

Can Driver Training Improve Your Lawsuit Defense?



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If you have employees or contractors who drive motor vehicles on behalf of your organization, you will likely be subject to a lawsuit at some point as a result of a crash involving one of your drivers. If the crash results in a fatality or permanent injury to another party, there may be millions of dollars at stake. Whether your drivers use company vehicles or their personal vehicles for business purposes, the potential liability may be the same. If your driver is at fault, the chance of a lawsuit goes up. However, just because your driver is not at fault does not mean you can't or won't be sued. In fact, the most costly lawsuits are often when the company driver is not at fault and the company wants to prove their innocence. In the litigious society we live in today, lawsuits are inevitable. Poor outcomes don't have to be.

Negligent Entrustment

Negligent entrustment is when one party (the entrustor) is held liable for negligence because they negligently allowed another party (the trustee) to drive a motor vehicle, and the entrusted party caused injury to a third party with that vehicle. Negligent entrustment is the basis for many lawsuits against organizations who have employees or contractors that drive motor vehicles for work-related activities. If your organization is sued for negligent entrustment, plaintiff's attorneys will try to demonstrate that your driver caused the injury to the third party, whether they in fact did or not.



To reduce the risk of negligent entrustment liability, organizations need to be sure they have sound, defensible processes and policies in place for their drivers. If the lawsuit goes to trial, make no mistake about it, your processes and policies will be on trial every bit as much as your driver. Strong, defensible processes and policies are the ones that provide the best possible opportunity for your drivers to be safe, proactive drivers. Of course there is no guarantee that all of your drivers will always be safe drivers, but if you have the right structure, rules and training in place, you will be best positioned for a strong defense.

There are many things you can do to minimize the risk and cost of negligent entrustment lawsuits. The following are some of the keys to a strong defense. ¹

Have a formal process in place for hiring new employees including:

- ✓ Make sure the applicant understands the job description and qualifications for the open position

- ✓ Make sure the applicant completes a thorough employment application including a list all prior jobs in which the applicant drove a motor vehicle for business purposes and a list of all motor vehicle violations or crashes in last five years
- ✓ Conduct criminal background checks
- ✓ Ask for references and conduct reference checks

Regularly obtain Motor Vehicle Records (MVR) for both new applicants and existing drivers.

- ✓ Make sure the applicant or the employee knows and agrees to your obtaining their MVR as a condition of their driving on behalf of the company
- ✓ Look for any major violations within the past five years and any minor violations within the past three years

Develop sound fleet policies and ensure all drivers certify that they have read and understand the policies. Enforcement of your policies is critical. Be sure to enforce your policies consistently and document all non-compliance as well as any action taken by management. At a minimum, your vehicle use policy should:

- ✓ Prohibit cell phone use, emailing or texting while the vehicle is in motion
- ✓ Require the use of seat belts for all occupants of the vehicle
- ✓ Require drivers understand and obey all traffic laws including speed limits and traffic stops



Conduct regular drug testing. Make sure your drug testing policy defines your rights to drug test and the consequences if the applicant or employee fails to pass the test. You should drug test at hiring, randomly after employment, whenever there is reasonable suspicion, and after any motor vehicle crash.

Acquire reputable vehicles that are in good working order. Get a vehicle history report if the vehicle is used and retain all documents related to the vehicle acquisition. Ensure the vehicles are properly maintained per the manufacturer's recommendations and document all vehicle service. Do not keep any vehicle longer than its normal life.

In the event one of your drivers is involved in a motor vehicle crash, conduct a thorough crash investigation and document your findings.

Train all drivers on what to do and say in the event of a crash.

Utilize technology that blocks cell phone use in company vehicles.

Document annual performance standards and conduct annual written reviews for all drivers. Require drivers provide a list of all violations and accidents in last twelve months.

Maintain a file of all documentation on every driver for three years *after* the driver's employment terminates.

Driver Training

In addition to those mentioned above, one of the most important actions you can take to minimize negligent entrustment liability risk is to implement a comprehensive driver training program. Regular driver training for all drivers can improve your drivers' driving performance, which can not only help reduce liability risk, it can improve safety, lower costs, and enhance the reputation of your brand. Drivers who participate in a quality driver training program are often safer, more proactive, more courteous drivers. In addition, having a comprehensive driver training program in place demonstrates your safety commitment to judges and plaintiff's attorneys in the event of a lawsuit, which helps strengthen your defense.

A good driver training program provides training for all of drivers of your organization's vehicles as well as those who use their personal vehicle for business purposes. Driver training should be required for new hire employees, existing employees, and contractors. Some



organizations allow their employees and their spouses to use the organization's vehicle for personal use. The safest policy is to restrict use of the company vehicle to the employee only and to not permit family members to use the organization's vehicle. However, if you do, be sure the family members are subject to the same processes and policies as the employee and that they are required

to participate in your driver training program just like an employee.

New hires who will drive an organization vehicle or who will drive their personal vehicle on behalf of the organization should have more extensive training than regular employees. New hires should be trained on a variety of driving topics.

New Hire Driver Training Topics	
Proactive Driving	How to be a proactive driver who drives cautiously, anticipates and quickly identifies hazards, and takes decisive action to avoid them
Distracted Driving	How to avoid driver distractions and maintain their focus on driving
Drowsy Driving	How to avoid drowsy driving and be alert, attentive drivers
EcoDriving	How to control their emotions when driving and avoid aggressive driving behavior
Aggressive Driving	How to drive economically to maximize fuel efficiency and minimize wear and tear on the vehicle
Specialty Vehicles	How to handle the nuances of any specialty vehicles they may drive such as shuttle/passenger vans, cargo vans, pickup trucks, or light/medium/heavy duty trucks

New hire driver training should include online or classroom training to reinforce defensive and safe driving concepts. Ideally, this would be supplemented by an on-the-road evaluation to determine how the new hire performs in real world situations. At the conclusion of the training, the new hire should be required to pass a final exam. Successfully passing the final exam and evaluation is proof that the driver adequately comprehended the training material and key concepts and has the proper skills to drive. They should not be permitted to drive on behalf of the company until they successfully pass the exam and the evaluation. The consequences of failing the exam may include having to re-take the driver training, taking more in-depth training, or possibly even employment termination, depending on the organization's enforcement policies. If they are required to re-take the driver training and they do not pass the final exam a second time, then the organization should not allow them to drive on behalf of the organization. By extensively training new hires, they will be better prepared for a long career in which they are an asset to your organization. It also demonstrates to a plaintiff's attorney or a judge that you take safety very seriously and that you do everything reasonable to make your drivers safe, proactive drivers.

Driver training should not be limited to only new hires. In fact, all employee and contractor drivers should be required to take re-certification training at least once per year. Re-certification training helps ensure that your drivers' skills and driving knowledge are current. It also is a good refresher to remind them of the key concepts of proactive, safe driving. Re-certifying your

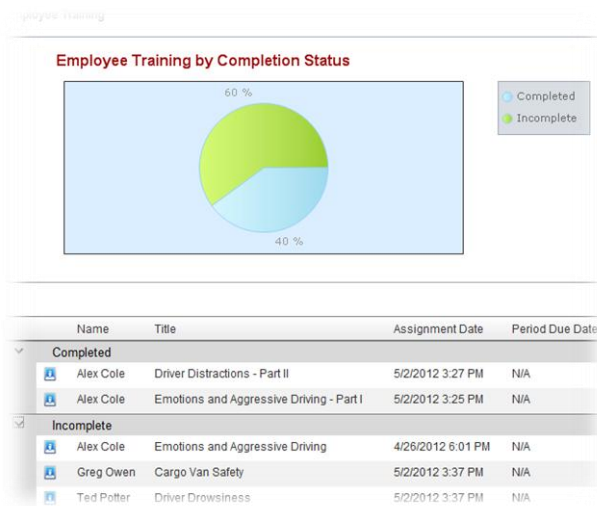
drivers through classroom or online driver training can provide your drivers with very effective refresher training. At a minimum, re-certification training should include a refresher on proactive driving concepts and scenarios, and distracted driving.



Logistically, it can be very difficult to have all of your drivers attend classroom training as drivers may be spread across multiple facilities and work multiple shifts. Trying to schedule classes can be very challenging logistically and productivity can be impaired due to the time your drivers are away from their jobs. As a result, either training compliance suffers or management spends too much time managing the enrollment process and enforcing attendance. Web-based or online driver training can significantly help with this problem.

With online driver training, drivers can take their re-certification courses whenever it is convenient over a period of time designated by management. There is no need to coordinate drivers' schedules or make logistical arrangements for classes. To help facilitate compliance, the online system will automatically send email reminders to drivers who have not completed the course as they approach the due date. This helps management ensure 100% training compliance throughout their organization. One of the most important benefits of online driver training is that management can have complete visibility into their drivers' training progress and results with real-time reports and dashboards. Through online reports, management can see which drivers have started or completed each assigned driver training course as well as their final exam scores. If the driver fails to pass the final exam, they should be required to re-take the online course. The organization should prohibit any driver who fails the exam from driving until they successfully pass. The online management reports can be used as evidence that your organization takes proactive steps to ensure driver safety throughout your organization.

Whenever a driver gets a moving violation or is involved in a preventable crash, the best practice is to have the individual participate in an appropriate driver training course. Remedial training can help reinforce safety concepts with violators and help reduce violations and crashes in the future. An important point to remember is that the remedial training should be completed immediately after the violation or crash. Ideally, the training should be completed within two days of the incident. The timing and enforcement of the training are critical elements



of a sound driver training program and position your organization better for a stronger negligent entrustment lawsuit defense.

Online remedial driver training provides the best solution to avoid logistical issues and ensure rapid action following a violation or crash. Once a violation is identified, managers should immediately assign remedial online training to the violator. The violator will be immediately notified of the training requirement and the due date via email. Due dates can be set for a very short timeframe (one or two days) to ensure fast compliance. Online driver training provides the important benefit that training can be assigned that specifically applies to the violation or crash -- whether for speed management, distracted driving, drowsy driving, aggressive driving or any other infraction. Again, with the proper online tools, managers can track the driver's training progress and measure test results to ensure comprehension.

Online vs. Classroom Training

Online driver training offers many other advantages that can help improve safety and build a stronger defense against negligent entrustment lawsuits. For example, with online learning, students have the convenience of accessing the course and training materials 24 hours a day, 7 days a week. That means they can take the course anytime from work, home, or anywhere there is a computer and Internet connection. In fact, they can start the course at work and finish it at home or vice versa. Because online courses are so accessible and convenient for employees and contractors, training compliance can be improved.



Not everyone learns at the same pace. In a classroom, students can only go at the pace set by the instructor. For some students that is too slow and for others it is too fast. With online learning, students go at their own pace. Training with online courses is individualized as opposed to a classroom where there is typically one instructor for many students. This results in a more enriching learning experience and is one of the reasons online learning can be even more effective than classroom training. In fact, the U.S. Department of Education has reported that online learning can be more effective than classroom learning.²

Online courses are often much more affordable than traditional classroom courses, especially when considering travel and lost productivity. This reduces training costs or allows more drivers to participate in the training for the same cost.

The quality of classroom education is often highly dependent on the effectiveness of the instructor and can vary by how well the instructor teaches on any given day. With online learning, course quality is delivered consistently every time. In addition, good online courses are highly interactive with engaging exercises and activities. This keeps every student interested and actively participating in the course.

When it comes to learning, one size does not fit all. With online learning, training plans can be more easily customized to individual needs to help ensure each driver gets the specific training they need, when they need it. This is particularly important for remedial training. Management can decide which courses are right for each driver and easily assign the courses to individual drivers or groups of drivers.

Online learning is self-documenting. As a driver enrolls in, takes and completes a course, the online system automatically updates the student's record providing a comprehensive, accurate audit trail of who took which course when. Furthermore, this critical information can be easily accessible for managers for almost any length of time. As mentioned earlier, you should keep driver files for three years after employment. This is easily accomplished for driver training records with an online driver training system.

Summary

To position your organization for the best outcomes of negligent entrustment lawsuits, make sure your organization has sound, consistent driver processes and policies in place throughout the organization. A comprehensive driver training program for new hires, re-certification training for experienced drivers, and remedial training for violators is one critical component of a strong defense. It also can help your organization improve safety and lower costs.

For more information, contact Rich Radi at rich.radi@drivefleet.com.

¹ *Negligent entrustment liability: avoidance of legal and financial threats*, John E. Cruickshank III, Alaniz & Schraeder, LLP, Fleet Safety Conference, May 23, 2012

² *Evaluation of Evidence-Based Practices in Online Learning - A Meta-Analysis and Review of Online Learning Studies*, U.S. Department of Education Office of Planning, Evaluation, and Policy Development Policy and Program Studies Service, September 2010