

P&C RISK REVIEW

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Hired and Non-Owned Vehicles: What Are Your Risks?

This material is provided for informational purposes only. Before taking any action that could have legal or other important consequences, confer with a qualified professional who can provide guidance that considers your unique circumstances.

Few architect and engineering firms own sizable fleets of company-owned vehicles for use by their employees while working. Instead, employers often turn to two alternative types of vehicles for employees to use while conducting company businesses:

Hired vehicles. A hired vehicle is a rental car or truck used on a short-term basis by employees when conducting company business. In most cases, the vehicle is rented directly by the employee driver.

Non-owned vehicles. These are your employees' personally-owned vehicles that are used when conducting company business. Some employees may regularly drive their own cars during the workday for jobsite visits, client meetings and so on. Or, an employee's vehicle may be used for business only on rare occasions, such as picking up a client at the airport.

Should an employee have an accident while driving a rental car or their own vehicle on company business, their personal auto insurance policy typically provides the primary coverage. The rental car companies also

offer insurance to cover physical damage and other losses to their hired vehicles. Even so, the use of hired and non-owned vehicles for company business can still leave the employer with a substantial liability for any damages the employee driver might cause.

Consider this scenario: Your CFO asks an administrative clerk to stop off at the bank on the way home and deposit a number of company checks. While backing into a parking space at the bank, the clerk hits a senior pedestrian, resulting in a broken hip and wrist. The plaintiff eventually files a \$500,000 claim against your employee for injuries, pain and suffering. Unfortunately, the employee driver only has \$50,000 in auto liability coverage. When the plaintiff's attorney discovers that the clerk was conducting company business when the accident occurred, he sues the company for the \$450,000 balance of damages.

Hired and Non-Owned Vehicle Coverage

Fortunately, liability coverage for hired and non-owned vehicles is available, typically as an endorsement to the company's auto or general liability policy. Note that this coverage only applies to company liability, and only if the limits of the employee's personal policy have been exhausted. Also, certain losses, such as the theft of business personal property, are not typically covered on these auto policies.

To obtain such liability coverage, companies typically must complete a hired and non-owned auto supplemental application. This application requires the employer to reveal information such as:

- Your annual cost for the short-term lease or rental of hired automobiles. "Short-term" is typically defined as fewer than six months.
- The types of vehicles you hire, the types of use, maximum distance driven, and whether you purchase liability insurance from the leasing company.
- Whether employees hire the vehicles under their own names.
- Your total number of employees and how many regularly use their autos on company business.
- The purposes for use of non-owned vehicles (sales, delivery, errands, client/jobsite visits, etc.).
- How often employees use their personal vehicles on business.
- Personal auto liability limits required of employees who regularly use their personal autos for company business.
- Whether you allow "business use" exclusions on employees' personal auto policies.
- What employee policies you have in place to limit the company's liability for hired and non-owned automobiles.

Company Policies To Limit Liabilities for Hired & Non-Owned Vehicles

It's comforting to know that insurance coverage is available to limit a company's financial liability should

an employee be involved in an accident while driving a hired or personal car on company business. However, insurance is not enough to adequately reduce this exposure. A firm should also institute a company-wide policy that promotes safe driving while reducing the cost of hired and non-owned vehicle insurance.

Consider instituting a company-wide policy that achieves the following objectives:

Ascertain the need to have employees drive personal or rental cars to conduct company business. Can employees use company cars and avoid the added exposure of hired and non-owned vehicles? This may be feasible for some companies but probably a minority of A/E firms.

Identify employees who are likely to operate hired and non-owned vehicles on company business. Prepare a list of those employees and identify the type and frequency of use for each.

Investigate the driving records of all potential drivers. Collect copies of drivers licenses, car registrations and motor vehicle records (MVRs) of each potential employee driver. Look for frequency and severity of traffic accidents and moving violations. Prohibit employees with bad driving records from driving on company business. Realize that if you discover an employee has a bad driving record but you allow them to drive on your behalf, your exposure may move into the areas of negligence and vicarious liability. (The same liabilities hold true if you don't perform due diligence and neglect to check the MVRs of employees with bad driving records who later cause an accident. Continue to review MVRs at least every two years, and require employees to report all moving violations and accidents within 24 hours.

Require minimum liability limits on employee's personal policies. Your state's minimum limits can be as low as \$10,000. Require that all employees who drive on company business carry liability limits of, for example, \$250,000 or more. Ask for certificates of insurance as evidence that the required coverage is in place. Consider having the company listed as an additional insured on the employee's policy, and ensure there are not any exclusions for "business use" of the vehicle.

Establish vehicle safety rules. Require that employees obey speed limits, wear seatbelts, drive unimpaired by alcohol, recreational drugs or prescription medications, and follow state rules regarding the use of cell phones or other mobile devices. Also require employees to pay their own fines and other penalties for ticketed offenses. Consider holding annual drivers safety programs for all employees in your firm, documenting your efforts. Requirements for regular vehicle inspection and maintenance are also recommended.

Driving Down Exposures and Costs

Virtually every company has a liability exposure for hired and non-owned automobiles. Establishing a company policy that regulates employee drivers not only reduces the chances of accidents and claims, it helps lower your insurance premium by demonstrating to potential insurers that you take risk management very seriously. We can assist you in reviewing your auto policies and help ensure you have adequate coverage for liability and physical damage.

Finally, keep in mind that having employees use their own vehicles to conduct company business can become a costly burden on them unless they are compensated for the use. Considering the costs and increased liability of driving their cars, a monthly or per-mile reimbursement program is only fair, especially if the company is requiring the employee to carry higher insurance limits than they normally would.

We may be able to help you by providing referrals to consultants, and by providing guidance relative to insurance issues, and even to certain preventives, from construction observation through the development and application of sound human resources management policies and procedures. Please call on us for assistance. We're a member of the Professional Liability Agents Network (PLAN). We're here to help.

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