RISK MANAGING

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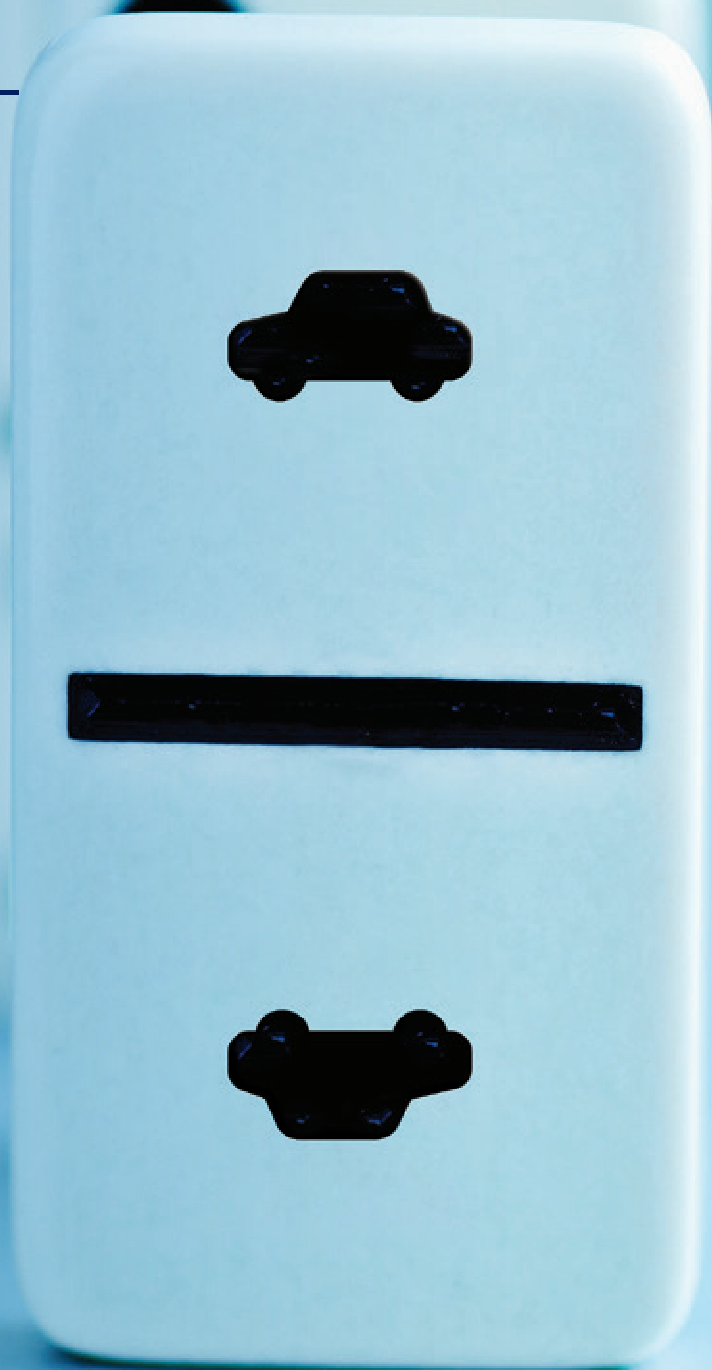
Any commercial entity, including drug and alcohol testing businesses, that uses (i.e., allows employees to operate) vehicles that are not owned by the company, but are leased, hired, or borrowed, should consider the enterprise risk transfer strategy of insurance to address potential liabilities and losses. But what types of auto-insurance policies or endorsements to other policies are needed? Which policies are primary vs. secondary? Are there special considerations for drug and alcohol testing businesses? How should a company manage these risk exposures?



Hired and Non-Owned Auto Insurance in Drug and Alcohol Testing Businesses

This article will focus on the hired and non-owned auto (HNOA) type of insurance and suggest strategies for managing the risk exposures and liability for these arrangements.

Having a good understanding of the different types of HNOA policies available—what is and isn't covered and when coverage is triggered—is a good first step in ensuring that your business' needs are met. Insurance producers, insurance carrier underwriters, and risk managers with experience in this type of coverage can help businesses navigate this often misunderstood coverage.

After selecting the type of insurance policy that your business needs, the next step in the risk-management process is to develop organizational policies and procedures for employees driving on company business. These types of policies can help to create the understanding that driving as part of the job requirements is more of a privilege rather than an assumption.

Types of Auto Insurance

- A **Business Auto Policy** provides a method for commercial entities to cover their exposure to loss out of ownership, maintenance, or use of various categories of autos, depending on which type of coverage is chosen. These can include vehicles that are owned by the business and are used for company business and can extend to rented vehicles or non-owned autos.
- **HNOA** covers *liability* expenses for loss involving vehicles that are not owned by the business, but are leased, hired, or borrowed (e.g., may include an employee's personal vehicle) and used for company purposes. This type of coverage can be an endorsement to a General Liability insurance policy or a separate business auto policy.
- **Personal Auto Policy:** There are several different types of standard and optional coverages for drivers and their personal vehicles, which may include liability, personal injury, collision, medical payments, uninsured/underinsured motorists, and physical damage. Requirements vary by state. If an employee is using their own vehicle for work on a regular basis, their personal policy may not cover work-related accidents and damages. Therefore, it is very important for employees and the business owner to understand the specific terms of the personal auto policy. This will assist in determining an employee's eligibility to use their personal vehicle for company business and/or determine minimum requirements for an employee's personal auto policy. ***This is especially important to determine and confirm since the employee's personal auto policy is expected to be the primary coverage in the event of a loss when operating their own vehicle.***

Hired and Non-Owned Auto Coverage as an Endorsement to the General Liability Policy

When a drug and alcohol testing business does not own or lease vehicles, a business auto policy may not be required, and often, the HNOA endorsement is chosen to address this exposure. The HNOA endorsement to the General Liability coverage part is intended to cover the employer's vicarious liability for employee conduct that occurs within the scope of employment. These endorsements do not contain standard wording, so definitions and exclusions must be carefully reviewed. Our discussion here is based on standard business auto definitions and common language seen in industry HNOA endorsements.

Below are some definitions to assist:

A "**hired auto,**" as defined in the endorsement, will be any auto leased, hired, or borrowed by the insured. Autos

Non-owned auto coverage protects the insured business against lawsuits arising from use of employee-owned vehicles on company business. However, employees do not benefit from this protection, as the owner of the auto is not an insured for “non-owned auto.”

leased, hired, or borrowed from employees or members of their households, partners, or executive officers do not qualify as hired autos. An automobile leased by an executive while traveling on company business is an example of a hired auto.

It is important to realize that hired auto liability coverage does not cover damage to a vehicle leased by the insured; ***coverage applies only to liability for injury to others and liability for damage to other vehicles (and other property).***[1]

A "**non-owned auto**" is defined as an auto not owned, leased, or borrowed by the insured that is used by someone other than the named insured in connection with the insured's business. An employee's car used by the employee to run company errands or to travel to or from a business meeting is an example of a non-owned auto used in connection with the insured's business. **Non-owned auto coverage protects the insured business against lawsuits arising from use of employee-owned vehicles on company business. *However, employees do not benefit from this protection, as the owner of the auto is not an insured for “non-owned auto.”*** *An employee (including a partner or an executive officer) using his or her own car on company business must rely on his or her personal auto policy, both for liability to others and for any damage to the employee-owned vehicle.*[2]

Risk-Management Considerations for Organizational Policies and Procedures for Employees Using Personal Vehicles for Company Business

As noted earlier, developing clear organizational policies and procedures that outline the requirements, expectations, and actions that will be taken regarding the employee’s authorization to drive a personal, leased, hired, or borrowed vehicle for company business, as well as the ability to *continue* to drive these vehicles for company business purposes, is a sound enterprise risk management (ERM) approach. Communicating these policies and contingencies during a job offer for potentially new employees or annually for current employees, and having them sign an acknowledgement of their understanding of such policies supports the ERM strategy.

Key Considerations for Policies and Procedures

- Consult with legal counsel in the development or final review of policies and procedures because regulations, laws, and statutes regarding employment and driving vary state to state.
- Indicate in the policy how an employee receives authorization or permission to use their personal or other hired, non-owned vehicle for company business.
- Define who may drive and/or be in the vehicle while it is being driven on company business, including a statement on transporting clients/patients and whether that requires approval from management.
- Define what “while on company business” means for auto insurance, workers’ compensation, and any other applicable insurance coverages. Company policy should be clear here to ensure employees understand that accidents resulting from running personal errands or occurring during nonworking hours are outside of scope.
- Provide information to employees who are authorized to use their personal or other hired, non-owned vehicle for company business regarding which auto insurance policy is primary, what policy is secondary, and what is covered vs. not covered.
- Include statements regarding what types of costs related to autos, insurance, and driving will/will not be covered by the company. These could be, for example, paying fines employees receive while driving on company business; paying bail for employees who are arrested while driving on company business; cost of an employee’s personal auto insurance policy and/or deductible; cost of a driver’s license and/or any fees or penalties incurred related to the driver’s license; driver training; fuel; loss of use/car rental/towing; vehicle maintenance or repairs, etc. Determine whether this policy would establish or connect to any other company policies and procedures regarding drug/alcohol screening and testing.
- Define what the driving/motor vehicle record-screening process will include

(e.g., verification of current, valid driver's license of applicable type for the company's purposes; an evaluation of the driving record of the individual and the vehicle; a 3–5 year self-reporting of motor vehicle infractions/violations/crashes); all drivers must have had at least (e.g., five years, other) of driving experience.

- Outline how often motor vehicle records will be checked (e.g., pre-employment, annually thereafter, whenever an infraction is reported, continuous, etc.).
- Define responsibilities for and the process for driving-record checks:
  - Obtaining release/consent (if necessary under state law)
  - Who is responsible and authorized to obtain driving records
  - The formal structure and process for review of driving records and infractions
  - How investigations will happen
  - The "rating" or "points" system, how it will be applied (if the company chooses to implement such a system), and the consequences regarding employment/authorization to drive when triggers are met (e.g., Risk Management, Human Resources, a "Driver Review Committee," or other department or entity)
- Define the minimum requirements for authorized drivers. Examples may include but are not limited to:
  - Providing written proof of current personal auto insurance with details on the types of coverages, exclusions (e.g., business use of a personal auto; transporting flammable or hazardous material), and limits (states differ on whether there is a requirement to carry insurance). The limits required may include the state statutory minimums or more. Be sure to determine what that is in each state. Set a requirement that this confirmation must be provided each year (and set up a system to obtain this). If an employee doesn't own an automobile, the individual employee could be required to carry a Named Non-owner policy and a Personal Umbrella policy as backup to that, or the individual could purchase just a Personal Umbrella policy that provides step-down coverage.
  - Maintaining a personal vehicle used for company business so that it is safe, will not create undue risk to others on the road and will not cause interruptions in business activities due to failure.
  - Operators must comply with road traffic laws.
  - Maintaining an acceptable Motor Vehicle Record (MVR) or "rating" (e.g., zero accidents/infractions or a number determined by the company, an "excellent," "good," or "adequate" determined by the company "grading" or "rating" system or a state insurance merit system).
- Develop a policy statement regarding the company's safe and responsible driving "requirements or expectations," violations, and maintaining a defined MVR rating and conformance with same for continued employment and/or driving privileges or duties.
- Define "violations." This may be on a ratings scale from "minor" to "serious." The company may consider types of "risky driving" factors as defined by the National Highway Traffic and Safety Administration (*https://www.nhtsa.gov/risky-driving*), use the state's point or suspension system and disqualifications for driving, or develop their own definitions.
  - Violations may include any moving violation; driving while impaired by drugs/alcohol; license suspension/revocation; being involved with a certain number of accidents in a time period; criminal convictions involving a vehicle; reckless driving, etc.
  - The company may consider including violations such as any moving violation; failure to maintain personal auto insurance, a current, valid driver's license or vehicle registration; or failure to self-report violations or accidents, refusal to permit a driving-record check or provide proof of insurance, or any other failure to comply with the policy.
- Define the specific consequences or progressive disciplinary steps regarding employment and/or driving for company business (e.g., termination of driving privileges for company business, requiring completion of a driver-training program, suspension for a period of time, etc.). Be consistent in applying the policy to all levels of employees.
- Define the employee reporting requirements for any violations, accidents, etc. (what must be reported, when, and how), and whether they would include any violation that occurred while driving, or not driving, on company business.
- The company may wish to participate in a "DMV Pull" type of program if available in the applicable state (CA is one example). In these programs, the company may be able to be alerted to any moving violations against the employee.
- Provide training on the policies and procedures and consider conducting required, documented training (or engaging with a vendor who can provide such training) on safe and legal driving. Include information about state laws regarding motor vehicle safety and violations, safe handling and transportation of specimens, etc. This

might include “lessons learned” from reported or hypothetical incidents.

- **Special considerations for the transport of biological specimens/hazardous materials:**
  - Ensure compliance with any applicable state and federal regulations/laws and requirements for safe handling, use, transportation, and disposal of hazardous materials from agencies such as the Department of Transportation, the Environmental Protection Agency (EPA), and the Occupational Safety and Health Administration.

Additional Considerations for Hired Auto:

Cars rented by employees to be used on company business are a common exposure. The employee’s personal auto policy will be the primary coverage for liability and physical damage to the rented vehicle, but this varies by state regulations, depends on the breadth of coverage that the employee carries, as well as how the rental agreement is entered into.

Some credit cards include a travel-protection benefit for car-rental insurance, but how the rental is booked and paid for are important factors. The type of credit card (personal vs. corporate) used to pay for the rental can also significantly impact the coverage afforded, and likely includes exclusions.

Knowing what the personal or corporate/business card coverage includes, and more importantly excludes, is a critical piece of developing the company’s policies and procedures on rental cars being used for company business. Risk identification, or in this case literally “reading the fine print,” is an important first step in the process. Banks and other card issuers often change these terms by notifying the card holder, so there must be a process to revalidate this benefit.

Credit cards typically offer secondary coverage that includes collision damage and theft protection, but does **not** include damage to any other cars, personal property, or injury to any party. A few credit-card companies may offer primary coverage when using the rental car for business purposes, or there may be different types of coverage models available, usually for purchase.

Credit-card companies typically have certain requirements for the rental car agreement and payment in order to afford coverage. These may include:

- Having the *renter’s* name on the rental agreement.
- Declining the rental car agency’s collision/loss damage waiver.
- Paying for the rental in full with the credit card that has the coverage.
- Requirement to list everyone who will be driving the vehicle on the rental agreement. Be sure the *company* policy on additional drivers is clear.
- A specified timeframe for filing a claim.
- A requirement that law enforcement be notified in all cases and a police report filed.
- A requirement for photos of the accident scene and/or damage.
- A cap on the benefit amount available for physical damage to the rented vehicle. A common maximum is $75,000.
- The maximum length of the rental. Most credit cards have a limit of 30 days or less, and the rental agreement may not be able to be extended or even re-booked as a new rental agreement.
- **Exclusions:** They may include, but are not limited to:
  - An exclusion or an assessed fee for Loss of Use
  - An exclusion for towing and/or roadside assistance
  - Vehicle type (e.g., trucks, motorcycles, bigger sized/multi passenger, large SUVs, luxury or high priced)
  - Vehicle/driver outside of the U.S.
  - Use on unpaved surface, gravel, or off-road

Conclusion

Having adequate auto insurance coverage without gaps in place for drivers and drug and alcohol testing businesses that allow or require employees to operate vehicles that are not owned by the company, but are leased, hired, or borrowed is an important enterprise risk management strategy for protecting the company from losses and liability. This type of insurance coverage, however, is not well understood in the insurance industry. Partnering with knowledgeable and experienced insurance producers and carriers is an important first step.

Beyond purchasing insurance coverage, managing the ongoing risk exposures of employee drivers also requires a thoughtful, multidisciplinary risk analysis and implementation of a risk-control plan. ▮

References

1 International Risk Management Institute, Inc., accessed 2018, https://www.irmi.com/.

2 International Risk Management Institute, Inc., accessed 2018, https://www.irmi.com/.