

Managing Work Related Driving

Employees are often required to travel during their working hours to seminars, networking events or to visit existing or potential customers and clients. They will use their own cars for this and claim back a mileage allowance. Often this will not cause any problems for employers but it is an area of potential risk. Employers can be vicariously liable for the acts of employees committed during the course of employment and this could include being liable for a negligent act of an employee whilst driving their own car on their employer's business. Employers can also face criminal liability in certain circumstances.

Despite the potential liability of an employer, we find that little is done by employers to regulate matters such as:-

- whether the vehicle the employee is using is road worthy;
- if the employee is taking necessary rests during long journeys, or driving late after a long day;
- is the employee qualified and properly insured for the journeys he or she is taking;
- is the employee taking risks such as using mobile phones whilst driving (or feeling pressurised to do this).

Increasingly, people are turning to the employer with 'deeper pockets' to try to establish liability if any accidents take place during the course of the working day and with onerous obligations under the Corporate Manslaughter and Corporate Homicide Act 2007 and Health and Safety at Work Act 1974 we think it is prudent for employers to address how their 'grey fleet' is managed.

Privately owned vehicles that are used for occasional journeys at work or if an employee rents a vehicle to use for work is commonly referred to as 'grey fleet'. However, employees who have a grey fleet vehicle are often not referred to in the company car policies, unlike employees who have a company car or lease vehicle.

It is important to manage all employees, regardless of vehicle ownership, to minimise the legal and financial risk associated with grey fleet. For example if an employee had a car accident whilst making a work related journey and is not covered by their insurance for 'business use' any party affected by the accident may look to the employer to show that they failed to manage their employee effectively and are therefore liable.

The government suggests that employers have a policy to manage its grey fleet to include matters such as the following:

- vehicle maintenance;
- fitness to drive;
- use of mobile phones whilst driving;
- licence and insurance checking;
- fatigue during the journey;
- alternative options to reduce the need for long journeys.

At the start of employment an employee could be required to provide copies of their vehicle registration and insurance, which could be held on file and checked periodically to ensure they are kept up to date. Checking an employee's vehicle for roadworthiness may be difficult and impractical

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unless an outside resource is engaged to carry out the inspection, which is likely to be costly. However, for many employers, cost is unlikely to be an adequate defence. Employers should provide guidance on the use of mobile phones whilst driving (if this is to be allowed at all - even with a hands free kit) and give advice on resting on long journeys and ensuring that there is adequate time to travel to meetings or home after a meeting. Employers must have risk assessments in place for driving and associated activities.

Employees may be unwilling to cooperate with these new procedures because questions about their personal choice of car and driving ability may be deemed intrusive. The introduction of a grey fleet policy would therefore need to be handled sensitively. However, in most cases, the benefit of these checks would outweigh any perceived intrusion.

Policies and procedures relating to driving and travel should apply to all employees and be linked to the disciplinary procedure so that non compliance of the procedures can be managed.

In practice covering all of the above may be an onerous task and further administration for employers. However, with the financial risk of a claim, the potential criminal liability and civil liability under the Corporate Manslaughter and Corporate Homicide Act 2007 and the Health and Safety at Work Act 1974 and the bad publicity of any legal action it seems important to have a policy in place to address these issues.

Additional benefits to an employer are in terms of environmental impact and potential costs savings. By introducing a grey fleet policy an employer may be able to demonstrate that they are seeking to reduce their carbon emissions by managing the necessity of work related journeys, the type of vehicle being used and the method of transport.

If you require any further assistance on this growing area or would like to review your existing policies or introduce a new one to specifically cover 'grey fleet' please let us know. We have a model 'grey fleet' policy and would be happy to tailor this for your business.

NEED SOME GUIDANCE? PLEASE CONTACT US ...

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