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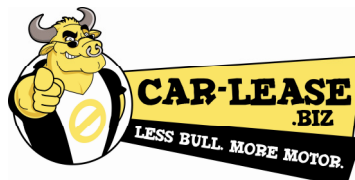
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Essential Duty of Care: Private Cars

For smaller organisations, the use of privately owned vehicles for company business is not a new issue. It is fairly common for staff to use their own vehicles for informal or ad-hoc company business e.g. carrying out the daily banking.

What is new is that the HSE have sought to extend a company's responsibility for the safety of staff to the use of vehicles on the road. As a result, a company has to ensure that, irrespective of its owner, a vehicle is in a roadworthy condition, and is suitable for the job it is being used for.

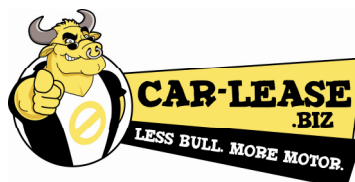
This means that the company has to ensure that private vehicles used on company business by staff are:

- fully taxed
- fully insured for social and business use
- have a valid MoT test certificate
- have been properly maintained
- have had a pre-journey safety check

For larger companies, problems such as this are relatively new, and have come about largely as a result of drivers opting out of the company car scheme. This creates a major headache for fleet managers when considering health and safety issues.

Any employee driving on business is the responsibility of the employer. The same duty of care applies to the use of a private car as to the use of a company car. So, the fleet manager now has to ensure that any vehicle used for company business is fit for purpose, whether it is a company vehicle or not. Companies need to see regular proof that non-company vehicles are properly insured, regularly maintained and roadworthy.

Because of the difficulties with insurance, some organisations opt to pay the business insurance premium themselves. On the other hand, some companies simply ban the use of private vehicles for company business altogether, while others opt for daily car rental.



Essential Duty of Care: The Law

As an employer, you have duties under the Road Traffic Act and Road Vehicle (Construction and Use) regulations. These laws are administered by the police and other agencies e.g. DVLA. Health and Safety guidelines and laws are additions to such laws.

At the time of writing, the HSE are at pains to point out that their document 'Driving at Work: Managing Work-Related Road Safety' is simply a set of guidelines, which are not enforceable by law. However, we would recommend that they are regarded as a benchmark. We believe that is how the courts will treat them.

It would appear that the Government is committed to the introduction of new corporate manslaughter laws. This could mean that senior company executives will be brought to court for failing in their duty of care, should a serious incident occur in a vehicle which is being used for company business.

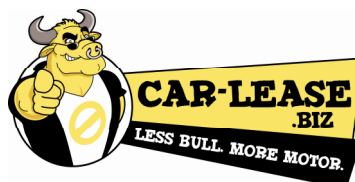
The Health and Safety at Work Act 1974 requires employers to ensure, so far as is reasonably practicable, the health and safety of all employees while at work. It is also your responsibility to ensure that others are not put at risk by work related activities.

Under the Management of Health and Safety at Work Regulations 1999, you have a responsibility to manage health and safety effectively.

Health and safety law does not apply to commuting. However the new HSE guidelines do extend company responsibility to ensure the safety of journeys to and from work, even though such trips are not counted under the Working Time Directive, nor are they eligible for allowable business expenses under Inland Revenue rules.

Particular features of road traffic and employment law which need to be borne in mind include:

- all drivers must hold a valid driving licence
- drivers who lose their licence may not be dismissed unless the possession of a valid driving licence is specifically mentioned in the employee's contract of employment
- employers and employees could face prosecution if they colluded in allowing the employee to drive when they were disqualified



- it could be an offence for an organisation to set its drivers unrealistic time schedules, which result in them breaking speed limits
- it could also be an offence to have payment or rewards systems in place which effectively turn a journey into a race
- it could be an offence for an organisation to require or permit an employee to drive a vehicle which was in an un-roadworthy condition
- vehicles must be taxed, and where appropriate, have a valid test certificate
- drivers must be insured for social and business use (employees need to have cover when using their own vehicles for work purposes)
- there is a clear requirement for drivers involved in accidents to exchange names, addresses and insurance details and to report such details to the police within 24 hours, where there is an injury to any party

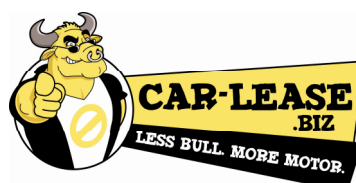
Essential Duty of Care: Developing a policy

According to the HSE, case studies and research have shown that benefits from managing work-related road safety and reducing crashes include:

- fewer days lost due to injury
- reduced risk of work-related ill health
- reduced stress and improved morale
- less need for investigation and paperwork
- less lost time due to work re-scheduling
- fewer vehicles off the road for repair
- reduced running costs through better driving standards
- fewer missed orders and business opportunities so reduced risk of losing goodwill of customers
- less chance of employees being banned from driving

These benefits can be regarded as the business benefits, but there is also an ethical case for operating a duty of care policy. Road accidents impose unquantifiable human costs on their victims, relatives and friends. Accidents damage lives and wreck families. No amount of money can compensate for loss of a loved one or severe disability as a result of an accident. Even relatively minor road accidents can lead to time off work due to minor whiplash or psychological trauma, some of the effects of which can be long lasting.

The HSE points out that the promotion of sound health and safety driving practices and a good safety culture at work may well spill over into private



driving, which could reduce the chances of staff and their families being injured in a road traffic accident outside work.

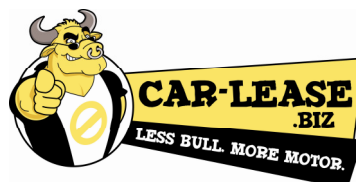
Their guidance in 'Successful Health and Safety Management' advocates a five step approach to the management of safety.

According to HSE, organisations need to have:

- a clear policy statement which is communicated to all employees outlining their safety objectives. It is important that this policy statement is vigorously supported by senior management at the highest levels. If you have five or more staff, it is a statutory requirement to make your health and safety policy available to every member of staff. This policy should make it quite clear that it is the organisation's policy to operate vehicles in a safe, efficient and effective manner by minimising vehicle related risks to employees.
- good safety organisation with clear responsibilities and relationships, designed to promote a positive safety culture and the implementation of safety policies. Your safety objectives should be properly documented and widely available. They should clearly identify who has active responsibility for health and safety. They should explain that line managers are expected to co-operate with HR and fleet managers and health and safety experts. They should also encourage co-operation and effective communication, ensuring competence of staff at every level.
- a planned approach to safety with performance standards for eliminating or controlling risk, based upon risk assessment. The policy should have clearly prioritised and time based targets for implementation.
- adequate means to measure safety performance, by actively monitoring compliance with safety standards and by investigating the causes of accidents and incidents.
- appropriate procedures for reviewing performance against targets, auditing health and safety management processes and feeding back information so that policies can be developed and improved. This final step is crucial.

Essential Duty of Care: Car Checks

It is now distinctly possible that the courts will hold a company responsible for the well-being of its staff on company business, not only in company owned vehicles, but also in private vehicles used for business. As a result, it is



essential that the organisation has clear policies in place to ensure that vehicles are checked before being used on company business.

Pre-Journey Safety Checks

Recent research has indicated that many drivers actually do not know how to check their oil levels, or how to conduct basic vehicle maintenance. It is therefore essential that the company ensures a basic level of driver awareness about vehicle maintenance.

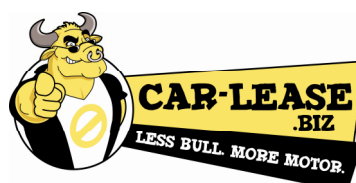
[RoSPA](#) recommends the following items should be checked before any journey is undertaken. Whether all of these checks can be deemed as 'reasonable' is a matter for debate however.

- Lights and indicators should be checked to ensure that they are working properly
- The windscreen should be checked for chips or cracks
- Windows and mirrors should be checked to ensure there is no broken glass in the vehicle
- Washers should be checked to ensure they operate effectively
- Washer fluid levels should be checked and topped up where necessary
- Power steering fluid and coolant system (with 50% anti-freeze, where necessary) should also be checked
- Brake / clutch fluid and battery electrolyte levels also need checking (except maintenance free battery)
- The controls on the vehicle should be checked to ensure they are working properly
- The vehicle should also be checked for signs of damage that may be a danger
- Fuel level should be checked to ensure enough fuel for the journey
- Tyre pressures and condition should also be checked, including the spare wheel

Routine Maintenance

It is important that cars are regularly serviced at the recommended intervals to ensure their long term reliability. These intervals can be found in the manufacturers handbook for each vehicle.

We believe in the use of the appropriate manufacturers franchised repair network, where trained technicians with the expertise and modern equipment



necessary to maintain vehicles to the highest possible standards are available.

By having vehicles serviced in accordance with the manufacturers programme, you will find that not only do you maintain performance quality, but you will also help to increase the resale value of the vehicles for your company.

Should you need to make a claim under the manufacturers warranty, this will be dealt with promptly and efficiently, only if the vehicle has been serviced in accordance with the manufacturers recommended programme. Lack of servicing, or late servicing may invalidate the warranty and cost your organisation money.

No modification, addition, extension or alteration should be made to the original factory specification, where this will affect the performance, handling or general safety of the vehicle.

Tyre Maintenance

Tyre pressures levels can be found in the vehicle handbook. For the best handling characteristics and extended tyre life, tyre pressures should be maintained at these levels.

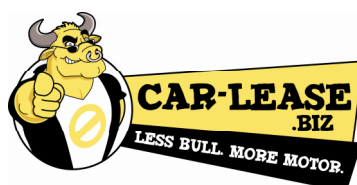
By law, tyres must be replaced when the tread depth across $\frac{3}{4}$ of the width of the tread throughout the entire circumference of the tyre falls below 1.6mm. There must be no damage to the tyre body, either sidewalls or tread, no bulges or cuts.

Essential Duty of Care: Risk Assessment

The Health and Safety Executive is of the opinion that a failure to properly manage work-related road safety is more likely to endanger other people than a failure to properly manage other risks in the workplace.

They have published a Guide to Risk Assessment Requirements in addition to further guidance available in their Driving at Work document. Both documents outline a 5 step approach to risk assessment.

Look for Hazards that may result in harm when driving on public roads. The main areas to consider are the driver, the vehicle and the journey. It is



important to ask your employees what they think, as they will have first hand experience of what actually happens in practice.

Decide who might be harmed. This will normally include the driver and any passengers, but also other road users or pedestrians. Consider whether there are any groups who may be particularly at risk e.g. young or newly qualified drivers or long distance drivers.

Evaluate the risk and decide whether existing precautions are adequate. You need to consider how likely it is that each hazard will cause harm. This will help you decide whether or not you need to do more to minimise risk. The fundamental question is whether any remaining risk is acceptable. Can a hazard be completely eliminated? If not, think about how to control the risk to reduce the possibility of harm.

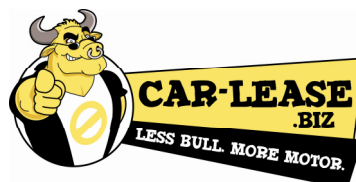
- Does your policy of car allocation encourage driving as opposed to other forms of transport?
- Consider alternatives to driving e.g. train, use of telephone etc.
- Avoid situations where employees are placed under pressure e.g. unrealistic delivery schedules.
- Ensure that vehicles are maintained in line with manufacturer recommendations to ensure long term reliability.
- Check that vehicle safety equipment is fully functional e.g. seatbelts, airbags etc.
- Make sure that company policy covers important aspects of The Highway Code.

Record your findings. Employers with five or more employees have a legal obligation to record details of risk assessments. You need to be able to show that proper checks have been made, that you consulted those affected and that you dealt with the obvious hazards.

Review your assessment. Your assessment should be monitored and reviewed, and revisions made where necessary. Business is never static, so where circumstances change so also should the assessment regime. It is good practice to review your assessment on a regular basis to ensure that precautions you have taken are still controlling road-safety risks effectively.

Essential Duty of Care: Speeding

In 2002 the Department for Transport carried out a speed survey, which showed that up to one third of road crashes were as a result of excessive



speed. They found that there were 72,000 speed related crashes each year in which 1,100 people are killed and over 12,000 injured.

More than half of all cars exceed the speed limit in urban areas or on motorways. Most drivers will admit to speeding, but research shows the groups most likely to speed include:

- Drivers who drive as part of their work
- Young or novice drivers
- Male drivers
- Car drivers from high income households
- High mileage drivers of newer, larger cars
- Company car drivers

At 35mph a driver is twice as likely to kill someone as they are at 30mph. Impacts at higher speeds are more severe than lower speeds and thus lead to more serious injury. However, the probability of serious injury to a passenger travelling at 30mph is three times greater than at 20mph.

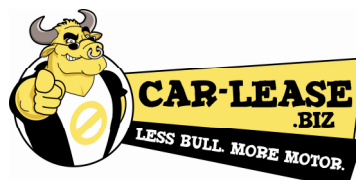
Speed Cameras

The Road Traffic Act 1991 enables Courts to accept evidence of speeding from type-approved cameras accompanied only by a certificate signed on behalf of the relevant police force.

Speed cameras are an emotive issue, and arguments relating to the use of income from them and the positioning of cameras still rages. However, survey after survey seems to prove that speed cameras reduce accidents.

Surveys conducted before and after the introduction of speed cameras shows that on average:

- The percentage of drivers exceeding the speed limit fell from 47% to 20%
- Average speeds fell by 10%
- The number of people killed fell by 35%
- The number of people seriously injured fell by 27%
- There was a 56% reduction in the number of pedestrians killed or seriously injured



The term 'inappropriate speed' encompasses situations where the speed limit is exceeded, but also where driving within the speed limit becomes too fast due to particular road conditions.

RoSPA 10 Point Code on Preventing Inappropriate Use of Speed

- The organisation should promote safer driving
- A policy on speed should be communicated to everyone
- The organisation should make it clear that it expects employees to drive within speed limits
- All senior managers should lead by example
- Safe journeys should be planned with sufficient time for rest breaks
- Avoid work-related targets which may cause the use of inappropriate speed
- The allocation of powerful company cars should be controlled
- Companies should actively monitor to assess employee compliance with policy
- Accidents should always be investigated
- Liaise with local police authorities on best practice issues

Driver Hours

Official research suggests that a 15 minute break for every two hours of driving is vital to avoid driver fatigue. The important point is that the 15 minute break is not just a break from driving, it is a genuine break from work.

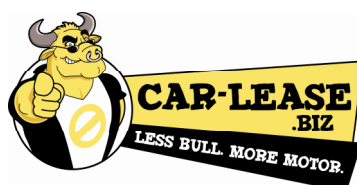
It is important that companies do not provide any form of financial incentive or un-realistic delivery schedules that would encourage drivers to drive excessive number of hours.

Essential Duty of Care: Mobile Phones

Since December 2003 it has been illegal to use a hand-held mobile phone while driving. If you are caught using a mobile phone, you risk a fixed penalty of £30, or a fine of up to £1,000, if the case goes to court.

It is also the Government's intention to raise the fine to £60 and to make it an endorsable offence resulting in 3 penalty points. These changes will be implemented as soon as 'a suitable legislative opportunity arises'.

It is also an offence to use a mobile phone while supervising a driver who only has a provisional licence.



A hand-held mobile phone is defined as 'a mobile telephone or other device which is, or must be, held at some point during the course of making or receiving a call or performing any other interactive communication function'.

A person is 'driving' if a vehicle is stationary but the engine is running, or the vehicle is being driven.

As far as employers are concerned, the law includes an offence of 'causing or permitting' a driver to use a hand-held phone while driving. This means that employers can be found guilty of an offence if they permit staff who drive for work to use a hand-held mobile phone while driving.

RoSPA's view is that the use of mobile phones while driving should be banned completely. The Government appear to accept that using a mobile phone, even with a hands-free kit, distracts the driver and increases the risk of an accident.

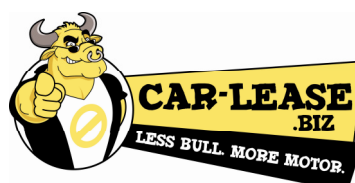
Consequently, RoSPA considers that employers would be unwise to simply respond to this new legislation by issuing staff with hands-free kits. Even if the use of a hands-free kit while driving does not contravene the specific legislation covering the use of hand-held mobile phones, employers could fall foul of health and safety laws if an investigation finds that the use of a phone contributed to an accident.

RoSPA recommends that employers introduce a policy along the following lines:

You must not make or receive a call on a mobile phone (whether hands held or hands free) as the driver of a vehicle unless it is parked in a safe place with the engine switched off. No line manager shall require an employee to receive a call on a mobile phone while driving. Contravention of these requirements will be regarded as a serious disciplinary matter.

Essential Duty of Care: Key Points

- It is crucial that the company health and safety ethos is introduced to new employees and drivers as quickly as possible. It should form an integral part of employee induction.
- It is essential that a complete record of accidents is maintained within the organisation, or through an accident management services company.

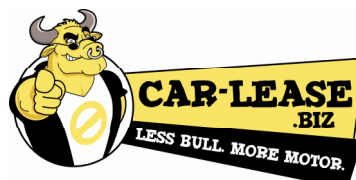


- The nature of accidents, the frequency and the responsibility must all be carefully analysed.
- Each driver must hold a valid drivers licence. We recommend that this is included in the employee's contract of employment.
- We also recommend that regular checks on driving licences are conducted i.e. obtain photo-copies of driving licences perhaps once a year (including all family drivers).
- It is important that the organisation ensures that every driver is medically capable of driving a vehicle on the road. Medical checks can help this process.
- Drivers eyesight should also be checked on a regular basis.
- Make sure that lines of communication are clear and that the organisation's safety policy is widely available and has been issued to every driver.
- Make sure all drivers know their responsibilities and that they are capable of carrying out simple safety checks such as oil, water and tyre pressure checks.

Along with the Department for Transport, the Health and Safety Executive have published guidance on work-related road safety, entitled Driving at Work. This is an excellent publication and is essential reading for every fleet decision maker and fleet manager.

According to this booklet, some of the key questions you must ask are:

- Are drivers capable of doing their work in a way that is safe for them and other people?
- Are you satisfied that drivers are properly trained?
- Are you sure that drivers are sufficiently fit and healthy to drive?
- Are vehicles fit for the purpose for which they are used?
- Are vehicles properly maintained?
- Is safety equipment properly fitted and maintained?
- Do drivers have access to information that will help them reduce risks?
- Do drivers plan their routes and more importantly, are work schedules or delivery schedules realistic?
- Is sufficient time allowed to complete journeys safely?
- Are you satisfied that drivers will not be put at risk from fatigue caused by driving excessive distances without appropriate breaks?
- Is sufficient consideration given to the effects that weather conditions will have on journey times e.g. snow or high winds?



Essential Duty of Care: Sources of Information

Managing Occupational Road Risk

Available from the Royal Society for the Prevention of Accidents (RoSPA) on 0121 248 2000.

Health and Safety Executive

<http://www.hse.gov.uk>

In particular, the HSE's Driving at Work booklet can be downloaded at

<http://www.hse.gov.uk/pubns> (leaflet number is 'indg382.pdf')

