

**OFFICE OF GENERAL COUNSEL
LEGAL OPINION**

Liability Coverage for Vehicles Driven by State Employees

State Owned or Leased Cars

Although the state of Tennessee does not have an insurance *policy*, it does have motor vehicle *liability coverage*. State employees are covered for loss or damage to cars used in the course of employment provided that the employee was authorized to rent or use a motor vehicle paid for by the state at the time of the incident giving rise to the claim. This applies to state-owned vehicles or cars rented by the institution.

State employees are also covered for claims for personal injury related to negligent operation of a motor vehicle for injury incurred by passengers, including students, provided the employee was acting within the scope of employment at the time of the accident. Additionally, if the accident was caused by the negligence of the state employee, the driver and any passengers of other cars involved in the accident could also file claims for personal injury and damages to their vehicles through the Board of Claims. This also applies whether the car driven by the state employee is owned or leased by the state.

Third parties who are injured or suffer damage to personal property will be compensated by the state for that personal injury and property damage up to a maximum of \$300,000 per claimant and \$1,000,000 per occurrence (meaning if more than one person is involved).

Injury to the state employee is covered under worker's compensation law.

The employee is *not* covered and may face personal liability if he or she was acting unlawfully (e.g., did not have a valid driver's license), was grossly negligent (e.g., was under the influence of narcotics or alcohol), or was acting outside the scope of his or her employment.

The travel must be required as a part of an official institutional program or activity that is necessary for the proper execution of official business; in justifiable pursuit of the institution's educational and research objectives; or travel that is required for meetings and conferences of a professional nature that will increase the attending employee's usefulness to the System (see TBR policy 4-03-03-00).

The Division of Claims Administration authorizes payment for damage to rental cars used in the course of employment under Tenn. Code Ann. 9-8-111 (a)(2)(B), "provided that the employee was authorized to rent or use a motor vehicle paid for by the state at the time of the incident giving rise to the claim." The text of Tenn. Code Ann. 9-8-111, addressing rental cars, provides in pertinent part:

- (a)(1) The state shall compensate state employees for the loss, damage or destruction of personal property which is not otherwise compensable which occurs in the course of employment and which is required by the state to be used in the course of employment.
- (2) For purposes of this section, a motor vehicle shall be considered required by the state to be used in the course of employment only if :
 - (A) The employee was reimbursed for mileage by the state for use of such motor vehicle at the time of the incident giving rise to the claim; or
 - (B) **The employee was authorized to use a rental motor vehicle paid for by the state at the time of the incident giving rise to the claim.**

With respect to personal injury, Tenn. Code Ann. 9-8-307 provides compensation under the following circumstances:

A) **The negligent operation or maintenance of any motor vehicle** or any other land, air or sea conveyance. In addition, the state may be held liable pursuant to this subdivision for negligent operation of state-owned motor vehicles or other conveyance by persons who are not state employees; provided, that such persons operated the vehicle or other conveyance with the permission of a state employee;

* * *

K) **Workers' compensation claims by state employees**, including injuries incurred by national guard members, Tennessee state guard members, civil air patrol members, civil defense agency personnel and emergency forest firefighters while on active duty and in the course of that duty;

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Q) (i) **Claims for injuries incurred by persons where such injury occurred while the person was a passenger in a motor vehicle operated by a state employee while such employee was acting within the scope of employment.** The claimant has the burden of proving the following:

- (a) The injuries suffered by the claimant occurred as a result of an accident involving a motor vehicle operated by a non-state employee and a motor vehicle operated by a state employee who, at the time of the accident, was acting within the scope of employment;
- (b) The proximate cause of the accident was the negligent operation of the motor vehicle operated by the non-state employee;
- (c) The claimant has been unable to recover any damages from the negligent party because the negligent party was uninsured or underinsured at the time of the accident and is otherwise financially incapable of fully compensating the claimant;
- (d) The claimant has been unable to recover sufficient amounts under the Workers' Compensation Law or from any other public or private source, including the claimant's uninsured motorist's insurance policy, to fully compensate for the injuries suffered; and,
- (e) The claimant's presence in the motor vehicle operated by the state employee was for the benefit of the state, except that this requirement shall be waived for persons who are injured while a passenger in a state-owned motor vehicle used in the state employee van pool program...

Use of Personal Cars for State Business

The same degree of liability coverage with regard to personal injury or property damage of third parties involved in an accident with a state employee stated above applies when a state employee uses a personal vehicle for institutional business.

As stated previously, the travel must be required as a part of an official institutional program or activity that is necessary for the proper execution of official business; in justifiable pursuit of an institution's educational and research objectives; or travel that is required for meetings and conferences of a professional nature that will increase the attending employee's usefulness to the System (see TBR policy 4-03-03-00).

If an accident occurs while an employee is operating a personal vehicle on state business, the state provides liability coverage for injury to third parties as long as the employee's conduct was not (1) outside the scope of the employee's employment; (2) willful, malicious, criminal or involved personal gain; or (3) grossly negligent. Use of the personal vehicle must be authorized under TBR policy 4-03-03-00, and the employee must be eligible for-and-claim mileage reimbursement.

T.C.A. 9-8-111 provides, with regard to compensation for damage to personal property:

(a)(1) The state shall compensate state employees for the loss, damage or destruction of personal property which is not otherwise compensable which occurs in the course of employment and which is required by the state to be used in the course of employment.

(2) For purposes of this section, a motor vehicle shall be considered required by the state to be used in the course of employment only if:

(B) The employee was reimbursed for mileage by the state for use of such motor vehicle at the time of the incident giving rise to the claim.

(c) In cases where the employee has the benefit of insurance coverage for the personal property, the employee shall not be compensated by the state unless the employee has attempted to obtain compensation from such insurer. The state shall compensate the employee only to the extent the employee is not compensated by the insurer.

(d) In cases where the loss, damage or destruction is to a motor vehicle and the employee does not have the benefit of insurance coverage for the motor vehicle, the employee shall be compensated by the state in an amount in excess of five hundred dollars (\$500).

(e) The burden shall be upon the employee to prove the extent of the loss, damage, or destruction of personal property and the failure of an insurer to compensate for such loss, damage or destruction. The state shall only be responsible for compensating employees to the extent that such proof is submitted.

Read together, these provisions provide coverage to state employees and their passengers while driving or riding on state business, as well as to third parties who are injured or whose personal property is damaged. To file a claim, the injured party should contact the State of Tennessee Division of Claims Administration. The address is:

State of Tennessee
Division of Claims Administration
Eleventh Floor, Andrew Jackson Building
Nashville, Tennessee 37243-0243
(615) 741-2734

The claimant will need to call and request that a claim form be faxed to them. When it is sent back to DCA, the claim should include any damage estimates, a copy of the police report, and whatever other documents the claimant deems pertinent. Injured employees should file a workers compensation claim.

With respect to claims filed outside Tennessee, if the jurisdiction does not recognize the employee's immunity, the board of claims is authorized to pay final judgments for state employees for any damages, including interest, awarded in a final judgment in a civil lawsuit against the employee in a court of competent jurisdiction where it is determined by the board that the incident on which such damages were awarded occurred while the employee was "acting in good faith, within the scope of such employee's official duty, and under apparent lawful authority or orders." Because the employee's immunity devolves from state law, an employee may not be immune from liability for acts occurring outside of the state. The answer to this

depends on whether the state at issue recognizes Tennessee's immunity. Even if the state does not, the employee still has coverage. The employee can be sued in that jurisdiction's courts, but if the employee is found to be legally liable, he or she can request that the state pay the amount of the judgment, as well as the employee's reasonable legal fees if the employee is required to retain counsel. Typically, such suits are handled by an attorney appointed by the Tennessee Attorney General's office to represent the employee.

For all accidents, whether in Tennessee or out of state, exclusions from coverage include acts of God; natural disasters, gross negligence (e.g., drunken driving); acts outside the scope of the employee's official duties (e.g., frolics); illegal acts (e.g., driving without a valid license); willful, intentional, malicious acts; and, acts performed for personal gain.

1. What dollar value of coverage is provided to TTU employees when they are operating a vehicle? If the employee is operating the car in a reasonable fashion, in a job related function will he be fully indemnified for an accident?

If the travel is required as a part of an official institutional program or activity that is necessary for the proper execution of official business in justifiable pursuit of an institution's educational or research objectives; or to meetings and conferences of a professional nature which will increase the attending employee's usefulness to TTU, the employee is covered, meaning that there is state-provided liability coverage. The limit of this coverage is \$300,000 per claimant and \$1,000,000 per occurrence (meaning if more than one person is injured).

If the employee is operating the car in a reasonable fashion and in a job related function will he be immune from liability? Yes. The employee will not be covered by immunity if his conduct is:

- (1) outside the scope of the employee's employment;
- (2) willful, malicious, criminal, or involved personal gain; or
- (3) grossly negligent

Absent the above-noted exceptions, the employee is immune from liability, meaning that he or she cannot be held personally liable for money damages even if the actual damages exceed the statutory limit.

2. If a state employee is traveling on official business and has a family member in the car, would that family member be covered if an accident occurred?

No.

3. If an accident occurred while an employee was operating a personal vehicle on TTU business, whose coverage would pay for the accident? Who would be responsible for the deductible?

If the travel is required as a part of an official institutional program or activity, the state provides liability coverage for injury to third parties as long as the employee's conduct was not (1) outside the scope of the employee's employment; (2) willful, malicious, criminal, or involved personal gain; or (3) grossly negligent. Use of a personally-owned automobile must be authorized under TBR policy 4-03-03-00, and the employee must be eligible for – and claim – mileage.

Under the *Employee Property Damage* statute, Tenn. Code Ann. 9-8-111, the state will compensate employees for the loss, damage or destruction of personal property that is not otherwise compensable that occurs in the course of employment and which is required by the state to be used in the course of employment. The "not otherwise compensable" language is interpreted to mean that a claim must first be made against the other driver's insurance. If the other driver's insurance does not pay and if the damage is not compensable under the employee's own insurance policy (which it usually is not), then the state would pay under the EPD statute. As stated by the EPD statute, "In cases where the employee has the benefit of insurance coverage for the personal property, the employee shall not be compensated by the state unless the employee has attempted to obtain compensation from such insurer. The state shall compensate the employee only to the extent the employee is not compensated by the insurer."

A motor vehicle is considered to be required by the state to be used in the course of employment only if the employee was reimbursed for mileage by the state at the time of the incident giving rise to the claim.

The Division of Claims Administration (DCA), a division of the Treasury, is responsible for investigating and making determinations on claims for workers' compensation and employee property damage. DCA

determines whether damage to a personal vehicle or a deductible would be covered. With respect to the deductible under the EPD statute, the state would pay the deductible if the employee was not negligent.

4. If an employee operates a vehicle in a negligent fashion, what impact does that have on the coverage?

If the travel is required as a part of an official institutional program or activity, there would be liability coverage **for injuries to third parties** even if the employee was negligent. Under the EPD statute, the state will **not** pay for damage to the employee's own car if the employee is grossly negligent.

5. If an employee traveling out of town drives at night to a restaurant for dinner, is that considered official business? What if he travels to an entertainment venue or a shopping mall? Is he still covered by the state under both these circumstances?

Travel that is necessary for the proper execution of official business, or in justifiable pursuit of an institution's educational or research objectives; or to meetings and conferences of a professional nature which will increase the attending employee's usefulness to the System is covered.

We are not aware of any law or policy specifically addressing driving to restaurants, malls, etc., so I cannot state with certainty whether this would ever be covered.

Conceivably, a business dinner **could** be classified as necessary for the proper execution of official business, or in justifiable pursuit of an institution's educational or research objectives if it involved an educational affiliate, donor, or business partner.

6. Has an individual ever been personally sued in Tennessee for operating a state car when there was no negligence?

Of course. It happens all the time. The employee must immediately advise their agency legal counsel upon receiving service of the lawsuit. Agency legal counsel notifies the state Attorney General's office, which files a motion to dismiss the claim for lack of jurisdiction based on the employee's state immunity. Once the suit is dismissed against the individual employee, it is typically refilled against the state/institution in the Claims Commission.

7. Do drivers of 15 passenger vans have sufficient state coverage?

They have coverage of \$300,000 per injury and \$1,000,000 per occurrence (meaning if more than one person is injured).

8. If an employee is involved in an accident while on official business could the injured party elect to sue the employee instead of the state?

They could sue the employee, but they would not recover any damages. The state employee has immunity, which means that no state or federal court in Tennessee may enter a judgment against the personal assets of a state employee on a civil, state law claim arising out of acts or omissions by the employee unless: (1) the act or omission was outside the scope of the employee's employment; (2) the act or omission was willful, malicious, criminal, or involved personal gain; or (3) they were grossly negligent.

9. Do Tennessee laws regarding immunity from liability apply if the employee is driving a state automobile in another state?

No. The immunity of state employees under Tennessee law has no mandatory effect in courts outside Tennessee. Whether other states recognize Tennessee employees' immunity depends on their willingness to

do so as a matter of comity. Generally speaking, if a state has granted immunity to its own employees, the courts of that state will be inclined to recognize the immunity granted by another state. Mississippi and Arkansas recognize Tennessee's state employee immunity. Nevada, Alabama and New Jersey do not.

If the other state does not recognize Tennessee immunity, Tennessee can reimburse an employee for actual damages, interest, costs and attorney fees paid by the employee when individual liability is imposed by a court and damages are awarded in a civil lawsuit, up to a maximum of \$300,000 per plaintiff and \$1,000,000 per occurrence under Tenn. Code Ann. 9-8-112(h). This includes all federal law actions (in which the employee's state law immunity has no effect) and any state law action in which the employee's immunity is not sustained.

In its discretion, the Board of Claims may reimburse the employee for amounts beyond these limits.

10. The bottom line is that our employees are asking questions and what they want to know is “are they covered by the state when they are driving a state automobile.”

Yes, in Tennessee, unless: (1) they are acting outside the scope of their employment; (2) they drive the car in a manner that is willful, malicious, or criminal, (3) they are acting for personal gain; or (4) they are grossly negligent.

Outside of Tennessee, it depends on the other state's law and whether Tennessee's immunity is recognized as a matter of comity.

11. Could you list instances where they would not be covered, if any, and how/who would determine if they are covered should an accident occur.

The following is a non-exhaustive list of things that are not covered:

- *Willful or malicious conduct;
- *Criminal misconduct;
- *Gross negligence;
- *Conduct that involves personal gain;
- *Conduct that is outside or unrelated to the employee's office or assigned duties; and
- *Conduct that occurs while the employee is on a personal frolic.