MANAGING NONOWNED FLEET EXPOSURES

By J. William Bayne

Safety professionals generally do a fantastic job of managing a great number of risks from confined spaces, elevated work platforms, slips, falls and so on. However, one element often remains that holds the greatest risk of a fatality: a motor vehicle incident.

This may be seen as an uncontrollable risk, with lone drivers working via a commercial or passenger vehicle, or the thought and the implications that other drivers are at fault. There is a misconception that if a driver holds a license, then they are set and ready to go. As safety professionals, we often pay very close attention to our commercial fleets or our owned fleet vehicles, but ignore those employee-owned, or "nonowned," fleet exposures, as this is the employee's responsibility to maintain, and if something goes awry, then it is on them.

According to the Fatality Analysis Reporting System (FARS) and Federal Highway Statistics 2017 data, more than 34,000 fatal motor vehicle crashes occurred in 2017 alone (FHWA, 2020; NHTSA, n.d.). The number is not significantly different in historical years. For 2016, the number is up only 6% to 8% depending on the specific vehicle. Note that these are for vehicles 10,000 lb and greater, so small passenger cars, light trucks and the like are not included. However, according to the National Safety Council (NSC, 2021), it is estimated that 2020 had the highest number of crashes in 13 years despite a national pandemic and far fewer miles being driven overall. The estimated total of 42,060 fatal motor vehicle crashes is quite staggering, to say the least.

It is safe to say that drivers are getting worse. The question is, why? Some would say that it goes back to the invention and mass production of the cell phone. (The technology dates back to the early 1970s, but it would take another decade or more for it to become more than a passing fancy and to make its way to the masses.) Once smartphones gained popularity, there was an even bigger distraction in our hands, from small minicomputers with a full keyboard to slick touchscreen technology and digital keyboards. This is paired with computers in our vehicles and touch screens, and "infotainment" systems that can do everything but make a cup of coffee during a commute. While state laws vary, the general consensus is that there must not be any distraction device in a driver's hands while driving. A good rule to be sure, but this has not curbed the number of crashes and fatal or life-changing events that have occurred on roadways. So, we dig deeper.

No shortage of studies point out issues such as more drivers; as noted, fewer drivers were on the road in 2020, yet crashes increased. Others point to higher speeds, less enforcement or improved economy. However, in the author's opinion, we are no longer driving and we are paying less attention to those who drive for our organizations overall. There is an assumption that everyone knows how to drive or is safe to drive, that it is an innate ability given to us upon receipt of our state-issued driver's license and that we are automatically "good to go."

Organizations large and small must understand that just because they do not own a fleet (which includes company leases or rentals) does not mean they are free from safety issues, liability and overall risk to employees and the organization.

For a nonowned fleet exposure within your organization, this could not be further from the truth. Organizations large and small must understand that just because they do not own a fleet (which includes company leases or rentals) does not mean they are free from safety issues, liability and overall risk to employees and the organization. These vehicles and those who drive them must be treated in much the same manner as a company-owned vehicle and driver: with controls such as motor vehicle record checks, inspections, driver training and more. Let's review these individually for a better understanding.

Motor Vehicle Records

Motor vehicle records are state-managed records of driving history (Figure 1). Similar to a credit history report, this record lists every infraction that a driver has had, such as speeding, driving under the influence or while intoxicated, and failure to yield. Many of these remain on the record for at least 12 months, but this time can extend to 5 years or more depending on the state of licensure.

Why is this important for employers? By running a motor vehicle record history on an individual who drives for the organization, whether full-time, part-time or occasionally, the organization gains a clear picture of who is driving and the risks they may pose to the organization. These reports can be pulled by the drivers themselves for minimal or no cost, by the organization, or by an array of third parties as often as the organization chooses. A best practice is to have these records pulled twice a year or at least annually.

Many organizations rely on their broker, agent or auto carrier to pull their drivers' records. However, there is an incorrect assumption generally with relying on this for motor vehicle records. The agents and carriers of these parties may only pull a percentage (e.g., less than 50%) or a random assortment of drivers. This leaves the organization with unknown risks as to who is driving for the organization. Another area of concern for many organizations is that they do not account for all drivers within the organization.

The organization's driver list should include everyone who drives company vehicles or a personal vehicle for company business, including those in a part-time capacity or those who only drive occasionally, such as an office manager who makes a biweekly bank or post office drop, office staff who travel yearly to an off-site conference in a rental car, outside sales personnel making an occasional call on a local customer, or senior management who also travel as a part of their function. This can be a cause for unwanted risk within the organization.

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Vehicle Inspections

Vehicle inspections are another area where many organizations do not take the time to understand what vehicles employees are driving. While it would be bad form to mandate certain criteria, an employer can have some input and offer assistance to a nonowned fleet driver in some areas. The first of these is education as to why it is important for employees to maintain their vehicles for the safety of themselves as well as their passengers, families and their overall livelihood. Eastern Alliance Insurance refers to this as an N3L3 moment: the next 3 seconds could impact your life, loved ones and livelihood.

When speaking with organizations, the author advises them to treat a nonowned fleet in much the same way as they would their owned fleet: with a daily preuse inspection, which includes looking at the tire tread depth, fluids, fuel level, lights, windows, mirrors and more. Many drivers on the road today simply do not do this. They hop in, turn the key and take off, not taking the requisite time to walk around and give the vehicle a once-over to ensure that it will be safe to drive for the day. Encourage employees to do a preoperation inspection; if they work remotely, make it a part of remote clock-in procedures, and provide an incentive to do so. This incentive can be simple or complex depending on the nature of the organization. One best practice that has been utilized is to partner with a local service shop for free or discounted services (e.g., oil change, filters, fluid top off). The organization can even provide employees with vehicle gift cards for detailing to further incentivize the program.

Safety Driving Pledge

A safety driving pledge is much more than a policy. A pledge is a commitment to driving safety, avoiding distractions, wearing a seat belt, avoiding driving under the influence of drugs or alcohol, or other at-risk activities.

Let's consider the differences between a policy and a pledge. A policy is usually written from the top to be enforced on its way down. It is likely written in a vacuum with little or no input from rank-and-file employees. Now, consider a pledge. A pledge is a promise, an oath to perform a task. Consider the Pledge of Allegiance that occurs in U.S. schools. If we consider the implications and verbiage of that pledge and compare it to a substituted version where the pledge becomes policy, it loses its impact, its implications and does not have the same ring to it.

When we consider the commitment and promise of a pledge, it is positive. The employee is pledging to meet a goal: driving safely and avoiding distractions and other risky behaviors. Taken a step further, we can reinforce this goal throughout the organization through actions such as posting the pledge in a conspicuous place, and encouraging parents of teens to ask their children to take the same pledge and lead by example. The organization can send a thank you letter home to the employee's family, spouse or significant other to thank them for allowing the employee to be a part of their organization and their shining example of taking the safe driving pledge. This again reinforces that desire for safety on and off the job.

Driver Training

Driver training is imperative even if the drivers are not driving the organization's owned fleet. Many drivers on the roadways today may not have received significant driver training since being a teenager. However, based on the known risks of driving professionally, training is a sorely needed endeavor. Drivers on the road today were taught the mechanical aspects of driving. However, what about the defensive or intentional aspects? Defensive and intentional driving is driving with the head up, eyes open, and being fully aware of the other drivers on the roadway and of situations that are up ahead. Driving intentionally is driving with a purpose: driving and nothing else. Not talking on the phone, not adjusting the radio, not getting lost in thought. This requires skills training on behalf of the organization.

FIGURE 1

EXAMPLE OF A MOTOR VEHICLE REPORT

Violation	Points	# of violations	Total Points	Notes
SERIOUS				
DUI/DWI	4			
Refusal of a drug/alcohol field test	4			
Vehicular homicide/assault	4			
Leaving the scene of a crash (hit and run)	4			
Eluding a police officer	4			
Any vehicle-related felony	4			
Drag racing/Reckless driving	4			
>25mph over the speed limit	4			
License suspension	4			
Driving with a suspended license	4			
Texting while driving	4			
Other	4			
MAJOR				
15 – 25 mph over the speed limit	2			
Improper lane change	2			
Failure to yield	2			
Failure to obey traffic control device	2			
Careless driving	2			
Other	2			
MINOR				
<15mph over the speed limit	1			
Improper passing	1			
Improper backing	1			
Distracted driving (other than texting)	1			
Failure to pay a toll	1			
Other	1			
OTHER				
Vehicle collisions	3			
	3			
	3			
Total Points				
4 points or more – High Risk; 2-3 points Moderate Risk; 0-1 – Low Risk				
Driver High Risk ☐	Driver Moderate Risk ☐		Driver Low Risk ☐	
Driver:	Date MVR Pulled:		Reviewer:	

Do not forget about this population of drivers who are driving their own vehicles; they need these skills as well, just as they need other job skills and continuing education. Make this a part of the regular cycle of training. If employees are remote, there are third parties that provide classroom training, web-based portals, video chat options and many more. While these resources may appear cost-prohibitive, they are not when considering the cost of the loss of that employee, the impact on their loved ones, and the many direct and indirect costs associated with a fatal or life-changing event. The cost of training quickly becomes quite reasonable, and technology makes providing training easily accessible.

Nontraditional Vehicles

Many organizations fail to recognize nontraditional vehicles (e.g., motorcycle) as a potential issue when it comes to their nonowned fleet. When employees travel for company business in their conveyances without policy or direction to not travel on nontraditional vehicles, then the organization is left to chance. The risk of a motorcycle crash causing a fatal or life-changing event goes up exponentially.

Consider even the basic differences between passenger vehicles and motorcycles: A passenger vehicle has essentially four walls and a roof for protection, with airbags, seat belts, technology such as lane departure warnings, automatic braking, and more; this alone makes for a pretty safe situation. Motorcycles have none of these features; safety relies on the use of appropriate clothing, and varying state mandates regarding helmet use. These rely on that human element, which is innately fallible, while the passenger vehicle's safety features are present regardless of the actions or inaction of the employee.

Consider language in handbooks and policy manuals, and make it a part of job descriptions and new-hire orientation programs that driving a motorcycle, ATV or another nontraditional vehicle is prohibited for the organization. While the organization may not have any drivers of these conveyances now, it may in the future, and the possibility of those employees crashing would have an immeasurable impact on the organization, and the employees' families and friends if a fatal or life-changing event occurs.

Route Selection

Many organizations do not take route selection into account personally or professionally. Consider that in February 2021, golfer Tiger Woods crashed his personal vehicle on Hawthorne Blvd. in Rolling Hills Estates in California. What is interesting about this stretch of asphalt is that the speed limit is 45 mph, but the average speed has been reported as upwards of 65 to 75 mph or more. This stretch of road is also known for many crashes, some of them fatal (Fox News, 2021). From all accounts that the author could find, the road is in good condition. On the surface, this would be a perfectly acceptable area to travel if not for the high rate of speed, numerous crashes and fatal incidents that reportedly occur frequently.

This is not the only hazardous stretch of road in the country; there is likely at least one in every county, in every state (Peterson, 2019). These are not "best-kept secrets"; often, organizations and employees alike know about them. Yet many still take these routes even when they know of the hazards they pose. Consider route planning efforts for your organization and help to educate nonowned fleet drivers.

Route planning is more than simply plugging an address into a GPS or smartphone. It is taking into account the hazards of the area, the time of day traveling and other factors of concern. This is a level of planning that should be part of every organization. We plan activities such as confined space entries and large lifts with cranes; route planning is no different. Some questions to ask when determining an acceptable and safe route to travel:

- Will I be traveling into the sun (east-sunrise, west-sunset) with potentially limiting vision?
- Will I be near a major city or congested area between the hours of 7 to 8 a.m. or 5 to 6 p.m.?
- Does the route have any steep grades, poor maintenance or other known road hazards?
- Does the route have a higher than average accident rate?
- Is the route rural, where I might encounter sharp turns, hidden drives, loose gravel roads or other known issues?

These are just a few concerns to look out for. Each area may have different concerns or issues to contend with, such as flash flooding, mudslides, cliffs or avalanches. It is also important to consider the appropriateness of the vehicle that employees are traveling in. Vehicles with poor brakes would not fare well on steep grades; vehicles with low stances and bald tires may not be suitable for snowy areas. Consider all of the areas and vehicle appropriateness when planning a route with employees.

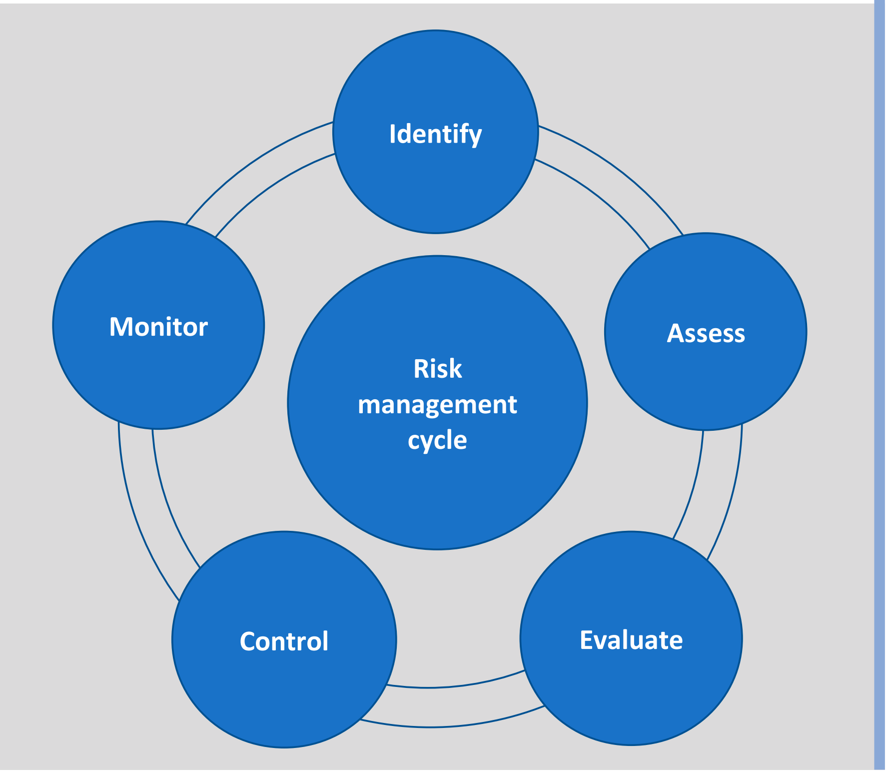
Legal Liability

Another factor that many organizations do not properly take into account is legal liability. When setting a driver to a task in a personal vehicle, the individual becomes an employee in every sense of the word. The driver is on the job and so is the vehicle. The organization becomes responsible for the person's vehicle and actions. This liability cannot be easily waived, if at all. Many will rely on obtaining a copy of the employee's insurance as a safety net. However, this does not prevent the personal auto carrier from subrogating against the organization for damages paid or for third parties to seek compensation from the organization for an employee's accident. If the employee has not selected and informed the carrier that the employee is using the vehicle for professional business, then this issue can be compounded, as the driver has not been properly endorsed and the carrier has grounds to deny the claim. Not all carriers are willing to offer such an endorsement, especially those of a minimum coverage nature or for situations where employees are transporting clients, customers, participants or others. Additionally, if the organization is in the business of delivery such as a courier or food delivery, personal auto carriers may be reluctant to offer coverage for this type of business without an additional premium and advanced notice and approval of this type of use, given the increase in mileage and opportunity for crashes beyond that of a normal driver.

This played out early in the onset for the taxi alternative of ridesharing companies. Carriers did not have advanced notice and did not approve of this as a part of their auto coverage. The organizations themselves relied on the "employee's" coverage for the auto, and what played out in the early days left many of these drivers with no coverage for damage to their vehicles, themselves or their passengers. This has since been resolved all or in part, but the history provides an idea as to the quagmire that can exist when carriers, employers and employees are not all in sync as to the availability of coverage (Console and Associates, 2021).

Even beyond simple insurance coverage are the issues of negligent

FIGURE 2
EXAMPLE RISK MANAGEMENT CYCLE



entrustment and vicarious liability. Merriam-Webster defines "negligent trust" as "the entrusting of a dangerous article (as a motor vehicle) to one who is reckless or too inexperienced or incompetent to use it safely; also, a theory or doctrine making one liable for injury caused by a party to whom one negligently entrusted something." Law.com (2021) defines "vicarious liability" as the

> attachment of responsibility to a person for harm or damages caused by another person in either a negligence lawsuit or criminal prosecution. Thus, an employer of an employee who injures someone through negligence while in the scope of employment (doing work for the employer) is vicariously liable for damages to the injured person.

Simply put, if an organization puts an employee behind the wheel of a vehicle for professional purposes, the company is therein entrusting that person to be an agent of the organization and, if found negligent, the organization holds the bulk of the liability. Vicarious liability comes into play if the event was so egregious that it would involve criminal prosecution. Again, the organization can have a hand in this and be involved in the criminal case.

This begs the question: what controls does the organization have in place to ensure that its drivers appropriately represent the company on the roadways? A good place to start is by examining the company's risk management framework.

Risk Management Framework

A risk management framework is not new, nor does it have to be flashy, but it does have to be done. Whether a company utilizes Z15.1-2017, Safe Practices for Motor Vehicle Operations, or other standards, this framework provides the basis for knowing where you are and where you need to be as well as providing the cycle to continually improve and grow the program. Consider this process, expanded from Deming's plan, do, check act process (Figure 2).

If we identify our hazards, such as driving, accidents, employees, nature of the work and other areas, we can begin to identify where our hazards exist. We can matrix this or put it on a whiteboard, whatever system works for us. Then assess what controls we currently have in place; we may have boilerplate policies or procedures, some basic work planning or other basic elements. Then evaluate where we need to go, based on audits, uncontrolled or undercontrolled risks, to identify where we can improve. Once we move to control these, we can see the work in progress. We can impact the lagging indicators of what we are doing to be better and not simply reacting after an incident. Move toward leading indicators of the controls that are in place and monitor this process at regular intervals, such as biannually or annually to see where to adjust in the future.

An organization's employees are its most valuable asset. The organization likely spends significantly on recruitment, hiring, orientation, outfitting and generally getting employees to day one. As organizations decrease overhead with the reduction of company-owned vehicles and rely on employees driving their personal vehicles and being responsible for maintenance, insurance and other prerequisites, safety professionals must equally match this with their efforts. Consider utilizing a risk management framework to guide the organization toward understanding the risks, current and needed controls, and implementing best practices necessary to control the risk of a fatal or life-changing event. Remember that you cannot get far by looking in the rearview mirror. **PSJ**

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