

# Risk Control Bulletin

## Negligent Entrustment

RISK CONTROL



### Introduction

Negligent entrustment can stem from employees driving a company owned vehicle, or their personal vehicle, on company business. Employers have a responsibility to know if a person has something in their driving background that creates a risk or harm to others. Negligent entrustment implies a company knew, or should have known, that it put an unsafe driver behind the wheel of a company vehicle.

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 ABC Inc. when he passed out from a medical condition. His vehicle struck several other vehicles and killed one of the passengers. ABC Inc. 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 XYZ Inc. pulled out into the path of a motorcycle. The rider of the motorcycle was killed. The employee had been driving on business for XYZ about five years and did not have a driver's license. XYZ 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

### Resources

"Negligent Entrustment." *TheFreeDictionary*. Farlex, Inc. <http://legal-dictionary.thefreedictionary.com/Negligent+Entrustment>

RSI Insurance Brokers. Transport Times. [http://www.rsiinsurancebrokers.com/10\\_07-negligent-entrustment/](http://www.rsiinsurancebrokers.com/10_07-negligent-entrustment/)