Steering Clear of Liability: Motor Vehicle Report (MVR) Checks for Employee and Student Drivers

Those who drive on behalf of your institution—both employees and students—help expand the services, experiences, and opportunities the institution can provide. Whether the drivers are buildings-and-grounds staff members who are transporting materials to campus facilities, student recruiters promoting your institution at high schools, faculty members transporting students on a field trip, or other institutional representatives on the go, they are important to your operations. However, drivers may also increase your institution’s liability.

Ignoring bad driving records can be regarded as reckless or grossly negligent conduct that could lead to punitive damages. To avoid liability, take ensure that your institution’s drivers have good driving records by conducting motor vehicle report (MVR) checks on drivers.

An institution’s failure to check an applicant’s driving history can cost dearly. Consider this recent claim:

A new staff member of a university’s athletics department was hired to drive a college-owned van to transport equipment to and from various athletic venues. Two months into the job, the employee was delivering equipment across campus, went through a red light, and collided with a vehicle occupied by a young mother and her infant. Both passengers sustained serious bodily injuries.

During litigation, the university’s counsel learned that neither the athletics department nor human resources checked the employee’s driving history, which revealed that the employee had nearly a dozen moving violations and that his license had been revoked twice in the prior 10-year period. This claim resulted in a seven-figure settlement.
Employer Liability

The law imposes liability on an employer who entrusts a vehicle to a poor employee or student driver. Institutions should understand these legal concepts when determining who is qualified to drive while conducting campus business or driving institution-owned vehicles:

- **Negligent hiring** focuses on the person selected for a particular job. If at the time of hire an institution fails to consider relevant information about the applicant’s experience and qualifications, then it may be liable for injuries resulting from that negligent hiring decision. For example, if the institution hired someone with a poor driving record for a position that requires driving, the institution could be liable to a person injured in a traffic accident caused by the employed driver.

- **Negligent entrustment** imposes liability when an institution entrusts to a party (not necessarily an employee) property that injures another while in the party’s possession. For example, negligent entrustment can occur when an institution provides a motor vehicle to an employee without first ensuring that a propensity for dangerous driving behavior does not exist. An injured party can assert a negligent entrustment claim involving employed drivers years after they are hired on the premise that the institution failed to monitor the employee’s driving records during the course of employment.

Components of a Sound MVR Policy

Establishing a clear MVR policy that includes consistent and regular MVR checks for all drivers can help protect your institution before a costly accident occurs. A comprehensive MVR policy for employees or students states the institution’s procedures for conducting reviews, the minimum requirements drivers must have before driving for institution-related activities, and the institution’s expectations for minimum performance in driving-related positions. Specific provisions of a policy may include the following:

1. **Applicability of the MVR policy.** This provision specifies which positions must include an MVR review as part of the hiring process and ongoing employment, and how reviews would be conducted for an institution’s fleet vehicles. (See below, “Applying the MVR Policy.”)

2. **Minimum age and driving experience requirements.** Studies show that experienced drivers tend to have fewer accidents than inexperienced drivers. Some institutions require that all drivers be at least 21 years old, while others require that drivers have at least three years’ driving experience. The policy may require that drivers who will operate a particular type of vehicle have practical behind-the-wheel experience with that vehicle.
3. **Violations that disqualify a job candidate or an employee from driving on the institution’s behalf.** One of the easiest ways institutions can avoid negligent hiring and negligent entrustment claims is to bar drivers with serious or multiple violations, or both, from driving their vehicles. This prohibition includes those in driving-related positions as well as individuals using an institution’s fleet vehicles. Many MVR policies identify specific moving violations that can disqualify an individual from performing driving tasks or operating an institution-owned vehicle if they occur within a particular time period prior to or during employment. Examples include:

- Operating a vehicle under the influence of drugs or alcohol within the prior five years
- Vehicular homicide
- Drag racing offenses
- Felonies involving a vehicle
- Driving on a suspended or revoked license
- A hit and run accident
- Fleeing police in a motor vehicle
- Two or more speeding violations in the prior three years or less

Other MVR policies use the state’s point system as a standard for evaluating an employee or student’s driving record. These policies typically set the maximum point count acceptable for drivers at a total lower than that the state requires to suspend or revoke a license. For example, a state may suspend a license when a driver accumulates seven points, whereas an institution’s policy may disqualify those from driving tasks when they accumulate five points.

If your policy uses a point system, be sure to check with your state’s Department of Motor Vehicles to understand how points are assessed. Also, understand that variances in how points are assessed exist from state to state. Consider this when evaluating a driver’s MVR from another state.

4. **Continued monitoring of a driver’s records.** Aside from checking driving records at the time of hire, the MVR policy may establish the institution’s right to check a driver’s MVR on an ongoing basis. While some institutions automatically request all drivers’ MVRs every year, others find it sufficient to spot check annually. The policy may also require drivers to give the institution formal consent so that it can obtain updated driving records.
5. **Self-reporting traffic violations or accidents during employment, or both.** MVR policies may also require drivers covered by the policy to promptly report to their supervisor any traffic violations or accidents that occur during their employment. The requirement would include any violation whether or not it occurred while driving on institution-related business, or involved any issue of fault or another vehicle.

6. **Discipline for traffic violations or failure to comply with the policy.** The MVR policy may also detail steps the institution will take when a driver is cited for a traffic violation, is involved in an accident, neglects to self-report traffic violations, refuses to permit the institution to perform an MVR check, or otherwise fails to comply with the policy. A system of progressive discipline can be used, requiring drivers who incur minor infractions to attend driver safety training while more serious violations require removal, suspension, or termination from driving-related positions.

**Applying the MVR Policy**

To avoid negligence claims, some institutions apply the MVR policy to those who drive a vehicle for work, whether their own or the institution's. Some institutions also require that any person using a vehicle from the institution's fleet submit to an MVR review.

For some campuses, such a broad application of the MVR policy might prove too difficult to manage administratively and impose a significant financial burden. In those instances, the institution can tailor the policy so that it covers drivers at higher risk for a traffic accident. High-risk categories for which an MVR check is warranted could include:

- Employees in driving-related positions, typically including those who are routinely required to drive for the purpose of their work (at least six hours a week or more, for example)
- Drivers under the age of 25 or with less than three years' experience
- Those driving distances greater than 100 miles per trip
- Those driving 15-passenger vehicles
- Employees transporting students, regardless of distance or vehicle type

“The basic legal standard that applies to [MVR] screening,” the Nonprofit Risk Management Center says, “is reasonableness under the circumstances.” Should a claim head to court, the institution will be judged on whether or not it could have reasonably anticipated the risk of an accident and whether the screening policy, or lack of one, could have contributed to the accident.
Conducting the MVR Check

Employers need an individual’s consent before they can review his or her MVR. In 1997, Congress passed the Driver’s Privacy Protection Act (DPPA), which requires states to protect a driver’s personal information, including names, addresses, and birth dates.

Campuses can request MVRs in one of two ways:

- Use an outside provider. A number of private companies can request MVRs on your behalf. A partial listing of providers is contained in the resources section.
- Submit requests through a campus office. Sworn campus law enforcement departments or human resources can coordinate and submit an institution’s MVR requests.

Fees for obtaining an MVR check range from $10 to $30. Third-party service providers will charge an additional fee to submit requests on your behalf. Institutions will need to obtain documented consent for all individuals who will be undergoing an MVR review.

Many state motor vehicle departments have special procedures for employers that regularly request a large volume of MVRs. Some departments also offer a driving record monitoring program by which the department notifies participating employers when a driver’s record is updated with certain traffic violations (for example, driving under the influence of drugs or alcohol, or reckless driving), or vehicular accidents, or when their driving privileges are suspended or revoked. Check with your department of motor vehicles for a list of services available to employers, participation requirements, and applicable fees for those services. In many instances, institutions will need to register and subscribe to participate if such services are available. Typically, these services are less expensive than those provided by a commercial service.

To contain costs, institutions can require job candidates to submit MVRs as part of the employment application process. If you adopt this practice, require official documents rather than photo copies, electronic copies, or facsimiles. You will also want to require records for at least three years immediately prior to the application date.
Acting on Information Contained in the MVR

Even with a policy in place, the key is developing a process that ensures the MVR check is actually performed. Consistent application of the policy is critical. In many claims reported to United Educators, there is confusion about who is responsible for requesting and reviewing the MVR, and the driving record is never checked. Institutions should also apply the policy uniformly to all drivers regardless of their position within the institution.

To avoid these situations, develop clear procedures detailing who is responsible for the following:

- Requesting the MVR review (the hiring department, public safety, risk management, or human resources, for example)
- Reviewing the records obtained
- Taking any necessary action based on the records

Train all personnel conducting MVR checks on those procedures and how to apply them equally to all drivers regardless of rank or status. An institution can develop a centralized system for processing the MVR program or, depending on the structure of the institution, can establish separate administrative systems to process MVRs—one for employees in driving-related positions and another for drivers using fleet vehicles.

Conclusion

Not every accident involving an employee or student driver is foreseeable or preventable. But your institution is potentially liable if an employee with a poor driving record causes serious injury in a traffic accident. While the relationship between poor driving history and future driving performance can result in increased liability, you can use that relationship as a framework for obtaining driving record information. Adopt and implement a comprehensive MVR policy to ensure that only properly screened individuals are hired as drivers at your campus.