



Risk Control

Automobile Negligent Entrustment

Automobile loss due to negligent entrustment can arise from employees driving company-owned vehicles or other vehicles on company business. Employers have a responsibility to know if an employee is too inexperienced or incompetent to drive a vehicle safely. In the employment context, an employer may be found liable if the employee's record of reckless or dangerous conduct was known to the employer or if the employer could have easily discovered this record by conducting a diligent search.

To recover loss due to negligent entrustment of a motor vehicle, the injured party must generally prove five elements to establish the company's liability:

1. The company entrusted the vehicle to the driver or the person who was driving on behalf of the company.
2. The driver was unlicensed, incompetent, negligent or reckless.
3. The company knew or should have known that the driver was unlicensed, incompetent or reckless (negligent retention).
4. The driver was negligent in the operation of the vehicle.
5. The driver's negligence resulted in property damage or bodily injury.

Drivers may be judged incompetent to operate a motor vehicle for any of the following reasons:

- Not possessing a valid driver's license or driving with a suspended license
- Not possessing a commercial driver's license (CDL) when required for the vehicle being operated
- Being deemed unqualified due to lack of experience
- A motor vehicle record (MVR) with several at-fault violations such as intoxication, reckless and distracted driving, numerous accidents or moving violations in the previous few years

Provincial and federal regulations, such as Federal Motor Carrier Safety Regulations (FMCSR) and Canadian Council of Motor Transport Administrators (CCMTA) National Safety Code (NSC), may be used to establish minimum competencies for drivers. Businesses can use these regulations as a benchmark for their

drivers' qualifications. Regulations like these outline minimum standards, which all operators can adhere to, not just those legally required to.

Before allowing someone to drive for your organization, we recommend that you verify they:

- Hold a valid driver's license
- Are physically qualified to operate the vehicle
- Are able to read and speak the language required by the relevant jurisdiction
- From experience or training, are able to safely operate the vehicle
- From experience or training, are able to determine whether the cargo is securely loaded

Examples of possible negligent entrustment:

1. On the way to work, an employee driving a vehicle owned by Business A passed out from a medical condition. The vehicle struck several other vehicles and critically injured one of the passengers. Business A knew this employee's license had been revoked because of the medical condition, but still allowed the employee to drive a company vehicle to and from work.
2. While driving a personal 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 had multiple speeding violations. While Business B requested a copy of the employee's driver's license, they never reviewed the MVR to see if the employee had past violations that would render them an unfit driver.

How can you reduce exposure to negligent entrustment?

When negligent entrustment is alleged in causing an accident, company policies and procedures will be reviewed during litigation. This includes a full review of the company's fleet management program.

We recommend that company management consistently enforce all elements of the fleet management program. This program should be formally documented and, at a minimum, include the following:

- Formal driver selection procedures with a review of all employee motor vehicle records, including those that drive non-company-owned vehicles
- New employee orientation
- Ongoing training of drivers on safe driving behaviors and company policies and procedures
- Post-incident/accident review and training with well-maintained records
- 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
- Continuous (or at least annual) monitoring and review of MVRs for all drivers, including employees that regularly drive their personal vehicles for company business
- A strictly enforced, with no exceptions, disciplinary procedure for violations that includes revocation of driving privileges

School of Risk Control Excellence (SORCE®)

CNA offers [educational courses](#) to help our policyholders improve their fleet risk management, including:

- Distracted Driving
- Driving in Today's World
- Alcohol & Substance Abuse
- Defensive Driving Techniques
- Load Securement

Additional tools and resources from CNA risk support are available at: cna.com/risk-control/capabilities

To learn more about how CNA's Risk Control services can help you manage your risks and increase efficiencies, please visit cna.com/riskcontrol.