Past work records - Investigate past work records thoroughly. Talk to past employers to gain insight into the employees work history. If they were a driver for another company, request all information about their driving record with their previous employer.
5. Require a commercial drivers license - A commercial drivers license means that your drivers have had proper training for driving commercial vehicles.
6. Repossessed Automobiles and credit check - Checking for repossessed automobiles along with checking your employees credit history are good ways to find out the type of responsibility your potential employee exhibits. It may not seem like a big deal to have had a car repossessed or not have excellent credit. But knowing these two pieces of information can help determine what type of risks your employee takes.
7. Hire experienced drivers - Do not hire inexperienced drivers, including those under the age of eighteen. Make sure that the drivers you hire have had plenty of experience driving commercial vehicles and have excellent driving records with other companies.

Create a Written Vehicle Policy

A written vehicle policy is essential for your company if you own a fleet of vehicles that employees will be driving. It lets your drivers see, in writing, what is expected of them. The policy should lay out the rules and regulations, in detail, in order to drive for your company. By having a written vehicle policy, it will make it more convenient for your drivers to review the rules and regulations on a regular basis. Your drivers should study the policy and be able to pass a rigorous test of their understanding of the key policy points. Testing the drivers understanding of the vehicle policy leaves virtually no room for excuses for not knowing what your company expects.

Outline the chief principal policies, rules and regulations in a clear, concise detailed manner. If everything is clear cut, there will be no questions or confusion as to what is expected of your drivers. A driving contract is also recommended for your drivers. Once they complete the policy test, have them sign the contract and date it. You may want to require your drivers to be re-tested on the policy throughout their employment on a timed basis - perhaps once a year. This will help keep the policies clear and fresh in their minds.

Your policy should at a minimum should reflect a 100% seat-belt use policy and zero tolerance for moving violations.

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Use a Comprehensive Drivers Evaluation

Proper evaluation and training for your drivers is crucial. First, a drivers evaluation will allow you to see where your drivers stand with their driving skills.

Evaluations are an excellent tool for mapping how well your drivers drive, and how much training your drivers will need. Evaluations allow you first, to see how safely a potential employee will operate your vehicle before they are behind the wheel on public roads. A good evaluation will also allow you to see where the potential employee's strengths and weaknesses are, and in what areas they will need the most training.

For a person already employed, routine evaluations are a must to make sure that your employee remains a safe and competent driver. Repeated evaluations allow you to see if any changes have developed over time with their skills, and creates a record with your company that can be referred to in the event of a negligent entrustment issue.

You should make note of your driver's strengths and weaknesses as a fleet driver, documenting the results for each area of the evaluation. Always keep the records of the evaluation on file so you can compare the latest results with previous results and to establish a history of evaluations and training. Your drivers should be aware of their results so that they know which areas they need to improve on.

Another requirement of the evaluation is to create a strict policy that states that in order for your drivers to drive your vehicles, they are required to pass all portions of the evaluation and training program; not just part of it. Let them know that without passing all areas, they will not be permitted to drive any of your vehicles.

Evaluations are beneficial for your company, beyond helping you understand the qualifications of your drivers. Many times, driver evaluations are used in court cases to support the drivers driving abilities, as well as they can show your driver's restrictions. If your driver did well in his evaluation, it can be an excellent benefit for your company in a court proceeding to show that your driver was proven, and tested a safe and competent driver.

Driver evaluations should include evaluating your drivers':

- Cognitive skills
- Physical abilities; such as the ability to physically handle the size vehicle the employee is expected to drive
- Safety precaution knowledge; such as knowing how to safely back up, speed limits, and driving in different weather conditions or with different vehicle loads
- Overall health



Always keep the records of the evaluation on file so you can compare the latest result with previous results





Use a Comprehensive Driver Training Program

Comprehensive driver training should be developed with several different learning styles in mind because not everyone learns the same way. Adults learn in different styles. Some learn best through reading and reading comprehension, some who understand numbers, graphs and statistical figures, and those adults who learn best through combining audio and video. Your training materials should engage all areas of learning so that your drivers have a greater chance to understand and comprehend the material.

Driver training programs should be comprehensive; covering all areas of driving a vehicle for your company. There are several areas of driving that should be covered in a training course:

- Defensive driving - Defensive driving courses are essential for teaching your drivers how to anticipate many different situations on the road and avoid negative outcomes; such as weather, speed, how to anticipate accidents and avoid them, avoiding dangerous situations, and how to avoid other drivers on the road despite their mistakes.
- DUI awareness - DUI awareness teaches your drivers about substance abuse and the risks of driving after consuming a substance; such as drugs or alcohol. This pertains to taking a prescription medication before driving. There are online courses or in-classroom courses that your drivers can attend.
- Closed course training – Closed course training can be expensive and time-consuming, but can benefit your fleet. This type of training teaches defensive driving and maneuvering on a driving course with real life situations. You can see, first-hand, how your drivers react and respond to many different situations.

- Driving simulators - Driving simulators create life-like situations and conditions for your drivers but avoid the expense and downtime associated with closed-course training. Driving simulators can give your drivers real-life obstacles to avoid and learn from. Many companies use simulators for training their drivers on defensive driving as well as proper techniques for many different road conditions and situations.
- Nighttime driving - Your drivers can learn defensive nighttime driving. If your company requires your drivers drive at night, they can learn the best driving techniques for safe driving after dark.

Types of Vehicles Can Increase Your Exposure

Certain vehicles pose a greater risk of accidents than others. Large, 15-passenger vans, for instance, are at a higher risk of roll-overs than most other vehicles. There are many types of businesses that use these large vans for carting a large number of people; such as churches, day-cares, and airports. These types of vans, according to a 2004 study conducted by the National Highway Traffic Safety Administration (NHTSA), are at greater risk of a rollover due to the characteristics of the van, which is a higher center of gravity.

Know the types of vehicles your fleet operates, the various weight class and duty ratings, and provide training that is appropriate to your fleet's individual characteristics.

Summary

When you choose well-trained, responsible, top quality drivers for your company or organization, your exposure to negligent entrustment claims drop significantly. When you put into regular practice requirements like documented vehicle policy tests, comprehensive driver evaluations, and professionally developed driver training programs, you can be assured that you have taken excellent precautions to help reduce your fleets accident rates and limited your company's exposure to potential negligent entrustment claims.



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