

## Manager/Supervisor Risk Management

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A twice weekly e-mail training for YCPARMIA members

### TOPIC: AUTO LIABILITY

Maybe the most obvious exposure faced by YCPARMIA members is auto liability. YCPARMIA members declare 1,151 vehicles on their list of insured vehicles, and there are probably many more that are valued too low to be included. We can divide the general topic into two situations:

- Operating a vehicle owned by the entity, and
- Operating the employee's vehicle on entity business.

Let's get the legal basis out of the way:

- California Vehicle Code section 17001 states that public entities are liable for injuries and damages caused by the negligent operation of a motor vehicle by one of their employees (or volunteers) acting within the scope of employment.
- VC 17002 makes a public entity liable to the same extent as a private person.
- Government Code section 820(a) states that public employees are generally liable to the same extent as private persons, and
- GC 815.2(a) makes the employing entity vicariously liable for the actionable torts of employees.
- The only real exception that comes up is an immunity for operating emergency vehicles with the lights and siren on during an emergency call or in pursuit.
- The employing entity has no responsibility to pay any punitive damages awarded against its employee.

In other words employees have the same exposure as any private citizen for the operation of a vehicle, and the entity has generally the same exposure as any private employer for its employee's negligence in operating vehicles during employment.

It is a question of fact whether the employee is operating the vehicle within the "scope of employment." We have had claims where an employee, driving on entity business, takes a "detour" to do something personal. This can break the chain of employment, and can result in making the employee individually responsible for their negligent acts.

It is important to note that public entities have the same available defenses as private parties. The most important defense is "comparative negligence;" a claimant's recovery will be reduced by their share of fault. Equally important is "The California Fair Responsibility Act (Proposition 51) which makes all responsible parties responsible for out of pocket expenses, but limits responsibility for pain and suffering damages to their percentage share of fault; a claimant that fails to have auto liability insurance at the time of an accident is barred from any recovery for their pain and suffering (Proposition 213).

Next Topic: Entity /Employee owned vehicles