



Risk Management Solutions



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Personal Use of Public Entity Vehicles

By Aaron Stone, OneBeacon Government Risks



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Local governments often issue their employees company cars for use for work-related travel. Sometimes personal use of these vehicles is sanctioned for specific jobs, such as local law enforcement or municipal works, but other times employees simply use the vehicle for personal reasons due to lack of supervisory or other oversight, which can expose local governments to multiple liabilities.

So while government entities can see numerous benefits by allowing employees to use cars for personal use as well as work, they must also consider risks that may be involved and ensure specific policies and procedures outlining use of company vehicles.

Law Enforcement Use

Law enforcement entities have allowed personal use of vehicles for decades. The practice first started in Lexington, Kentucky in the 1970s, and is often referred to as the "Lexington Plan" or "Take Home" plan. Under such plans, a local government entity assigns every police officer a car, rather than maintaining a pool of cars, and allows the officer to use the car for both work and personal reasons. The officer keeps the car at his or her home while off-duty and is generally expected to park the car in some conspicuous place. Some of the many benefits of this method are:

Crime prevention. Criminals are less likely to commit crimes in areas with an obvious law enforcement presence.

Quicker response time to critical incidents. Officers have all the equipment they need in their car and do not need to go to the station to gear up.

Extended vehicle life. Officers are more likely to maintain "their" car when they view it as a personal car and not simply for work.

Cost savings and fewer overtime hours or benefits. Officers are considered on-duty when they sign onto the Mobile Data Terminal (MDT) or computer system in their vehicles and, under IRS regulations, officers may be exempt from paying taxes on the use of their vehicles.

However, the benefits of this type of vehicle program must be weighed against the potential costs, such as the increased liability exposure for accidents resulting in personal injury and/or property damage. For example, consider the scenario in which an officer has finished his/her shift and is returning home in an assigned squad car. The officer runs a red light and causes an accident resulting in significant personal injuries to occupants of the other vehicle. Regardless of whether the officer is on-duty or not at the time of the accident, the employing entity may be responsible for the damages. Further, if the officer is injured by the negligence of the other driver, the entity may be exposed to an Uninsured or Underinsured Motorist claim. Compare this to a similar scenario under which the officer is driving his personal car home after completing his shift and causes the same accident. Presumably, the officer's personal insurance carrier, not the municipality's, will respond to covered losses.

General Municipal Use

Employee usage of municipal vehicles usually falls into one of two categories: assigned use of a specific vehicle similar to the police officer "take home" plan discussed; or, specific, limited use of a pool vehicle for job-related matters. In the first category, the municipality generally limits

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participants to key employees (e.g. Mayor, Fire Chief) or to positions that require a great deal of local travel. In the second category, the municipality maintains a pool of vehicles for employee job-related usage. The employee is required to check out the vehicle and then return the vehicle at the conclusion of its use.

Similar to law enforcement agencies, municipalities create these programs based on a perceived cost savings or on a specific job-related basis. Assigned use vehicle programs are subject to benefits and costs similar to those discussed for law enforcement. Pool vehicle use programs, however, can result in additional costs.

Employees may be more inclined to engage in personal use of the vehicle as they are frequently out of sight of their immediate manager. Personal errands are likely to result in additional mileage put on the vehicle and additional maintenance costs. Also, the increased mileage exposes the employee (and others) to the increased potential for accidents.

Personal Claims Are Entity Claims

Major claims involving unauthorized personal use of entity vehicles are common and the costs to the entity can be substantial. Employees often do not realize that their entity could be responsible for the damages resulting from an accident, if the employee is found at fault. Regardless of fault, an entity will still incur some costs associated with the accident, including any deductible. Employees using entity vehicles for personal use without the consent of their employer are putting the employer at risk to possibly pay damage amounts up to the total limits of their insurance policy. It is also worth noting that a public entity's loss experience can be affected for many years to come. Some of the more common scenarios where claims are generated in the personal use category include:

- Commuting to and from work
- Vehicles taken home for on-call service capability
- Taking children to school
- Lunch breaks
- General personal errands not connected with work

Frequently, the accidents arising from these scenarios occur because either they have not been anticipated, or proper procedures have not been implemented to protect the entity against them.

The presence of passengers in a company vehicle further complicates matters. It is difficult enough to contemplate and limit the exposure presented by the use of company vehicles, but entities must also consider the potential additional exposure passengers present. **All passengers are potential future litigants, including family members, friends and acquaintances.** This added exposure may include claims asserted under negligent driver theories, added uninsured or underinsured exposures or claims presented under med-pay or personal injury protection coverages. These exposures mount quickly, emphasizing the importance of implementing procedural safeguards.

How to Avoid the Risk

The simplest way an entity can avoid risks related to vehicle use is to prohibit the personal use of entity-owned vehicles. In many instances, however, total prohibition is not feasible. Therefore, to better manage the potential exposures, municipalities should create and enforce specific policies, procedures and guidelines covering an employee's personal use of an entity vehicle. These guidelines may include the following:

- A policy specifying what is considered personal use of the entity's vehicles, including what is permitted and what is not.
- Authorized drivers. Generally, the employee should be the only authorized driver. This authorization may be extended in limited emergency situations.
- Authorized passengers.
- Personal use of entity vehicles requires prior written approval.
- The same entity driving restrictions apply off-duty as they do while on-duty.
- Typical exclusions for entity vehicles:
 1. No hitches, racks or plows
 2. No towing of boats, trailers or campers
 3. No for-profit use

Specific procedures should be in place for reporting any accident, contacting the police, and preserving evidence.

Regardless of the type, any public entity vehicle program should be regulated and have a specific, written policy regarding who is entitled to participate in the program; a list of allowed uses and prohibited uses; and discussion of any applicable tax issues, including clear directives that the employee is ultimately responsible for any such tax issues if applicable.

The most important thing is to anticipate this troublesome issue and to limit unauthorized personal use of company vehicles by enacting protective measures before a major accident occurs.

Allowing local government employees to use government-owned vehicles makes sense for many municipalities. Permitting employees personal use of those vehicles can also make sense and benefit both the employees and the entity. However, despite these benefits, local governments must also consider the risks that may be involved and try to mitigate these risks through the practice and enforcement of specific policies and procedures outlining use of company vehicles. ■

NOTE: This article does not address Alabama Law with regard to the personal use of municipal vehicles. Generally speaking, municipally owned vehicles can only be used in the performance of official municipal business. Automobiles owned by a municipality are under the management and control of the municipal council pursuant to Section 11-43-56, Code of Alabama 1975, and the council should promulgate rules and regulations regarding their use.

It must also be noted that while Alabama law does not have any specific law concerning the use of automobiles owned by a municipality, the State Ethics Law prohibits the use of an official position or office for personal gain. See Section 36-25-5, Code of Alabama 1975. The Ethics Commission has sanctioned the personal use of law enforcement vehicles and equipment under certain circumstances. For more information see the article titled "Ethics and Liability of Off-Duty Police Officers" in the League's publication *Selected Readings for the Municipal Official*, 2012 edition. Any determination as to whether the Ethics Law has been violated by the personal use of a municipal vehicle is to be made by the Ethics Commission. They can be reached at 334.242.2997.

New Claims Adjuster Joins AMIC Staff



Logan Wells received a bachelor's degree in Business Administration with a focus in marketing from Auburn University in 2014. Prior to joining the AMIC team as a Claims Adjuster, he interned as an Account Coordinator/Content Developer with Montgomery-based Stamp Ideas, a full-service, inhouse advertising agency. Logan has lived in the River Region for 16 years, is the youngest of his two siblings and is an active member in the Montgomery area music scene as well as involved in several local sound technician projects.

LocalGovU Launches Course to Address Hidden Dangers of Hands-Free Devices

In 2013, AMIC/MWCF's Loss Control Division partnered with LocalGovU to create an Online Learning Center that provides a variety of course topics, including risk management, human resources, safety and law enforcement. Courses are available on a 24/7 basis from any computer with internet access and are provided at no cost to AMIC/MWCF members.

LocalGovU recently launched its latest course on Distracted Driving. Motor vehicle crashes are among the top two causes of injury or death throughout a person's lifetime, and the number one cause of work-related death. This two-hour Distracted Driving course provides the necessary training to educate employees and employers about the dangers of distracted driving. The information in this course will provide background and context for employees and employers considering prevention and policies. At the end of training, students will be able to understand the following:

- The Distracted Driving problem
- Multitasking is a brain drain
- Multitasking impairs performance
- Driving risks of hands – free and handheld cellphones
- Identifying tips for preventing Distracted Driving

For more information, or a complete list of courses offered, visit losscontrol.org.



Defining Moment

Additional Insured

An “additional insured” is a person or entity that is not the policy holder (or the “named insured”) but is someone added to a policy by the named insured so that this additional person has the same coverage as if he/she were the policy holder. In order to best protect your municipality from liability exposures while utilizing contractors, there are some important steps you should follow:

1. Always require that the contractor provide proof of their own liability insurance by requiring they submit a “certificate of liability insurance.”
2. Require in writing that they maintain their liability insurance for the life of the project or contract, keeping in mind that a certificate of liability insurance is only proof that the policy is in effect on the day the certificate is issued.
3. Require that the contractor adds your municipality as an “**additional insured**” on their liability policy for the life of the project or contract. Also, require the contractor's insurance to be the primary coverage over any insurance your municipality may have.
4. Finally, have all contracts reviewed by your attorney prior to signing.

As an additional safety measure, consider having your insurance agent or carrier review the contract from an insurance perspective to accompany the legal perspective provided by your attorney.

Are You Registered?

Loss Control Seminars Aug. 11,13,18 & 19

Some locations have limited space so please register at losscontrol.org for your preferred location as soon as possible. Lunch will be provided.

Topics:

- Understanding Your AMIC Claims Process, AMIC Claims Staff
- Fire Extinguisher Training, Will Strength, Loss Control Rep
- Improving Supervisory & Leadership Skills, Terry Sanders, Police Consultant
- Driven to Distraction, Stephanie Southerland, Loss Control Rep
- Heavy Equipment, Aaron Reeves, Loss Control Rep

Dates and Locations:

Tuesday, Aug. 11	Madison City Hall 100 Hughes Road, Madison
Thursday, Aug. 13	Alabaster Municipal Building 1953 Municipal Way, Alabaster
Tuesday, Aug. 18	Summerdale City Hall 502 W. Lee Avenue, Summerdale
Wednesday, Aug. 19	Alabama League of Municipalities 535 Adams Ave., Montgomery

www.losscontrol.org

2015 SkidCar Schedule

Through an advanced, computer-controlled driver training vehicle known as the Skidcar System, trainees learn how to react quickly and safely to a range of hazardous driving conditions. Training is conducted throughout the state at a minimal cost. Visit www.losscontrol.org for more information.

July 14-24	Thomasville	Sept. 29 - Oct 2	Oneonta
August 11-18	Decatur	October 6-16	Pelham
August 19-21	Cullman	November 3-13	Orange Beach
September 8-18	Guntersville	December 1-11	Montgomery

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www.losscontrol.org!



Loss Control Division

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- 5.053 Landscaping Equipment: Safety and Maintenance
- 7.089 Working Safely in Hot Environments
- 7.097 Heat Stress: Staying Healthy, Working Safely
- 7.105 Groundskeeping Safety: Dealing with Bugs & Critters
- 7.106 Groundskeeping Safety: Be A Pro!
- 7.107 Heat Stress for Public Employees: Seeing Red
- 7.108 Protecting Your Feet: Learning Your ABC's
- 7.110 A Practical Approach to Ladder Safety
- 7.118 Safety Procedures for Lawn Mower Operators
- 7.119 Landscape Power Tool Safety
- 7.120 Hedge Trimmer Safety
- 7.121 Video Guide to Chainsaw Safety
- 7.122 String Trimmer Safety
- 7.123 Boating Safety
- 7.128 Golf Cart and Low Speed Vehicle Safety
- 7.132 Heat Stress: Real Accidents, Real Stories

Video/DVD requests to: **Rachel Wagner at: 334-262-2566;**
rachelw@alalm.org; or FAX at 334-263-0200.

Need Help Filing Work Comp Claims?

For step-by-step instructions, visit:

www.almwcf.org

Employment Practices Law Hotline

1-800-864-5324

Through a toll-free Employment Practices Law Hotline, members can be in direct contact with an attorney specializing in employment-related issues. When faced with a potential employment situation, the hotline provides a no-cost, 30-minute consultation.

www.losscontrol.org