

# YOUR NANNY, HER AUTO INSURANCE AND YOUR VICARIOUS LIABILITY

Most caregivers are asked to drive as a regular part of their job -- using either the family's car or their own car. Either way, the errands and excursions can create exposure for families if auto insurance is not properly addressed.

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## The Situation

A family hires a full-time nanny to take care of their 2 children. The family knows they will need the nanny to perform regular driving duties so they search for -- and find -- a candidate who has her own car and auto insurance.

Once the nanny says she has her own vehicle and insurance, the family moves to the next item on their checklist. They don't give another moment's thought about auto insurance because they assume that the nanny's coverage is adequate.

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## The Law

The state laws for auto insurance vary widely -- with each state having its own requirements for minimum coverage in the areas of liability and property damage.

Within each state, the various insurance providers typically have some latitude to include or exclude certain "extraneous" provisions. What's covered by one provider may be excluded by another -- and use of a vehicle by a nanny for "business" purposes (as opposed to personal use) falls into the category of "extraneous" provisions. The bottom line: to truly understand what's covered and what's not, you have to call your insurance agent.

If an employer asks an employee to drive as a regular part of the job, it's important for the employer to understand their coverage -- and that of their employee -- because of a legal concept known as "vicarious liability." Generally, employers are vicariously liable for the acts of their employees. That means that, if the nanny were to hurt someone while driving on the job, the employer may have secondary liability for damages caused by their employee.

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## The Mess

One day, the nanny is in a hurry to get the kids across town to a very important piano recital. In trying to beat a red light, the nanny hits an oncoming vehicle. The passenger in the other vehicle is injured.

The family now finds out that the nanny's insurance policy is a "basic" policy, which means that it only meets the state-required coverage minimums. In this particular state, the minimum required coverage is:

- \$25,000 Bodily Injury Per Person
- \$50,000 Bodily Injury Per Accident
- \$25,000 Property Damage

The injured party sues for \$25,000 in property damages and \$100,000 in liability for medical bills, lost wages and pain & suffering.

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## The Outcome

The plaintiff wins the lawsuit and is awarded full damages.

The nanny's auto insurance provider covers the property damages and liability up to the limits. (Note: Some insurance companies may deny this claim on the grounds that the accident happened during "business" use and, therefore, does not fall under the personal use stipulations of the policy).

Because the nanny is under-insured, the employer is responsible for the balance of the damages because they are held to have vicarious liability for the actions of their employee. The employer's insurance company does not pick up the tab because the nanny was not included on the family's policy.

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## How the Whole Thing Can Be Avoided

Obviously, this case is extreme. But it's not out of the realm of possibility given the number of serious accidents on our roads and the litigious nature of our society.

The good news is this kind of nightmare scenario is easy to avoid. Families who have an employee driving on their behalf should contact their insurance agent and discuss auto insurance coverage for their nanny -- regardless of whose car will be used.

The family and their agent should look at the nanny's coverage and the family's coverage collectively. Once a variety of factors have been analyzed (i.e. who's car is being driven, how many business use miles will be driven as a regular part of the job, what are the liability limits for each policy, etc.), the agent can provide a customized recommendation for minimizing exposure from auto accidents.