



# Risk Management Considerations Staff Carrying Clients in Their Own Vehicle in New Brunswick

**E**mployees are sometimes asked to transport clients/students as part of their work related duties. Liability questions are often raised by employees engaged in such activity. Employees need to understand their liability if they choose to transport clients/students.

## The Law

New Brunswick 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 New Brunswick which is the governing legislation for automobile insurance in New Brunswick.

## Does the law change when staff is driving their own vehicle on behalf of and for the employer?

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.

## Why does the owner's automobile's policy respond?

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.

## Risk Management Considerations for Employees driving their own vehicles.

1. Since the employee's insurance policy is the primary responding policy, it is imperative that:
  - The vehicle is insured.
  - The owner of the vehicle carry sufficient levels of Third Party Liability coverage (the mandatory minimum limit of liability insurance in New Brunswick is \$200,000).
  - Occasional use of your vehicle to carry clients/students would be automatically covered and would not violate the policy. If this is more frequent or included in the scope of their duties, the employee should notify their insurer/broker. If it is considered beyond the scope of the basic automobile then an endorsement called "Permission to carry passengers for Compensation- NBEF 6A" is added to the policy. This change could generate an additional premium.

- Should an accident occur, the clients/student would be covered under their own or guardian's policy even though they are being transported in the employee's vehicle. Should they not have an auto policy; the employee's policy would cover the client/student.
  - The employer should obtain evidence in the form of a letter from the employee's insurance broker or insurance company confirming that insurance is in effect and the policy recognizes the employee'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 vehicles on behalf of their employer.
    - 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 vehicles is used to carry passengers.
    - Motor Vehicle Reports (MVRs) ordered annually to ensure 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 Your hands-free communication policy.
    - Your hand-free communication policy.
    - Your requirements in any contract.

### Staff Driver Pledge Form

Some employers will ask the employees to sign a Driver Pledge Form. The form states that employees:

- Provide evidence of current status as a licensed driver, current auto insurance policy and vehicle registration.
- Comply with all of the policies and procedures that have been provided.
- Comply with all laws pertaining to the use of seat belts, child safety seats, cell phone use and speed limits.
- Promptly notify supervisor of any physical conditions, vehicle defects or road conditions.
- Notify supervisor of any traffic citations received while driving on personal time.
- Attend driver training if requested.
- Agree to complete an accident report, cooperate with the policy, supervisor, organization's insurer, insurance adjuster and legal counsel, should an accident occur.

The Staff Driver Pledge Form should include a statement similar to this sample and should be signed by every staff member who drives as part of their duties.

#### Sample:

I pledge that if I drive my own vehicle on behalf of (name of organization), adequate insurance will always be in force; and I also understand that as a driver, the limits and coverage's provided by my personal automobile insurance are applicable to any accidents or incidents that involve my vehicle, including those that occur while I am serving as a driver for (name of organization).

Signature: \_\_\_\_\_

Date: \_\_\_\_\_