



WRIGHT & KIMBROUGH

# REPORT

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## Vicarious Liability

# You're Responsible for Employees Driving on the Job

**M**ANY BUSINESS owners don't think twice when asking a worker to run to the office supply store, to the bank or run another errand for the company while on the clock.

But as soon as that employee enters their personal vehicle on a trip for your business, you automatically become vicariously liable for their actions.

Think it's not a big deal? There have been cases when employers have been found liable and ordered to pay up to \$25 million for crashes involving employees using their cell phones while driving, according to the National Safety Council.

That means if your employee is in an accident and injures a third party, damages another car or injures themselves, your firm could be held liable.

For injuries to only your employee, your workers' compensation insurance would handle the costs, but for injuries to others and third party property, you are ultimately liable

since they were carrying out duties for your firm.

The employee's auto insurance will be primary, but the problem arises when the coverage is insufficient. The employer can then be sued by the third party.

And once a third party knows there is an employer behind the person who hit them, that often encourages them to sue, seeking even more damages than they normally would.

With that in mind, you should do all you can to reduce your exposure by writing a policy for your driving employees (see box on right).

Beside having a driving policy in place, you can also make sure to hire employees who are safe drivers by checking their driving records during the hiring process.

Also, make sure that your management is on board with the policy.

That means that managers should avoid texting or calling employees while they are driving on company duty.

That would clash with your policy on barring cell-phone use while driving.

### Elements of a Driving Policy

Consider including the following in the policy:

- Expectations you have for driving staff.
- No talking on a cell phone or using any functions like apps and texting.
- Avoid other distractions by barring other activities while driving, like eating and drinking.
- Train workers in safe vehicle operations.
- Make sure that any employees who drive for you are properly licensed.
- Require them to take breaks on longer trips.
- Check staff driving records periodically.
- Spell out that they must buy personal auto insurance with certain minimum limits. The insurance policy should not include a business exclusion.



See 'Endorsement' on page 2



If you have any questions regarding any of these articles or have a coverage question, please call us at:

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# Cal/OSHA Maximum Penalties Nearly Doubled

**N**EW PENALTIES for workplace safety infractions in California took effect on Sept. 14, nearly doubling the maximum fines that Cal/OSHA can levy on employers who are cited.

California was required to increase its penalties in response to penalty hikes implemented by Fed-OSHA last year.

All new fines have a cost-of-living component that will entail an-

nual increases starting Jan. 1, 2018.

Meanwhile, the maximum penalty for serious violations remains unchanged at \$25,000.

At the same time, the fixed statutory penalty of \$2,000 for serious tower crane and carcinogen-use violations has been repealed and replaced by a new maximum of \$25,000. ❖



## NEW FINE STRUCTURE

The new penalties, which apply to all citations issued on or after Sept. 14, are as follows:

Citation	New Maximum	Old Maximum
General and regulatory violations, including posting and recordkeeping violations	\$12,471	\$7,000
Willful and repeat violations (maximum)	\$124,709	\$70,000
Willful and repeat violations (minimum)	\$8,908	\$5,000
Serious violations	\$25,000	\$25,000

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## You Need an Endorsement for Staff Who Drive Personal Cars

### Insurance

Finally, you should make sure that you have proper insurance in place in case calamity strikes. And unfortunately, some employees will inevitably be slack in following even the best laid out policies.

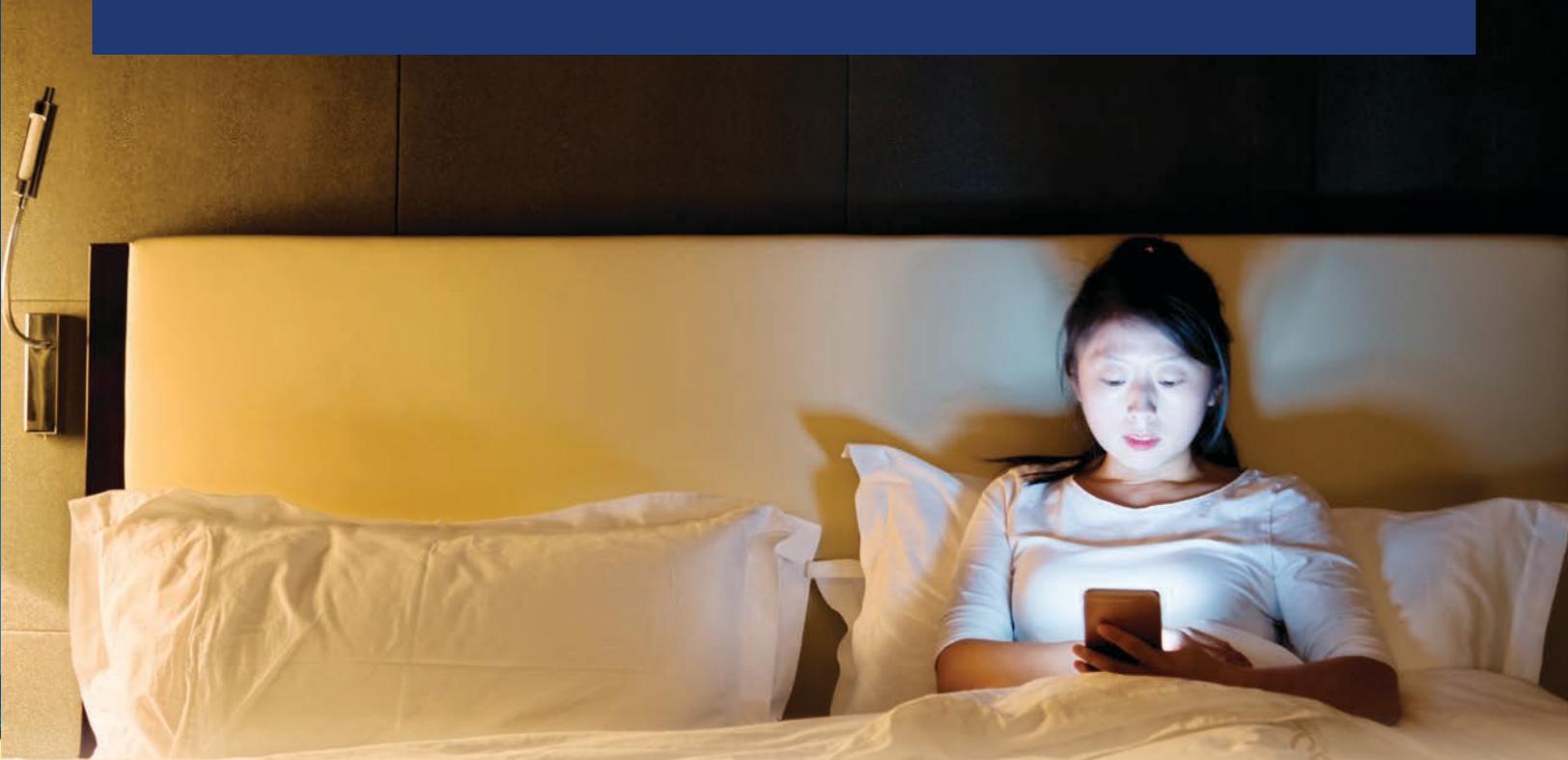
Commercial auto will cover all of your workers who drive company vehicles for collisions, but it won't cover employees if they are driving their own vehicles while on the job. Such vehicles are considered non-owned autos because they are not owned by the named insured.

Employees are not insureds while driving non-owned autos,

even if they are using the vehicles on company business.

But if you do have workers who use their personal vehicles for work, like sales reps, you can purchase an endorsement for your commercial auto policy: Entitled Employees as Insureds. This endorsement covers workers who drive their personal vehicles on behalf of their employer.

But it provides excess coverage only, meaning that the employee's personal auto policy will apply first if the worker is sued after an accident involving their personal auto. The endorsement would apply only if the employee's personal policy limits are breached. ❖



## Risk Management

# What Keeps Business Owners up at Night?

**B**USINESS OWNERS have a lot of risks on their minds these days. Complying with regulations, holding on to their best workers, the constant threat of computer hackers, increasingly unpredictable weather – all of these have businesses worried.

According to the “2016 Travelers Risk Index” from the Travelers Companies, fewer business leaders saw the world as riskier than they did the year before. However, they expressed concern about the following factors:

**Medical/employee benefit cost inflation.** The rising cost of medical care is the top concern for all businesses. This worry is rational: Government data shows that medical costs rose by nearly 20% between 2010 and 2016, almost twice as fast as the general inflation rate.

**Workforce issues.** Finding and keeping skilled employees is the second greatest area of concern. Retaining their best workers is the top workforce issue, followed by finding and hiring qualified employees and the cost of training them.

The Congressional Budget Office forecasts that the percentage of the population older than 16 participating in the labor force will decline for the foreseeable future as the baby boom generation retires.

**Legal liability.** Business owners worry that professional errors and omissions will land them in court. They also worry that their own employees will sue them for discrimination, harassment, wrongful termination, or other employment practices.

These worries are well-founded, as law firm Seyfarth Shaw reported that the value of employee lawsuits over wage and hour law violations tripled between 2014 and 2016.

Liability for auto accidents and faulty products is also a concern.

**Cyber and data breach risks.** Large businesses are particularly worried about cyber risks, with 23% of them having suffered external data breaches and cyber attacks. Malicious cyber attacks and criminal activity are seen as the biggest threats, while human error and poor system performance are lesser concerns. The FBI has reported that cyber crime jumped 24% in 2016.

**Automobile risks.** Two-thirds of businesses have employees using their personal vehicles for work. They are particularly worried that their employees are looking at their smartphones instead of the road in front of them. The U.S. Centers for Disease Control and Prevention has found that nine Americans are killed and more than 1,000 injured daily in distracted driving incidents.

**Supply chains.** Businesses worry about being unable to ship products to customers; being unable to obtain materials from suppliers; receiving poor quality goods; and having goods damaged while in transit.

**Weather.** Half of all businesses believe that severe storms are becoming more frequent, while a minority have observed changes in their own geographic areas.

**Regulations.** Nearly half of businesses worry about complying with new laws and regulations. Many are concerned about complying with the Affordable Care Act and the costs that come with it.

### The takeaway

Some of these issues – such as weather, liability, driving and supply chains – can be insured. Others, like keeping a skilled workforce, are not insurable. In either case, business leaders are right to worry about these risks. The search for solutions is time and money well spent. ❖

## Slander and Libel

# Does a Business Policy Protect against Defamation Lawsuits?

**W**HAT WOULD you do if your business got SLAPPED? SLAPP stands for “strategic lawsuit against public participation.” A business that gets SLAPPED has been sued for speaking out against or about a person or entity.

In these actions, the plaintiff accuses a person or business of harming them by speaking out publicly with malicious intent. For example, small businesses in a village may protest plans to build a huge shopping mall nearby and in the process spread a false rumor about the developers.

The owners of the proposed mall might sue them for alleged defamation – written statements (libel) or oral statements (slander)) that are false and harm the victim’s reputation.

A court may eventually rule the lawsuit groundless. But, in the meantime, the party being sued accrues great costs, including attorneys’ fees, court costs and lost income.

The business will have to find the money to cover these costs from somewhere, and the source may well be its commercial general liability (CGL) insurance policy.

Standard CGL policies provide personal and advertising injury liability coverage. The policy would pay for damages arising out of, among other things:

*“Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person’s or organization’s goods, products or services.”*

In addition, it covers the costs of defending against a lawsuit. The most the insurance company will pay for any one loss is the amount shown in the policy’s information page as the Limit of Insurance for Personal and Advertising Injury Liability. This amount could be \$500,000, \$1 million or higher.

But the CGL insurance does not cover all accusations of wrongdoing. The insurer will not pay to defend or settle a claim for damages if:

- The insured person knew the statement would violate the other party’s rights and injure them.
- The insured person knew the statement was false.
- The material was published before the date the insurance policy took effect.
- The insured person’s action was a criminal act.
- The insured person is in the media or Internet business.
- The injury arises out of an electronic chatroom or bulletin board that the insured company hosts.

The first, second and fourth items on the list involve deliberate misconduct; insurance will not cover the liability costs for such

**SLAPPED SILLY:** Your commercial general liability policy may take the sting out of lawsuits alleging slander or libel.



behavior. The third item would be covered by the policy in effect before the current policy took effect.

Companies in the media or Internet business need to buy special liability insurance designed for them; the CGL policy is designed for businesses that do not face a media company’s special risks.

### The takeaway

Being accused of libel or slander can be a traumatic experience for a business owner. A SLAPP suit can be especially upsetting because the victim of such a suit was exercising the constitutionally protected right to free speech.

Personal and advertising injury liability insurance can ease the financial worries that accompany such a claim. Talk to us and we can take you through the options available. ❖