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Vehicle Management



DUTY OF CARE GUIDE





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FOREWORD

2006 has seen one major legislative development - the publication of the new Corporate Manslaughter Bill. The introduction of this new offence is designed to penalise companies or other corporate bodies for systemic management failures which have led to a breakdown in the health and safety process within that company. Such failures can now lead to a charge of "gross negligence manslaughter".

While it was expected that the legislation would target senior management such as the CEO, MD or Company Directors, the report of the Home Affairs and Work and Pensions Committees - published at the end of December 2005 - recommends that the potential obstacle of the "senior manager" test be removed in favour of a more general approach of "management failure". Prosecutions will be aimed at organisations, rather than individuals, though it is also recommended that secondary liability for corporate manslaughter be included in the bill in the case of individuals who have been shown to have contributed to a company's management failing that has caused death.

However, many employers are still prepared to "risk it" and not consider the options should the worst happen with regard to a vehicle or employee being involved in a fatal accident. A quick browse through the case studies in this guide should provoke you into taking this issue very seriously indeed. As has been said so often - ignoring the legislation is no defence in the eyes of the law. We hope this guide will give you a good thoughtful insight on what is required to comply with the new legislation.

SAUL PARSONSON
Director of Sales

INTRODUCTION

What we all know as the 'Duty of Care' legislation is in fact an integral part of the Health and Safety at Work Act 1974. In simple terms, the act requires employers to be responsible for the health and safety of their employees whilst at their place of work. Therefore, any vehicle in which an employee carries out business on behalf of the company is regarded as a place of work and, as such, is most definitely subject to the current legislation.

Many companies appear to view this legislation as a route to increased costs and therefore do their best to avoid the issue, in the hope that lady luck will be on their side. A more certain route to drastically increase costs is to ignore the legislation. In the event of a serious incident where any blame can be attributed to the operating company involving one of their employees or vehicles on company business, the courts can hand down massive financial penalties for non-compliance, negligence or even manslaughter.

Compliance and correct application of the legislation should, in fact, reduce your costs because of the improved policies and procedures, while anecdotal evidence points towards improved productivity from workforces which feel that their employers have their best interests at heart. When the thorny issue of Duty of Care and Corporate Manslaughter started to raise their heads a few years ago, some industry pundits suggested that the threat of a long prison sentence would be

enough to make every company director in the UK immediately draw up plans for a new risk management policy.

In the event, it is likely that most of the risk management policies that have been introduced so far have come about for sound financial reasons, rather than to keep company directors out of the dock.

Some employers believe, incorrectly, that provided they comply with certain road traffic law requirements, e.g. vehicles used on company business have a valid MOT certificate and that the driver holds a valid licence, this is enough to ensure the safety of their employees - and others - when they are on the road. This is, of course, a misconception, as this guide will illustrate. Any business allowing employees to carry out company business - no matter how trivial - in company cars or in their own vehicles, needs to be well informed on the Duty of Care legislation. A basic knowledge of the rules and regulations at the sharp end - the Fleet Manager/Administrator - is essential if your company is to ensure compliance. Risk Management, of which Duty of Care is an important part, now needs to sit at the top of the agenda for any company permitting employees to drive vehicles on company business.

It is estimated that 65 per cent of all company vehicles will be involved in a road accident within the next 12 months. We have to hope that the vast majority of these will be in the 'minor' category,

but we all know that many may well be in the serious or fatal category. Average vehicle repair costs following an accident range between £750 - £4,500 per claim. Indirect costs add still more to the financial impact of road traffic accidents for companies. The cost to industry resulting from the consequences of such accidents is estimated to be a staggering £3.2 billion.

Industry figures show that just 31 per cent of companies have put into place a risk management strategy with regard to employees driving on company business. This means that 69 per cent of companies are putting the lives of their employees and other road users at risk. This represents a small improvement, as the figure for companies installing a risk management policy in 2003 stood at 17 per cent. Data supplied by the RAC / Ross Durkin.

ROSPA figures reveal that employees who drive more than 25,000 miles a year have a one in 8,000 chance of dying behind the wheel of a vehicle whilst on company business which, with the demise of heavy industry in the UK, means that day-to-day driving on our roads is the most dangerous occupation we can undertake.

The purpose of this guide is to give details on the actual law, the possible consequences of ignoring the law, and the importance of introducing an internal Duty of Care policy. It will also detail the data you need to record in order to satisfy any Health & Safety Executive audit.

Evidence continues to show that, with regard to policies and procedures for employees driving on company business, the 'ostrich' (head in the sand) syndrome is alive and well when Duty of Care legislation is considered. Do not fall into the trap whereby you feel safe on the grounds that you cannot be expected to know what each and every driver is up to whilst on company business, or that

any vehicle used for company business is up to the required safety standards. Your company is expected to know, and prosecutions and convictions are increasing against those companies which believe that keeping a low profile makes them immune from such risks.

Applying the Duty of Care legislation may appear to be a daunting task and will prove to be so unless you apply the required policies and procedures. This guide will give you a firm base on which to build your policies and procedures, the introduction of which may well protect your company from a very serious prosecution.

The task before you is a simple one. Make sure you have adequate procedures and policies in place that comply with requirements of the legislation and you will have nothing to fear. Another important point to bear in mind is the requirement that any Duty of Care action should be fair, just and reasonable.

Meeting the requirements may well require your company to consider such issues as safer vehicles, different working practices, training and the introduction of stricter methods of measurement, in order to provide the required accurate audit trail. All of these factors could push up costs. However, do not believe for one minute that any court in the land would give a sympathetic hearing to a plea of 'We could not afford the additional costs'.

You must therefore develop an anti-accident culture in your company and work hard to ensure that your policies and procedures comply with the legislation. The UK companies who are believed to have the safest and most effective Duty of Care policies and procedures are in the petro-chemical sector - is that any surprise?

EXISTING LEGISLATION

WHAT DOES THE EXISTING LEGISLATION STATE?

The Health and Safety at Work Act requires you to ensure, as far as is reasonably practicable, the health and safety of employees while at work (full or part time). This includes work-related journeys and covers all drivers whether they are in company vehicles, using their own vehicle for business use, temporary drivers or freelance, agency or contract workers.

You also have a responsibility to ensure that others are not put at risk by your work-related driving activities - this naturally includes other motorists and the general public.

Under the Management of Health and Safety at Work Regulations 1999 you have a responsibility to manage health and safety effectively. You need to carry out an assessment of the risks to the health and safety of your employees, while they are at work, and to other people who may be affected by their work activities. Employees driving on company business are considered to be undertaking a work activity and the vehicle they are driving, regardless of ownership, is regarded as a place of work.

Health and Safety law does not apply to commuting, unless the employee is travelling from their home to a location for business purposes, which is not their usual place of work. The Health and Safety Commission in August 2001 issued

a series of guidelines that covers the employer's responsibility towards the employee, which included the recommendation that every company appoint a director to look after the health and safety of its employees - which included at-work driving.

Given the current statistics, more people are likely to be killed or injured in an at-work road incident than in an accident in a 'fixed' workplace. Historically, road safety relating to cars and vans has been addressed solely through road traffic legislation and enforcement of such legislation by the police and the courts has been directed at individual drivers. However, employers are now more likely to be prosecuted than the individual for causing or permitting a wide range of traffic offences. (See section on The Offences).

Following the Government's indication that it intends to pursue a policy of reducing road traffic accidents the Health and Safety legislation already in place is to be used, where applicable, in a bid to reduce the accident toll. This means that employers are charged with managing the risks associated with at-work road journeys within a framework they should already have in place for managing Health and Safety within their firms.

The Association of Chief Police Officers has produced a 'Road Death Investigation Manual', which in the event of a fatal or serious injury accident, acts as a guide

to police officers who are now investigating all road deaths as if they are unlawful killings. It is the police, assisted by the Health and Safety Executive, who will carry out all the initial investigations. If they then believe there is a case for a prosecution they will hand over the evidence etc. to the Health and Safety Executive who will then seek to have the case tried in court.

In the event that an incident involves an employee driving on company business, the police will be looking for the following evidence:

- Why was the vehicle at the scene?
- The mechanical condition of the vehicle - regardless of ownership
- The physical condition of the driver, including signs of fatigue
- The legalities of both vehicle and driver - Licence, MOT, Insurance etc

It is for these reasons that a vehicle and driver audit trail is required to show that the policy for employees driving on company business is based on Health and Safety best practice lines.

There are numerous Acts of Parliament applying to road transport that set out clear requirements for both employer and employee regarding roadworthiness and safe operation of company vehicles.

The Management of Health and Safety at Work regulations issued in 1999 requires an employer to take into account an employee's capabilities regarding health and safety, to provide adequate safety training when recruited and further training for new or increased risks. The Provision and Use of Work Equipment Regulations 1992 includes motor vehicles in its definition of 'work equipment'.

The legislation now directs employers to consider the company car or any other

vehicle to be used on company business, to be a 'place of work'.

This means the 'place of work' will include anywhere you have an employee driving on company business be it in a company car or his or her own private vehicle.

Under the Health and Safety at Work Act, employers have a Duty of Care for the safety of staff on at-work journeys. Whether the workers are full time, temporary or are driving their own vehicles on business, their road safety is the concern of the company.

For a business to comply with that Duty of Care, they should:

- Have a comprehensive road safety policy supported by top management
- Have road safety management procedures in place, including risk assessment and implement safe practices that eradicate or minimise identified risks
- Ensure staff are given relevant information, training and supervision to be safe on the road
- Regularly audit the safety of journeys and amend policies and procedures accordingly if new risks are identified

By law employers are responsible for the safety of their staff and that includes journeys undertaken for business purposes.

In addition, by law, companies have the same liability for individuals who drive their own vehicles on company business. Many company bosses believe that by abandoning the traditional company car in favour of the cash for car alternative, they are ridding themselves of any responsibility towards their staff when driving on business - they are not!

FAILURE TO COMPLY

THE CONSEQUENCES

Failure to comply with the legislation can lead to a prison sentence and/or an unlimited financial penalty for directors/managers, regardless of whether they were directly responsible for the offence.

There is also the resulting publicity to consider which, apart from being extremely embarrassing, could have a serious adverse effect on your business. There is also a growing list of civil cases being brought by the relatives of employees killed in accidents whilst on company business, where it is believed that the company could be blamed for any aspect of the accident. There have been successful outcomes in the courts whereby the employers were sued for compensation equivalent to 30 years salary.

If, after investigation of any incident, the Police wish to take further action they will first seek to prosecute the 'directing mind' of the company - the Board of Directors. If a case is brought before the courts, further action could be taken against managers and employees (see section on The Offences).

The basic outcome is that an employer is 'vicariously liable' for harm caused through the negligence of its employees in the course of driving on company business and could face severe penalties for placing employees or any other person in any sort of danger.

A recent statement from the Minister of State for Transport has also endorsed this observation and threat of action.

Recent surveys show that many employers fail to introduce the required risk management policies on the basis of increased costs, or that they did not realise they were required to introduce such a policy. Just imagine the reaction in court if you ever decided to use lack of funding or ignorance of the legislation as a plea for consideration.

Do not believe that the authorities will only be concerned with incidents where there is a fatality. They will investigate any incident if they feel there is cause for concern over a vehicle or employee if they suspect carelessness or recklessness by your company.

The Crown Prosecution Service still believes that many companies have yet to 'put their houses in order' and failure to do so could result in a serious prosecution in the future.

Employers who still insist on not taking the legislation seriously should spend a few moments reading through the case studies, which can be found on page 24.

THE OFFENCES

CORPORATE MANSLAUGHTER

The offences that can be brought against you as an employer in the event of a fatal accident involving one of your vehicles or employees whilst on company business should send a shiver down your spine. However, the major offence in the event of a fatality under the Duty of Care legislation is Corporate Manslaughter.

Lesser offences can also be made against companies where the authorities believe there is blame that can be attached to the employer/employee for any incident - not just fatalities.

The long-awaited updating of the Corporate Manslaughter offence has now reached the final stage and the general opinion is that it now goes a long way to confirming where the blame will lie in the event of an accident resulting in a fatality.

Under the old corporate manslaughter legislation, prosecutors had to prove a single director/manager was negligent in the event of a fatal or serious accident. This proved to be virtually impossible, which is why the new Corporate Manslaughter Bill has been drafted to target companies rather than individuals.

In other words it will influence who will be prosecuted - individual or organisation. It will be looking for evidence of any obvious management failure, as being a major contributory factor.

CORPORATE MANSLAUGHTER

The major change is that the offence will target the 'organisation' rather than individual senior managers, though there may be provision for prosecution of individuals in cases of clear, gross negligence. It is not intended, except in exceptional circumstances, to target middle or junior managers or the Fleet

MANAGER/ADMINISTRATOR

However, these more junior positions could still be subject to other offences - Reckless Killing or Killing by Gross Carelessness for example - if any evidence of such behaviour is identified as being a contributing factor in any fatal accident. The appropriate 'manager' will be held responsible for any failures, but the managing director will have ultimate responsibility.

Therefore, providing a satisfactory Health and Safety policy is in place, then the risk of imprisonment and punitive fines for persons actually involved in the day-to-day management of employees driving on company business is actually very small.

Nevertheless, the Fleet Manager/ Administrator and junior management will be expected to play their part in keeping the Board of Directors out of trouble, because without them you may not have an employer!

The new Corporate Manslaughter offence is expected to make it easier for the authorities to bring prosecutions against companies and, if necessary individuals, where any blame can be attributed.

A recent announcement by the Government indicated that a new charge 'Causing a Death by Careless Driving'

could carry a mandatory five-year prison sentence. Such a charge could of course be made against one of your employees if they were in any way to blame for such an incident. This could then have serious consequences for your company as a whole, depending on the findings of the Police on how you handle safety issues within your company.

CASE STUDIES

At the time of writing, the Corporate Manslaughter Bill had not been passed into law, though its overall objectives had been clearly stated. It is generally accepted that when the Bill is passed, the Police and HSE will find it easier to bring charges against a company and/or employees in the event of blame being apportioned after a fatal accident.

Prosecutions are on the increase and, as the following examples will illustrate, the penalties can be extremely severe.

An additional worrying trend is that relatives of employees killed whilst driving on company business are bringing civil cases against the employer and are being awarded sums equivalent to 30 times the employee's salary.

You should also note that in Case Study D and E the employer escaped punishment because they were found to have complied in every way they could

with the Duty of Care legislation.

COMPANY A

Failure to Introduce a Risk Management Policy

An employee driving his own vehicle struck and killed a pedestrian on a pelican crossing after falling asleep at the wheel. Although driving on company business, the employee had failed to take out business insurance cover and the employer had no procedures to check this. The employers were also accused of asking the employee to operate longer hours in an effort to increase business.

VERDICT

The employee was jailed for 3 years and banned from driving for 10 years.

The Sales Manager, Fleet Manager and Managing Director were also prosecuted for failures in policies and procedures. The final verdicts on these persons are not known.

COMPANY B

Failure to Maintain Correct Records

An employee driving on company business caused two deaths in a multi-vehicle accident on the M25 after dozing off at the wheel.

VERDICT

The company owner and a fellow director were JAILED for 15 months and 12 months respectively. The court heard that the procedures used to monitor drivers' hours were wholly inadequate. The employee involved was also jailed for two years.

COMPANY C

Forgery and Fatigue

A Transport Manager was found guilty of breaches of Health & Safety regulations, forgery and tachograph offences. The driver died in the crash when his vehicle veered onto the hard shoulder and collided with a vehicle that had stopped to change a wheel.

VERDICT

The court heard that the firm had encouraged drivers to drive excessive hours on a regular basis and that various ploys were used to falsify tachograph records. It was concluded that such practices had been the cause of the accident, in that the driver probably fell asleep at the wheel. The transport manager was JAILED for 18 months.

COMPANY D

Correct Policies and Procedures in Place

An employee using a non hands-free phone lost control of his vehicle and collided with another vehicle resulting in the death of the other driver.

VERDICT

The employee was sentenced to three years in prison plus a four-year driving ban. The employers were cleared of all

blame when it was shown that all their procedures and policies were in line with the legislation and that specific written instructions had been issued to all employees regarding the use of mobile phones whilst driving.

COMPANY E

Illegal Use of Mobile Phone

An employee spent six and a half minutes on his mobile phone (whilst driving his own vehicle) during a fifteen-minute journey. During a second call to his wife, the driver ignored a total of 15 road signs as he used his hand-held phone. He then made an illegal turn onto the M6 motorway and immediately collided with a motorcyclist driving in the opposite direction who subsequently died from his injuries.

VERDICT

In passing sentence, the judge stated that a motorcyclist had lost his life because the driver of the car had been avoidably distracted by the use of a mobile phone. The car driver was JAILED for five years, followed by a five-year driving ban. The employers escaped prosecution on the basis that the employee was talking to his wife, which was therefore not a business call.

COMPANY F

Gross Negligence and Mismanagement

The director of a haulage company was found guilty after one of the company's drivers fell asleep at the wheel, killing himself and two other drivers. The driver fell asleep while driving an articulated lorry, crossing all three lanes of the carriageway and crashing through the central reservation. The lorry struck seven vehicles, killing two of the drivers. At the time the lorry driver was half-way through an 18-hour trip whilst, according to records, the truck was at rest at the time in the company depot. The judge commented that the incident was a result

of serious road safety breaches by the company, involving falsifying records and working long hours.

VERDICT

The director was sentenced to seven years in prison. Another director was sentenced to 16 months in prison for falsifying driver

records. The company secretary was sentenced to 160 hours community service for falsifying driver records and all full-time drivers were fined for breach of driving regulations.

MANAGING THE RISK

A risk management approach to on-the-road work activities in your company will result in fewer accidents which, after all, is the whole purpose of the Duty of Care legislation.

But what action should be taken by the 69 per cent of employers who are believed to have no risk management strategy in place? It has been suggested that the risk can be avoided altogether by undertaking the task in another way, such as putting a complete stop to employees driving on company business. However, this is not very practical when you consider the key role at-work travel plays.

Nevertheless, there is merit in carrying out a survey to establish whether you actually need all your company vehicles. More importantly, do you actually know how many employees are carrying out business in their own cars and whether the practice is justified in every case? Many companies are now actively cutting back on employees using their own cars for company business, especially those just undertaking the odd casual journey. You may find that daily rental is a better option for this sort of activity, particularly where the journey is made by a driver with a vehicle that rarely carries out such business travel.

Unless you end up with a scenario of no employees driving on company business, a risk will remain and that risk needs to be managed. That means the risk needs to be measured, because if you can't measure it, you can't manage it.

In addition you are required to place a senior manager or director in charge of the road risk. The starting point is therefore

an assessment of the risk followed by any necessary actions, both immediate and ongoing, to reduce the risk.

In simple terms, an employer's at-work road risk management strategy should include a policy statement that takes into account: management, journeys, drivers and vehicles.

SIX STEPS TO RISK MANAGEMENT

1. Identify possible hazards:
 - The vehicles - are they safe, legal and suitable for the job?
 - The routes - are they suitable?
 - The employees - their legality, working practices, experience, training and commercial pressures.
2. Identify who might be harmed and how - drivers, passengers, members of the public.
3. Evaluate risks and assess whether existing precautions are adequate or if more are needed.
4. Take into account different types of drivers, vehicles, journeys and working practices.
5. Record significant findings.
6. Periodically review the risk assessment document to ensure it remains valid.

It might be prudent at this stage to review contracts of employment. They may need rewriting to take account of any new risk management policy.

For example, as a condition of employment it should be compulsory for employees to report any endorsements relating to motoring offences, and failure to do so will result in disciplinary action.

Having undertaken a risk assessment - which applies equally to any employees who drive their own cars on business - employers must put in place the following principles of prevention.

- If possible, avoid the risk altogether. In terms of occupational driving, that means considering whether alternatives to the journey or type of travel exist. Consider modern technology such as conference phones, etc. As it is understood, 97 per cent of companies now have access to and are actively using broadband technology.

- Tackle risks at source, rather than taking superficial short-term action.

This might include work rescheduling to restrict long hours, reschedule meetings to reduce the risk of employees speeding between appointments, choosing vehicles carefully to consider the needs of the driver and maintaining them up to the highest possible standards.

- Identify employees who are required to drive on company business, ensure they are competent to drive the vehicle through driver assessment and provide them with the right amount of information and training to enable them to drive or work safely. This also applies to employees using their own cars - if they are seen to be driving a 'hot hatch' this might give you cause for concern.
- Involve employees and managers in identifying and putting in place controls and other measures.

- Clarify the roles and responsibilities of directors, down to the individual employee - setting standards of behaviour. A most important link in this chain is the Line Manager.

- Ensure that the systems apply equally to those who drive a company vehicle for work and those who use their own vehicles on business.

An employer needs to protect itself, management and employees against the possibility of charges being brought with regard to the operation of vehicles on company business.

It should be borne in mind that the Health & Safety Executive (HSE) can carry out an audit without warning. Should such an audit reveal that your policies and procedures are not up to the required standard, then a prosecution could follow.

However, the Police in most cases will continue to take the lead on the investigation of road traffic accidents on the public highway. Enforcement by the HSE will usually be confined to incidents where the Police identify that serious management failures have been a contributory factor in the incident.

The HSE will then require an employer to demonstrate that it maintains records of all driver and vehicle activities, including those employees who use their own cars for business purposes, no matter how trivial the journey may appear. This also applies to employees on any opt-out schemes.

DRIVING LICENCES

All driving licences must be checked on a regular basis and such inspection recorded. This also applies to employees who undertake company business in their own vehicles. There are third-party companies who will undertake this process for you.

Where an employer permits employees with the use of a company car to nominate other authorised drivers (partners/family etc), it is essential that such checks are also carried out on the licences of these authorised drivers.

Records of Fixed Penalties must be noted and recorded. Make it mandatory that employees must immediately inform management in the event of any changes to the licence - additional penalty points, etc.

To claim that you were not aware that a specific employee was driving on a licence not valid for the vehicle, or which had been rendered invalid by excess penalty points is not likely to be accepted as a plea for consideration in any court hearing. Such circumstances could lead to drivers/management facing prosecution.

INSURANCE

Are all employees adequately covered for business use when driving on company business? You should make it a priority to ensure that all employees who are driving on company business are covered for business use. If they are not, you must remove the option to drive on such journeys.

There is growing concern that employees using their own vehicles for company business are not fully insured by such business cover. This is something you should check on an urgent basis.

CONDITION OF THE VEHICLE

Do your records show that that any vehicle being driven on company business is regularly serviced?

For vehicles that are subject to a Contract Hire or Fleet Management agreement, much of this responsibility will rest with the service provider. Check your service agreements on this point. Procedures should be in place that require these service providers to alert an employer if servicing etc. is not being carried out.

If vehicles are not subject to outsourced control, you should consider taking steps to ensure that employees are fully aware of their responsibilities and what their employer expects of them with regard to vehicle condition. The employer is responsible for the condition of a private vehicle whilst it is being used on company business. Schemes do exist that provide a simple management plan for private vehicles, or you can talk to Lombard.

LEGAL MOTORING REQUIREMENTS

Any vehicle operated on company business must be fully roadworthy in terms of legal requirements. It must also be taxed and insured for the purposes for which it is being driven.

Introduce systems to ensure that - as far as it is reasonably possible - you, the employer, can be confident that all vehicles driven on company business meet all legal criteria. Consider an official communication to employees that details exactly what the company expects with regard to legal requirements.

FITNESS TO DRIVE

Line management must be made aware that in the event of a serious incident involving one of your employees, the Police will take into account the condition of the driver at the scene in terms of fatigue, alcohol, drugs, eyesight and stress. It is not expected that line management should become experts in detecting all of the above, but should look for warning signs and raise the issue with the employee or higher management if it is necessary to do so.

COMMUNICATIONS TO EMPLOYEES

Any Police or HSE investigation will expect to see written guidelines issued to all employees driving on company business that spell out exactly what the employer expects of the employee when driving on company business.

Such a document will enable you to provide instructions to users with regard to their activities that you cannot reasonably monitor without actually being in the vehicle with them.

Provided that you instruct all employees, in the guidelines, that you expect them to drive safely, courteously and within the law, you will be seen to have provided a Duty of Care.

You should require all drivers to operate according to the requirements of the HIGHWAY CODE and recommend that all employees driving on company business actually read a copy.

Any such guidelines should include a section that requires the employee to sign a statement declaring that they have read, understood and will abide by the instructions laid down including those contained in the Highway Code. This also applies to employees using their own vehicles for company business, no matter how trivial the journey.

VEHICLE ALLOCATION

Any investigation will take a look at the type of vehicles on offer and the ability of employees to handle the vehicle in question.

It is the responsibility of the employer to ensure that, as far as they can reasonably assess, any vehicles offered in a published choice list are subject to a risk management decision with regard to suitability for any employee.

HOURS SPENT DRIVING

It is well known that the greatest cause of fatalities in road traffic accidents is fatigue. It is also known that time spent behind the wheel by employees on company business has increased by 10 per cent, with the most likely cause being put down to commercial pressures. Therefore, you should take steps now to ensure that as an employer you can never be accused of such a practice if it put the lives of your drivers at risk.

You must give guidance to employees on the issue of regular rest periods and refreshment. Management must be advised to keep a watch on all employees for signs of fatigue prior to going out and spending the day on the roads.

If a driver is spending three hours reaching an appointment and three hours to travel home or back to the office, that does not equate to a six-hour day. You must take into account the hours spent at the actual appointment/s to arrive at the true working day.

Any move by an employer to increase unreasonably the amount of time an employee spends behind the wheel, simply to increase sales or productivity, would be seen as a blatant breach of the Duty of Care legislation.

An audit trail should be introduced to record as accurately as possible the hours any employee on company business spends behind the wheel, together with hours at appointments.

Telematics can provide extremely useful management tools for this issue. Many companies now use Telematics, although the introduction of such systems will depend on your own internal views with regard to privacy.

MEASURING THE RISK

All of the above data requires measuring via an accurate database. There are several excellent off-the-shelf packages on the market to do the job for you and it is recommended that you consider such a package.

If you keep all your data on an internal spreadsheet, do ensure that it enables you to report accurately all the data that any future investigation would require to see.

WORKING TIME DIRECTIVE

The EU Road Transport Working Time Directive came into force on March 23rd 2005.

The New Working Time Directive regulations introduced limits on weekly working time (excluding breaks and periods of availability) and a limit on the amount of work that can be done at night. They also specify how much continuous work can be done before taking a break. Under the new regulations, working time for mobile workers must not exceed:

- An average 48 hours week
- 60 hours in any single week
- 10-hours in any 24 hours period, if you are working at night

The regulations affect mobile workers - commercial vehicle drivers and crew.

The working time directive does not cover employees driving cars on company business. However, there appears to be little doubt that the new regulations could provide a basis for similar legislation aimed at companies who require any employee to drive on company business. Because of the concern over fatigue as a factor in so many accidents, it is clear the authorities will be paying increasing attention to hours spent driving on company business.

Given that the Lord Chief Justice has stated that drivers who cause death by dangerous driving should expect a custodial sentence no matter what the mitigating circumstances are, we should all be aware that - based on sound statistics - employees driving on company business are more likely to be involved in a fatal accident due to the high mileage factor.

We should also be aware that fatigue is one of the main reasons, if not the main

reason, behind these fatalities. Therefore, all those responsible for the management of the policies and procedures for driving at work should, as a matter of priority, ensure they have strict control of drivers' hours.

Many recent surveys indicate that employees list pressure of work imposed by their employers as being a real concern. If, in the event of a Police/HSE investigation into a fatal or serious accident, this fact was proven to be correct, the implications for the employer would be far reaching.

However, there appears to be little doubt that the new regulations could form a basis for similar legislation aimed directly at companies who require any employee to drive any vehicle on company business.

Taking into account recent court cases where 'fatigue' has been proven to be a major factor, you should endeavour to put into place policies and procedures that would enable you to demonstrate that you do take note of hours behind the wheel and take account of the 'fatigue' factor. It is already accepted by the authorities that driving on company business does form part of the working week, so they will have every right to request access to your records on such issues.

If they believe that unreasonable commercial pressures are the cause of any fatigue factor, they will understandably take this into consideration - regardless of any working time directive. A tired or overworked driver is a danger to everyone, so you must make sure your policies and procedures correctly cover such matters.

Further information can be obtained from the HSE and DFT websites.

COMMERCIAL VEHICLES

Whilst every comment in this book applies in general terms to vehicles being driven on company business, it is essential that you consider the increased risks for operators of Light and Heavy Commercial vehicles.

If you have employees driving such vehicles, you should include additional sections in your user instructions to recognise this fact.

Guidelines for commercial drivers should address loading factors, the use of any special equipment on the vehicle such as tailgate lifts etc. It must also advise on the differing regulations with regard to drivers' hours.

Load-safety guidelines should be posted in the back of the vehicle or on the inside of all doors, on the importance of securing loads before the vehicle is driven. Make yourself familiar with the recent changes to the law with regard to the wearing of seatbelts for light commercial vehicle drivers.

Recent changes include increased legislation regarding the wearing of seat belts for drivers of 'vehicles constructed or adapted for carrying goods'. An important change for these drivers regards those involved in the door to door delivery activities.

The law now requires these drivers belt up, unless the journey from one stop to another is LESS than 50 metres.

Make yourself familiar with the recent announcements regarding permitted speeds for varying weights of Light Commercials.

Consider fitting reversing alarms as this is where many accident and pedestrian injuries occur. Reversing into an unsuspecting pedestrian may well bring you to court on charge of a lack of Duty of Care to persons not in your employment.

Resist the urge to ask your delivery drivers to do that extra job as a 'favour' to the company or indeed the customer. It is known that van drivers who cover more than 25,000 miles a year are in the highest group for fatal at work accidents.

If evidence of requesting drivers to do that 'extra' journey is uncovered by the Police or HSE, then the consequences could be very serious indeed.

With regard to measuring hours behind the wheel, Digital Tachographs are now a mandatory fitting for all new CVs over 3.5 tonnes. The EU published Regulation 561/2006 on 11 April 2006. Amongst other things, this regulation introduced

the mandatory fitment of digital tachographs to vehicles first registered on or after 1 May 2006.

All drivers of vehicles fitted with digital tachographs and in scope of the EU drivers' hours rules will need a driver's card (£38 from DVLA). Beware the 'guided missile'. Make sure you advise your employees to keep their cabs free from, clutter.

Those drink cans that appear to sit on top of virtually every dashboard you see in a LCV can be lethal weapons in the event of a serious collision. The same applies to loose CDs.

COMPANY BUSINESS IN PRIVATE VEHICLES

This is the area where many employers are not coming to terms with the requirements for such people, as laid down in the Duty of Care legislation.

It is estimated that there are 5 million privately owned vehicles being used on company business, compared to 3 million company cars. This explains why the authorities are determined to ensure that the legislation is applied to these vehicles and their drivers.

The legislation applies to all vehicles used on behalf of the company/organisation, whether they are provided by the employer, hired in on a leasing or daily rental agreement, or provided by the employees.

It obviously covers vehicles provided on cash-for-car schemes.

In such cases, the employer must be satisfied as to the condition and legality of the vehicle and must also be assured that the employee is licensed to drive and is correctly insured for business purposes.

It is the condition and legality of the vehicle that will be the most difficult to monitor. However, if such a vehicle is involved in a serious accident because the employee's car was not roadworthy or legal in terms of insurance etc, the employer may then be subject to

investigation on the grounds that they took a risk that was unreasonable to take.

A review of who actually needs to drive on company business in their own vehicles may reveal some surprising results, which in turn could drastically reduce the numbers, thereby having a positive effect on reducing the risk. An increasing number of companies are now removing the option of employees carrying out company business in their own vehicles.

Introducing the procedures and policies for such users can be a long and tiresome project. However, it must be recognised that it has to be done if you are to be safe from the clutches of the authorities in the event of serious or fatal accident.

Employees driving on company business in their vehicles need to provide their driving licences and evidence of correct insurance to their employer on a regular basis.

An employer standing in court and stating that they did not realise the employee had, for example, been disqualified, would receive very little sympathy. You are expected to know and you therefore need to implement procedures that enable you to gather the data in the first place and then maintain an accurate database.

If you do not issue these employees with the same guidelines that you issue to those driving company vehicles, which contain the acceptance of conditions document, then you have to put in place a number of checks and balances that the employee must agree to abide by. Many companies place the onus onto the employees by requiring them to sign a statement on their expenses that declares that the vehicle has been regularly serviced and is road legal in all respects - tyres, lights etc.

A further statement where the employees declare that their licence and insurance cover meet the laid down criteria is also needed.

Further statements should require them to declare that they will notify the appropriate person of any changes to licence or insurance details and that they will drive in a courteous manner and abide by the Highway Code.

Such initiatives will show the authorities that you have done all that is reasonably possible to ensure these employees are driving according to the legislation. Should the employees then choose to ignore such guidance and advice, then the spotlight will be on them in the event of any enquiry.

With regard to the servicing of such vehicles, you must satisfy yourself that these vehicles are being serviced at establishments that operate to the standards required by the manufacturers. Having the car serviced every six months by the employee or 'Uncle Fred' is not really considered to be the answer.

Line management must pay as much attention to these vehicles and their drivers as they would to the more traditional company car.

The job descriptions for employees using their own vehicles on company business should reflect the company rules regarding monitoring and remedial action, as necessary. Drivers should also be required to report any incidents involving themselves or the vehicle whilst on company business to the appropriate manager/director.

Finally, do not fall into the trap of asserting that you cannot be expected to manage employees in their own vehicles. You are expected to manage this issue and failure to do so could be extremely punitive.

The legislation refers to employees driving any vehicle on company business - it does not just refer to company cars.

DRIVER TRAINING

Getting employees to drive safely is not just about driver training, it is also about having a safety culture within the company.

It is not surprising to learn that companies which typically have the best road safety records in Britain, are those companies which have safety at the very core of their existence - for example, oil, chemical and pharmaceutical companies. They don't talk of driver training, they talk of driver development and they also ensure that directors and other senior staff lead from the front.

Many organisations report significant reductions in incident rates following a variety of interventions, including driver training.

Crucial to managing the on-the-road activity is managing off-the-road activities relating to such issues as stress, competitive pressures and tight timetables, which in turn lead to aggressive driving and excessive speed. Therefore, if the underlying causes of casualties on the road involving those driving company cars can be identified and eliminated, the first steps towards finding solutions have been identified - without the requirement of driver training.

It is calculated that 65 per cent of accidents are attributable to human error alone, while 95 per cent involve human error in association with another factor.

The most common reasons for accidents whilst driving on company business are fatigue, time pressures, general work stress, thinking about work and using a mobile phone.

The factors behind driver fatalities

- Excessive speed contributes to about one in three deaths. Whilst the overall figures for fatalities in road traffic accidents are falling, the amount of deaths attributed to speeding is actually rising. In the year 2000, fatalities totalled 3,409 of which 886 (26 per cent) were speed related. In the year 2004 the fatalities dropped to 3,221 but speed related fatalities reached 1,095 (34 per cent)
- Tiredness contributes to about one in five deaths
- Drivers impaired by illegal drugs contribute to about 17 per cent of deaths
- Poor maintenance of brakes and other safety critical components on vehicles contribute to around 14 per cent of deaths
- Drunk drivers contribute to 13 per cent of deaths

A recent RAC report states that there is a yawning gulf between rudimentary, compulsory, initial and voluntary advanced training. The report argues that there are three components to becoming a good driver:

- technical mastery - learning to control the vehicle
- reading the road and detecting hazards in order to anticipate where and when changes to speed or direction might be needed and
- driving being an expressive activity related to your identity, individuality and personality.

The report concludes that the initial driving test concentrates largely on the first of these - it is necessary but not a sufficient condition for safe use of the car.

Driver training has been applied mainly to the UK's larger fleets, whereas the majority of UK companies operate small fleets.

There is initially a cost to delivering risk management and driver training and a lot of companies find it difficult to justify the investment. Also, many people suffer from the 'ostrich' (head in the sand) syndrome, where having a low accident rate leads them to believe they do not need driver training.

Companies, which have accepted the philosophy of driver training, have seen the benefits of reducing their accident frequency by 60-70 per cent and more. Accidents are a hassle and they cost money.

If driver training is to be part of your risk management solution, the right driver training course must be selected.

For example, there is little point in sending an employee on a skid control course if every month there is a claim relating to reversing into a car parking space.

Training programmes today are many and varied. They can relate to specific skills such as roadside parking - or hazard awareness, risk perception and improved decision making.

Apart from improving safety, side effects of driver training can be:

- Improved fuel economy
- Reductions in vehicle wear and tear
- Improved residual values

Driver training should be targeted at the higher risk drivers, who should be easy to identify following the completion of a risk audit on the basis of previous claims experience or on the grounds of high annual mileage, hours of operation or type of work undertaken.

Such drivers should be given the highest priority under any driver training scheme, as this is where the greatest benefit for both the employer and employee is likely to come.

Management should also remember that it is not only the driver profile - age, experience and accident records - that should be studied but also the vehicle profile. For example, are high-risk drivers at the wheel of the most powerful vehicles?

Competitive employment pressures may force a company to offer a powerful car to a 25-year-old salesman, but the risk management strategy should ensure suitable training is also provided.

Driver training is one aspect of health and safety where it is virtually impossible to find a company in Britain which has not seen significant overall savings in time and money as a result of introducing training for all or some of its employees.

A recent development within driver training has been the initiative by some Police forces whereby they offer Speed Awareness Courses as an alternative to prosecution for speeding offences.

You can do your bit by making sure that your company does not and will not condone speeding.

Fact: Employees driving on company business have more accidents than any other group of motorists, even allowing for the greater mileage they do.

MOBILE PHONES

Holding a telephone conversation is claimed to be the single biggest distraction facing drivers while on the move. This has resulted in the Government bringing in legislation that bans the use of hand-held mobiles while driving.

The Royal Society for the Prevention of Accidents says it is aware of at least 23 deaths on Britain's roads over the last 7 years which have been directly linked to mobiles, but fears this may only be the tip of the iceberg.

New guidelines recently launched by the Lord Chief Justice and two other Appeal Court judges recommend that drivers known to have caused death due to using a mobile phone while driving should be routinely given custodial sentences. Such sentences have now been handed down.

Those caught breaking the ban will receive three penalty points on their licence and fines ranging from £30 to £1,000 if the case goes to court.

However, evidence shows that the current £30 fine has done little to stop motorists from flouting the law.

In response to this disappointing reaction from motorists, the Government has announced it is to introduce a further clampdown by bringing in the threatened three penalty points on their licence and a £60 fine for any motorist caught using a hand-held phone whilst driving. Such points would count in any topping-up towards 12 points and disqualification.

Also, the Police will increasingly download phone records from 'hands-free' equipment in the aftermath of any serious accident and will prosecute accordingly if they believe such a call was in any way a contributory factor in the incident.

So what are the regulations regarding the use of mobile phones whilst driving?

- The use of a hand-held device while driving is prohibited. A hand-held device is something that 'is or must be held at some point during the course of making or receiving a call or performing any other interactive communication function'.
- A device is 'similar' to a mobile phone if it performs an interactive communication function by transmitting and receiving data. Examples are sending and receiving spoken or written messages, still or moving images and access to the Internet.
- The use of two-way radio equipment (unless the device can also be used as phone) when driving is not included in the offence, but there is still a risk of prosecution under other powers. The use of multi-purpose devices that can be used as both mobile phones and two-way radios is prohibited.

- Providing a phone can be operated without holding it, hands free equipment is not prohibited. Pushing buttons on a phone while it is in a cradle or on the steering wheel is not covered by the offence, provided you do not actually hold the phone.
- Cradling the phone between the ear and the shoulder is not accepted as the offence applies if a phone has to be 'held' in any way while making or receiving a call.
- For purposes of the legislation, the term 'making or receiving a call' includes sending or receiving text and Internet messages. Receiving video messages is also prohibited.
- The use of a mobile phone whilst stationary at traffic lights is also prohibited. The same applies to traffic hold-ups, unless the stop is obviously going to be long one.
- In a genuine emergency, where it is unsafe or impractical to stop, the mobile phone may be used for emergency calls only.
- There are no restrictions on passengers using a mobile phone.
- A driving instructor is prohibited from using such a device while supervising a learner driver. This also applies to any person supervising a learner driver.

Drivers who have an accident while breaking the laws on mobile phone use could find their insurance has been invalidated.

Whilst a total ban has not been applied to the use of mobile phones while driving, the Police still have the power to bring charges if they believe the driver was distracted by a call on a hands-free phone. The Police will, in serious incidents, investigate the phone records to establish

if the use of any type of phone had a bearing on the incident in question.

A prosecution for careless or dangerous driving may be justified if a phone was in use at the time of the accident. The penalties for such offences include heavy fines, endorsement, disqualification and, in serious cases, imprisonment.

The recent guidelines set by the Court of Appeal also recommended that a further five years be added to any sentence involving a fatal or serious accident caused by the misuse of a mobile phone.

The legislation on mobile phones also applies to employers. The regulations apply to 'anyone who causes or permits any person' to use a hand-held mobile phone while driving. Employers would not be considered liable just because they supplied a phone or phoned an employee who was driving. However, they would probably be liable if they required their employees to use hand-held phones while driving, or failed to forbid employees to use such phones while driving on company business.

Therefore, it is imperative for companies to have a clear policy on the use of mobile phones.

Useful mobile phone policy advice might state:

- Never use a hand-held mobile phone while driving
- Buy, fit, and always use, a good hands-free system.
- Use the phone's features to minimise distraction, such as voicemail for incoming calls and speech dialling
- Do not take or make calls when road, traffic or weather conditions are poor
- Keep calls short and never argue or negotiate

An increasing number of vehicle manufacturers have announced plans to introduce factory fitted phone kits that will enable the drivers to operate within the law. No doubt this will become one of the 'must have' options when considering vehicles for your choice lists. Talk to your supplier/s now and ascertain what their plans are on this issue.

Bearing in mind that employers can also be prosecuted, you should decide upon your policy and communicate this to your employees.

It is believed that poor territory planning and a lack of standard procedures for handling customer calls in offices also contribute to the number of calls made by company car drivers while on the move.

You should also question how many times the employee is called by the 'office' and whether you expect them to answer these calls.

There is hard evidence that by introducing best practice procedures on the use of mobile phones, of cost savings in the order of 60 per cent are achievable.

Too many 'lonely' company car drivers are using in-car mobile phones as an excuse to hold lengthy conversations with friends and colleagues.

Within Europe only France has no specific laws on the use of mobile phones while driving. All other countries in Europe prohibit the use of hand held mobiles. Most countries permit the use of hands-free kits with the exception of Portugal which totally bans the use of any type of mobile while driving.

THE ONGOING PROCESS

Risk Management is more than completing a study and then filing it away to be forgotten...

At the outset it sets a benchmark of an employer's current position and a basis for response in relation to numerous management, employee and vehicle issues. But employers must realise that a person's risk profile can change overnight due to a variety of circumstances - a death in the family, personal difficulties or illness, etc. It is for these reasons that line management must be tuned in to the risk management process. If employees work in an atmosphere where they can feel encouraged to report any problems to their line managers, actions can be taken which could prevent an accident. A person's personality is a major indicator as to whether they are likely to be a safe or unsafe driver.

All accidents should be investigated and acted upon. The driver who is continually scraping the paintwork may need training in road space awareness or parking training. Whatever the cause of the accident, the employer's financial costs are escalating unless action is taken.

To demonstrate that the risk management programme is working, measurements should be made against key indicators. They might be lower rates of accidents per mile driven, lower fuel bills, lower insurance premiums and lower vehicle repair bills.

You could also introduce awareness

campaigns. For example, you could remind employees that the maximum speed limit on motorways is 70 miles per hour. The employer should then ask themselves why everybody is hurtling down the motorways at speeds of 80, 90 or 100 miles per hour. Is it because they have too tight a schedule and if so could one of these drivers be one of yours? Do not give your employees excuses to drive at such speeds, because they feel they need to do so to meet the schedule you have placed on them.

An important factor in the ongoing process is to realise that the Duty of Care legislation is here to stay and even more guidelines and laws are being considered for introduction in the future.

Develop that all-important anti-accident culture, which will make any new legislation that much easier to accommodate. A variety of techniques can be used to monitor employees on an ongoing basis...

They could include:

- Analysing incident records
- Join a 'How am I Driving' initiative

Regularly check driving licences - every six months is recommended

- Install black boxes in vehicles to record journey data. Such devices can record journey time, speeds and driving patterns

MANAGEMENT POLICY

- Do you have an identified director committed to managing road risk who also understands the legal commitments of the company?
- Do you have a senior employee in charge of managing road risk?
- Do you have a written and dated road risk policy and a list of planned road risk initiatives, which are regularly updated?
- Do you invite employees to suggest ideas with regard to road risk?
- Do you carry out routine risk assessments on all aspects of your use of roads including routing and timing of journeys, driver and vehicle safety?
- Do you record comprehensive information about all incidents involving all vehicles driven by employees on company business?
- Do you analyse the information collected to identify causes and frequency of incidents?
- Do you use this analysis to implement appropriate initiatives to prevent future incidents?
- Do you keep updated on road risk best practice?
- Do you monitor key indicators - such as number of incidents, to ensure road safety in your company is improving?

VEHICLE SAFETY Policy

- Do you consider safety first when specifying new vehicles - Euro NCAP crash test results, ABS braking systems etc?

- Do you ensure that all maintenance on vehicles is carried out to a high standard by approved service outlets?
- Do you ensure that defects on vehicles are quickly identified and corrected?
- Do you ensure that drivers carry out regular essential safety checks on their vehicles - tyre pressures and tread, lights etc?

DRIVER SAFETY Policy

- Do you have a handbook for employees giving advice and information on road safety?
- Do you assess employees' driving skills and check their licences, health and references before letting them drive?
- Do you provide induction training for employees with regular assessments using qualified driver assessors/trainers?
- Do you regularly check the employees' fitness to drive - eyesight, alcohol/drug abuse and ensuring employees are not stressed or tired?
- Do you monitor employees day-to-day - through incident rates, Black Box technology or 'How Am I Driving' Schemes?
- Do you provide remedial on-the-road and theoretical training for employees as necessary?
- Do you motivate employees to improve their safety records - through reward/award schemes?

USEFUL CONTACTS

TELEMATICS

Tracker (www.tracker.co.uk/home.php) 01895 445 605

CONTRACT HIRE, LEASING AND FLEET MANAGEMENT

Lombard Vehicle Management (www.lombardvm.com) 0808 101 4039

INDUSTRY BODIES

| | | |
|---------------------------------|--|---------------|
| ACFO | (www.acfo.org) | 01730 260162 |
| ICFM | (www.icfmonline.co.uk) | 01462 744914 |
| Health & Safety Executive | (www.hse.gov.uk) | 0845 345 0055 |
| Department of Transport | (www.dft.gov.uk) | 020 7944 8300 |
| Institute of the Motor Industry | (www.motor.org.uk) | 01992 511521 |
| Congestion Charging Hotline | (www.cclondon.com) | 0845 900 1234 |

DAILY RENTAL

Enterprise (www.enterprise.co.uk) 0870 330 0330 (Option 3)





Address for all correspondence:

Lombard Vehicle Management

Registered in England No. 2597082

Seven Brindleyplace, Birmingham B1 2TZ

T 0808 101 4039

E contactus@lombard.co.uk

W www.lombard.co.uk/vehiclemanagement

Head and Registered Office:

Lombard Vehicle Management Limited.

Registered in England and Wales. Registered Number 02597082.

Registered Office: 3 Princess Way, Redhill, Surrey, RH1 1NP.

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W www.lombard.co.uk

