

Risk Control Bulletin: Negligent Entrustment



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Negligent entrustment can stem from employees driving company-owned vehicles, their personal vehicles or other vehicles on company business. Employers have a responsibility to know if an employee has something in his/her driving background that creates a risk to others. Negligent entrustment implies a company knew, or should have known, that it put an unsafe driver behind the wheel of a vehicle and allowed that employee to drive on behalf of the company.

A party injured by the company driver must generally prove five elements to establish liability in a lawsuit for negligent entrustment:

1. The owner company entrusted the vehicle to the driver or knew the person was driving on behalf of the company.
2. The driver was unlicensed, incompetent or reckless.
3. The owner company knew or should have known that the driver was unlicensed, incompetent or reckless.
4. The driver was negligent in the operation of the vehicle.
5. The driver's negligence resulted in damages.

A driver may be judged incompetent if he/she is intoxicated, unlicensed, inexperienced or has a record of reckless driving. Examples include:

- Not possessing a drivers' license or driving with a suspended license.
- Not possessing a Commercial Driver's License (CDL) when it is required for the type of vehicle being operated.
- No experience or lack of training in operating a specific type of vehicle.
- The driver's motor vehicle record (MVR) has several at-fault accidents or moving violations in the past few years.

Some jurisdictions use the Federal Motor Carrier Safety Regulations (FMCSR) to establish minimum competency for drivers. FMCSR is increasingly being referenced as a benchmark to measure the qualifications of an individual when driving is a regular part of his/her job duties. The FMCSR standards are also utilized by companies that are not under the authority of the Department of Transportation (DOT). In simple terms, FMCSR requires that a driver:

- Holds a valid driver's license.
- Be physically qualified to operate the vehicle.
- Be able to read and speak English.
- By reason of experience or training, be able to safely operate a vehicle.
- By reason of experience or training, be able to determine whether the cargo is securely loaded.

Examples of possible negligent entrustment:

On his way to work, an employee was driving a vehicle owned by Business A when he passed out from a medical condition. His vehicle struck several other vehicles and killed one of the passengers. Business A knew this employee's license had been revoked because of his medical condition, but still allowed him to drive a company vehicle to and from work.

Driving his own vehicle on company business, an employee of Business B pulled out into the path of a motorcycle. The rider of the motorcycle was killed. The employee had been driving on business for Business B about five years and did not have a driver's license. Business B never requested a copy of the employee's license and never reviewed the employee's MVR.

What you can do to reduce your exposure to negligent entrustment?

While the driver's negligence in causing an accident is usually the primary issue, the investigation of negligent entrustment charges must focus upon two main issues: the company's policies and the company's actual practices. Were policies in place and were the policies followed?

Your fleet management program must be followed and documented. Management must be held accountable for implementing the fleet management program. The following list includes areas that your company's program should include:

- Driver selection procedures that include review of employee motor vehicle records
- New employee orientation and training
- Ongoing driver training
- Post-incident/accident review and training
- An enforced policy limiting driver distractions such as cell phone usage and texting
- A drug and alcohol testing program
- Adherence to local, state and federal laws
- A strictly enforced, with no exceptions, disciplinary procedure for violations which includes revocation of driving privileges

To help avoid negligent retention, your fleet management program needs to include:

- Reviewing the MVRs for all drivers, at least on an annual basis
- Removing the employee from driving positions if they develop an unacceptable driving record
- Ongoing training of drivers on safe driving behaviors

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CNA offers educational courses to help our policyholders improve their fleet risk management, including:

- Driver Selection
- Distracted Driving
- Drug and Alcohol Testing
- Regulatory Requirements of Commercial Fleet Ownership

Additional tools and resources from CNA are available to help reduce auto and fleet risks at www.cna.com/driverperformance.

To learn more about how CNA Risk Control can work with you please speak with your local independent agent, or visit www.cna.com/riskcontrol.

