

IMPORTANT

YOU CAN BE SUED OVER YOUR EMPLOYEE'S DRIVING HISTORY

Court decisions are showing that it can be considered gross negligence if you allow an employee with a bad driving record to drive their own vehicle, a rented vehicle or a company owned vehicle, in the course of their job.

In the case of Joe Roane Grain Company vs. McFarland, (Tyler Court of Civic Appeals) cited in 381 S.W.2D220, the case points to the clear use of the personal driving record of an employee in seeking punitive damages against the employer on the basis of gross negligence. (NOTE: Punitive Damages are not insurable in the State of California)

In this case the plaintiff alleged that the employer was negligent in letting an employee with such a poor driving record (13 violations) drive a vehicle upon the public highway, in the course of his job. The Trial Court permitted the driving record to be entered into evidence but limited such evidence to the effect of gross negligence. The jury then found the employer guilty of negligence. The non-insurable punitive damage award was \$24,615 to a 21-year old man with \$420.00 in medical expense and a whiplash injury. The judgment was affirmed by the Court of Appeals.

A recent statistical review of accident and conviction records chosen at random for various groups shows conclusively that as the number of motor vehicle convictions increases, so does the ratio of accidents to drivers increase.

In the group with no prior convictions, there were only nine accidents per one hundred drivers. In the group with two prior conviction, there were 41 accidents per hundred drivers, and in the group with three prior convictions there were 51 accidents per hundred drivers. The four or more convictions group showed an accident rate of 62 accidents per hundred drivers.

It must be remembered that the courts upheld that a liability policy does not cover punitive awards.

Why would a responsible employer expose their risk of loss to a new employee or one who they had not pre-underwritten, by first checking his driving record?

The message comes through loud and clear from this case, obtain and review the driving records of all who drive for you. Restrict driving privileges for those who pose an excessive risk to you and the public. Follow the (minimum) guidelines as provided with this article and review them periodically. A little proactive investigation goes a long way toward protecting your company from unnecessary risk of loss.



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Motor Vehicle Record ORDERING AND HANDLING CRITERIA

1. When **MVR**'s are received:
 - A. Review MVRs
 - i. Driver approval should be subject to the following minimum criteria:**
 1. Maximum of 1 moving violation in the last three years in combination with one at fault accident.
 2. Maximum of 2 moving violations in the last 3 years with no at fault accidents.
 3. Maximum of 1 at fault accident in the last 3 years with no moving violations.
 4. No speeding over 80 miles per hour.
 5. All drivers must be licensed for at least 3 years.
 6. No drivers under the age of 25
 - ii. Any driver with any of the following in the last 3 years is unacceptable:**
 1. Suspension or revocation for other than failure to pay fines.
 2. Driving under the influence of alcohol or drugs.
 3. Careless Driving.
 4. Negligent homicide arising out of the use of a motor vehicle.
 5. Operating during a period of revocation or suspension.
 6. Using a motor vehicle for the commission of a felony.
 7. Aggravated assault with a motor vehicle.
 8. Operation of a motor vehicle without owners' authority.
 9. Operating a motor vehicle while unlicensed.
 10. Speed Contests.
 11. Any other criminal use of a motor vehicle.
2. The following drivers must be re-evaluated annually:
 - a. All new drivers not already approved by your carrier.
 - b. MVR older than 3 years old.
3. As respects to Drivers under 25 years old, the following is implemented:
 - **No** drivers under 21 years old
 - Drivers between the ages of 21 and 25 will be considered so long as:
 - No driving of 15 passenger vans.
 - **Clean MVR** provided to carrier prior to quoting
 - Valid Driver's License in effect for at least 3 years.
4. No more of 25% of drivers should be under the age of 25 or over the age of 74 without carrier underwriting approval.

