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RESOURCES:

- [Federal Motor Carrier Safety Administration – FMCSA “Medical Requirements for Drivers”](#)
- [Employer Pull Notice \(EPN\) Program](#)

QUESTIONS:

[Email PRISM Risk Control](#)

or call 916.850.7300

Vehicle Fleet Operations and Liability

By Kevin Luke

Driving is a critical part of the operational success for all public agencies as goods and services are often delivered or transported on a daily basis. Though driving is an inherent function of an agency, vehicular operations do come with potential financial, reputational and liability consequences for incidents that may occur. While most automotive accidents are minor, there are times when these accidents can lead to serious injuries and result in extensive property damage that can be catastrophic to all parties. Implementing the best practices in a *vehicle fleet program* to mitigate the exposure is critical in preventing an agency's potential for liability claims.

Vicarious Liability and Negligent Entrustment

In PRISM's experience, auto-related liability claims are typically grounded in claims of dangerous condition of the public roadways such as physical hazards, obstructions and deteriorating roads. The other exposure is a lack of training or negligent entrustment of the vehicle to a staff member in which an agency can be held responsible via vicarious liability. Vicarious liability is the legal doctrine which assigns liability for an injury to a person who did not cause the injury, yet who has a particular legal relationship to the person who did act negligently. An agency who is held vicariously liable in court may be responsible for the injured party's medical bills, lost wages and other related costs to their injury.



While the majority of either dangerous condition or negligent entrustment claims result in coverage under the Memorandum of Coverage (MOC), each must be evaluated on a case-by-case basis.

When an effective fleet program is not executed, the risk of Vicarious Liability via Negligent Entrustment of a vehicle increases for an agency. Negligent Entrustment is defined as a cause of action in U.S. tort law which arises where one party (**Employer**) is held liable for negligence because they carelessly provided another party with a dangerous instrumentality (**Ex: Vehicle, Equipment, Tools, etc.**). Then, the entrusted party (**Employee**) causes injury to a third party (**General Public**). Settlement of negligent entrustment claims can be costly as

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well since the agency may be responsible for payment of punitive damages. In significant personal injury cases, these types of auto claims can result in large settlements or jury awards which can directly affect the budget of an agency, result in increased insurance costs, and impact the reputation of the agency from the general public's standpoint. Punitive damages are designed based on the defender's ability to pay, to punish the wrongdoer and deter similar dangerous conduct in the future. Therefore, a public agency is more susceptible to this type of punishment due to their fiduciary responsibility to protect the general public they serve.

Below are some examples of situations in which a judge or jury might find an agency liable for the negligent entrustment of a vehicle when it allows an employee to drive while in the course and scope of employment:

- *When the driver is ruled incompetent physically, mentally or simply does not have a license and the employer knew or should have known about this.*
- *When the employer knew or should have known of the staff member's incompetence through means of motor vehicle record history.*
- *When the employee was not trained, licensed, certificated or guided on operating the vehicle properly.*

Vehicle Fleet Policy Best Practices

An important consideration with regard to vehicular operations is to formalize the vehicle fleet/transportation program by developing a written, formal policy plan. This policy should be acknowledged and signed by all employees who have any potential to drive on behalf of the agency for any reason. The goal is to create accountability and clear rules for conduct that must be followed while operating either a fleet or personal vehicle under the agency's direction or in the scope of employment.

As a best practice, an agency's policy should include the following:

- *Defensive Driver Training*
- *Periodic Tailgate Meetings*
- *A Clear "Code of Conduct" and Restrictions on Personal Use of Fleet Vehicles*
- *Vehicle Maintenance Requirements*
- *Pre-travel Vehicle Inspection Requirements*
- *Automotive-Specific Accident Investigation Procedures*
- *Periodic Motor Vehicle Record Monitoring*
- *Driver Criterion for Staff Eligibility*
- *Specific Rules for Operating Personal Vehicles for the Agency*

Practical Mitigation Tips

The best way to mitigate the risk of potential accidents and lessen the costs of liability is to establish a robust fleet program that includes: training staff appropriately on vehicles, maintaining licensing, determining operator competency, promoting accountability, and ensuring that the administrative team follows established procedures that have been well-documented.

Below are practical tips to support Fleet Program objectives.

- Completing Motor Vehicle Record (MVR) reviews at least annually and/or requiring staff to report any involvement in an accident or traffic violation and when any change occurs to their driving record. This can be easily managed through an [Employer Pull Notice \(EPN\) Program](#).
- Restricting employees from driving on behalf of the agency based upon their driving record. Employers should compare driving records to the agency's established eligibility criteria consistently.
- Having a defined process to disqualify drivers who do not meet agency training, certification and MVR eligibility requirements at pre-hire and during the course of employment. The consequences to staff not meeting these requirements could be self-insurance, change of job duties/classification and/or termination.
- Documenting agency procedures and training as they may be subpoenaed in the event of a legal case involving the agency. Ensure records are held per the requirements of the agency's record retention policy or jurisdictional requirements.
- Requiring proper training and licensing of all drivers. All potential drivers for the organization should be enrolled or trained in Defensive Driving training. Defensive driver training and physical road tests are especially important for Class A and B drivers and any driver required to transport materials requiring load securement or hazardous waste through an endorsement.
- Verifying the physical, mental and emotional ability of a staff member to operate a commercial vehicle (DOT requirement for Class A/B Licenses and Class C Licenses with hazardous material endorsement).
- Meeting periodic drug testing requirements (DOT requirement for Class A/B Licenses and Class C Licenses with hazardous material endorsement).
- Installing telematics on all fleet vehicles as a consistent way to provide oversight, accountability and location tracking. Modern telematics have varying levels of service to help capture driver behaviors conducive to accidents such as speeding, hard braking, swerving, etc. They also have the ability to provide real-time feedback on location and provide in-cab and exterior surveillance, which can assist in the accident investigation process. Studies have shown installing telematics reduces the likelihood of accidents.



For any additional questions regarding this topic or related regulatory requirements, contact the [Risk Control Department](#).