



Understanding negligent entrustment is crucial to business sustainability

WHAT IS NEGLIGENT ENTRUSTMENT?

The principle of negligent entrustment:

- Is the failure to exercise an appropriate degree of care in allowing someone else to operate or use one's auto, aircraft or watercraft. (*International Risk Management Institute, Inc., Glossary, <https://www.irmi.com/glossary>*)
- Is not based upon negligence of the at-fault operator, but on negligence of the business owner for entrusting the operation of a vehicle or equipment to a person who was not qualified, capable or has a history of inappropriate operational behavior.
- Means a person knew, or should have known, their failure to systematically "entrust" an operator created a greater danger to others.

Entrusted operators can include:

- Employee
- Contractor
- Family
- Service personnel

Claims can result from operation of:

- Vehicles
- Construction equipment
- Recreational vehicles (ATV/UTV)
- Watercraft
- Aircraft (including drones)

FOUR STEPS TO REDUCE NEGLIGENT ENTRUSTMENT EXPOSURE

Minimize the potential for negligent entrustment claims by developing, implementing and executing these four risk management practices:

1. Operator screening

Proactively identify and address issues before hiring a new operator. Review the operator candidate's Motor Vehicle Record (MVR) and compare it to a recommended criterion, confirm references, and verify prior employment history and operational experience. Operator candidates should be able to communicate or demonstrate favorable to exceptional vehicle or equipment operational habits. Potential equipment operators may be able to produce licenses, certificates or other documents verifying experience or advanced operator training. The documented, confirmed facts must support the entrustment decision.

2. Operator training and qualification

Review and verify the operator's understanding of vehicle and equipment capacity, capabilities, operational or special training requirements, rules and expectations. Qualification must include conducting and documenting an operational observation. The operational qualification should include activities where each of the basic functions of the equipment are appropriately deployed in a safe and controlled manner.

Refresher training and requalification should occur when new equipment is being entrusted to an operator, following every accident and periodically (i.e. annually for operators with less than three years' experience and every three years for those with more than three years' experience).

When vehicles or equipment are to be entrusted to another business or someone who is not an employee, a signed written agreement or statement of owner expectations should be exchanged. The document should clearly transfer risk to the controlling party, limit operation to trained and qualified personnel, and describe the way the equipment is to be used.

3. Operator performance assessment

Document and verify operator performance reviews on a scheduled basis. This can be achieved by reviewing incident reports, scheduling MVR reviews, conducting planned and random observations, and deliberately reviewing and promptly acting upon telematics data and onboard camera images. Maintenance reports can also be reviewed if a vehicle or equipment is assigned to specific operators.



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4. Audit execution of established practices and procedures

On a random and scheduled basis, conduct and document internal audits to confirm adherence to established risk management practices and procedures.

WHEN AN ACCIDENT HAPPENS

Immediately report accidents involving entrusted vehicles or equipment to the owner so that a thorough investigation can be conducted. The existence or absence of policies, procedures and documentation showing efforts taken to prevent the loss are discoverable. Should a claim be filed, the outcome will likely correlate to the favorable proof an owner can present reflecting a deliberate effort to screen, train, qualify and assess operators entrusted to vehicles and equipment.

IS NEGLIGENT ENTRUSTMENT EXCLUDED FROM A POLICY?

Under an insurance policy that excludes liability arising out of the use of an auto, aircraft or watercraft owned by an insured, negligent entrustment may still constitute a separate — and therefore unexcluded — category of negligence, unless a contrary provision is made specific in the policy. (*International Risk Management Institute, Inc., Glossary, <https://www.irmi.com/glossary>*)

COMMON CIRCUMSTANCES WITH POTENTIAL FOR A NEGLIGENT ENTRUSTMENT LIABILITY CLAIM

- A company has purchased several new vehicles. They do not train the drivers in the operational functions and features of the new vehicles.
- A company has a vehicle telematics or video monitoring system and does not review the daily driver or operator performance reports, nor do they swiftly act upon urgent text notifications received from the system.
- A business has its name and phone number on its vehicles. They receive several telephone complaints about one of the drivers but fail to document conversations with the employee and the resulting corrective action, if taken.
- An equipment operator with over 10 years of experience is assigned to operate a new piece of equipment. Operator training is not documented nor is the operator given time to safely explore the operational functions of the new equipment or its attachments.
- Equipment is entrusted to someone who does not have training in the operation or maintenance of the equipment (e.g., forklifts, chainsaws, auto-flat bed trailers, secure equipment tie-down, etc.).
- Following a formal screening process for a new operator, the candidate's MVR reveals two speeding and one reckless driving conviction. When questioned about equipment operational practices, some of the candidate's answers are not favorable. But, due to business demands, the owner disregards internal driver qualification and eligibility requirements and places the candidate in a position where they will be loading and transporting heavy equipment.
- A company hires a vehicle or equipment operator and waives the screening process based upon the favorable word of a friend or fellow employee.

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