

Duty of Care – Fleet Management

Regardless of how many vehicles you operate, there is legislation that governs road safety, including the various Road Traffic Acts and Regulations supported by the Highway Code.

In addition, there are a number of related Statutes that are intended to safeguard road-users. These include Regulations covering the construction and use of vehicles, special health and safety legislation and Regulations covering the carriage of dangerous goods by road.

The main responsibilities imposed by this legal framework fall on the shoulders of road users and vehicle owners.

When vehicles are being used or driven on the highway by persons working for an employer under a Contract of Employment, the employer has duties of care which are responsibilities under the Health & Safety at Work Act 1974 and also they have a Common Law duty of care. This means that under this 'duty of care' an employer must take reasonable care to protect employees from the risk of foreseeable injury, disease or death whilst they are at work.

It is important to note that the vehicle is considered to be a place of work.

The main responsibilities under the Road Traffic Acts are towards the driver of the vehicle. He/she is responsible for driving a safe vehicle, adequately maintained and insured, in a safe manner having due regard to other road users and pedestrians. The employer has a duty towards providing a safe vehicle and insurance if the vehicle is owned by the employer.

Under Employment Law the employer has a duty towards the employee and members of the public who may be affected by his/ her work activities. The employer is also "vicariously liable" for the acts of his/her employees. The employee has a duty to comply with legislation etc.

An employer is liable for the injuries or death negligently caused by one employee to another, or to a worker from another company on his premises or to a member of the public injured by his employee.

Where the employee drives recklessly or breaks speed limits it is the driver's responsibility. Where speeding is due to inappropriate scheduling of appointments by the employer, liability could be joint, i.e. they could both be prosecuted.

As previously mentioned, employers have a responsibility to manage Health and Safety. There need to be policies, procedures and 'safe systems of work' in place that reduce work-related risks, including on-the-road activities of employees.

Need to know more?

For more information contact Colin Bailey or Andrew Milverton on 0118 940 6175 at Cassey Miller James today.

Details of our offices and telephone numbers can be found on our website at www.cmj.co.uk



There are three key areas for risk management that you need to give attention to:

Driver

- Driver vetting and selection
- Induction procedures
- Licence checks
- Accident reporting procedures

Vehicle

- Vehicle suitability
- Vehicle maintenance and inspection
- Vehicle security

Journey

- Journey planning
- Managing driver fatigue
- Speed management
- Journey type

The Health & Safety Executive (HSE) has an occupational road risk publication.

A copy of the 'Driving at Work' leaflet can be downloaded at:

<http://www.hse.gov.uk/pubns/indg382.pdf> Persons found guilty of breaching Road Traffic Law can be subject to a wide range of penalties including prison for serious offences. Breaches of Health & Safety Law may result in a fine or imprisonment. Directors may be liable if it can be shown that their negligence contributed directly to an injury.

Corporate killing

A criminal offence of corporate manslaughter has been drafted, making it easier to prosecute companies responsible for fatal accidents.

The offence will apply when someone has been killed because senior management “grossly fails to take responsible care for the safety of employees or others.”

The maximum penalty will be an unlimited fine.

The employer's responsibility also extends to ensuring that private vehicles used by employees on “company business” are also operated in a lawful manner.

Checks by the employer should include a vehicle's mechanical fitness i.e. MOT test (if over 3 years old for cars), service and maintenance records and regular vehicle condition reports.

They must ensure that the driver has “business use” insurance cover and that the driver is suitably licensed to drive that vehicle.

Key action points

- Carry out a risk assessment
- Produce a Health & Safety Policy, which includes your procedures to manage driver safety
- Ensure all licences are checked at least annually
- Regularly record maintenance and service details
- Record all training that has been completed