

# Negligent Entrustment

## What is “Negligent Entrustment”?

Your company is responsible for hiring competent and qualified employees. If your company has no formal hiring policy, it may be exposed to serious liability for acts of its employees under the legal theory of negligent entrustment.

In an employment situation, “negligent entrustment” is a legal term meaning the act of an employer leaving a dangerous article (such as a gun or car) with an employee whom the employer knows, or should know, is likely to use it in an unreasonably risky manner.

Typically, negligent entrustment arises in an employment situation when:

1. The employer carelessly allowed or entrusted an employee to use an instrument that could cause harm.
2. The employer knew or should have known of the incompetence of the employee.
3. The incompetence of the employee was a substantial factor in the cause of the injury.

Under a charge of negligent entrustment, an employer may be liable for the damages caused by an incompetent employee. Generally, an employer has a duty to hire competent and qualified employees to conduct the business of the company. Punitive damages may be awarded if negligent entrustment is proven. These damages are not commonly covered by your insurance policy. Some states do not allow for punitive damage coverage and even if covered, the judgment may exceed your policy limits.

### Common situations for negligent entrustment:

Use of a company vehicle may present a risk of negligent entrustment. Employers should be aware of an employee’s driving record. Poor driving records that include violations for speeding, driving under the influence, chargeable accidents, etc. can create a risk of harm to others.

If employees drive in a business context, the employer may be at risk for a charge of Negligent Entrustment if:

- The driver is ruled incompetent.
- The employer knew or should have known of this incompetence.
- The employer entrusted the vehicle to the driver within the scope of work.
- The driver was negligent and caused the accident. Some cases have not required negligence by the driver.

Additional business situations can present a risk of negligent entrustment. Employers should pay particular attention to the qualifications of the following types of employees: paid or volunteer workers, nursing home personnel, childcare personnel, employee exposure to children, delivery personnel, machinery/crane operators, out-of-office service and repair personnel, private residence installation or sales personnel, security personnel, non-profit and fraternal organization personnel, campus organization personnel (such as sororities and fraternities), and personnel who carry a firearm.

### Qualification considerations:

If your company has no formal hiring policy, it may be exposed to serious liability acts of its employees under the legal theory of negligent entrustment.

- Proper training and credentials.
- Restrictions on employment.
- Disqualified under a Federal/State/Local regulations.
- Prior history of accidents and violations.
- Lacks appropriate skills for the equipment or situation.

**Proactive Tips for Driving:**

Develop a company driver-hiring program that includes regular driving record evaluations and a training policy that is uniformly administered. Federal or State regulations clearly specify driver hiring and training programs for some driving such as Commercial Drivers License.

Even if there are no applicable regulations, training programs should be implemented to avoid charges of negligence. Best business practices may not always prevent an accident, but they show employees and others that you are serious about safety. Implementation of proactive company policies may limit your liability if an accident occurs.

- Develop a company policy for MVR evaluation that must be signed by the employee.
- Evaluate MVR at time of hire and annually thereafter.
- If required by Federal or State regulations, develop a company policy for physical examinations that must be signed by the employee.
- Develop a company policy for personal use of the vehicle that must be signed by the employee.
- Develop a company policy for use of cell phones while driving that must be signed by the employee.
- Develop a company policy for occasional drivers.
- Provide a driver training program.
- Develop a company policy for alcohol and drug-free workplace that must be signed by the employee.

**Proactive Tips for Non-Driving:**

Perform personal interviews and be diligent about reference and criminal background checks. If allowed by law and in accordance with company policy, administer drug and alcohol testing. Develop a documented training program and establish written policies and programs for each of these topics. Consult with your company attorney as needed for legal advice.

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