



U.S. General Services Administration



What is your Personal Liability While Driving a GOV?

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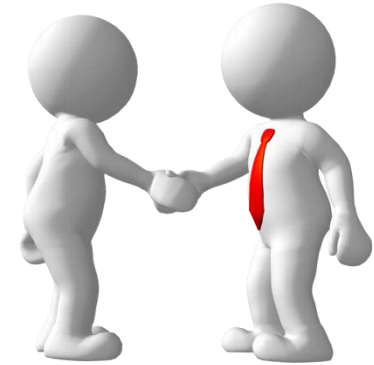
GSA Motor Vehicle Management Value Proposition



Right Vehicle



Right Price



Great Service

and the data required to effectively
and efficiently manage a fleet



Personal Liability Disclaimer

- **This presentation is not all inclusive and each agency may handle personal liability a little differently.**
- For specific questions or guidance contact your Agency Fleet Manager and/or consult your agencies General Counsel (Legal Office)



Objectives

- Your Responsibilities when using a GOV
- Official Use/Misuse
- Permissible/Impermissible Use
- Scope of Employment
- Liability Assigned
- Federal Tort Claims Act
- Privately Owned Vehicles on Government Business
- Rental Cars



What are my Responsibilities when I use a GOV?

- You must obey all motor vehicle traffic laws of the state and local jurisdiction except where the duties of your position require otherwise. You are personally responsible if you violate state or local traffic laws. If you are fined or otherwise penalized for an offense you commit while performing your official duties, but which was not required as part of your official duties, payment is your personal responsibility. (FMR 102-34-235)



What are my Responsibilities when I use a GOV? cont

- You must pay parking fees and tolls while operating a motor vehicle owned or leased by the Government.
 - You can expect to be reimbursed for parking/toll fees while performing official duties (FMR 102-34.240)
- If you are fined for a parking violation while operating a motor vehicle owned or leased by the Government, you are responsible for paying the fine and will not be reimbursed (FMR 102-34.245)



Official Use

- Official use is using a Government motor vehicle to perform your agency's mission(s) as authorized by your agency. (41 CFR 102-34.200, FMR 102-34.200)
 - Agency lead makes the decision
- Incidental use must be authorized
 - What is incidental use?
- Determination to authorize non-Federal individuals to accompany you in a GOV



Official Use

- What is ok for one agency may not be ok for another
 - GOV parked at a private residence,
 - Driver was in civilian clothes
 - GOV parked at COSTCO, driver seen loading dog food and other items in the back
 - GOV parked at a “Gentleman’s Club” a.k.a Strip Club
 - Observed at 9 am
 - Observed at 9 pm



Official Use

- You may not use a GOV for transportation between your residence and place of employment UNLESS it is approved in writing by your agency head (FMR 102-34.205)
 - CAN NOT BE DELEGATED
- Who is the Agency Head?
 - “The Highest Official of a Federal Agency”



Official Use

- What about short trips on the way home?
 - Store
 - Dry Cleaning
 - Soccer game

- May be considered Incidental time



Permissible Use of GOV

- Making rounds of area worksites
- Attending official meetings
- Attending official training
- Going on official errands (e.g. post office, Court, Car maintenance, Car Washes)
- TDY station to hotel



Permissible Use of GOV while on TDY

- Going to drug/grocery store
- Going to worship services
- Visiting the barber shop
- Eating at restaurants
- *TDY = Temporary Duty Assignment



Permissible Use of GOV while on TDY

- Going to dry cleaning or laundry establishments
- Similar places necessary for the sustenance, comfort or health of employee
 - Hard to define
 - What about extended TDY's
 - Will be agency specific



Examples of Impermissible use of GOV

- Going to a private social function (birthday party, retirement party, bar, strip club)
- Transporting people not authorized to be in the GOV
 - What about family member/clients
 - Key word is authorized
- Doing personal errands



Examples of Impermissible use of GOV

- Engaging in entertainment activities while on TDY (mall/movie)
- Attending local sporting events/attractions, visiting liquor stores, bars or lounges
- Picking up hitchhikers
 - Cold weather states??



“What If” (actual questions)

- But you said, “You cannot use a GOV to engage in entertainment activities while on TDY (mall/movie)”
 - What if the restaurant is in the mall, can I eat there then go see a movie in the mall?
 - What if I park on the other side of the street, can I go to the mall to shop or watch a movie?
 - What if I drink alcohol during dinner, can I drive a GOV as long as my blood alcohol content is below the legal limit?



“What If”

- Perception is reality
 - You are a target for scrutiny when driving a GOV
 - People are looking for you to “do something wrong” and will report you
- DON'T EVER DRINK ALCOHOL AND DRIVE A GOV
- Be prepared to justify your actions
 - Don't risk it.
- *Video*





Permissible? Or Impermissible? You Decide

- Case Law Simpson v. United States Jan 22 1980
 - US Marine recruiter met four perspective recruits (2 male and 2 female) at a local drinking establishment. After the meeting, one of the recruit candidates asked the Marine to take them home. He agreed in part so he could get additional information on more perspective recruits. While driving them home, they were involved in a vehicle accident, one person in his vehicle was killed. Two questions, was the vehicle use permissible, do you think the Marine was liable?



Accidents: Who is liable?

- Was the Government employee negligent?
 - Obey laws, speeding, under the influence of drugs alcohol, texting, talking on cell phone
- Were they in their Scope of Employment?
 - What does “Scope of Employment” mean?



Scope of Employment

- Legal Term – activity authorized by a competent authority (supervisor, standard operating procedure, orders) and was serving, at least in part, a government purpose
- Determined by state law where accident occurs
 - Critical Component
- Under circumstances where the US, if a private person, would be liable to the claimant under state law
 - i.e would a civilian be liable if they were driving



Scope of Employment Factors

- Time, place and occasion of accident
 - Normal business Hours – What is normal?
- Act commonly done by such employee
 - Do others in the office perform a similar function
- Extent of departure from normal methods of performance
- Act the employer could reasonably have anticipated



Scope of Employment Factors

- Act motivated to serve employer or was it personal
 - Within general authority given by employer
 - In furtherance of employer's business
 - For accomplishment of objective which employed
- Justice Department makes final decision **



Out of Scope of Employment Examples

- Commuting to and from work (depending on state laws)
- Intoxicated or willful negligence – generally not in scope
- Frolicking – term of art meaning not in scope
- Deviated from route – generally not in scope



Out of Scope of Employment Examples

- Using vehicle without permission
- Accident occurred when NOT doing something to promote the mission of the agency – generally not in scope



Scope of Employment

- Case Law Singleton v Burchfield Feb 25, 2005 (3)
 - USAF Active Duty Airman on Temporary Duty to Maxwell AFB Alabama for a 6 week leadership course. He was issued a GOV to use at the TDY location. On the day of the accident the Airman attended class, went to the gym then to his hotel room— all on Maxwell AFB. Around 6 pm, he left the base in his GOV wearing civilian clothes to meet his classmates at Tony Romas. En route to the restaurant he made a legal left hand turn and was hit by a driver trying to beat the light at an intersection. The other driver, even though the accident was her fault, sued the USAF, her lawyer didn't think the Airman was operating within his Scope of Employment.



Scope of Employment Outcome

- According to AF Instructions (AFI 24-301) the motor vehicle should be operated as follows, “between places of business or lodging and eating establishments, drugstores, barber shop, places of worship....”
- Under Alabama Law, “The use of a vehicle owned by an employer creates an administrative presumption that the employee was acting within the scope of his employment”



Scope of Employment

- Case Law
 - On 23 November 2011 at 3:30am Crystal Pollard collided with a GSA Van driven by Sergeant Wold. Mrs. Pollard alleges Sergeant Wold was driving recklessly, not looking for other traffic, not controlling his vehicle and not making sure he had a clear distance to cross through the intersection and caused the accident.



Scope of Employment

- At the time of the Accident Sergeant Wold was on leave:
 - Governed by a Joint Base policy on Official Use of GOV's
 - He was driving a GSA leased van to the airport
 - Going home for Thanksgiving
 - Type of travel he was doing was not authorized



Scope of Employment

- Scope of Employment had to be proven
 - Burden was on the plaintiff
 - Could not provide substantive evidence the drive was within his scope of employment
- The Court found that Sergeant Wold was acting outside the Scope of his Employment.
 - ▶ Dismissed the claims against the Defendant “United States of America”
- The Sergeant is now liable for the accident and injury claims.



Liability Assigned

- What does the term Liability mean?
- How does it impact you if you are found at fault?
- Will you have to pay and \$ out of pocket?



Liability Assigned

- If you were driving a GOV and faulted for causing an accident, injury and/or damage and were acting in your “Scope of Employment” you are covered under the Federal Tort Claims Act.
- If you were not acting in your scope of employment and caused an accident, injury or damage while using a GOV, you are personally liable
 - You need a good lawyer



Federal Tort Claims Act

- Allows individuals to recover against the federal government for personal injury, wrongful death and property damage caused by negligence of a federal employee acting in the scope of their employment
- Only type of relief allowed under FTCA (Federal Tort Claims Act) is money damages for a specified amount



Federal Tort Claims Act

- The Federal Employees Liability Reform and Tort Compensation Act of 1988 PL 100-694 amended the FTC to make it the exclusive remedy for torts committed by federal employees within the scope of their employment. In other words, it precluded federal employees from being sued for torts within the Scope of Their Employment
- You are protected as long as you are acting in your “Scope of Employment”



Federal Tort Claims Act

- Intentional Tort Exception
 - 28 USC provides that the FTCA does not apply to claims arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit or interference with contract rights. However the US may be held liable for any of the first six torts in the list if committed by an investigative or law enforcement officer of the United States Govt



Federal Tort Claims Act

- Federal Government's Insurance Policy
 - US Government is Self Insured
 - Using/owning agency pays for damages if they are at fault and working in their Scope of Employment
 - In limited cases you can use appropriations to purchase additional insurance.
 - Driving a GOV overseas



Privately Owned Vehicles (POV) on Government Business

- In most cases if you use your POV for official business you are NOT covered under the FTCA
 - Mileage reimbursement covers the cost of fuel and insurance
 - If you use your POV for official business; recommend you contact your insurance carrier to see how you would be covered.
- With any rule, there are unique circumstances that may or may not apply to your situation.



Privately Owned Vehicles (POV) on Government Business

- Unique rules apply to different agencies
 - GSA – Mileage reimbursement covers cost of insurance, not generally covered
 - IRS and DHS provide coverage for POV's under FTCA when operating vehicles on official business

- PLEASE check with your agency fleet manager or legal counsel if you have questions concerning this topic.



Liability Assigned

- What about contractors?
 - Are they covered under the FTCA while driving a GSA GOV
 - What about a government contractor riding in the vehicle?
- Must be written in the contract so drivers can operate GOV's
 - Depends on how contract is written as to how they are covered
 - FAR 51.202 requires contractors to obtain motor vehicle liability Insurance.



Claims Under the Federal Tort Claims Act

- If you are involved in a vehicle accident, are at fault and within your scope of employment
 - Work with your agency's Legal office
 - They are the POC for legal claims against the Government
 - i.e. Air Force, contact is the base's Judge Advocate General (JAG)



Rental Cars

- Generally, you are covered under the FTCA
 - Scope of Employment, official use rules apply
 - What about after hours? Does your private insurance kick in?
- “Government Rate” rental costs include the cost of collision damage insurance.
- Strongly encouraged to use the companies that offer the Government rate



Rental Cars and Personal Insurance

- Check with your Insurance Carrier to see if and how you are covered while driving a rental car.
 - Rental Car Coverage varies by company



Summary

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Desktop Workshop

- GSA Fleet will Host the “Liability Workshop” in February.
- Class dates
 - 5, 12, 19 and 26 February (Times Vary)
- On line, no cost, recommended for all GOV drivers.



Thank you!

- Questions?
- My e-mail devin.beckes@gsa.gov



References

- FMR 102.34 Subpart D
- 41 CFR 102-34 Motor Vehicle Management, Sub part D
 - Covers Official Use, home to work
- 31 U.S.C 1349 Adverse Personnel Actions
- Simpson v. United States, January 22 1980
- Singleton v. Burchfield, February 25, 2005
- Air Force Instruction 24-301
- Essig v. United States and Edward Hamill 1987



References

- Federal Tort Claims Act (FTCA)
- *Crystal Pollard v United States and the City of Philadelphia* January 8 2014
- Federal Acquisition Regulation (FAR) 51.202



GSA Motor Vehicle Management Resources

- [GSA Fleet Drive-thru and Training](#)
- [Consolidate Your Vehicles With GSA Fleet](#)
- [Short Term Rental Program](#)
- [Dispatch Reservation Module](#)
- [Federal Fleet Management System \(FedFMS\)](#)
- [Car Sharing](#)
- [Alternative Fuel Vehicle Guide](#)
- [WEX Station Locator](#) / [DOE Station Locator](#)
- [2015 FFMT Presentations](#)