

To The Point

Food Delivery Services

CHUBB®



Commonly Overlooked Risk

When your employees drive their personal vehicle for your food delivery service, catering operations, or to run an errands for your business, you have potential risk of financial liability in the event of an accident - this is known as a non-owned auto exposure. If you rent or lease a vehicle to provide these same services or for other business usage, or use an independent contractor for these services, your business has a hired auto exposure. Employers may not give much consideration to how they manage their non-owned and hired auto risks, but this should be a critical component of their risk management plan. The liability of an employer always depends on the facts and applicable law, but understanding the basic concepts of non-owned auto and hired auto exposures can be helpful for employers as they seek to control their risks and exposures:

Non-Owned Auto exposure involves automobiles not owned, leased, rented, hired, or borrowed by the employer, but which are nonetheless used in connection with the business of the employer. Some examples of this business usage could include restaurants delivering their own

food, catering operations, and when employees use their personal autos to run an errand or go to the bank to make a deposit for the business.

Hired Auto exposure exists when the company leases, rents, hires, or borrows automobiles other than those belonging to an employee or partner of the policyholder. An example would be utilizing an independent contractor for your food delivery service. Other examples would be a manager of a business who rents a car while on a business trip or the temporary leasing of a truck to deliver for your food delivery or catering operations.

The use of non-owned autos or hiring of autos by a business can occur frequently or rarely. Still, either way, the exposure needs to be identified and appropriate controls exercised.

How can hired or non-owned vehicle exposure impact your company?

From a risk management standpoint, employers should recognize that legal liability can arise with the operation of hired, owned, and non-owned vehicles.

This legal liability typically arises under the common-law doctrine of respondent superior or through the concept of negligent entrustment.

Under respondent superior, an employer can be held liable for the actions of an employee or an independent contractor when the actions take place within the scope of employment/contract. If, for example, an employee rear-ends another vehicle with his personal auto while delivering food, the employer may be liable for the injury to the vehicle occupants as well as the property damage of the other vehicle.

A company may be found liable under the concept of negligent entrustment for an accident caused by an employee or independent contractor driving a vehicle (regardless of ownership) with either the company's direct or implied permission. Also, it must be shown that the company was negligent or failed to act reasonably in the driver's supervision, training, or hiring. These driver deficiencies may be evidenced by a history of crashes or violations, lack of qualifications to drive a vehicle, lack of a valid operator's license, or the inability to drive a vehicle safely.

Focusing on driver-related protocols from a risk management perspective is a prudent endeavor for employers. To help reduce exposure to a loss from hired and/or non-owned vehicle operations, all drivers should be expressly vetted, authorized, and qualified by the company to drive for company-related business. To establish these controls, a set of best practices should be developed. Driver qualification policies should be established, as well as driver rules regarding seat-belt usage and distracted driving resulting from cell phones, smartphones, tablets, computers, texting, and inputting data in GPS units while driving. Accident response and reporting procedures should also be detailed.

It is imperative that your company identifies, understands, and manages non-owned and hired auto risk to minimize the potential for losses. To properly manage this risk, your company should make a

concerted effort to implement controls similar to those for a fleet of owned or leased vehicles.

The following are some criteria that can be used to develop best practices related to a company's use of non-owned and hired autos:

- Establish a driver qualification/authorization program that requires everyone (employee or independent contractor) driving a hired or non-owned vehicle for company business to be authorized to do so by management or a designated responsible person. Authorized drivers should be required to:
 - Provide a valid driver's license for the type of vehicle being operated, and proof of registration in the employee's/independent contractor's name.
 - Be 21 years of age or older and have a minimum of three years of licensed driving experience.
 - Have an acceptable driving record as determined through an initial review of the driver's motor vehicle record (MVR) by the company, and an annual review thereafter.
 - Be versed in the safe-driving policies of the company.
 - For non-owned vehicle drivers, provide proof of insurance by supplying the company a current certificate of auto-liability insurance or a copy of their current auto-insurance policy with established minimum acceptable levels of auto liability coverage.
 - Immediately report all crashes (while the vehicle is in use for company purposes), licenses, suspensions, and moving violations to the company.
- The driver qualification/authorization program should also address:
 - The type of vehicle that is acceptable to be driven for business purposes.
 - Regular defensive-driver training.
 - Rules addressing impaired driving, seat-belt use, etc.
 - Procedures to follow when an accident occurs.

- Rules regarding the transport of non-business-related passengers while driving for business purposes.
- A distracted-driving policy that addresses common distractions such as phone calls, texting, computer or tablet use, GPS use, etc.
- A Rental Use Policy should additionally include these rules:
 - Provide the driver a company vehicle for business use instead of renting when appropriate.
 - Pre-determine qualified rental car agencies, taxi and/or limousine services for your business' use (verify they have adequate insurance liability coverage through certificates of insurance and that they are reputable).
 - Evaluate your company credit card used to rent autos to determine if it has favorable auto rental terms (some credit cards will reimburse the card member for their liability to pay for the physical damage and loss of use for damage to a rental vehicle - it is excess coverage and not primary in most cases).
 - If renting in the United States, determine if a rental car insurance plan should be purchased from the rental car agency (highly suggested).
 - If renting a vehicle in a foreign country, consider purchasing a local rental car insurance plan due to certain laws and insurance provisions of that country.
 - Address or restrict personal use of rental vehicles when on company business.
 - Require renters to take the time to become familiar with the auto before driving it and make the appropriate adjustments to seats and review mirrors.
 - Inspect the vehicle for prior damage before leaving the rental agency. Point out prior damage and document it in writing with the agency. Take photos of the damage or ask for a different vehicle.
 - Educate all your employees who rent on the company's rental policy.
 - Have an employee acknowledgment and sign off form regarding hired/rental vehicle use.

Prepare Now

Don't let this often overlooked issue impact your bottom line. Evaluate your non-owned and hired auto exposure based on your operations and the expectation of employees who use their vehicles for business driving or independent contractors using their vehicles for your company business. Develop a plan to address the risks you identify and implement a formal policy to mitigate those risks. Train affected employees/independent contractors and get their acknowledgment so that they understand what is expected of them as a prerequisite for driving their vehicles on your company business.

Resources

ANSI / ASSE Z-15.1 - 2017 Safe Practices for Motor Vehicle Operations, store.assp.org/PersonifyEbusiness/Store/Product-Details/productId/25652900

National Safety Council- Safety on the Road, <https://www.nsc.org/road>

Learn More & Connect

For more information on protecting your fleet, contact your local risk engineer, visit the [Chubb Risk Consulting Library](#), or check out www.chubb.com/engineering.

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