What is Your Personal Liability When Driving a GOV

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What happens if you caused a vehicle accident while driving a GOV?

- Will you have to pay money out of your pocket?
- Can you be sued?
- Are you covered by insurance?
Ultimate Question of the Session

- Are you personally liable if you are involved in a vehicle accident, while driving a Government Vehicle and are at fault?
  - Includes all GOV’s
    - GSA leased
    - Agency owned
    - Tactical and non tactical
Personal Liability Disclaimer

The information provided in this presentation **DOES NOT** constitute legal advice as any such advice would need to be based upon an analysis of law applied to specific facts by your agency.

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. (41 CFR 102-34.235)

• You are personally responsible if you violate state or local traffic laws.
What are my Responsibilities when I use a GOV?

• 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. (CFR 41 102-34-235)

• 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 (CFR 41 102-34.240)
What are my Responsibilities when I use a GOV?

• If you are fined for a parking/moving violation while operating a motor vehicle owned or leased by the Government, you are responsible for paying the fine and will not be reimbursed (41 CFR 102-34.245)
  – Cannot use appropriated funds to pay the fines
  – Agency Driver is responsible

• If you receive a Toll Violation Notice
  – Work with the respective State Toll Authority to pay the fee
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)
  – Agency lead makes the decision
    • Incidental use must be authorized
      – What is incidental use?

• Incidental use is a taxable benefit reported to the IRS
Official Use

• Agency Lead (cont)
  
  – Determination to authorize non-Federal individuals to accompany you in a GOV

• Family Members

• Candidates (recruits) for Military
Official Use

• What is OK for one agency may not be OK for another
  • GOV parked at a marijuana dispensary
  • GOV parked at a local pawn shop, driver seen walking in the parking lot.
  • GOV parked at a “Gentleman’s Club” a.k.a Strip Club
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 (41 CFR 102-34.205, 41 CFR 102-5)
  — CAN NOT BE DELEGATED (41 CFR 102-5.40)

• Who is the Agency Head?
  — “The Highest Official of a Federal Agency”
Official Use

• Home to work authorizations MUST be renewed.
  – Renewal intervals vary based on the type of Home to Work authorized
    • Two (2) Years for Field Work, updated as necessary
    • Fifteen (15) days for other circumstances

  – Reference 41 CFR 102-5.60 HOW LONG ARE INITIAL DETERMINATIONS EFFECTIVE?

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Official Use

• Most recent change in 41 CFR 102-5.20 Home to Work
  – Rewritten to clarify employees using vehicles in conjunction with Official Travel from coverage by the regulation.

• Not meant to give blanket authority to take a vehicle home prior to a TDY. Allows taking a GOV home if the use is more advantageous to the Government.
Official Use

• Follow your agencies guidance on official travel.
  – Make sure you have written approval BEFORE you take the GOV home

• Approval should be on an Official Travel Order
  – DTS
  – CONCUR
  – E2
  – Agency Specific System for Authorizing TDY Travel
Official Use

- Second change §102-5.20 Home to Work
  - Updated to indicate employee use of vehicles between work and mass transit facilities is not covered by the regulation

- GOV use between places work and mass transit facilities is now covered under 41 CFR 102-34-10
  - Head of Agency must make determination in writing valid for 1 year
  - No safe and reliable commercial or duplicative Federal mass transportation service that serves the same route
  - Transportation is made available, space provided to other Federal employees
  - AFV’s should be used to the maximum extent practicable
If you have home to work authorization, What about a quick trip on the way home?

- Quick trip to pick up groceries for tonight’s meal
- Pick up your Dry Cleaning
- Stop by to watch a family member’s sporting event

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, barber shop,
- Attend worship services and eating at restaurants
- Visiting a dry cleaning or laundromat
- Similar places necessary for the sustenance, comfort or health of employee
  - Hard to define
  - What about extended TDY’s?
  - Will be agency specific

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Examples of Impermissible use of GOV

• Going to a private social function
  – (birthday/retirement party, bar, strip club)

• Transporting people not authorized to be in the GOV
  – May not be covered under the Federal Tort Claims Act

• Doing personal errands

• Engaging in entertainment activities while on TDY (mall/movie)

• Attending local sporting events/attractions

• Picking up hitchhikers
  – Cold weather states??
Examples of Impermissible use of GOV

• Carrying Medicinal Marijuana in a GOV for a patient
  – Currently any use of Marijuana is not legal under Federal law (Controlled Substances Act (CSA) (21 U.S.C. § 811)
    • Even though some states have legalized it, it is still illegal according to the Federal Government

• Carrying a personally owned weapon in a GOV
  – Generally speaking, you cannot carry a weapon in a GOV unless you are performing a LE mission
    • Consult your agency Fleet Manager or General counsel for specific information/authorization
Penalty for misuse of a GOV

• The statutory penalty for willful misuse is a minimum suspension of 30 days without pay. 41 CFR 102-34.225 (31 U.S.C. § 1349.)
“What If” (actual questions)

• But Devin 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

• Be prepared to justify your actions
  – Don’t risk it.
Dear Sir / Ma'am,

This morning at approximately 0715hrs, I observed the vehicle identified below stopping at the 7-Eleven on 7907 Rolling Rd, Springfield, VA. The operator was an older white male, gray hair/bald, medium build, 35-40 years old wearing jeans and a dark jacket.

Vehicle:
Black, Late Model Ford Taurus
GSA Tag: G XX-XXXX
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, policy, 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

• Was it 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
• Using Vehicle without permission
• Deviating from route – generally not in scope
• Accident occurred when NOT doing something to promote the mission of the agency – generally not in scope
• Frolicking – term of art meaning not in scope
Case law Essig v. United States of America and Edward Hamill 1987

- An undercover DEA agent who operated as a “drug trafficker”, routinely utilized his assigned GOV in connection with his duties. On 6 August 1984 Mr. Hamill reported to work at approximately 10 a.m. He spent a good part of the day filling out expense vouchers and attempting to telephone an informant to set up a meeting with a narcotics trafficker at a local bar that evening. He also contacted other agents to assist with the meeting. At approximately 4:30 p.m. Mr. Hamill left his office and went a Bar located in the same building as the DEA offices.
Scope of Employment Case Study 1

- He was at the bar until approximately 7:15 p.m., and while there consumed several alcoholic beverages. Mr Hamill went back to his office to clean up some papers and try to reach the informant. During that time he attempted to call the informant, and an agent to meet later that night. He left a message for Agent Eiselle to call him at 9 p.m. to serve as back up for a meeting with the informant and narcotics trafficker. At approximately 9 pm, while driving his GOV, hit a bicyclist on the shoulder of the road. He did not stop, render aid and continued home. The next morning he found the windshield of his vehicle was broken, and paid over $200 of personal funds to repair the windshield.
### Scope of Employment Outcome

- Mr. Hamill was found to be working within the Scope of Employment
  - Going home with the understanding he would be receiving a call from a fellow agent who would accompany him to the meeting with the narcotics trafficker an informant.

- Side Note
  - On 17 August 1984, he was arrested and charged with leaving the scene of an accident and reckless endangerment - he pled guilty
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 Roma’s. 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”
Liability

• 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.
  – This applies to third party claims only (i.e. the “other vehicle”)

• 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 FTCA 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 from being personally sued by a third party 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 Government.
Federal Tort Claims Act

• Basically Speaking, The FTCA is the Federal Government’s Insurance Policy

  – Essentially it (FTCA) substitutes the Federal Government for the individual as the defendant

  • Using/owning agency pays the third party claim if their driver is at fault and working in their Scope of Employment.
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 agency for legal claims against the Government
    • i.e. Air Force, contact is the base’s Judge Advocate General (JAG)
Liability Assigned

• What about contractors? (41 CFR 102-34.215)
  – 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.
Federal Tort Claims Act

• Driving in Canada or Mexico?
  – Many foreign countries do not recognize the U.S. Government self-insurance
  – If your agency is not covered under a SOFA or other diplomatic treaty which specifically addresses liability issues.

• GSA General Counsel’s office determined that an agency **must** purchase additional liability insurance to operate vehicles in foreign countries
Federal Tort Claims Act

• Driving in Canada or Mexico? Continued

  – The Federal Torts Claims Act does not protect Federal employees outside the United States
  – Contact your agency’s General Counsel office for assistance
  – If short duration trips, consider commercial rentals that are inclusive of insurance in foreign countries.
Liability Assigned

• What about the damage to the Government Vehicle (GOV)?
  – Pretense
    • Government employee is at fault, there is damage to the GOV
      – FTCA protects them from 3rd party liability

• Can you (the driver) be held liable for the damage to the GOV???
Liability Assigned

• YES, the driver can be held liable for the damage to the GOV
  – FTCA covers 3rd Party Claims, it does not cover the damage to the agency owned/leased GOV

• Guidance based on Department of Justice ruling for EPA
  – “Memorandum of Opinion for the Acting General Counsel Environmental Protection Agency” May 28, 2008
Liability Assigned

• Policy will vary by each agency
  – Typically a “Board of Survey” is convened to review the case

• It is an official investigation/vetting process
  – Will have to prove some type of negligence

• Investigation will decide if the at fault driver has to pay for damages to the GOV.
  – Examples are Army FLIPL, Air Force Report of Survey
Privately Owned Vehicles (POV) on Government Business

• In most cases use of personal vehicles for the benefit of the government is prohibited unless Officially Authorized.

• When authorized, employee is reimbursed on a mileage basis.
  – Cost of collision and liability insurance is a component of mileage reimbursement
Privately Owned Vehicles (POV) on Government Business

- If you are involved in an accident in your POV, were at fault and had proper authorization to use your POV for government business
  
  — You cannot be held liable for damage or injury to 3rd parties if acting within your Scope of Employment, you are covered under the Federal Tort Claims Act

  — This does not indemnify the employee from discipline or adverse action for negligence
Privately Owned Vehicles (POV) on Government Business

- Employee must seek reimbursement from their private insurance carrier for loss or damage to their Vehicle while under POV travel authorization
  
  **BEFORE you use your POV for work related travel, contact your insurance carrier to see if and how you are covered.**
Privately Owned Vehicles (POV) on Government Business

• Employees may file a claim under the Military Personnel and Civilian Employees’ Claims Act for the deductible amount of the employees personal Insurance policy

  – Work with your agency’s General Counsel to submit and process the claim.
Privately Owned Vehicles (POV) on Government Business

• The key to using a POV for official Government business is “AUTHORIZED”

— An employee cannot just “jump in their vehicle” (without proper authorization) to perform government business and expect to be covered
Rental Cars

• Generally drivers are covered under the FTCA
  – Scope of Employment, official use rules apply

• “Government Rate” rental costs provide a myriad of protections to the driver(s) - for more information visit https://www.defensetravel.dod.mil/site/rentalCar.cfm
  - Read Rental Agreement Number 4

• Encourage you to use the companies that offer the Government Rate
Rental Cars

• What about after hours or extended TDY’s?

Rental Cars

• “When an employee is renting a car while on travel or temporary duty, there is nothing wrong with using the car for personal business.”

• “The impropriety enters the picture when the employee tries to charge the government for the personal portion of the use.“

   – GAO Redbook Appropriations Law Redbook, Volume III, pages 12-217 to 12-218
Rental Cars and Personal Insurance

• Recommend you contact your insurance carrier to see if they provide coverage for the “personal use”
Ultimate Question of the Session

• Are you personally liable if you are involved in a vehicle accident, while driving a GOV and are at fault?

  — The answer is.................................
The Answer Is:

• **DEFINITELY MAYBE!**

• It depends on the mitigating circumstances, including but not limited to
  – Official Use
  – Scope of Employment
  – The state the accident was in
  – Fault

• Contact your Agency Fleet Manager or General Counsel if you need more information
Summary

• 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
• We answered the Liability Question.
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• Air Force Instruction 24-301
• Chufo v. Department of the Interior, 45 F.3d 419 (Fed. Cir. 1995)
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• Controlled Substances Act (CSA) (21 U.S.C. § 811)
• 41 CFR 102-34.215
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