

# Frequently Asked Questions for Non-Owned Automobile Coverage

## The Law

Ontario law mandates that the registered owner of the vehicle bear the primary responsibility for liability arising from the ownership, use or operation of their vehicle. This is found within the *Insurance Act* of the Province of Ontario which is the governing legislation for automobile insurance in Ontario.

### **Q. Does the law change when an employee/volunteer is driving their own vehicle on behalf of and for the municipality?**

A. No, the law does not change. Whenever the vehicle is driven, regardless of who is driving the vehicle, or for what purpose the vehicle is being used, the owner of the vehicle bears the primary responsibility for liability. It is the owners' automobile policy that will be the primary responding policy in the event of an accident.

### **Q. Why does the owner's automobile policy respond?**

A. The insured vehicle(s) is attached to the automobile insurance policy. Therefore, whenever the vehicle is used, the automobile policy insuring the vehicle responds to any accidents involving that insured automobile.

### **Q. If that is the case, why does the insurance company require information about the driver(s) of the automobile?**

A. This information is required for rating purposes only. Good drivers pay lower premiums.

### **Q. If I have employees/volunteers that are driving their own vehicles for municipal business, should they notify their insurance company?**

A. We recommend that employers encourage all employees/volunteers who use their own vehicles to conduct business on behalf of the municipality to report this use to their insurance broker. Any change in the use of the vehicle must be reported as it can affect the employee's/volunteer's exposure to loss. Failing to do so could seriously impact claims resolution. Since it is the owner's policy that is

primary, the employee/volunteer's insurer should have full disclosure regarding the use of the vehicle.

### **Q. Will this increase their premium?**

A. It depends on the insurance company and how often the vehicle is used for business purposes.

### **Q. What is non-owned automobile liability coverage?**

A. Non-owned automobile liability insurance provides protection to the employee/volunteer against liability imposed by law for loss or damage arising out of the use of or operation of any automobile not owned in whole or in part or licensed in the name of your municipality.

The policy is designed primarily to pay claims in excess of the insurance carried on a vehicle not owned by the municipality while being used or operated on your behalf. In all cases, law stipulates that the vehicle owner's insurance is primary to a non-owned liability insurance policy. Your non-owned auto liability policy only applies if you are named in the suit. If found negligent, the policy will indemnify you. If you are not named in the suit, coverage is not triggered.

### **Q. How do the policies respond in the event of a claim?**

A. In the event of a claim, the employee/volunteer's policy would respond first. For example, if the limit of liability coverage on their vehicle was \$500,000 and a claim cost a total of \$2,000,000, the employee/volunteer's automobile insurance company would pay the first \$500,000 and the non-owned automobile policy could be called on to pay the next \$1,500,000 if and only if your municipality was named in the suit and found to be negligent.

### **Q. What should we do to protect ourselves and our employees/volunteers?**

A. Pass a resolution

The standard non-owned auto coverage only provides excess coverage to the named insured. Under the non-owned automobile policy, the named insured (municipality)

can extend its non-owned coverage to provide excess coverage to its employee/volunteer drivers by passing a resolution. The non-owned automobile resolution will act as the formal/legal trigger for this coverage extension provision.

### **Consider the following:**

1. Since the employee/volunteer's insurance policy is the primary responding policy, it is imperative that:
    - the vehicle be insured.
    - sufficient levels of Third Party Liability coverage be carried by the owner of the vehicle (the mandatory minimum limit of liability insurance in Ontario is \$200,000).
    - the municipality obtain evidence in the form of a letter from the employee/volunteer's insurance broker confirming that insurance is in effect and the policy recognizes the employee/volunteer's work-related use.
  2. Request proof of insurance on an annual basis.
  3. Implement a written policy that specifies:
    - minimum levels of liability insurance for those who operate their own vehicle on behalf of the municipality.
    - the number and type of license convictions that is acceptable (i.e. careless driving; impaired driving; speeding tickets).
    - accident history – number of accidents in the last three years that is acceptable.
- expected maintenance standards especially if vehicle is used to carry passengers.
  - Motor Vehicle Reports (MVRs) ordered annually to ensure that all drivers hold a valid driver's license.
  - the completion of a questionnaire to gather information on current drivers. The questionnaire should ask questions about previous driving history; convictions; accidents; information collected will be subject to privacy legislation.
  - your hands-free communication policy.
  - your requirements in any Employment Contract and in the terms of employment when hiring new staff.
  - how/if this new policy will impact your unionized workforce - check your Collective Bargaining Agreements before implementing.