

Solving the duty of care dilemma

By **ROB INGRAM**, UK business development manager, Enterprise Rent-A-Car

WHILE driving on business in his own vehicle, an employee is involved in an accident that leaves another motorist with fatal injuries. The employee's car is identified as the cause of the accident due to poor vehicle maintenance. As it was a business trip, his employer will be held liable.

The fact that the employee was in his own car, not a company-owned vehicle, is irrelevant. The company will still face a court hearing, the result of which could mean a conviction for corporate manslaughter and hefty fine – not to mention considerable negative publicity.

And all because it didn't fulfil its legislative responsibilities on health and safety in the workplace, which extends to all vehicles used for business journeys.

Businesses must ensure that their vehicles meet government safety standards and that drivers are adequately trained to operate the vehicle they are using. Amazingly, many are still unaware that they have a duty of care to their employees while the latter drive on business.

In sectors where drivers in both cars and vans routinely have to negotiate building sites and uneven ground, driver health and safety is thrown into sharp focus.

Although the present laws may seem daunting enough, they have been criticised for allowing companies to escape conviction due to insufficient evidence. The proposed new corporate manslaughter bill aims to close this loophole.

The new proposals have done away with the need to find a senior manager personally responsible of gross negligence manslaughter. However, there should be no sighs of relief from directors just yet: the new law will complement existing legislation, so if there is a fatal accident they will still need to demonstrate that they fulfilled their duty of care.

Otherwise, under the new law their company could face an unlimited fine. In addition, the

existing corporate manslaughter regime allows for individual prosecutions and it will remain in place. Directors could yet find themselves facing fines or even imprisonment.

It is clear that, when the bill comes into force some time later this year, there will be no room for error. Whether a driver is in a company car or a private vehicle, responsibility remains with the employer.

So why do companies allow private vehicles to be used for business at all? And is there an alternative?

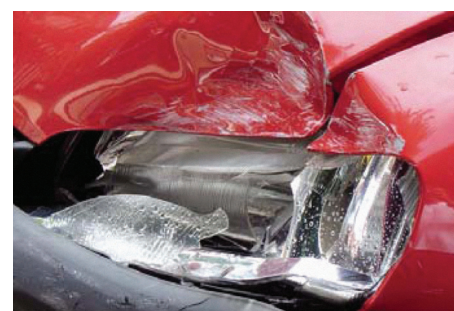
Industry surveys have shown that many businesses do not understand the current law, let alone the pending changes. They wrongly assume that allowing employees to use their own cars will be cheaper for the company. Furthermore, they believe employees will be safer in cars they are already familiar with, even though the condition of the vehicle is unknown.

If there is an accident, companies must provide an 'audit trail' to demonstrate that they did everything possible to ensure the safety of their employee behind the wheel. That means evidence of both the driver and the vehicle being fit for their intended purpose: the former might include specialist driver training, while the latter means a safe, reliable car or van.

Companies are presented with a host of problems when monitoring safety standards for private cars. They must approve all employees' vehicle registration documents, road tax certificates, vehicle servicing records and insurance details prior to allowing the use of private vehicles for business.

If this information is not available, written confirmation or credible third party endorsement must be available to prove the employee has confirmed the existence and contents of the relevant documents. This is costly, time-consuming and may not be 100% effective.

Using rented vehicles for business trips, instead of letting employees drive their private cars, is one



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way around this problem: the daily rental firm will take responsibility for providing vehicles that fully comply with government safety standards. If the vehicle does not meet these requirements then the rental companies take the blame, not the person or company hiring the car.

At first glance some companies avoid this option, wrongly assuming that using a rental company will be difficult to manage and expensive. However, both parties can agree costs up front and develop a transparent system that suits the exact needs of the business.

Where employees have company cars, generally with maintenance services included, companies have a significant measure of control over the vehicle's condition and can often call on the advice of a leasing company. We have found that smaller businesses – such as subcontractors – are more likely to rely on employees using their own cars for business trips.

With vans, the likelihood of an employee using a privately-owned vehicle is much less. However, the specialist nature of commercial vehicles means

that they must be fit for their purpose and suitably maintained. Health and safety is again a major consideration, hence the appeal of rented or leased vans where the responsibility for the vehicle's condition lies with the provider.

Employers cannot afford to neglect their duty of care, nor can they allow management costs to spiral as legislative requirements become stricter. Company directors must comply with their responsibilities on health and safety at work, plus they want the security of knowing that their employees are driving safe, familiar vehicles.

There are ways to get that peace of mind, so it's vital to seek them out. Car rental is one solution that can tick the boxes as far as duty of care goes. For many businesses, it provides the flexibility and convenience that is needed whilst at the same time ensuring that duty of care obligations are covered off.

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