



Non-Owned Auto Liability Policies for Staffing Firms

Before placing an employee in a position to drive a client's vehicle, staffing firms need to evaluate the insurance requirements and other contractual provisions they've agreed to. Provisions that would normally be acceptable for General Liability exposure can completely change the way Auto Liability coverage is intended to respond to claims involving non-owned vehicles.

Claim Example: Your employee is transporting goods for your client in a vehicle owned by the client when they rear-end another car. Both the employee and the driver of the other car are injured, and both vehicles are damaged, as well as some of the goods being transported.

In the absence of a contract that amends insurance provisions or includes indemnification language, the damages involve multiple insurance policies:

- **Bodily injury to the employee**
 - The **staffing firm's** workers' compensation policy will respond, as the employee was injured in the course and scope of their employment.
 - The **client company** won't be responsible for the injury to the staffing firm's employee unless their negligence contributed for the injury – for example, failing to properly maintain the vehicle being driven. In that case, the driver could sue the client company and their auto liability policy would respond to the bodily injury claim.
- **Damage to the vehicle being driven or property within it**
 - The **staffing firm's** auto liability policy won't respond. Damage to property that is in their care, custody or control is excluded.
 - The **client company's** collision physical damage coverage will cover the damage to their vehicle from the crash, and either their property policy or motor carrier policy will respond to the damage to the property within the vehicle, depending on whether it's their property or the property of others.
- **Bodily injury to the other driver and property damage to his or her vehicle**
 - The employee (as the driver of the vehicle), the staffing firm (as the employer of the employee), and the client company (as the owner of the vehicle on whose business the employee was driving), can all be sued for the injury to the other driver and damage to his or her vehicle.
 - The **staffing firm's** non-owned auto liability coverage will respond only on their own behalf. Employees are not insureds when driving non-owned vehicles.
 - The **client company's** owned auto liability coverage will respond on behalf of themselves, the employee driving the vehicle (anyone that is driving a covered owned auto with the owner's permission is an insured), and the staffing firm (anyone who is liable for the conduct of another insured is automatically an insured).
 - The client company's auto liability policy will respond first. If their limits are exhausted, then the staffing firm's policy will respond. Owned auto liability coverage responds on a primary basis while non-owned auto liability responds on an excess basis.

Contractual provisions can completely change the way that the auto liability policy is intended to respond. Let's now assume that the staffing firm has signed a contract in which they agree to add the client company as an Additional Insured on a primary & non-contributory basis to their auto liability policy. Let's say they've also signed a hold harmless agreement stating that they will defend and indemnify the client company for any claims or damages arising from the negligence of their employees. Here's the way this same example would play out:

- **Damage to the vehicle being driven or property within it**
 - The **staffing firm's** auto liability policy will still not respond, but the staffing firm may now be responsible for paying out of pocket for the damage to the vehicle and the property within it based on their agreement to pay for damage arising from the negligence of their employee.
- **Bodily injury to the other driver and property damage to his or her vehicle**
 - The **staffing firm's** non-owned auto liability coverage will respond on behalf of themselves, and the client company as an Additional Insured.
 - The **client company's** owned auto liability coverage will still respond on behalf of themselves, the employee driving the vehicle, and the staffing firm.
 - The staffing firm's auto liability will now respond before the client company's auto liability policy in response to suits made against either party due to both the primary and non-contributory status agreed to in the contract, as well as the hold harmless agreement. Ownership of the vehicle doesn't matter if you assume liability for another party to pay for bodily injury or property damage to a third party.

Non-owned auto liability coverage is significantly less expensive than owned auto liability coverage, as it's intended to apply on an excess and incident basis, with the vehicle owner's policy being the primary response. If a staffing firm assumes the primary auto liability for their clients' vehicles, they may jeopardize their ability to obtain coverage in the event of a loss. Consider the difference in how a carrier writing a \$2,000 hired & non-owned auto liability policy would view a \$25,000 liability claim versus a carrier writing a \$150,000 owned auto liability policy for a fleet of vehicles.

So, what does this mean for you and your staffing firm?

Best practice for a staffing firm placing their employees driving client vehicles is to add either a carve out or addendum to the existing contract specific to driving exposure. This ensures that any hold harmless provisions don't apply to driving exposures, nor any endorsements adding Additional Insured or primary & non-contributory status.



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