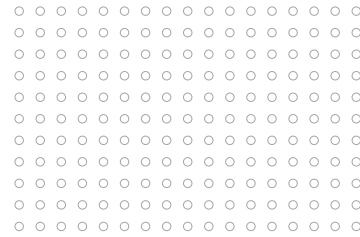


# COVID-19 and the Rapid Evolution of the Restaurant Industry:

## Why a review of insurance coverages and risk controls needs to be on the menu

As of March 2020



As restaurants navigate the new reality of COVID-19, many are considering alternative business models to comply with government mandated closure of on-premises dining. In order to continue serving customers, keep employees working, and perpetuate a revenue stream, some restaurants are offering carry-out and delivery services. The introduction or expansion of delivery services should be done only after confirming workers' compensation coverage and commercial hired and nonowned auto liability will apply to the delivery drivers' utilizing their own vehicles, and implementing loss control measures. This whitepaper explains delivery service exposures and how you can protect your restaurant from these risks.

### The Opportunity

Even though there is risk involved with delivery services (i.e., workers' compensation and non-owned auto vehicles), there may be an opportunity for the restaurant to continue serving customers, keep employees working and perpetuate a revenue stream during these unprecedented times by offering delivery services.

### The Exposure

Non-owned auto is any auto that is used in connection with the restaurant's business that is not owned, leased, hired, rented, or borrowed by the restaurant. Here are some examples that fall into the classification of a non-owned auto:

- An employee using their own personal car to run restaurant errands
- An employee using their personal car to make a sales call or food delivery
- A volunteer using their car when working for the restaurant

Driver-sales jobs, including delivery workers, are consistently ranked in the top 10 most dangerous occupations by the U.S. Bureau of Labor Statistics. Individuals who drive while on the job are at a higher risk to be in a motor vehicle accident. Only a limited number of commercial insurance carriers will accept the risk after full underwriting and loss control.

Most personal automobile policies exclude coverage for the use of a vehicle being used to carry persons or property for compensation or fee, including retail or wholesale delivery of food or any other product, making this a commercial non-owned auto liability coverage exposure for the restaurant. This is often referred to as the "pizza delivery exclusion".

## Liability Issue

**Non-Owned Auto Liability** – Generally, if an employee is in a motor vehicle accident in their owned vehicle while on the job, the employee's personal auto insurance will first respond to and pay for damages. After the limits of liability on the employee's personal auto policy are exhausted, the injured third-party may look to the restaurant to pay damages.

However, if the employee is in a motor vehicle accident in their owned vehicle while on the job delivering food, the restaurant's non-owned auto liability policy will most likely respond primary because most personal automobile policies exclude coverage while a vehicle is being used to deliver food or any other product for compensation.

**Workers' Compensation** – Delivery workers have an increased risk to injury for multiple reasons. Statistically, individuals who drive while on the job are at a higher risk to be injured or killed in a motor vehicle accident. The uncontrolled environment associated with delivering goods makes delivery workers at greater risk of slips, trips and falls. There is also a risk of injury due to robbery of goods or money. Any time an employee is injured on company time, the claim will be included in the experience modification calculation and will negatively impact claims history, increasing premiums.

## Controlling the Risk

Even though a restaurant's only option may be to have non-owned auto coverage, instead of operating their own fleet, there are ways to control the risks involved.

- Personal auto use should be restricted where possible. Employers should have a written program in place detailing their driver policies and procedures. Policies should require employees follow all laws, require the use of seat belts, restrict the use of communication devices in all but emergency situations and prohibit the use of alcohol and both legal or illegal drugs that may impair their ability to drive safely.
- Drivers should be qualified as if they are operating company owned vehicles. This qualification process should include:
  - Confirming the employee holds a valid driver's license
  - The employee's motor vehicle report, or MVR, should be accessed annually. The MVR should then be compared against company set driving criteria. Any employee not meeting this criteria should not be allowed to drive.
  - Ensure proper driver training and document that each driver has been trained on company policy in regards to distracted driving. Training should be used to address both auto and worker's compensation risks.
- Employees using a personal vehicle for business use should be asked to provide proof of insurance and confirmation that there are no exclusions regarding business use. The employer should retain on file a current copy of the employee's declarations page for their personal auto insurance policy. Instead of accepting state minimum limits, many companies and commercial auto carriers require higher limits be maintained on employee personal auto policies to further reduce their exposure. Transferring more of the risk by requiring higher limits is a very useful practice that should be strongly considered.
- A non-owned Auto Use Agreement similar to what's shown below should be implemented to document expectations of drivers of non-owned vehicles and to document that these drivers are aware of what's expected of them.

Creating a culture of safety is equally important for employees who provide off premises delivery.

- Establish a fleet policy to address the safety requirements for drivers, i.e., cell phone usage, seat belts, MVR checks, vehicle maintenance, detouring from the business route, visitors in the vehicle, etc.
- Establish your training platform, defensive driving, winter weather driving, proper footwear, situational awareness and expectation to decline delivery if they feel unsafe.
- Think about how you can return a delivery driver back to work to accommodate light duty restrictions to help mitigate workers' compensation costs.
- In the event of a robbery, employees should not resist – they should comply with the demands for money or goods and notify police and the restaurant only after they are safe.

## Non-owned Auto Use Agreement

If your restaurant allows employees, new or tenured, to use their personal vehicles during work hours or for work activities, a non-owned auto policy should be included within the employee handbook or employee safety programs. The following is a general example of an agreement within the non-owned policy that the employee should sign prior to using their vehicle for work activities.

An employee's use of a personal vehicle while on company business must be properly controlled to protect both the company and the employee. This certification ensures that employees understand whether they are permitted to drive a personal vehicle on company business and understand company policies related to that use.

\_\_\_\_\_ I understand that I am not an "authorized driver" for my company and as such am not permitted to operate company vehicles or my own vehicle on company-related business under any circumstances.

\_\_\_\_\_ I will be required to drive a personal vehicle on company business and am subject to the requirements of this program including:

Maintaining auto liability insurance with minimum limits of \$\_\_\_\_\_ for bodily injury and \$\_\_\_\_\_ for property damage or combined single limit of \$\_\_\_\_\_.

Maintaining current state vehicle inspections when required.

Maintaining my vehicle in a safe operating condition when driven on company business.

Proof of insurance (copy of declaration page, certificate of insurance) will be sent to \_\_\_\_\_. I agree to submit information concerning any changes or cancellation of that insurance and to provide updated evidence of insurance at any future renewal of my policy within three days of the change.

If I am pulling a trailer or hauling equipment/materials, the vehicle that I use must be appropriately designed/rated for the work being done for my company.

Acceptable motor vehicle report (MVR) that meets the policies set by my company (provide company policy reference)

No 'business use' exclusion on personal insurance policy.

I understand that my insurance is meant to be primary in the event I am involved in a vehicle collision while I am operating my personal vehicle on company business and that I am responsible for liability arising out of the operation of my vehicle.

The purpose of the employee signing this agreement is so they are aware of their responsibilities and the risks that are involved when driving their vehicle for the company.

Along with the non-owned auto use agreement, the company should also consider including within the policy the vehicle use rules. These rules can include, but are not limited to:

- Obeying the traffic laws and signs
- Requiring the drivers to perform a daily pre-trip vehicle safety inspection
- Prohibiting the use of radar detectors
- Who to report to in the event of a collision
- Never to admit fault if there is a collision

## Summary

Faced with unprecedented on-premises restrictions to battle COVID-19, restaurants are working hard to adapt their business to provide food delivery options. At a time with an abundance of unknowns, it is imperative that delivery risk exposure and non-owned auto liability not be overlooked. Addressing the risk and exposure upfront with appropriate insurance and loss control measures will free up more time to devote to other issues facing the restaurant, while providing peace of mind that your financial exposure to workers' compensation and non-owned auto liability is kept to a minimum.

*Get the latest information, guidance and resources on Coronavirus (COVID-19) to help you protect what matters most at [hubinternational.com/coronavirus](https://hubinternational.com/coronavirus). For additional support, please reach out to your local HUB office.*