

****CSRMA ALERT****

To Pull or Not to Pull?

CSRMA's Employee Driving Standards Policy & Procedure has been amended to conform to recent changes to the California Employer Pull Notification (EPN) Program. As a result, the CSRMA Employee Driving Standard no longer **requires** that Pooled Liability Program members enroll **all** employees in the DMV EPN Program. Instead, CSRMA only requires that those drivers who meet the State EPN Program requirements be enrolled in the EPN "Pull" program. These are employees who meet the following criteria.

- Class A (formerly known as Class 1) or
- Class B (formerly known as Class 2) license
- Class C (formerly known as Class 3) with Hazardous Materials Endorsement
- Class C (formerly known as Class 3) with Special Certificates, issued pursuant to CVC Section 2512. 12517. 12519. 12520. or 12523.5
- Any driver of a passenger vehicle having a seating capacity of not more than 10 persons, including the driver, operated for compensation by a charter-party carrier of passengers
- Passenger stage corporation with a certificate of public convenience and necessity or permit issued by PUC

However, in the interest of public safety, the DMV **allows** an employer to enroll "non-mandated" drivers (i.e. drivers who do not meet the criteria above) in the EPN Pull program when all of the following conditions have been met:

- Must be an employer/employee relationship
- Employee must drive frequently during course of employment
- Employer must have employee sign a waiver (form INF 1101 or internal document with similar language) which must be maintained at the employees' worksite
- Information received by the employer shall be for the business use of the employer and shall not be passed or shared with any third party
- Upon termination of employment, employer must remove employee from EPN program immediately

CSRMA **highly recommends** that other employees who "frequently" operate vehicles in the course of employment (once a month or more, on average) be enrolled under the permissive portion of the statute.

WHY should we put "non-mandated" employees into the State "Pull" program?

Many agencies will ask "Why should a public agency enroll all of its "frequent-drivers" into the EPN program, especially when employees and unions alike may disagree?" The answer is **liability**. An agency's failure to check an applicant's driving history and/or to ignore an employee's bad driving record **can cost dearly**.

In fact, ignoring bad driving records could be regarded as reckless or gross negligence which could lead to punitive damages. This is because the law imposes liability on an employer if the court finds them guilty of "**negligent hiring**" or "**negligent entrustment**." Negligent entrustment imposes liability when an agency entrusts to a party (not necessarily an employee) property that injures another person while in the party's possession. If an agency provides a motor vehicle to an employee without checking their driving record, and the employee is involved in a motor vehicle accident, the injured party can assert a negligent entrustment claim on the premise that the agency **failed to monitor** the employee's driving record during the course of employment.

Because an employer can be found liable if they failed to check an employee's "propensity" for dangerous driving behavior (as seen by their driving record), it only makes sense for an agency to have a written **Motor Vehicle Policy** that requires routine motor vehicle reviews (MVR's) on all employees who "frequently" drive during the course of employment, in addition to employees who meet the State EPN criteria.

Although an agency's **Motor Vehicle Policy** should contain the following provisions, each agency will have to decide for themselves the specific details and criteria that work best for their agency.

***For More Information, Please Contact David Patzer, CSRMA Risk Control Advisor at
707.373.9709 or at losscontrol@sbcglobal.net***

1. **Applicability** (which positions require motor vehicle record reviews as part of the hiring process and for ongoing employment)
2. **A minimum age and driving experience** requirement
3. **A list of violations or a point system** that disqualify a job candidate or an employee from driving on the agency's behalf. This requirement is already provided to CSRMA's Pooled Liability Program members as part of the CSRMA Employee Driving Standards Policy & Procedure.
4. **A continued monitoring** policy to establish the agency's right to check an employee's motor vehicle record on an ongoing basis. This will require that the agency have all non-mandated drivers (e.g. frequent drivers) sign a waiver that is maintained at the employee's worksite.
5. **A self-reporting system** to report any traffic violations or accidents during employment.
6. **A discipline policy** for traffic violations, accidents, or failure to comply with the Motor Vehicle Policy.

Even with a Motor Vehicle Policy in place, it is important to have an established process ensuring the MVR checks are actually being performed. It's important to include in the Policy who is responsible for:

1. Requesting the MVRs
2. Reviewing the MVRs
3. Taking any necessary action in accordance with the Agency's Motor Vehicle Policy and/or CSRMA's Employee Driving Standards Policy and Procedure.

Please contact David Patzer, CSRMA Risk Control Advisor, if your agency would like more information on developing a Motor Vehicle Policy.