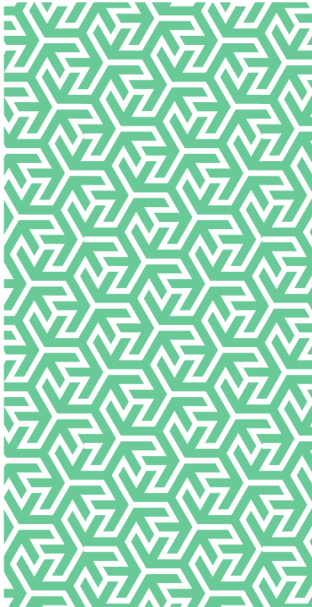




Risk control

Managing Risks associated with Grey Fleet Vehicles



In partnership with



Managing Risks associated with Grey Fleet Vehicles

Introduction

This guide relates to risks associated with employees using their own cars for work-related activity. A separate document is provided for “online booking” where many of the same principles are applicable to those using their own vehicles for work-related purposes.

'Grey fleet' is simply the term used to describe any vehicle that is not owned or controlled by an organisation, but which is used by employees of that organisation for work-related activity. This might include a vehicle purchased via an employee ownership scheme, a privately rented vehicle or a vehicle privately owned by an employee.

Overview

The legal obligations of the employer, in terms of employees using their own vehicle, on behalf of their employer are clear, both under road traffic law and health and safety legislation. However there is confusion and uncertainty amongst some employers about how the law actually applies in practical terms.

The revised Ministry of Justice Rules (1) applicable to fleet insurance claims extended the Road Traffic Act 1988 personal injury portal to apply to motor personal injury claims valued up to £25,000. It is one of several factors that are forcing employers to consider reducing their operational vehicle fleet. An increase in use of employee owned vehicles may well be a by-product of these changes.

Whilst reducing the organisation's administrative burden for maintaining fleet vehicles, insurance and claims, such action can increase risks and possible scope of corporate liability, including:

- Increased potential for offences under road traffic law
- Breaches of duty of care (in injury cases)
- Additional corporate liability offences including corporate manslaughter if negligently breaching the organisation's own procedures
- Civil litigation by employees or their families

The processes and practices required to ensure that grey fleet vehicles are properly managed may on occasion be more complex and time consuming than if an organisation's own fleet vehicles were being used.

Recent UK data shows that: 40% of work vehicles are grey fleet; 14 million grey fleet vehicles are in use; 9 million vehicles are used for business journeys on a regular basis; 62% of private car use is for work-related activity (2). The public sector in particular has a significant percentage of the miles driven by employees using their

own vehicles. In the UK, 57% of all public sector distance driven is by employees using their own vehicles (3). Health care employees making house visits is common.

Who's at risk?

The Health and Safety at Work etc. Act 1974 (4) applies to all employees whilst at work, but extends duties further to protect those who may be affected by an organisations acts or omissions. There are risks to the wider public from involvement in road traffic collisions caused by those driving whilst on work-related business.

Therefore an initial risk assessment (5) conducted on grey fleet use should include:

- Employees using their vehicles in the course of organisational business
- Contractors and services users / passengers
- Members of the public
- The organisation and its reputation

The guiding principle is that the management systems are maintained 'so far as reasonably practicable' for the safety of the public, employees and contractors.

1.1 Management of the grey fleet

1.1.1 Policy

An organisation should have systems in place to assist those using their own vehicles for work. These systems must include procedures which are proportionate, and include vehicle suitability, health of the driver, DVSA (Driver and Vehicle Standards Agency) driving licence type and authorisations, and insurance checks.

1.1.2 Vehicle safety and availability

It is unlikely that all employees who use their own vehicles for work-related activity have applied criteria to their vehicle selection process which takes into account work-related aspects such as ergonomics, nature of their work and suitability of the vehicle for work-related tasks etc. Whilst such vehicles may be MOT compliant, they may not carry the latest in passive safety technology, or meet ergonomic considerations required for prolonged work-related use.

The organisation's existing Driving at Work Policy and associated procedures must be reviewed to ensure the remote nature of grey fleet management does not fall outside of existing procedures and management controls.

1.1.3 Insurance

Organisations have a duty of care to ensure that their employees maintain the correct form of vehicle insurance cover if they use their own vehicle for work-related activity. The majority of grey fleet drivers will require Class 1 business insurance as an extension to their normal policy. Grey fleet drivers should be obligated to provide proof of Class 1 business insurance cover prior to undertaking any work-related driving, and for all subsequent years of work-related driving activity.

It is the responsibility of the organisation to check certificates of insurance prior to authorising an employee to use their own vehicle for work-related activity.

It is a general condition of a motor insurance policy that insurers have the right to refuse to pay for any liability, loss, damage, cost or expenses which takes place while any car insured under this policy is:

- being used for a purpose other than that permitted in the limitations as to use in the certificate of motor insurance or;
- driven by someone who does not have a valid driving licence; or is breaking the conditions of their driving licence

The proposer taking out the insurance needs to understand the requirements of the work for which the vehicle will be subjected whilst in the use of the organisation.

Additionally persons within the organisation delegated to check insurance policies must understand the requirements and detail of the insurance policy.

1.1.4 Document records

Employees are responsible for maintaining their vehicle in a roadworthy condition and compliant with the Road Traffic Act 1988. This includes keeping an up-to-date MOT, appropriate insurance cover and servicing and maintenance documentation. Systems should be in place to ensure that regular checks are undertaken to ensure that the appropriate standards and documentation are maintained.

It is worthwhile noting that an out of date MOT voids all classes of business vehicle insurance.

All drivers must hold a valid DVLA driving licence applicable to the category of vehicle they are using for work-related purposes. Drivers must immediately inform their employer if changes to the status of their licence occur. This includes notification of penalty licence endorsements and prosecutions for serious driving offences.

1.1.5 DVLA licence checks

Where employees use their own vehicle for work, the organisation has a duty of care to ensure that those employees are legally licensed to drive. The organisation must identify drivers who are 'at risk' due to the number of penalty licence endorsements, health factors which may affect their fitness to drive, or who exhibit behavioural or attitudinal factors which may affect their driving practices.

All employees who drive on behalf of an organisation should be required to have their DVLA driving licence checked on initial driving authorisation, and then at least 6 monthly thereafter, taking a risk based approach.

The DVLA provides a facility to view or share individual DVLA driving licence information. This service allows organisations to:

- View the driver driving record, e.g. classification of vehicles the driver is qualified to drive.
- Check any penalty points or disqualifications the driver has.

1.1.6 Line Manager responsibilities

These responsibilities should be detailed within the organisation's Driving at Work Policy, and relevant job descriptions. These responsibilities should include:

- Completion of a comprehensive risk assessment
- Development of safe systems of work.
- Appropriate vehicle provision, meeting the needs of the individual and task.
- Suitably trained and qualified staff, including dynamic risk assessment.

1.1.7 Monitoring

Good risk management principles include monitoring as a fundamental part of an overall risk control strategy. Monitoring activities for those who drive for work-related purposes include:

- Ensuring that the organisation's Driving at Work Policy is effective.
- Identification and analysis of failures of operational practice and procedures, road traffic collisions and near miss events
- Management oversight and engagement with all vehicle road traffic collision reports
- Timely reporting of vehicle road traffic collisions, to line managers, Fleet Managers and, where appropriate, Risk and Insurance Managers

- The use of data and information collected on vehicle road traffic collisions and system failures routinely analysed and used to identify trends in location, incident type, driver performance, and costs
- The use of road traffic collision data to design specific training initiatives and working practices to help to reduce operational road risk

1.1.8 Medical conditions of drivers

Key points for medical conditions that must be considered when implementing an online booking system and driver authorisation include:

The legal status of self-declaration

The DVLA must be notified if a driver holding a driving licence develops a 'notifiable' medical condition or disability, or if a condition or disability has worsened since initially receiving the licence. Notifiable conditions are anything that could affect the ability to drive safely and can include:

- Epilepsy
- Strokes
- other neurological and mental health conditions
- physical disabilities
- visual impairments

For a comprehensive list of reportable medical conditions and illnesses, please visit: www.gov.uk/health-conditions-and-driving

1.1.9 The insurance status

It is a general condition of a motor insurance policy that insurers have the right to refuse to pay for any liability, loss, damage, cost or expenses which takes place while any car insured under this policy is:

- being used for a purpose other than that permitted in the limitations as to use in the certificate of motor insurance; or
- driven by someone who does not have a valid driving licence; or is breaking the conditions of their driving licence

Duty of fair representation

The Insurance Act (2015) introduced a 'duty of fair presentation' which clarifies what an insured must disclose to an insurer and what an insurer ought to know about its insured party. If an insured deliberately or recklessly fails to make a fair presentation of the risk, the insurer may:

- avoid the policy and retain the premium; and

- recover any amounts paid (e.g. claims) and/ or expenses incurred
- If an insured's failure to make a fair presentation is not considered deliberate or reckless, the insurer may:
 - Avoid the policy - if the insurer would not have entered into the policy if it had received fair representation of the risk. In these circumstances the premium would be returned and the insurers incurred expenses recovered; or
 - Apply different policy terms – if the insurer would have entered into the policy, but on different terms. In these circumstances, different limits of indemnity, or excesses or exclusions may be applied and / or an additional premium charged.

1.1.10 Health and Safety Law

Health and Safety at Work Act (1974)

Section 7(1) of the Act places a duty on employees to take reasonable care for the health and safety of themselves and of others who may be affected by their acts or omissions while at work or performing work-related activities.

Furthermore, Section 7(2) of the Health and Safety at Work Act (1974) requires an employee to co-operate with an employer to enable them to comply with these duties.

Road traffic regulations take precedence over health and safety legislation where relevant: however, it should be noted that the Health and Safety at Work etc. Act (1974) is wide reaching in its terms and definitions and may well include aspects not covered under Road Traffic Law.

How to manage work-related road safety

Organisations have a legal duty to put in place suitable arrangements to manage health and safety. This is a wide-ranging requirement, so HSE encourages a common-sense and practical approach. It should be part of the everyday process of running an organisation and part of good management generally. This includes all aspects of driving at work (6).

Risk Assessment – Evaluating the risks

In order to ascertain which individuals are at greatest risk, an organisation needs to consider both existing and potential future risk factors. There are a number of elements that need to be considered as part of the risk assessment:

- Driving experience, history, capabilities and licence endorsements
- Licence entitlements
- Age and medical history

- Behavioural factors, including attitudes to driving
- Role, mileage (high, medium or low), and hours of work

If a driver's role or personal circumstances change significantly, then a review of the existing risk assessment should be undertaken (6).

1.1.11 Judicial Recommendations

The inquiry into the fatal road traffic collision involving a refuse collection vehicle which occurred in Queen Street, Glasgow, made a number of recommendations:

- Doctors should ensure medical notes can easily indicate any repeated episodes of loss of consciousness or loss of/ altered awareness. They should also work closely with organisations employing drivers to ensure fitness to drive is monitored on both sides with employers providing full information about any incidents and doctors notifying companies of any existing incidents experienced by a driver.
- The organisation should carry out an internal review of employment processes, specifically in terms of checking medical and sickness absence information.

It may be inferred that a learning outcome presented by the event is that occupational health checks and certification should be more rigorous, with a percentage of drivers randomly selected and referred to Occupational Health services for appropriate health checks.

For some increasingly common diseases such as type 2 diabetes and sleep apnoea, these occur and manifest themselves in far shorter periods than five years, and the current DVLA requirement for a once- every five years medical examination report (D4) (including a vision assessment) may be too long an interval.

Summary of medical conditions

It must be concluded from the above that the declaration of medical conditions must be foremost in the minds of both those managing and those declaring fitness to drive. It is both a criminal and a civil offence to neglect to declare any medical condition that may impair or prevent safe driving.

Where it would have been reasonable for the employer to know that a member of staff has a medical condition and they fail to address this and the driver continues to drive for the organisation and causes a road traffic collision and serious injury or death results, then the employer may be found jointly liable.

Summary of legal responsibilities

All organisations have a responsibility to take reasonable care to avoid acts and omissions which could reasonably

foreseeably injure a neighbour. Donoghue (a) created the modern concept of negligence, by setting out general principles whereby one person would owe another person a duty of care.

Conclusions

Over recent years, campaigns by agencies such as the Health and Safety Executive and RoSPA have increased organisational awareness of the need to manage fleet risk effectively. By doing so, road traffic collisions and the associated consequences can be controlled.

Organisations should recognise that grey fleet vehicles can present a similar risk profile to that of its fleet vehicles, and as such, should be managed as effectively.

Irrespective of ownership or control, these vehicles can present significant risks to the drivers, other road users, other persons, and the organisation itself and need to be managed with these factors at the forefront of considerations.

References

1. Ministry of Justice, Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents from 31 July 2013 - <https://www.justice.gov.uk/courts/procedure-rules/civil/protocol/pre-action-protocol-for-low-value-personal-injury-claims-in-road-traffic-accidents-31-july-2013>
2. Lex Autolease (2015) The 2015 Lex Autolease Annual Report on Motoring - <http://www.woudhuysen.com/wp-content/uploads/2015/09/lex-autolease-report-on-motoring-2015-interactive.pdf>
3. European Transport Safety Council - Managing Grey Fleet Safety 2016 - http://etsc.eu/wp-content/uploads/Grey_fleet_safety_final.pdf
4. Health and Safety at Work etc. Act 1974, Sections 2, 3, 4, 7, and 8
5. Management of Health and Safety at Work Regulations 1999, 3 and 4
6. Workplace (Health Safety Welfare) Regulations 1992, 15-21

Further information

For access to further RMP Resources you may find helpful in reducing your organisation's cost of risk, please access the RMP Resources or RMP Articles pages on our website. To join the debate follow us on our LinkedIn page.

Get in touch

For more information, please contact your broker, RMP risk control consultant or account director.

contact@mpartners.co.uk



Risk Management Partners

The Walbrook Building
25 Walbrook
London EC4N 8AW

020 7204 1800
mpartners.co.uk

This newsletter does not purport to be comprehensive or to give legal advice. While every effort has been made to ensure accuracy, Risk Management Partners cannot be held liable for any errors, omissions or inaccuracies contained within the document. Readers should not act upon (or refrain from acting upon) information in this document without first taking further specialist or professional advice.

Risk Management Partners Limited is authorised and regulated by the Financial Conduct Authority. Registered office: The Walbrook Building, 25 Walbrook, London EC4N 8AW. Registered in England and Wales. Company no. 2989025.