



c/o Alliant Insurance Services  
100 Pine Street, 11<sup>th</sup> Floor, San Francisco, CA 94111  
415.403.1400  
Insurance License No.: OC36861

## **California Sanitation Risk Management Authority (CSRMA)**

### **White Paper**

### **Business Use of District and Personal Vehicles**

*DISCLAIMER: The information contained in this White Paper is believed to be accurate and reliable. However, vehicle usage issues may result in complicated legal problems the outcome of which is likely to depend upon the particular factual circumstances. For that reason, CSRMA Member Agencies are urged to consider the White Paper as a guide and not a definitive treatise on all aspects of this subject. Your decisions should be based upon a thorough evaluation of your agency's needs and circumstances as well as legal advice of your own attorney.*

## Table of Contents

- 1 Introduction
- 2 Current Liability Coverages Provided by CSRMA
- 3 Advantages and Disadvantages of Personal Vehicle Usage
- 4 Example Vehicle Use Policies
- 5 Vehicle Use and Mileage Allowances
- 6 Consideration Regarding Physical Damage Losses to Rental Cars

## INTRODUCTION

### **Business Use of District & Personal Vehicles**

Employers are oftentimes faced with many difficult employment policy decisions. One of these is the issue of whether employees should be restricted to drive only district vehicles during business hours, or be allowed to drive district vehicles during non-business hours. There are obviously concerns when the personal use of district vehicles are thrown in to the mix. While most CSRMA members agree that the safest policy to implement is a strict "*no use of District vehicles for personal affairs*" policy, this is not always feasible for some districts, due to the need for emergency on-call employees. The issue then becomes whether the employee should drive their personal vehicle to the job site to pick up a district vehicle, or should they take the district vehicle home in order to effect immediate response to the emergency. If employees take a district vehicle home, should they also be allowed to use it in a "De Minimis" or limited fashion (i.e. stopping at the store on the way home or taking a child to daycare on the way to work), or should they be prohibited from using it for any personal reason.

Although the decision is up to each individual employer, it is important to fully understand the ramifications of each approach such that an informed decision can be made. This white paper will discuss several common vehicle use policies used by CSRMA members, including the benefits, legal issues and insurance consequences. Also considered in this paper is the issue of physical damage loss to rental vehicles.

## **CURRENT LIABILITY COVERAGES PROVIDED BY CSRMA**

### **Current Coverages**

**Pooled Liability Program:** If the district is currently a member of the pooled liability program, third party liability coverage is provided on a blanket basis for any vehicle that is used within the course and scope of district business. This includes rental vehicles and employee's vehicles. The key to this is the vehicle must be used for district business. Note also however that in California, a car owners' policy is always primary (unless waived by contract such as in a rental business agreement), so if a personally owned vehicle is used, (such as an employees) the owners insurance coverage will be primary and the Districts coverage from CSRMA will be excess.

**Primary Insurance Program:** Unlike the pooled liability program, liability coverage for district vehicles in the primary insurance program (PIP) is on a scheduled basis. This means that in order for third party liability coverage to be provided, all vehicles must be reported to the insurance carrier. In order for liability coverage to apply to rental vehicles they also must be reported to the insurance carrier.

**How CSRMA's Programs Dovetail with Employee's Personal Auto Coverage:** As noted above, CSRMA's liability coverage for both the pooled liability program and the PIP has been designed to provide excess coverage over employee's personal insurance when using their vehicles on district business. For example; an employee purchases an auto liability policy with a \$100,000 combined single limit, the employee uses their own vehicle on district business and is involved in an accident where they were found to be at fault, causing \$150,000 of third-party property damage. Assuming the district's liability coverage through CSRMA is subject to a \$10,000 deductible, insurance coverage should apply as follows:

Employee's personal insurance pays.....	\$100,000
Districts liability deductible applies.....	\$ 10,000
CSRMA pays.....	\$ 40,000
Total payment made.....	\$150,000

The issue of physical damage coverage for rental vehicles will be discussed later.

## **ADVANTAGES AND DISADVANTAGES OF PERSONAL VEHICLE USAGE**

**Given the above information, the following outlines the issues that need to be explored by districts when considering the use of district/personal vehicles beyond normal district business hours.**

### **Strict "No Use" Policy:**

**Advantages:** When employees are not allowed to use district vehicles during off-hours, there are no gray areas with regards to workers' compensation and liability issues.

**Disadvantages:** Employees must drive their own vehicle to the job site in order to pick up a district vehicle, or use their own vehicle to respond to an emergency. This can greatly increase response time in an emergency, such as a sewer backup or pump station failure.

**Insurance coverage consequences:** If the employee is involved in an accident enroute to the job site to pick up a district vehicle, then the employee's own personal auto insurance will/should respond as the primary policy. The second issue here regards the limits of insurance coverage the employee purchases. Also what if the employee has no insurance how is the district affected.

### **Restricted Policy:**

**Advantages:** Allowing employees to take a district vehicle home for emergency response, but restricting such use to business only (i.e. no personal stops and no transporting family or other third party members) provides for an immediate response to emergencies as long as minimizing the employer against third party, general liability insurance issues.

**Disadvantages:** If an employee is provided a vehicle for emergency response, but not allowed to use it for personal business, the employee is greatly inconvenienced as they will not be able to perform personal business, such as dropping children off at school, while on their way to work.

Employees will often choose to not use the district vehicle, which results in them using their personal vehicle for emergency response.

**Insurance coverage consequences:** If the employee is involved in an accident in a district vehicle during emergency response, CSRMA would become the primary coverage source.

### **"De Minimis" Policy:**

**Advantages:** Allowing employees to take district vehicles home, and allowing them to make personal stops and/or transport family members in a limited fashion, provides immediate responses to emergencies, yet does not interfere with the employee's ability to conduct personal business during non-working hours.

**Disadvantages:** If an employee is involved in an accident while driving a district vehicle and during personal business (e.g. not responding to an emergency), insurance coverage issues arise, especially if a family member or other third parties are involved. Furthermore, if an employee is using a district vehicle for personal reasons, there are tax laws that require reporting this as income for income tax purposes.

**Insurance consequences:** As in the restricted use, if the employee is involved in an accident in a district vehicle during personal business or any other time, CSRMA would become the primary coverage source.

### **Non-restricted "Open" Policy:**

**Advantages:** Providing an employee with a district vehicle to use "at will," is mostly beneficial to the employee. This open use policy is usually reserved for management personnel and does not directly benefit the district.

**Disadvantages:** Like the "De Minimis" policy, insurance coverage issues can arise if the vehicle is involved in an accident during personal business activities. Also, employees using district vehicles must report any personal use as earned income on their income taxes.

**Insurance consequences:** As in the restricted and "De Minimis" use, if the employee is involved in an accident in a district vehicle whilst on a personal errand enroute to an emergency call out, or any other time, CSRMA would become the primary coverage source

## **EXAMPLE VEHICLE USE POLICIES**

Listed below are example policy statements currently used by CSRMA members. However, before a policy is decided upon, management is encouraged to evaluate the pros and cons of each. And like any other employment issue, this should first be reviewed with legal counsel prior to final implementation.

### **Vehicle Use - Example Policy #1**

1. Vehicle Assignment and Use:  
(District)-owned vehicles shall only be used for official (District) business and shall not be driven to and kept at an employee's home, or any location other than (District's) facilities unless specifically authorized as set forth below:
  - a. Vehicles assignments shall be made by the General Manager. An assigned (District) vehicle may only be taken home by employees with the approval of the General Manager for the uses as described below:
    1. Emergency Response: Employees who, on a recurring basis, are required to respond, without delay, to emergencies in order to protect the public health, safety and (District) property.
    2. Job duties: Specific job duties may require an employee to be assigned a (District) vehicle. The General Manager shall make such assignments on a case-by-case basis.
2. Privately Owned Vehicles:
  - a. Employees, upon authorization from their Supervisor, may use their own vehicles on official (District) business and shall be reimbursed at a rate established by the Board of Directors, for mileage driven on official (District) business.
  - b. Employees will have on file with (District) a current certificate of insurance on their private automobile in conjunction with the requirements specified in the Personnel and Salary Policy.

### **Vehicle Use - Example Policy #2**

1. Use of (District) Vehicles and Equipment  
(District) vehicles are to be used for (District) business only. Seatbelts must be worn at all times by employees riding in (District) vehicles.

Employees assigned (District) vehicles may not use the vehicle for personal purposes, other than for commuting or "De Minimis" use (such as a stop for a personal errand on the way between a business activity and the employee's home).

## Vehicle Use - Example Policy #3

### MONTEREY REGIONAL WATER POLLUTION CONTROL AGENCY Personnel Policies and Procedures

#### ***AUTOMOBILE (AGENCY AND PERSONAL VEHICLE USE)***

**No.** 203  
**Effective Date:** June 1, 2013  
**Revision Date:**  
**Page:** 1 of 2

#### **GENERAL**

An employee required by job description or other job requirements to drive an MRWPCA vehicle must have a valid Driver's License in his/her possession, and meet the driving standards contained in the California Vehicle Code regulations. Failure to do so could be grounds for termination, if driving a vehicle is required by the position. While employed in such job requiring driving of MRWPCA vehicles, the employee must be insurable with CSRMA (MRWPCA's insurance carrier) at the "standard rate." The following minimum driving eligibility standards shall apply:

1. Employees must possess a valid driver's license to legally operate the class of vehicle(s) they operate in their employment.
2. Employees accumulating four violation points, as valued and enumerated by the Department of Motor Vehicles' Negligent Operator Count Sheet posted online at <http://www.dmv.ca.gov/dl/vioptct.htm>, within the last three years, shall be considered in a "warning status" and shall be required to attend a Defensive Driving class. The nature and duration of such class shall be left to the agency's discretion. Upon completion of the training, the member agency shall provide the Program Director with either a copy of the Certificate of Completion or a written description of the duration and contents of the training course attended.
3. Employees accumulating six violation points, as valued and enumerated by the Department of Motor Vehicles' Negligent Operator Count Sheet posted online at <http://www.dmv.ca.gov/dl/vioptct.htm>, within the last three years, shall be excluded from the pooled layer of Automobile Liability coverage.
4. The conviction date as determined by the DMV shall be considered as the starting date for the three-year period discussed in #2 and #3 above.
5. The provisions of #2 and #3 above shall apply regardless of whether the driving which resulted in acquiring the violation points was or was not in the course of employment.



**MONTEREY REGIONAL WATER POLLUTION CONTROL AGENCY**  
**Personnel Policies and Procedures**

***AUTOMOBILE (AGENCY AND  
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**Page: 2 of 2**

**USE OF AGENCY VEHICLES**

Agency vehicles are intended for official Agency business and may not be used for any other purpose without the express permission of the Executive Management. Notify your supervisor if any vehicle appears to be damaged or in need of repair. Supervisors will explain to employees any responsibility the employee may have for repair or upkeep of a vehicle. Employees should also be aware that if they are approved to use Agency vehicles for personal use, tax liability may be incurred by them for such use.

All employees who operate vehicles must comply with all traffic laws and wear seat belts/shoulder harnesses at all times while on Agency business. Such employees must maintain a current, valid driver's license. Drivers are responsible for paying any traffic or parking tickets issued.

Drivers have an affirmative obligation to promptly notify their supervisor of any moving violation or other violations of motor vehicle laws which may affect their driver's license, insurability or restriction/suspension of their driver's license. Failure to do so may result in disciplinary action up to and including termination.

Being under the influence of alcohol, drugs or other substances while operating an Agency vehicle or a personally owned vehicle on Agency business may result in immediate termination of employment, even for the first offense.

**USE OF PERSONAL VEHICLES**

When a privately owned vehicle is used for official travel on business because an Agency vehicle is not available, the Agency will reimburse an employee a maximum of \$250 for his/her deductible if the employee is involved in a verifiable no-fault accident, upon filing satisfactory proof of loss and insurance deductible with his/her Supervisor.

**MONTEREY REGIONAL WATER POLLUTION CONTROL AGENCY**  
**Personnel Policies and Procedures**

***ASSIGNMENT OF AGENCY  
VEHICLES***

**No. 203.1**  
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**Page: 1 of 1**

**ON-CALL STAFF**

- Maintenance: On-call staff person or persons take a properly equipped Agency vehicle (work truck) home at the end of the regular work day and is ready to respond to an incident within 20 minutes; Agency vehicle is parked in a safe location and used exclusively for Agency related business.
  
- Maintenance Supervisors are considered on-call second responders to an incident, as such; vehicles used by Maintenance Supervisors will be appropriately marked as “24 hour emergency response vehicles”. Vehicles used by Maintenance Supervisors will be stationed within the Agency’s service area to provide a minimum response time in the event of an incident. Subject to the approval of the General Manager or his/her designee, Maintenance Supervisors will be allowed to take an Agency vehicle to and from their reporting facility or will park an Agency vehicle at a secure remote Agency facility (i.e. Salinas Pump Station, Seaside Pump station etc.). Maintenance Supervisors shall keep a mileage log for their vehicle that reports mileage to and from home and total mileage. In accordance with Internal Revenue Regulations, the value of the mileage to and from work will be added to the Supervisors year-end W-2 earnings.

**SUPERVISORS/MANAGERS**

At the discretion of the General Manager or his/her designee, Management staff may be assigned an agency vehicle, provided an auto allowance or reimbursed for use of their personally owned vehicles (POVs) when they are required to drive their POVs on official Agency business. Supervisors or Managers that are assigned an Agency vehicle may use Agency vehicles to go to and from work, but must record their business and personal mileage. The cost of the personal mileage will be added to the managers W-2 earnings.

## **VEHICLE USE AND MILEAGE ALLOWANCES - Example Policy**

Attached is an example policy which complies with the Internal Revenue Service regulations relating to assigned use of District vehicles and payment of mileage allowances. This type of policy is recommended when employees are provided with a company vehicle to use "at will."

## **SUBJECT: DISTRICT VEHICLES AND MILEAGE ALLOWANCES**

- I. **PURPOSE:** To establish District policy to comply with Internal Revenue Service regulations relating to assigned use of District vehicles and payment of mileage allowances.
- II. **SCOPE:** This policy is intended to outline the use of District vehicles and reporting thereof to the Internal Revenue Service as a non-cash benefit and reporting of mileage allowances to the Internal Revenue Service.
- III. **POLICY:** It is the policy of the District to assign vehicles, pay mileage allowances and reimburse actual miles traveled as follows:
  - A. **ASSIGNED VEHICLES.** Assignment of automobiles for on-call personnel will be authorized by the General Manager for District business only.
  - B. **MONTHLY MILEAGE ALLOWANCES.** The District Board of Directors may elect to pay a monthly allowance to certain District employees to use their personal vehicles for District business. Employees receiving a monthly mileage allowance acknowledge their own insurance as primary if involved in an accident and are required to provide verification of minimum automobile liability limits of \$100,000 per person bodily injury, \$300,000 per accident bodily injury and \$50,000 property damage. The District will reimburse employees and Board members for any deductible requirement, up to \$500.00 while on District business. District business does not include commuting to and from work.
  - C. **MILEAGE REIMBURSEMENT.** District employees not covered under A and B above are required to annually provide evidence of insurance to the District verifying that the vehicle used for District business has State minimum insurance coverage levels and will be reimbursed in accordance with provisions of Memoranda of Understanding for actual miles travels on District business other than the normal daily commuting to and from work. Employees requesting to use their own vehicle for seminars or conferences are required to provide evidence of insurance for automobile insurance coverage not less than \$100,000/\$300,000 as required above for monthly mileage allowances.
  - D. **GENERAL MANAGER.** Procedure regarding vehicle related expenses shall be as directed by the Board of Directors and shall be reviewed annually.
- IV. **RESPONSIBILITY:** It shall be the responsibility of the Human Resource Analyst to ensure that the correct reporting is made to the Internal Revenue Service.
- V. **PROCEDURE:**

The District is required to report to the Internal Revenue Service the value of certain benefits. This reporting shall be as follows:

A. ASSIGNED VEHICLES

1. The benefit value of vehicle use is established in compliance with Internal Revenue Service Regulation. Vehicles assigned for the purpose of emergency response will not be subject to this provision.
2. Number of days used per year will be determined from payroll records and will include actual days worked only.
3. The total dollar value of non-cash benefit for the calendar year will be included on the employee's W-2 forms as a taxable fringe benefit.

B. MILEAGE ALLOWANCES

1. The total annual amount paid as a mileage allowance shall be reported to the Internal Revenue Service on the employee's W-2 form as other compensation.

C. MISCELLANEOUS

1. The District will not withhold income tax on the value of non-cash benefits; however, an employee who is receiving such benefit may request an increase in personal tax withholding by filing a revised W-4 form with the Human Resource Department.

## Considerations Regarding Physical Damage Losses to Rental Cars

Agency employees often rent automobiles while traveling to conferences and meetings. Auto rental companies offer a Loss Damage Waiver ("LDW"), also known as "Collision Damage Waiver," an agreement with the rental company, that for a daily fee, the renter will be released of liability for any physical damage to the vehicle. The fee presently ranges from \$9.50 to \$16 per day according to location. When the renter declines purchase of the LDW, which is notoriously expensive from a pure insurance point of view, he or she must sign off on the following wording:

"You are responsible for the cost of repair up to the value of the car, plus loss of use, towing, storage, impound fees and an administrative charge."

If the renter opts to forego purchase of the LDW, then the agency should evaluate its exposure and consider establishing other means of protection, insurance or otherwise. This will ensure that neither the employee nor his personal insurance is brought to bear on a loss incurred while the employee is on agency business.

### Alternatives to the LDW

#### 1) Self-insured Retention

Many agencies choose to self-insure all physical damage losses on agency-owned vehicles. For these agencies, it would follow that they self-insure physical damage exposure on rental cars as well. Agencies may wish to reconsider this decision with respect to rental vehicles because a rental vehicle is unfamiliar to the driver, and the driver may be in locations and road conditions that are new. As a result, the frequency of losses with rental vehicles may be higher than with agency-owned vehicles.

#### 2) Overriding Agreement

Major car rental firms may be willing to negotiate an overriding agreement if your volume of rentals is high. Overriding agreements set forth special terms for an agency which apply to cars your employees rent at any location. Here you have the opportunity to tailor the hold-harmless agreement, negotiate insurance limits, and set deductibles for cars rented at any location. It can be tailored to apply overseas or wherever cars may be rented.

#### 3) Credit Card with a Collision Bonus

Many credit cards include a rental car collision insurance bonus. The insurance bonus reimburses the credit-card holder for any collision damage to a rental car, up to the value of the vehicle.

Credit card companies provide different types and amounts of coverage. For example, a VISA Corporate card provides "primary" coverage. In contrast, some corporate cards provide "secondary" coverage, paying in excess of other business insurance, such as a business auto policy. Most companies have restrictions on the types of corporate accounts that receive the free protection, restrictions that are roughly based on the size of the agency seeking the corporate account. Also, to complicate matters, some credit card companies have even pulled out from providing free protection altogether.

Members may want to consider providing employees with a corporate credit card which would offer this collision insurance bonus. But because there are so many restrictions and limitations, it is crucial to investigate the various credit card company provisions and read the fine print. For example, certain types of vehicles, such as passenger vans, may not be covered under a credit card plan. Furthermore, if you choose to provide employees with this card, you should require them to use it. Many may prefer to use another card that offers them "bonus mileage" instead of bonus insurance protection.

You may want to encourage employees with personal cards that provide the collision bonus to use their cards. However, if a car is rented on business, you may need to clarify that your agency will step up on the employee's behalf in the event the bonus does not perform to your expectations.

#### 4) Direct Insurer Coverage

A final option members may have available is direct insurer coverage; specifically, a "Commercial Auto 360 Enhancement" endorsement to the Business Auto Coverage policy through the CSRMA Primary Insurance Program (PIP). The coverage is for physical damage to the rented vehicle (liability to third-party vehicles is covered by the car rental firm and the agency's own liability coverage) with a deductible for both comprehensive and collision losses. The deductible will be equal to the largest deductible shown in the Declarations for any owned "auto" for the applicable coverage. If a member is interested in this coverage, they should contact their CSRMA representative.

When evaluating this coverage option, the frequency of rentals and the estimated number of losses should be taken into account.

Assuming an average LDW insurance cost of \$10 per day and the direct insurer coverage has a \$500 Deductible, then 50 automobile rental days per year would be a "threshold" frequency at which the cost of LDW purchase would equal the cost of direct insurer coverage, if only one loss occurred. This is because the LDW has a \$500 deductible. Put another way: if 50 vehicles were rented, the total cost of LDW's would be \$500, with no out-of-pocket expenses in the event of a loss. If the same 50 vehicles were covered under the Hired Car endorsement, a single loss would again result in a \$500 cost to the agency (a \$500 deductible). Similar logic holds true for any multiple of 50 (i.e. 100 cars and two losses; 1,000 cars and 20 losses). However, for any number of losses greater than one per 50 vehicles, the agency could incur higher costs very quickly. For example, two losses would result in a net cost of \$1,000; three losses would be \$1,500. This example can be more accurately calculated depending on the agencies applicable deductible found in their Business Auto Coverage policy.

In short, the Commercial Auto 360 endorsement is probably preferable to self-insurance. However, because the endorsement contains a deductible significantly higher than the per day cost of the LDW, it would only be more cost-effective than the LDW if the agency rents greater than 50 cars per year, and if the agency has reason to believe that very few or no losses will occur; even then, cost savings would only be several hundred dollars. Also, the Commercial Auto 360 Enhancement endorsement involves some administrative effort and is only available to agencies which already purchase some form of auto physical damage on owned vehicles.

### A Recommended Plan of Action

- 1) Evaluate whether the agency should insure physical damage losses on rental vehicles. If the answer is yes or maybe, consider the following options:
- 2) Determine your agencies applicable deductible and estimate the number of vehicles rented for agency business in a typical year. If the deductible is more than the average costs per year of purchasing a LDW for each rented vehicle, then consider advising employees to purchase the LDW.
- 3) If the number of vehicles rented is greater than the LDW to deductible threshold, consider negotiating an overriding agreement with a rental car firm and advise all employees to rent under that agreement.
- 4) As an alternative to the overriding agreement, contact credit card companies and determine whether your agency qualifies for a corporate account that provides bonus collision insurance protection. Determine whether coverages offered benefit the agency.
- 5) Determine if your employees carry personal credit cards that provide bonus insurance protection, and establish whether their bonus protection plans override their personal auto insurance coverage.
- 6) Alternatively, advise employees to purchase the LDW when they rent vehicles on company business.

### Conclusion

For a potential loss scenario that averages only \$15,000, the Physical Damage question on rental cars is incredibly complex! Many factors can affect how coverage on a loss is played out. As you toil through this process, keep in mind that such losses are infrequent and unless your agency is in the habit of renting rare and exotic cars, the loss potential is usually manageable.