12.40
Insurance Coverage and Related Requirements

12.40.10 Insurance programs for state drivers

July 1, 2004

The following insurance programs relate to state driving activities:

12.40.10.a **Self-Insurance Liability Program (SILP) for vehicle tort claims.**

The Office of Financial Management Risk Management Division (RMD) administers the SILP for all agencies, except the University of Washington (which has its own insurance program), and certain boards and commissions that elect not to participate. The RMD:

1. Assigns claims for investigation, coordinates their defense, approves settlements, and pays covered state agency tort claims from the Self-Insurance Liability Fund.

2. Administers the Washington Self-Insurance Liability Program fund.

3. Covers state employees who have been involved in an accident with a third party while driving on official state business in foreign countries (including Canada).

4. Provides excess insurance coverage on behalf of state employees whose private commercial auto insurance coverage has exceeded policy limits.

5. Assigns most vehicle claims for investigation and resolution to the Washington State Department of Transportation (WSDOT), Risk Management Office, or to the Tort Claims Division of the Attorney General's Office.

6. Maintains a centralized claims database system to track the status of all state agency auto and other tort claims and reported vehicle losses where a claim has not been filed.

7. Makes all tort claim payments for third party injuries and damages.

8. **Does not pay or cover damage to state vehicles**. Payment for damage to a state vehicle is the responsibility of the agency authorizing its use.

9. Does not provide uninsured or underinsured coverage for state employees who have been injured while in a state vehicle.

For more information, visit the Risk Management Division website at: http://www.ofm.wa.gov/rmd/default.asp.

12.40.10.b **Workers' compensation for job-related injuries and illnesses.**

The Department of Labor and Industries (L&I) administers a "no-fault" workers' compensation insurance system in accordance with Title 51 RCW, Industrial Insurance. The workers' compensation program:

1. Provides "sole financial remedy" coverage for state employees who sustain injuries (or death) as a result of accidents or occupational diseases that occur while "in the course of business" for the state.

2. Provides wage and medical benefits to permanent, temporary, seasonal and part-time employees in agencies, universities and colleges, and medical only benefits to volunteers.

3. Assigns a claims manager to adjudicate claim allowance, and payment of medical, time-loss, disability awards and vocational benefits, and survivor's benefits in the event of a job-related death.

4. Coordinates with the medical provider and employing agency in adjudicating claim allowance, claim benefits and return-to-work.

5. Provides an established appeals process as described in Title 51 RCW.

6. Coordinates third party recovery actions as appropriate.

For more information, visit the Department of Labor and Industries website at: http://www.lni.wa.gov/claimsins/default.asp.

12.40.10.c **Insurance coverage for commercially rented vehicles.**

12.40.10.c.(1) **State contract rental company.**

In all cases, contract language specifically requires that state rental car drivers be authorized by the agency's agency head or authorized designee to rent and/or operate the rental vehicle.

Liability and loss damage waiver (LDW) insurance coverage is generally provided under the base rate charged to state agencies who rent vehicles through the state's vehicle rental contract administered by the Department of General Administration. (Insurance coverage is not covered under the base rate for some specialty vehicles rented from the contract company.)

LDW coverage provided under the base rate includes:

1. Third party liability insurance coverage for payments made to other parties who sustain injury or property damage as a result of an accident caused by a state driver authorized to operate a rental vehicle.

2. Repair costs for the rental vehicle.

More information is available at Department of General Administration's website at: http://www.ga.wa.gov/travel/rentvehicles.htm. Consult rental contract agreements for any restrictions (i.e., age, in the case of student drivers).

12.40.10.c.(2) **Non-State contract rental companies.**

Depending on the current State of Washington corporate travel card agreement, LDW coverage may be procured for a rental vehicle. For this reason, it is recommended that non-state contract vehicle rentals be placed on the State of Washington corporate travel card to take advantage of possible vehicle insurance coverage. To view the most current coverage terms of the state corporate credit card, visit: http://www.ga.wa.gov/pca/pcard.htm.

It is a business decision on the part of each agency to determine the need or advantage of purchasing LDW coverage when renting a vehicle that is not included under the state's rental contract. If liability coverage is not procured on a rental vehicle, the Washington SILP can provide coverage for third party liability claims, but will NOT cover damage to the rental vehicle. Agencies are responsible for all repair costs to a rental vehicle if LDW coverage is not acquired on the vehicle. The Office of the Attorney General may represent the state driver if a lawsuit was filed against the operator.

12.40.20 Insurance requirements and coverage for state drivers

July 1, 2006

12.40.20.a **State Employees.**

12.40.20.a.(1) **State Employee Drivers - State Vehicles**

1. The agency of the state employee driver causing damage to a state vehicle is responsible for payment or replacement costs of the vehicle. No vehicle repair/replacement costs are covered by the Washington Self-Insurance Liability Program (SILP).

2. Repair/replacement vehicle costs of Department of General Administration's Motor Pool vehicles are also the responsibility of the vehicle operator's agency, and are **not paid** from the Washington SILP.

3. The Risk Management Office of the Department of Transportation (WSDOT) will attempt to recover the cost of vehicle damage caused by third parties. These financial recoveries are forwarded to the agency owning the vehicle.

12.40.20.a.(2) **State Employee Drivers - Privately Owned Vehicles (POVs)**

1. Authorized drivers of POVs used for official state business are **required** to comply with the state of Washington **mandatory liability insurance requirements** as defined in chapters 46.29 and 46.30 RCW.

2. A driver of a POV involved in an accident while on official state business is covered by his/her private insurance policy. This insurance policy is considered **"primary" for payment of all losses/recoveries arising from an accident while driving a POV**. The cost of insurance is considered to be covered by the state's mileage reimbursement rate.

   Note: The state does not reimburse state drivers for insurance deductibles.

3. The Washington SILP will act as an "excess policy" in the event limits of the private insurance policy are exhausted. Under certain circumstances, the state may assist in the defense and settlement of claims, including possible lawsuit defense, if warranted.

12.40.20.b **Contractors.**

12.40.20.b.(1) **Contractor Drivers – State Vehicles**

The agency head or authorized designee must **authorize** contractors to use state vehicles for official state business. The agency head or authorized designee should formally document the approval.

Most Commercial Auto or Business Auto Liability insurance policies contain "Other Insurance" provisions in Section IV – Business Auto Conditions which provide that "For any covered "auto" you don't own, the insurance provided by this Coverage Form is excess over any other collectible insurance." In order to ensure auto coverage for all tiers for borrowed autos from the state, contractor/consultant agreement auto insurance provisions should provide for coverage as follows:

> Business auto liability insurance written under ISO Form CA 00 01 10 01 or equivalent providing coverage for any "Auto" (Symbol 1) used in an amount not less than a one million dollar ($1,000,000) combined single limit each occurrence. If the CONTRACTOR/ CONSULTANT or any SUB-CONTRACTOR/SUB-CONSULTANT is to use borrowed "auto(s)" from the STATE, the first sentence of the "Other Insurance" provisions in SECTION IV.B.5a. of each of their respective auto insurance policies is to be amended by endorsement to read:
>
> "a. For any covered "auto" you borrow from the State of Washington, this Coverage Form provides primary insurance, except when the primary cause of the accident is determined to be a defect of the borrowed auto."

Provisions for liability insurance and industrial insurance must be included in agency contracts. Insurance provisions for personal service contracts are covered in Subsections 15.10.50 and 15.10.55, and for client service contracts in Subsections 16.10.35 and 16.10.40.

12.40.20.b.(2) **Contractor Drivers – Privately Owned Vehicles (POVs)**

In situations where contractors are required to use POVs in performance of their contracted duties, agencies are required to:

1. Include indemnification language in contractual agreements limiting the state's liability for the action of the contractor.

   (Risk Management Division's Contract Manual is available at: http://www.ofm.wa.gov/rmd/risk/default.asp, and contains sample hold harmless and indemnification agreements.)

2. Require the contractor to:

   a. Name the State of Washington as an "additional insured" in their insurance policy.
   b. Meet the state's legal requirements for auto insurance.
   c. Provide Department of Labor and Industries workers' compensation coverage for drivers, as applicable and/or as required by Title 51 RCW.

12.40.20.c **Student Drivers - State Vehicles and Privately Owned Vehicles (POVs)**

The agency head or authorized designee must authorize students to use state vehicles and POVs used on official state business (prior authorization is generally a condition in the state's commercial rental contracts.)

Rental contract language generally excludes drivers under the age of 25. Consult the appropriate rental contract agreement for policy restrictions/exclusions that may apply to student drivers using commercial rental vehicles on official state business. The Department of Labor and Industries' Employment Standards Rules preclude youths under the age of 18 from operating vehicles or business purposes.

12.40.20.d **Volunteer Drivers - State Vehicles and Privately Owned Vehicles (POVs)**

The agency head or authorized designee must **authorize** volunteers to use state vehicles and POVs for official state business. Prior authorization is generally a condition in the state's commercial rental contracts.

Agencies should contact the Department of Labor and Industries to inquire about workers' compensation insurance coverage for personal injuries of volunteers or other non-paid operators of motor vehicles used for official state business.