

NEGLIGENT ENTRUSTMENT

What It Is and Why It's a Problem for Employers

Negligent entrustment is a legal theory that imposes liability on individuals and companies who put a dangerous device – usually a vehicle – in the hands of a person who is not equipped to handle it properly. In a negligent entrustment claim, the claimant alleges that the driver was incompetent, reckless, or unlicensed; the employer knew, or should have known, not to trust the operation of the vehicle to the driver; and the driver's lack of qualification to operate the vehicle was a substantial factor in the accident.

Unfortunately, simply preventing unqualified drivers from operating company-owned vehicles is insufficient to ward off a claim of negligent entrustment, as employers can be held liable for employees' behavior while driving personal vehicles on company business. It is also important to note that a business auto policy will not provide non-owned auto coverage for the business in the event there is an accident involving an excluded driver in a personal vehicle.

Negligent entrustment claims are a problem for employers. First, the employer's degree of negligence can inflate the value of a claim, possibly causing it to exceed the limits of the employer's commercial auto insurance policy. Furthermore, a finding of negligent entrustment often carries punitive damages, which are not covered by insurance.

Fortunately, good risk management practices can help defend against claims of negligent entrustment. Here are some tips to mitigate the risk:

- **Identify all your drivers.** Anyone with permission to drive a vehicle for company business is classified as an insured on a company policy. Therefore, it is important to be clear who has permission to drive on company business, and under what circumstances.
- **Screen and select drivers carefully.** Establish clear hiring standards and a thorough screening process for anyone who drives on company business. At a minimum, motor vehicle records should be reviewed annually. A more proactive approach is to continuously monitor driving records via state DMV programs or other commercial applications.
- **Establish written policies and procedures.** These should set clear and consistent expectations for all types of vehicle use. Monitor for compliance, follow through on consequences for those who are non-compliant, and update policies as needed.
- **Monitor vehicle health.** Formalizing a plan for vehicle inspection, repair, and maintenance can help reduce costly, unexpected breakdowns, and can assist in avoiding accidents due to faulty equipment.
- **Train drivers regularly.** This can help ensure that all drivers understand vehicle safety policies and procedures. All drivers should have access to information on safe driving strategies and techniques, including instruction in defensive driving. All training should be documented.
- **Manage accidents.** Conduct post-accident reviews and training on how the accident could have been avoided.
- **Leverage technology.** Telematics and other vehicle technology can capture data that helps identify unsafe driver behaviors, optimize fuel efficiency, and track vehicle maintenance.

Morris & Garritano can provide a range of resources to help you create and revamp your fleet safety program. Please contact our office if you would like some assistance getting started.