

LEGAL ISSUES BULLETIN



Education
& Communities

No. 24

updated 24 February 2011

USE OF CARS AT WORK

Legal Issues Bulletin No. 8 provides information about the use of private cars by staff at work. This Legal Issues Bulletin supplements Bulletin No. 8 and provides information on the subject of legal liability for accidents when staff use private or departmental cars at work. Information concerning damage to vehicles parked on school or TAFE NSW premises is also contained in Bulletin No. 8.

Staff employed by the Department of Education and Training or TAFE NSW are not required to own a car as a condition of employment. (For the purpose of this Bulletin, the term "car" will be used to mean a motor vehicle of any kind.) Accordingly, staff members cannot be directed to use their own cars to undertake official business. They may, however, do so on a voluntary basis.

The following advice relates to all staff who use cars on official business, whether by use of a car provided by the Department or where the staff member has volunteered to use his or her own car.

LIABILITY FOR INJURY TO OTHER PERSONS

Generally, where a driver of a car causes injury to another person, the injured person can take legal action to claim compensation (referred to as "damages" in legal terms). Provided the car is registered, the car will be covered by compulsory third party insurance ("CTP" or "the green slip"). The green slip covers the car's driver for legal liability arising out of injury to a passenger, a pedestrian or a person in another car.

In addition to the green slip insurance, two legal principles have the effect of protecting a staff member from being personally liable for injuries caused to other persons, including where injuries are caused through the use of a car. These principles are:

a. Vicarious Liability

The Department, like all employers, is liable for the negligence of its employees, unless the employee commits an act of serious and wilful misconduct. This is the legal principle of "vicarious liability". An injured person will almost invariably sue the State of New South Wales rather than the individual employee who caused the damage in any case. What constitutes serious and wilful misconduct will depend on the particular facts of each case. However, it would generally require some degree of intent or extreme recklessness by the employee. It is unlikely that an act of genuine carelessness or inadvertence would amount to serious and wilful misconduct.

b. Indemnification

In the rare case that an individual staff member is sued for compensation because of the staff member's negligence, the Department will cover (or "indemnify") the employee. In these circumstances, the Department (like any other employer in NSW) is legally obliged to pay any legal costs incurred by the employee in defending the legal proceedings and any damages that may be awarded by a court against the employee.

The Department's obligation arises as a result of the Employees Liability Act 1991. The only exceptions to this legal obligation are where the action of the employee:

- a. was serious and wilful misconduct, or
- b. did not occur in the course of, and did not arise out of, the employment of the employee.

The exceptions apply to the extreme and unlikely situation of staff members deliberately seeking to cause the injury, or being recklessly indifferent or wilfully "blind" to the consequences of their actions (which would in each case probably amount to criminal conduct). Of course where the staff members were driving the car for a private purpose and not for approved Departmental business, they will not be covered by their employer.

CRIMINAL LIABILITY

Whether staff members are driving cars, working in the classroom, on an excursion, or in any other work setting, if the staff member engages in criminal behaviour, he or she will be personally exposed to criminal sanctions. A criminal sanction will arise where a person intentionally injures someone or is so reckless that he or she is indifferent to the prospect of injury.

If a staff member is charged with a criminal offence for actions arising in the course of, or incidentally to his or her employment, the circumstances will determine whether formal assistance, known as Crown representation, is to be provided for defending the charge. For example, if the staff member has an accident while driving recklessly, the staff member may be charged with a serious criminal offence such as culpable driving. In such a case, the Department would be unlikely to offer support to the staff member.

PAYMENT FOR USE OF PRIVATE CARS FOR OFFICIAL BUSINESS

If a staff member is approved to use his or her car for official business then the staff member is entitled to payment of an allowance, provided the car is covered by a comprehensive insurance policy. This provision is set out, for example, in the relevant award for State Office staff and the Handbook for Non Teaching Staff in Schools (section 7.2.3.3).

It should be noted that for school teachers and other members of the Teaching Service, the relevant provision is set out in the Teachers Handbook. Section 1.10.1.1.14 provides that a teacher must have in force a comprehensive insurance policy or other policy approved by the Director-General.

Claims for payment of the allowance should be directed to the relevant school, school education area office, regional office directorate, college or TAFE institute from where approval to use the car for official business was obtained. Enquiries regarding the rates payable for car allowance should be directed to the relevant school education area office or TAFE Institute Human Resources Manager.

LIABILITY FOR DAMAGES TO YOUR OWN OR SOMEONE ELSE'S CAR

Comprehensive car insurance covers damage to your own car, or where you are at fault, damage to someone else's car or other property in an accident.

The Department acknowledges that on occasions members of staff may volunteer to use their private cars on official business, where their cars are not comprehensively insured.

If a staff member volunteers to use his or her own car for work related duties, and the car does not have comprehensive car insurance, it is strongly advised that the staff member obtain at least third party property damage insurance to cover a situation where another person's car or property is damaged due to the fault of the staff member.

If staff members use their own cars on a regular basis for work related duties, and the cars are insured for private use only, it is advised that confirmation be obtained from the insurance company that the car will be covered if damaged while being used for work.

Any claims for damage to a staff member's car being used for official business will not be met by the Department's self insurance arrangement, the Treasury Managed Fund. However, the Department will consider applications by staff members for reimbursement of excess insurance charges where excess is payable under the insurance policy.

Applications for reimbursement of excess are the responsibility of the relevant school, school education area or regional office, directorate, college or TAFE institute that approved the use of the staff member's car for official business.

In addition, principals and TAFE institute managers, directorate and office managers may meet any claims made provided the following conditions are met:

- * The car was being used for departmental business and this use had been approved by the school, school education area or regional office, directorate, college or TAFE institute.
- * The damage occurred while on departmental business.
- * The damage was not the fault of a third party.
- * At least two quotes are obtained and provided to the principal, TAFE institute manager, school education area or regional office or state office manager or, in the case where the damage has been rectified, a receipt for the repairs is provided.
- * The maximum amount that may be reimbursed is the "normal excess" prescribed by the insurer at the time that the car is damaged. "Punitive" excess charges imposed by an insurer because of poor driving record or the type of car insured shall not be reimbursed. The additional excess imposed by some insurers on inexperienced drivers (or those under 25) is not considered to be a "punitive" excess and will be reimbursed.

In cases where staff members use their cars to attend programs such as training courses or conferences organised by a TAFE institute, state regional or school education area office, approval to use the car for official business should be obtained from, and any

claims directed to, the relevant TAFE institute, state office directorate or school education area or regional office which has responsibility for the program.

WORKERS COMPENSATION

When staff members are using their own cars for school or TAFE NSW business and they themselves are injured, the staff members are entitled to workers compensation just as they would be if injured in the course of any other work activity. In some circumstances there may also be an entitlement to compensation under the green slip scheme. Staff members should seek their own legal advice about a green slip entitlement and whether they are required to make a choice in relation to a workers compensation entitlement, if the need arises.

ENQUIRIES

For further information on rates, approval and/or claims procedures, please refer to the appropriate Handbook or relevant TAFE policy. The Public Service Personnel Handbook can be viewed online at <http://www.premiers.nsw.gov.au/>

Alternatively you may contact the Personnel Support Officer in your school education area or the Human Resources section of your TAFE Institute office. School education area or regional offices, State office directorates and TAFE Institutes may seek clarification on rates and other award provisions from the Industrial Relations Awards and Conditions Unit on telephone 9561 8727.

This Bulletin is to be read in conjunction with the Department's existing policies including Travel on Official Business. This policy includes references to other administrative documents such as the Motor Vehicle Best Practice Guide.

About Legal Services.....

Legal Services provides legal support and advice to schools, colleges, districts and institutes in addition to senior officers, state office directorates and specialist boards and authorities. It arranges for the Department to be represented before a range of courts and tribunals and assists with the preparation of legal documents. It is also available to provide legal advice in respect of any Departmental policies or procedures that may have a legal complexion.

The Legal Services Directorate can provide legal advice to Departmental staff only. It is not able to provide legal advice or assistance to parents, students or members of the public.

The Legal Services Directorate has a web-site on the Department's intranet. The website contains:

- all past legal issues bulletins in both web-page and pdf format
- questions that the Legal Services Directorate most frequently encounters
- information about Government Information (Public Access) Act 2009 (NSW)
- links to other related legal web-sites
- other information for the use of schools and TAFE colleges

Of course, the Legal Services Directorate continues to offer its phone advice service to DET personnel. We have a duty officer system. Just phone 9561 8538 to make contact with the legal officer on duty. Our fax number is 9561 8543. Or you may wish to contact us via email on legal@det.nsw.edu.au

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