LIABILITY:
WHY 'GOOD ENOUGH' ISN'T ENOUGH

Company inertia about continuous MVR monitoring is a risky position for fleets, exposing them to potential liability by not identifying unsafe drivers.

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Always looking out for your fleet.

The evolution of continuous MVR monitoring programs has resulted in a powerful tool for fleet managers to employ in identifying risky activities, correcting them, and avoiding the potential for costly liability in a proactive manner before serious incidents can occur. Continuous MVR monitoring offers a “new way” to approach driver management by shifting the focus from managing accident transactions to addressing driver behavior and ongoing performance as they occur.

In the past, government and private companies deemed it “good enough” to follow the “old way”; pulling a driver’s motor vehicle record (MVR) only prior to hiring and then perhaps only to review the record on an annual basis. While the traditional argument was that these infrequent pulls were good enough, they didn’t address the real fact that fleets, with their perceived deep pockets, often risked increased liability due to these “good enough” reviews of driver MVRs.

Liability costs continue to be a reality for fleets across the board. In its survey of costs of accidents in 2015, the Network of Employers for Traffic Safety (NETS) found for a fatal crash fleet liability was more than $38,000 on top of the health fringe benefit costs and other direct costs (including legal costs) of more than $625,000[1].

For this reason, continuous MVR monitoring should be the foundational tool fleet managers use to monitor drivers’ risk profiles. In conjunction with a fleet safety program and other behavioral monitoring tools (e.g., telematics), fleet managers can take a holistic approach to compliance and safety to monitor drivers, reduce liability and scale down business losses.

Significantly, NETS found that for an off-the-job crash in which any person was injured, the employer’s costs average to just under $5,000. If that same crash occurred on the job, it cost the employer, on average, more than $73,000. Add in any liability claims, and that number could skyrocket into the six figures. This is an expense that goes directly to the bottom line. Just a handful of these types of crashes — apart from the human toll — could be the difference between a company remaining profitable or being deep in the red.

Continuous MVR monitoring is not a panacea — accidents will happen even with the best monitoring systems. But there is little argument that receiving ongoing reports of a driver’s MVR infractions can significantly limit these accidents and lower a fleet’s liability exposure.

Company costs relating to a fatal crash

$38,000+
fleet liability in fatal crash

$625,000+
health fringe benefit costs and other direct costs (including legal costs)

Cost of on-the-job vs. off-the-job crash

off-the-job injury crash
less than **$5,000**
vs.
on-the-job injury crash
$73,000+

The "good enough" approach of pulling an MVR once per year or less is becoming an increasingly outdated and risky practice. In addition to the increased risk of liability, fleets also face public backlash if its revealed — and it undoubtedly will in a public case — that the fleet has taken less-than-adequate steps to operate safely.

> "If a company only pulls driver records once a year, and a driver has a violation the day after, he or she has a 364-day grace period before the violations are discovered."

Drivers not maintaining a valid license are an ongoing safety risk for companies. A continuous MVR monitoring program alerts a fleet manager immediately of any changes to a driver's eligibility. This gives him or her the opportunity to mitigate company risk immediately if an infraction occurs or a driver's license is revoked, or has expired. If a company only pulls driver records once a year, and a driver has a violation the day after, he or she has a 364-day grace period before the violations are discovered. Because of the driver's undiscovered heightened risk profile, he or she is more likely involved in a serious crash or other incident. In this scenario, the fleet's company will experience substantially increased liability.

Fleets need to ensure that they keep proactive tabs on their drivers in the event that an employee is involved in a crash or other incident in a fleet vehicle. In such a situation, continuous MVR monitoring is one of the best precautions that a company can take to prepare in advance for potentially defending themselves in a liability lawsuit.

Why Does It Matter?

On top of providing early detection services and improved efficiency in time and money savings, employing a continuous MVR monitoring service reflects better on company reputation in a liability case. If the fleet operates according to the "old way"— pulling a driver's record when an employee is hired and then, at most, again on an annual basis, it opens the company up to increased liability exposure.

Make no mistake, a plaintiff's attorney will find any and all black marks on driver's license. For the company employing a risky driver, ignorance of a violation is not an excuse nor will it protect the

> "A 2016 wrongful death verdict against a fleet for **$22.7** million shows how a safety policy that is deemed "insufficient" can weaken a fleet defendant's case."

company in a lawsuit. In addition, a plaintiff's attorney will certainly raise the fact that a company has declined to spend the money on such a low-cost solution in order to improve the fleet's safety profile and protect the public by regularly pinpointing unsafe drivers within the fleet.

A jury will also question the effectiveness of a company's safety practices if the company is only pulling drivers' records sporadically for a *pro forma* review. Not knowing what violations are on a driver's license may be deemed negligent entrustment. (See sidebar "Types of Fleet Liability.") Companies have an ongoing obligation to track drivers' licenses if they continue assigning drivers a vehicle — whether they are a senior executive, in sales, or a service technician.

A 2016 wrongful death verdict against a fleet for $22.7 million shows how a safety policy that is deemed "insufficient" can weaken a fleet defendant's case. The driver for a food refrigeration company rear-ended a stopped vehicle, killing the driver of that vehicle, and injuring the driver of another truck. The fleet driver was found to be driving under the influence of numerous narcotic drugs, including marijuana. The company had a drug screening program, but had not identified the driver as a potential risk.

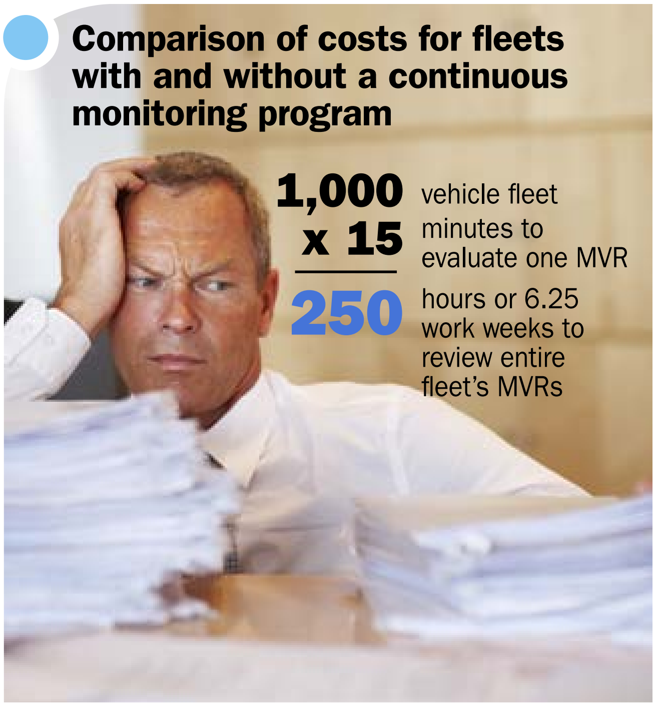
In addition to the $22.7 wrongful death verdict, the company was also found liable for the injuries of the driver in the other vehicle that was involved in the crash. That driver received a verdict of $12.3 million. The fleet driver was also facing criminal charges.

Prior to the accident, the driver had an identified history of speeding tickets, a red flag that a continuous MVR monitoring program would have caught.

MVR Monitoring Begins During the Hiring Process

Driver safety begins during the hiring process. All new hires should be subject to an initial MVR review to discover if there are any violations or other red flags on a potential employee's driving license.

Comparison of costs for fleets with and without a continuous monitoring program



1,000 vehicle fleet
x 15 minutes to evaluate one MVR
250 hours or 6.25 work weeks to review entire fleet's MVRs

The typical model many companies follow is an annual review of all driving records. While this can help identify risky drivers — often after the fact — it can be a daunting proposition. A 15-minute evaluation for each driver record in an example fleet of 1,000 vehicles will take more than 250 hours or 6.25 equivalent work weeks (or more than 6 staff members in a single week) to complete.

A continuous MVR monitoring service gives fleets a much-needed advantage by receiving notice of all violations, suspensions, and convictions, as they occur. Not only will the number of records that need to be reviewed be significantly lower, they will be spread out across the entire year. Risky drivers will get the individualized attention they need in a timely manner, and the fleet won't have to tie up extra resources to review the records.

Not only is continuous MVR monitoring a low-cost solution in the long run — given the depth of administrative work periodic reviews need for each driver record — often the cost for a continuous MVR monitoring program is just a few dollars per year per driver. For example, the per-driver fee for fleets to use SuperVision is about $15 per year. As well as gaining from the safety benefits of putting safer drivers out on the roads, for a fleet to be able to prevent just one event from occurring, the service will pay for itself in the first year.

Average cost of continuous monitoring
$15
per year, per driver

In addition to continuous license reviews, a strong continuous MVR monitoring program provider, such as SuperVision, has relationships nationwide to provide the alert service across state lines. This is particularly advantageous for a nationally dispersed fleet.

TYPES OF FLEET LIABILITY

There are two types of liability that fleets could face following an accident: direct liability and vicarious liability:

Direct Liability: Refers to a situation in which a person or a company becomes liable to another on the basis of their own act or omission.

Vicarious Liability: A legal principle that states that a party can be held liable for the negligent actions of another party with whom they have a special relationship, such as an employer and employee and vehicle owner and driver.

Examples of Negligence

The potential liability risks that fleets may face vary depending on the state, but can include:

Negligent Entrustment: Occurs when a company is held liable for negligently providing an entrustee with a "dangerous instrumentality," e.g., a vehicle, which causes injury to a third party.

Negligent Retention: Involves an employment-related claim in which a plaintiff asserts that an employer failed to discharge an employee who management knew was acting irresponsibly. (e.g., retaining a driver who was known to have several DUI violations).

Fundamentally, claims of negligence relating to fleets boil down to fleet leadership not exercising reasonable caution or care.

Looking back at types of liability, vicarious liability would have liability imposed on the employer due to respondeat superior, which is a legal doctrine that holds the fleet legally responsible for the wrongful acts of its drivers if such act occurs within the scope of employment.

There are advantages for a company to claim being vicariously liable over being directly liable. Punitive damages can be avoided in most states and the driving history of the operator doesn't come into evidence. The downside to this: If the driver is held liable in an accident so will the company, which can result in a large judgement.[2]

While it is impossible to eliminate all fleet violations — from parking tickets and toll/speeding violations to red-light camera infractions and license suspensions — fleet costs are significantly impacted by being able to identify high-risk drivers on a continuous basis.

This is how a continuous MVR monitoring program becomes a key component of managing a fleet’s risk profile. Since fleet managers are notified immediately after a violation occurs, they can then evaluate the seriousness of the violation, and if corrective action, up to and including termination, is required. In this way, the fleet manager is able to take immediate action, and establish a proactive pattern of addressing risky behavior.

How Continuous MVR Monitoring Is a Defense Tool

A program that can be demonstrated as successfully identifying risky drivers, enforced alongside a solid safety program, will help the company’s defense team build the case that the company fleet’s drivers are not only safe, but the entire fleet operation is run in a safe manner. Continuous MVR monitoring is the foundation of establishing the safety culture, and shows that the company acts proactively to any MVR violation.

As part of its safety program, the fleet should have a program to take corrective action following an MVR red flag.

It is crucial that the fleet manager is the catalyst to move his or her company out of this “good enough” inertia when it comes to monitoring driver records. Work with a continuous MVR provider, such as SuperVision, to help sell leadership, safety, HR, and other stakeholders on the importance of continuous MVR monitoring.

About SuperVision

A comprehensive fleet safety and performance portfolio, the SuperVision® product suite includes continuous driver MVR monitoring, CSA risk-score management and business performance solutions. With cloud and web-based infrastructure, fleet & safety professionals can easily optimize driver & fleet safety with streamlined access to up-to-date analytics & reporting.

With the industry’s easiest-to-use web-based application and straightforward nationwide pricing, we’ve simplified driver license monitoring. No other service monitors more drivers, provides faster alerts, or matches SuperVision’s infrastructure, expertise and customer service. See how easy it is to discover driver violations with the only driver monitoring service to cover all 50 states and D.C.

Resources

[1] Cost of Motor Vehicle Crashes to Employers — 2015. Network of Employers for Traffic Safety. June 2016. http://trafficsafety.org/road-safety-resources/public-resources/cost-of-motor-vehicle-crashes-to-employers-2015/. Accessed Aug. 3, 2017.

[2] “How Fleets Can Minimize Liability Exposure.” Lundin, Andy. *Fleet Financials*. January 2017. http://www.fleetfinancials.com/channel/safety-accident-management/article/story/2017/02/how-fleets-should-handle-liability-exposure.aspx. Accessed Aug. 3., 2017.