

The Real Story About Non-Owned Auto Insurance, Driving Risks and Which Insurance Fixes Your Employee's Car

Non-Owned auto liability insurance is designed to protect a named insured entity for the risk of having employees drive their own vehicles, or a client's vehicle, on company business. An easy scenario to illustrate the risk: An employee is driving from one client's home to another and runs over a pedestrian; the employee is at fault. The dead pedestrian's family hires a smart attorney who then sues both the employee and the employer for damages sustained. You now have a potential non-owned auto claim.

Assuming that the employee was driving his/her own vehicle, the question becomes which insurance policies are liable, and in what order?

1. The primary auto policy that is in place on the vehicle being driven is always the first in line for liability, AND IS THE ONLY POLICY THAT WILL FIX THE EMPLOYEE'S CAR.
2. After the limits of liability on the personal auto policy are exhausted, then the non-owned auto liability policy takes over. Most non-owned auto policies are written on a duty to defend policy form, which means that the insurance company provides the defense attorneys and manages the case.

3. Assuming that the case settles or the insured loses in court, then judgments are paid in the following order: First, the named insured, subject to policy limits, and then, second, the additional insured (employee of the home care agency), again subject to policy limits.

The order of policies and their intent brings up several issues in a home care setting. Some are as follows:

The employee needs to make sure that their auto insurance will extend to incidental transportation for a work purpose. It is recommended that each employee contact their insurance company and let them know the extent of their on-the-job driving. Some insurance companies will require a business use rider, which will specifically endorse the policy for incidental business use of a personally owned vehicle. The best time to clarify with an insurance company is prior to an accident, not when the vehicle is a smoking wreck and the insurance adjuster is searching for any way to squirm out of paying the claim.

The employer needs to protect against an employee NOT KNOWING that they are at risk of an unpaid personal auto insurance claim. As long as an employer can

show that employees were notified of the issues involved, you should be protected against a liability claim filed by an employee. (You have our permission to reproduce this report and give it to employees as necessary.)

As a loss-control mechanism, the employer might consider requiring employees to carry higher limits of liability on their personal auto policy, thus creating a higher wall behind which to hide.

If errands are being run on behalf of the client, or incidental transportation services are provided, **it is prudent for the company to USE THE CLIENT'S CAR WHEN POSSIBLE**, thereby transferring the risk of a damaged car from the employee to the client. In addition, a wealthy client is more likely to have higher limits of liability on their personal auto policy, making attachment of the non-owned auto limits less likely.

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