



# Negligent Entrustment

School of Risk Control Excellence (SORCE)

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# Objectives



## Understand

The concept of negligent entrustment and why it should be a concern to every organization



## Recognize

How employers may be negligent in their driver and fleet management practices



## Determine

Ways negligent entrustment risk can be limited with proper fleet management controls

# Negligent Entrustment

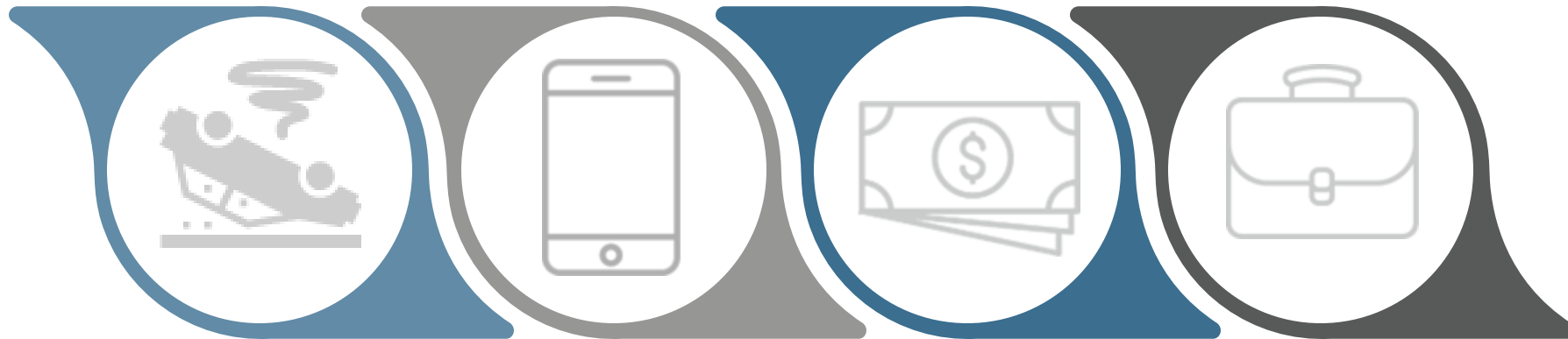
## Introduction

### Risky Behavior

Alcohol, Speeding and Distracted driving are the three key causes of fatal motor vehicle accidents.

### Incompetent Driver

Drivers are judged to be incompetent if they are *intoxicated, unlicensed, inexperienced* or have a *record of reckless driving*



### Occupational Fatalities

1,778 fatal occupational injuries in 2020 were transportation related.<sup>(1)</sup>

### Financial Impact

US Department of Transportation estimates the annual cost of roadway traffic crashes is over \$1 trillion.<sup>(2)</sup>

# Trending Terms

## Social Inflation



Rising litigation costs to defend a claim. The higher litigation and claim management costs impact policyholder premiums.

## Nuclear Verdict



An exceptionally high jury award that surpasses what should be a reasonable or rational amount

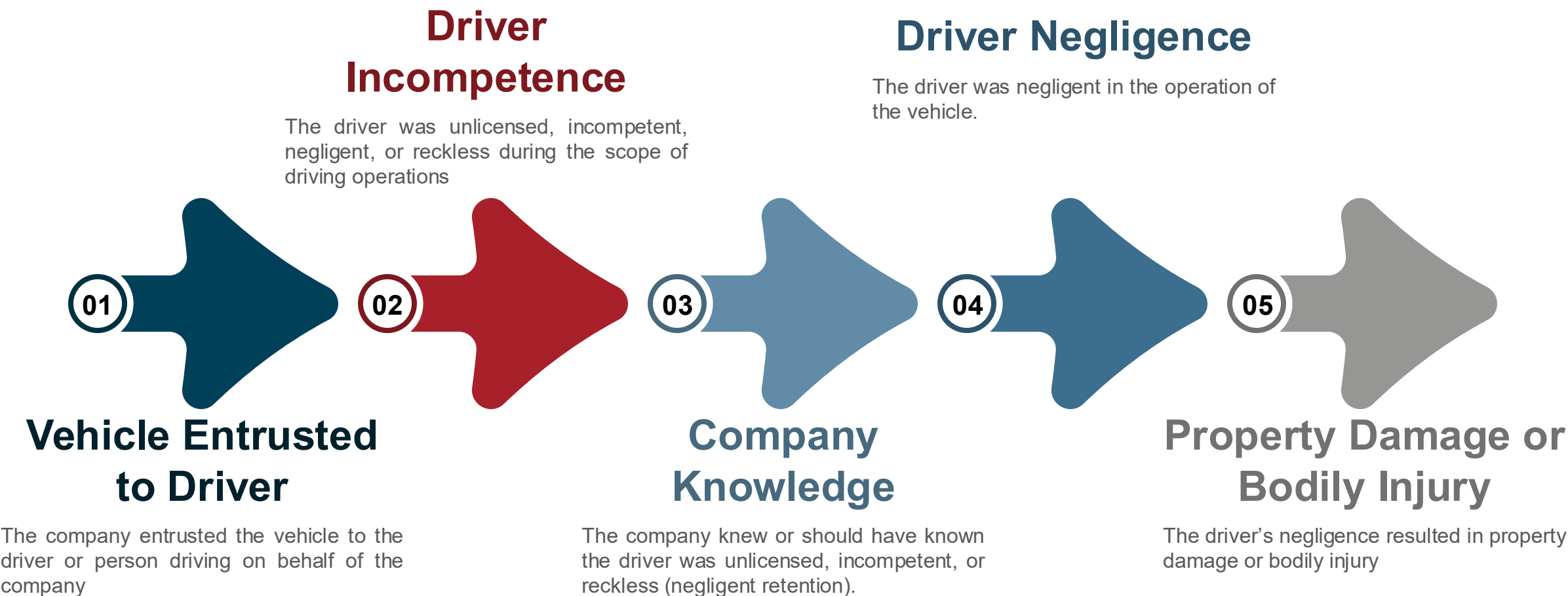
## Reptile Theory



Trial strategy that uses fear and anger to solicit a higher award amount to the plaintiff

# Negligent Entrustment Defined

Elements to trigger a negligent entrustment scenario



# Negligent Entrustment Defined

Who are considered drivers?



## Driver

- Hired by company to fulfill driving tasks for organization
- Typically assigned a specific vehicle, or type of vehicle



## Employee

- Driving tasks are part of job duties, but not only task
- May have company assigned vehicle, or use personal vehicle



## 3rd Party

- Individuals not employed by organization, but either:
- Perform driving tasks for company, or
- Are provided a company vehicle for other uses



# Hired and Non-Owned Auto



## Employee

- Driving tasks are part of job duties, but not only task
- May have company assigned vehicle, or use personal vehicle (H/NO)

## Hired and Non-Owned Auto

### Non-Company Owned Vehicle

Rented, Borrowed, 3<sup>rd</sup> Party

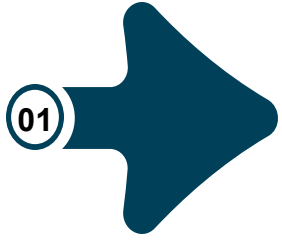
Driving tasks related to company business needs

Offer of payment for vehicle use

Mileage reimbursement, vehicle allowance, or rental reimbursement



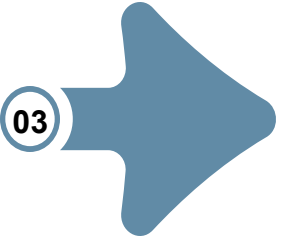
# Driver Incompetence



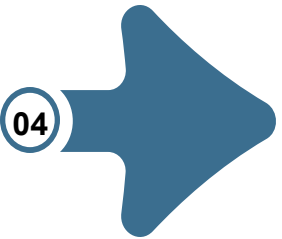
Not possessing a valid driver's license or driving with a suspended license



Not possessing a commercial driver's license (CDL) when it is required for the type of vehicle being operated, or the driver lacks proper experience



A motor vehicle record (MVR) with at-fault violations



An operator who is impaired while driving



# Negligent Entrustment – Example 1

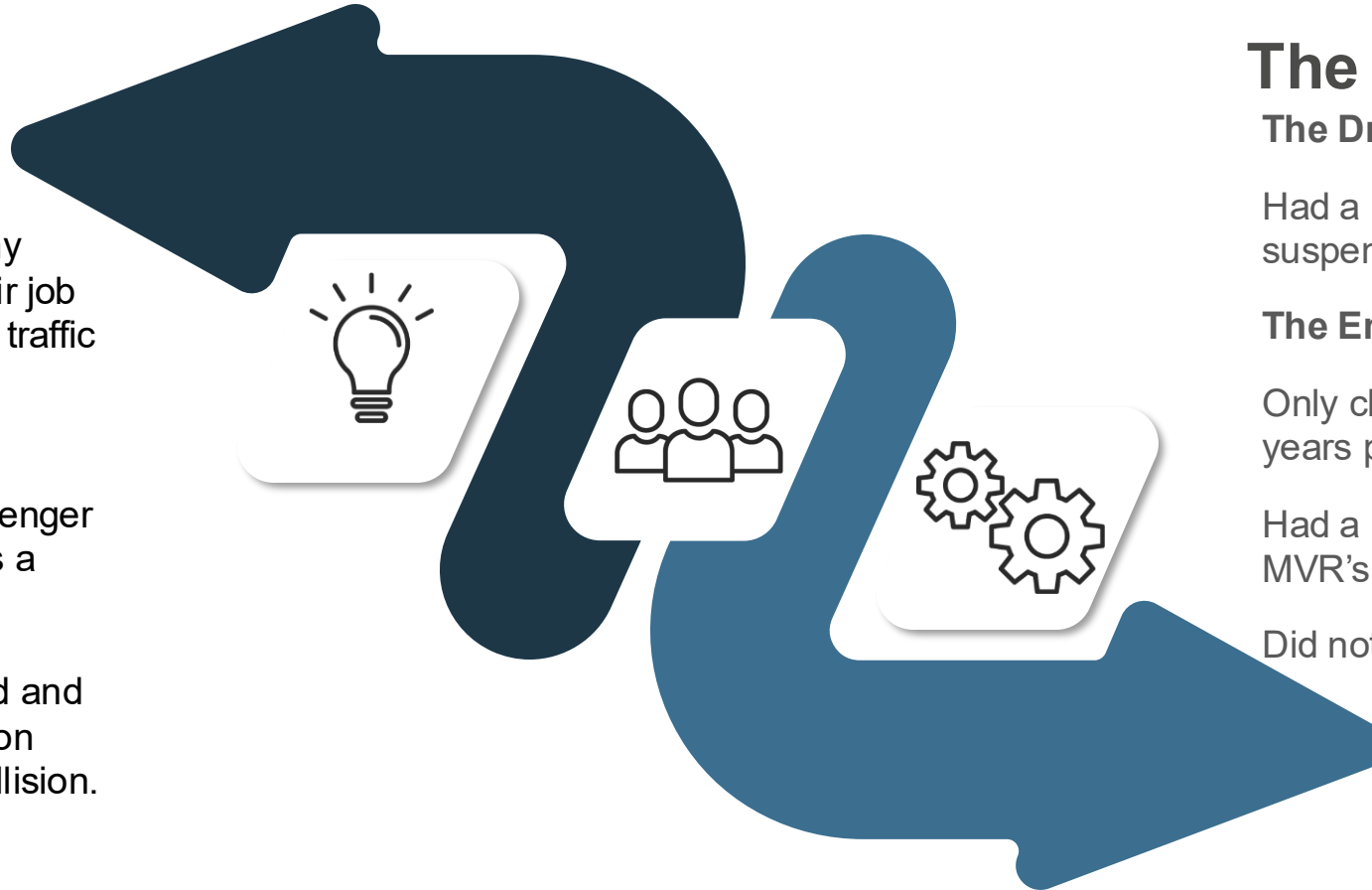
## Example

### The Accident

An employee driving a company vehicle during the scope of their job tasks turned left into oncoming traffic and collided with an oncoming motorist.

The other driver and their passenger sustained significant injuries as a result of the collision.

The at-fault driver failed to yield and was using navigation features on their phone near the time of collision.



### The Issue

#### The Driver:

Had a DUI resulting in license suspension.

#### The Employer:

Only checked MVR at time of hire, 5 years prior.

Had a policy stating they conduct annual MVR's and outline qualification criteria.

Did not enforce their cell phone policy.

# Was the Company Negligent?



## ✓ Vehicle Entrusted to the Driver

The driver was in scope of employment duties.

## ✓ Driver Negligence

Driver caused an at-fault accident. Element of distracted driving increases negligence.

## ✓ Driver Incompetence

Driver had past driving violations, including DUI and a suspended license.

## ✓ Property Damage or Bodily Injury

Injured parties and vehicle damage to third party.

## ✓ Company Knowledge

Company should have known of suspended license.

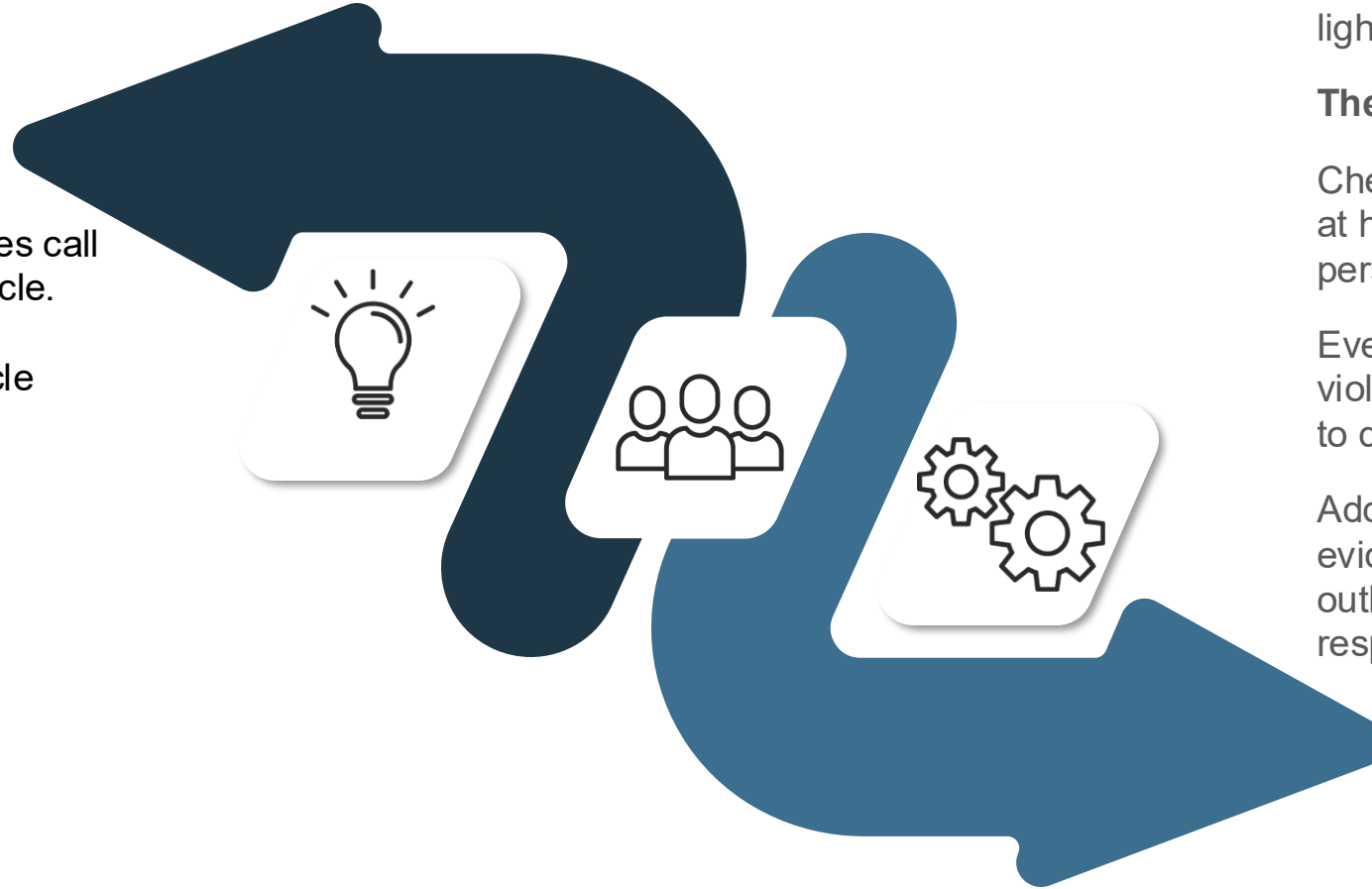
# Negligent Entrustment – Example 2

Example

## The Accident

An employee was driving their personal vehicle to make a sales call and rear ended a stopped vehicle.

The driver of the stopped vehicle was killed upon impact.



## The Issue

### The Driver:

Had two speeding and one traffic light violation within the past 2 years.

### The Employer:

Checked MVRs for their sales staff at hire for those who drive their personal vehicles.

Even though the driver had violations, employer permitted them to drive.

Additionally, the employer had no evidence of a fleet safety program outlining driver qualification and responsibilities

# Was the Company Negligent?



## Vehicle Entrusted to the Driver

Even though this was not a company owned vehicle, there was an expectation of driving tasks with the job duties.

Employer entrusted the employee to drive.



## Driver Incompetence

Driver had past driving violations



## Company Knowledge

Company should have been monitoring all employees who are entrusted to drive for company purposes.



## Driver Negligence

Driver caused an at-fault accident.



## Property Damage or Bodily Injury

Injured parties and vehicle damage to third party.

# Control Negligent Entrustment Risk

## Driver Qualification

Motor Vehicle Record Checks  
License & Certification Review  
Substance Abuse Program

## Vehicle Assignment

Personal Use Policy  
Hired and Non-Owned Exposure  
Appropriate Vehicle for Appropriate Driver

## Distracted Driving

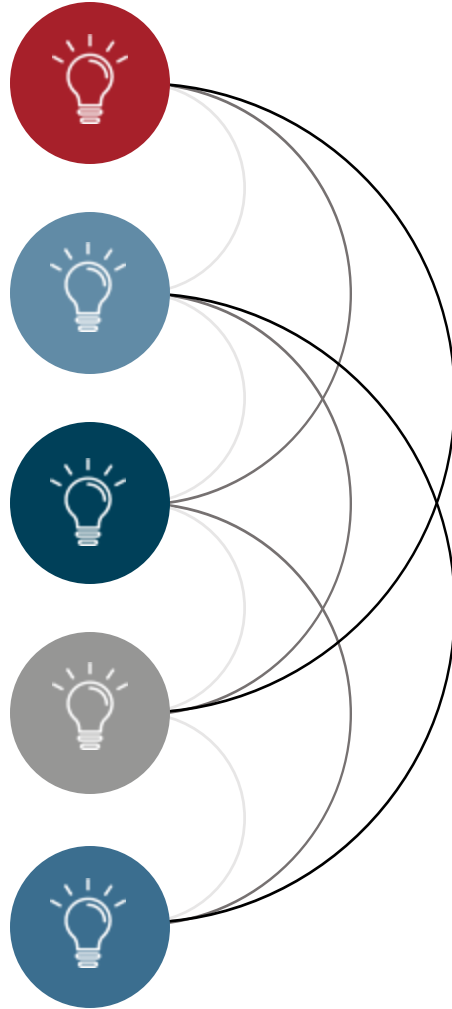
Cell Phone Policy  
Telematics Integration  
Workplace Well-Being

## Driver Training

Road Tests (specific vehicles)  
Pre-Use & Ongoing  
Industry and Company Trends

## Accountability

Enforced and Consistent  
Outlined and Communicated  
Driver Acknowledgement



**Fleet Safety Program**

**ANSI Z.15 Standard**

**Regulatory Compliance**

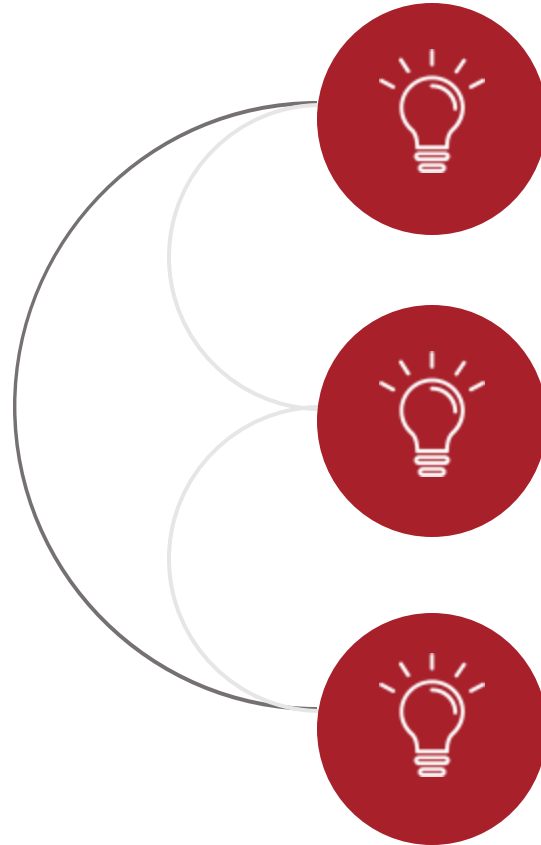


# Control Negligent Entrustment Risk

## 5 Key Elements

### Driver Qualification

Putting the right individuals at the wheel is the single most important action your company can take to ensure long-term success of your Fleet Safety Program



### Motor Vehicle Record Checks

Include driver criteria in fleet safety program

Best practice is 5-year lookback when reviewing MVRs (check by state; some only allow 3-year)

### License & Certification Review

Minimum standard of qualification

Regulatory requirements for commercial drivers license; review driver file and violation history through FMCSA

### Substance Abuse Program

Ensure drivers comply with company and regulatory substance abuse program elements

Offer training and assistance





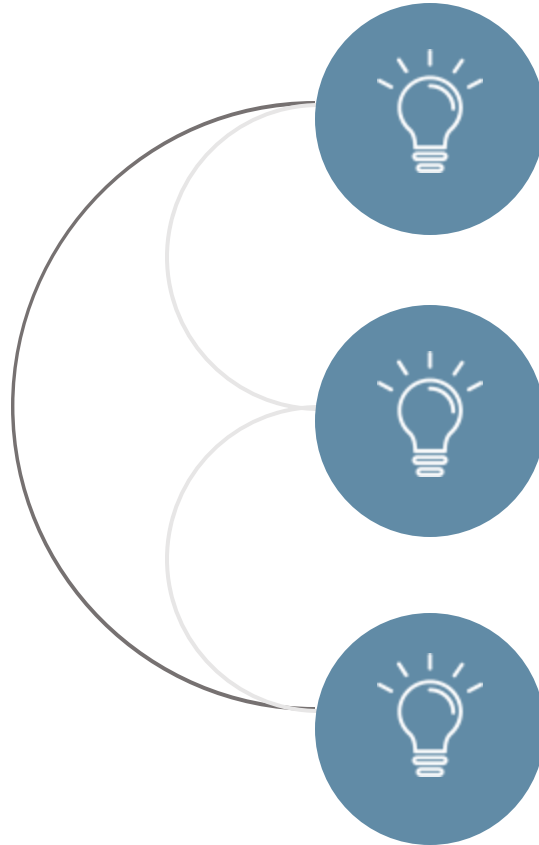
# Control Negligent Entrustment Risk

## 5 Key Elements

### Vehicle Assignment

Aids in ensuring the proper driver has been assigned the proper vehicle for their specific operational needs.

Assigning vehicles to a specific driver provides an additional layer of driver accountability.



### Personal Use Policy

Company policy should outline position on drivers using a company owned vehicle for personal use.

If allowed, strict guidance and adherence to policy guidelines

### Hired and Non-Owned

Guidance required for H/NO drivers to include confirmation that drivers have personal insurance & appropriate limits.

Must be included in driver selection, training, & accountability.

### Appropriate Vehicle – Appropriate Driver

Ensure drivers are properly qualified to drive the assigned vehicle.

Outline accountabilities and responsibilities for each driver.





# Control Negligent Entrustment Risk

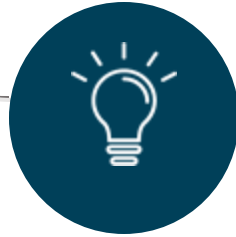
## 5 Key Elements

### Distracted Driving

In 2020, over 3,100 were killed in motor vehicle crashes involving distracted drivers.<sup>(1)</sup>

Distractions in Different Forms<sup>(2)</sup>:

- Visual
- Auditory
- Manual
- Cognitive



### Cell Phone Policy

Develop and implement a policy to restrict cell phone use

Manage expectations of cell phone use and operational logistics<sup>(3)</sup>

### Telematics Integration

Technology solutions can alert drivers of distracted driving activities

Continuous monitoring and real-time feedback drive results

### Workplace Well-Being

Consider how overall work and home environment may impact a driver's cognitive distractions

Provide support and assistance to all employees for wellness efforts



(1) [NHTSA Distracted Driving](#) (2) [NIOSH Motor Vehicle Safety at Work](#) (3) [Governors Highway Safety Association - Cell Phone Laws by State](#)

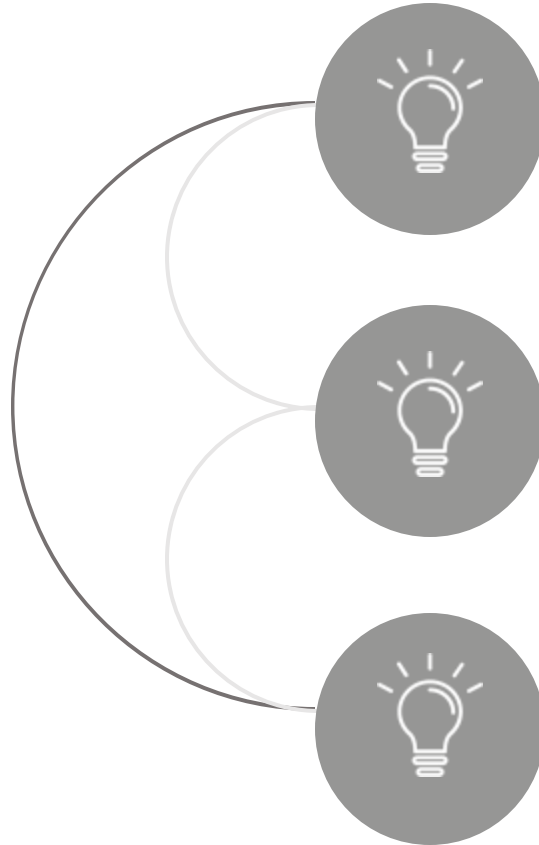


# Control Negligent Entrustment Risk

## 5 Key Elements

### Driver Training

Training should encompass aspects such as situational awareness and accident prevention as well as what to do in the event of an accident.



### Road Tests

Confirm the drivers are qualified to use the vehicle in question. Conducting road tests.

### Pre-Use & Ongoing

Training can be in-person, online, or one-on-one.

Training should be ongoing and adjusted to the needs of each individual driver.

### Industry & Company Trends

Educate employees on both industry and company trends.

Bring awareness to hazards and risks all drivers should consider.

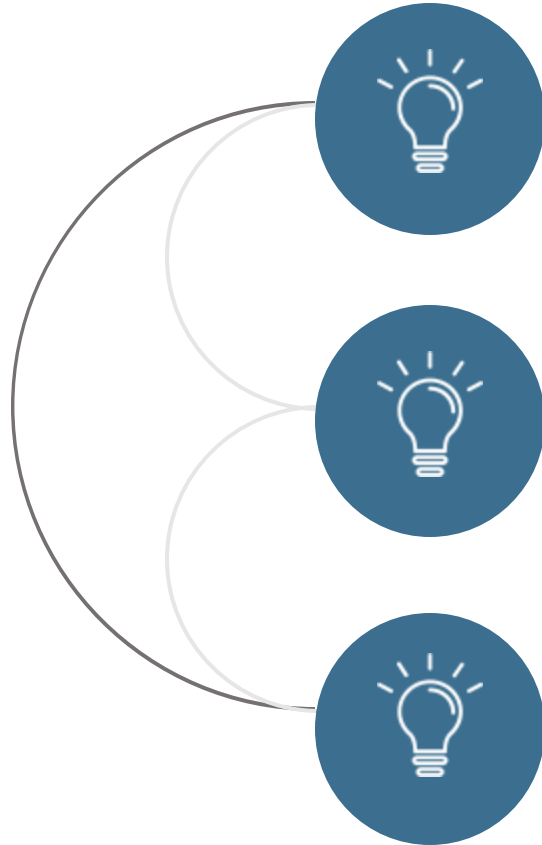


# Control Negligent Entrustment Risk

## 5 Key Elements

### Accountability

Provides a means for enforcing a fleet safety policy.



### Enforced & Consistent

Standards must be applicable to all drivers.

Variations in enforceability is prohibited. Exceptions lead to noncompliance.

### Outlined & Communicated

Provide clear and concise requirements for driver accountability.

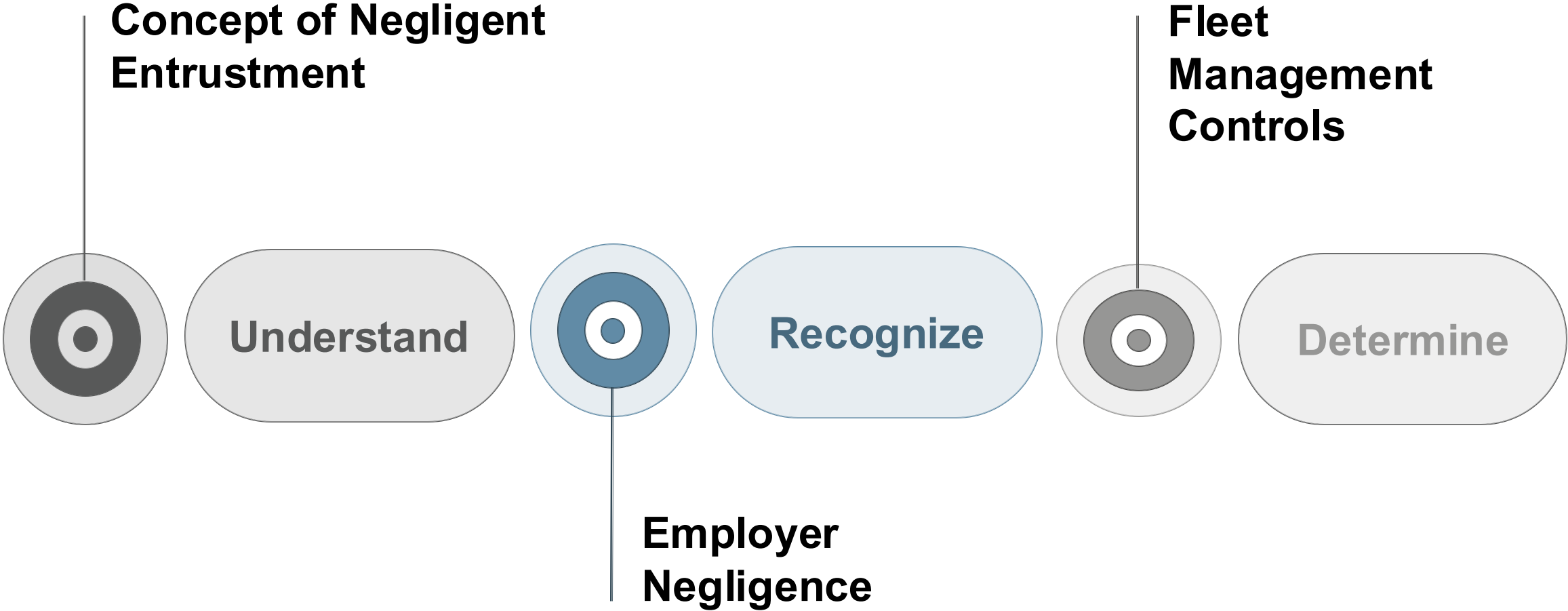
Ensure driver policies are properly communicated, and received.

### Driver Acknowledgement

Formal review and signed acknowledgement of expectations.



# Negligent Entrustment Review



# Questions?

Contact CNA Risk Control at:

