What's Your Personal Liability While Driving a GOV?

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

Can you be sued?

Will you have to pay money out of your pocket?

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
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
Personal Liability Disclaimer

• This presentation is not all inclusive, each federal 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))
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.
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. (FMR 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 (FMR 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 (FMR 102-34.245)
  – Cannot use appropriated funds to pay the fines
  – Agency Driver is responsible
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?

• 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 COSTCO, driver seen loading dog food and other food items in the back
  • 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 (FMR 102-34.225)
  – CAN NOT BE DELEGATED

• Who is the Agency Head?
  – “The Highest Official of a Federal Agency”
• Home to work authorizations MUST be renewed.

  – Renewal intervals vary based on the type of Home to Work authorized

  – Reference 41 CRF 102-5.60 HOW LONG ARE INITIAL DETERMINATIONS EFFECTIVE?
Official Use

• Most recent change in §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

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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
  • Agency Specific System for authorizing TDY travel
Official Use

• Most recent change in §102-5.20 Home to Work (cont.)
  • Also updated to indicate employee use of vehicles between work and mass transit facilities is not covered by the regulation
• If you have home to work authorization, What about short trips on the way home?
  – Store to pick up groceries for tonight’s meal
  – 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, liquor store, strip club)

• Transporting people not authorized to be in the GOV
  – What about family member/clients
    • Key word is authorized
    • May not be covered under the Federal Tort Claims Act

• 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??
Penalty for misuse of a GOV

• The statutory penalty for willful misuse is a **minimum** suspension of 30 days without pay. (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.
Permissible? Or Impermissible?

Today at about 1300, a white Ford Expedition (USGOV plate number – XXXXXX) pulled into a private parking lot, and parked in employee parking. Two males got out of the vehicle, walked across the parking lot and across the pipe yard to Pakalolo Supply Co. (a local supplier of marijuana products) Their actions attracted a lot of attention on the part of pipe yard employees, especially when the two trespassers had to climb over various items that were stored in the pipe yard to achieve their “objective”. Both were confronted, about infringing on private property when they returned to the vehicle.
Permissible? Or Impermissible?

- Complainant contacted the Federal Protective Service
  - Date, September 22, 2017
  - Time 13:22 hrs
- They provided pictures, date/time and the company’s website

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Permissible? Or Impermissible?

- How about now?
  - The business name is the “Bale Breaker Brewing Company Tap Room”

- From the Company’s Website:
  - “In our taproom, fans of Bale Breaker can enjoy a pint while watching a game at the bar, or soak up the Yakima sunshine at a table on our patio”

- “We can't prepare food onsite, but we encourage outside food to be brought in or pizza delivered.”
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
Out of Scope of Employment Examples

- Using vehicle without permission
- Deviated from route – generally not in scope
- Accident occurred when NOT doing something to promote the mission of the agency – generally not in scope
Scope of Employment Case Study 1

• Boscolo v. United States of America – March 2017

- A US Marshall was provided a GOV for official use, he had home to work authorization. While en-route from his house to his place of employment, the Marshall received a text message saying his son was ill and he needed to take care of him. The Marshall sent a message to his supervisor asking for leave. Once approved he drove to his estranged wife’s house to take care of his son. At approximately 4:15 he left his ex wife’s house and got into an accident. The force of the accident rolled Mr. Boscol’s vehicle.
Scope of Employment

• Scope of Employment had to be proven
  – Burden was on the plaintiff
    • Could not provide substantive evidence the driver was within his scope of employment

• The Court found the U.S Marshall was acting outside the Scope of his Employment.
  ▶ Dismissed the claims against the Defendant “United States of America” because the Marshall was acting outside his scope of employment

• He is now liable for the accident and injury claims.
Scope of Employment Case Study 2

• 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 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 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 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

• Federal Government’s Insurance Policy

– Essentially the 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?
  – 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.
• 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.
  – General Counsel’s office of GSA has 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 include the cost of collision damage insurance.

• Strongly encouraged 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:

• 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.
Liability Desktop Workshops

• Scheduled Desktop Liability workshops

- 8 Feb 2017 11 AM to 1 PM
- 14 Feb 2017 11:30 AM to 1:30 PM
- 23 Feb 2017 1:00 PM to 3:00 PM
- 28 Feb 2017 2:00 PM to 4:00 PM
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
• GAO Redbook Appropriations Law Redbook, Volume III, pages 12-217 to 12-218
• Memorandum of Opinion for the Acting General Counsel Environmental Protection Agency” May 28 2008
• Boscolo v. United States of America – March 2017