

## Use of Rental Vehicle while on Federal Travel—Who Is Liable if I Cause an Accident?

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9.0—Miscellaneous

14.0—Tort claims involving service members and military families.

**Q: I am a Commander in the Navy Reserve and a life member of the Reserve Officers Association (ROA). I am currently on active duty for one year at United States Southern Command (SOUTHCOM) in Miami, Florida. My Navy orders authorize me to have a rental car during this deployment, and I use that vehicle to travel daily from the hotel to SOUTHCOM and back. I also occasionally use the rental car for short trips around the Miami area, to restaurants, grocery stores, barber shops, church, etc.**

**My daughter is in college in Atlanta, Georgia. I am thinking of using the rental car to travel from Miami to Atlanta and back for a weekend visit with my daughter. My concern is about the possibility that I may be involved in an accident during that trip. If I negligently cause an accident during the proposed trip, would the Federal Government be responsible? Or would I personally be liable for injuries and property damage caused by my negligence? Does my liability insurance coverage on my own car (which I left at home during this deployment) apply when I am driving a rental car?**

**A-Bottom Line up Front (BLUF):** If you drive the rental car outside the immediate Miami area for personal reasons, unrelated to your federal employment, the Federal Government will not be responsible for any harm that you might cause by negligent driving. You alone will be liable for any personal injury, wrongful death, or property damage that might result from your negligence.

It is possible that your liability insurance policy on your own car back home has a provision applying that policy to you when you operate a rental car, but you should not assume that the policy contains such a provision or that you meet the conditions set forth in any such provision.

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<sup>1</sup> I invite the reader's attention to [www.servicemembers-lawcenter.org](http://www.servicemembers-lawcenter.org). You will find more than 1600 "Law Review" articles about laws and issues that are especially pertinent to those who serve our country in uniform, along with a detailed Subject Index and a search function, to facilitate finding articles about very specific functions. The Reserve Officers Association (ROA) initiated this column in 1997. I am the author of more than 1400 of the articles.

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You should ask an attorney (perhaps a military legal assistance attorney) to read the policy to determine if there is such a provision and if it protects you in this situation.

**Explanation:** As I have explained in Law Reviews 16070 and 16071 (July 2016), Congress enacted the Federal Tort Claims Act (FTCA)<sup>3</sup> in 1946. Prior to the enactment of the FTCA, the Federal Government had absolute sovereign immunity<sup>4</sup> in tort. If your child were injured or killed by a negligent post office driver, you could obtain compensation only by persuading your United States Senator or Representative to introduce and push for the enactment of a private relief bill. The chance of getting such a bill enacted depended more upon the Senator's or Representative's interest and clout than upon the merits of your claim. Considering thousands of private relief bills distracted Senators and Representatives from important matters of great national interest. Avoiding these distractions was a part of the reason for enacting the FTCA.

Under the FTCA, the Federal Government can be sued and held liable for personal injury, wrongful death, or property damage caused by a federal employee (including a service member) if and to the same extent that a private person or corporation would be liable under similar circumstances, in accordance with the law of the state where the allegedly wrongful act or omission occurred. Under the common law doctrine of *respondeat superior*, an employer is liable for torts committed by employees *in the scope of their employment*. The employer is not responsible for torts committed by employees outside the scope of their employment.

For example, Joe Smith is a driver for National Express Corporation (NEC) and is operating a vehicle in the scope of his employment when he is involved in an accident. If Joe's negligence caused the accident, NEC is responsible for the resulting personal injury, wrongful death, and property damage.

In this context, Joe Smith is not off the hook—he can be held personally liable, but the plaintiffs and their attorneys will likely focus their efforts on NEC, not Joe, because the company is likely to be a "deep pocket" capable of paying hundreds of thousands of dollars for the resulting harm.. Under the FTCA, Congress has chosen to make the FTCA claim against the Federal Government the *exclusive remedy* for the person claiming personal injury, wrongful death, or property damage allegedly caused by a federal employee (including a service member) in the course and scope of his or her federal employment. The relevant FTCA provision is as follows:

The remedy against the United States provided by sections 1346(b) and 2672 of this title for injury or loss of property, or personal injury or death arising from the negligent or wrongful act or omission of any employee of the [Federal] Government [including

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<sup>3</sup> 28 U.S.C. 1346, 2671-2680. The citation is to title 28 of the United States Code, sections 1346 and 2671 through 2680.

<sup>4</sup> Sovereign immunity or "the King can do no wrong" has been an important part of the law of Great Britain and the United States for almost a millennium. You cannot sue the sovereign (federal or state) without the sovereign's consent. It has only been in the last century that Congress and the state legislatures have enacted laws waiving sovereign immunity and permitting lawsuits against federal and state government agencies. There remain many exceptions to and conditions upon these waivers of sovereign immunity. Please see Law Review 16070.

service members] *while acting within the scope of his office or employment* is exclusive of any other civil action or proceeding for damages by reason of the same subject matter against the employee whose act or omission gave rise to the claim or against the estate of such employee. Any other civil action or proceeding for money damages arising out of or relating to the same subject matter [i.e., the same accident or incident] is precluded without regard to when the act or omission occurred.<sup>5</sup>

If you (a federal employee) are involved in a vehicle accident that is at least arguably in the scope of your employment, it is essential that you notify your supervisor promptly and that your federal agency employer notify the United States Department of Justice (DOJ). DOJ will investigate or task your agency to investigate the circumstances of the accident, to determine if you were in the scope of your employment at the time of the accident. If DOJ determines that you were in scope, DOJ will move to dismiss any lawsuit filed against you personally in state or federal court and to substitute the Federal Government as the sole defendant. These legal principles and procedures apply equally regardless of whether you are driving a federal vehicle, a rental vehicle, or even your own vehicle.

Ordinarily, commuting to and from work is not considered to be within the scope of the employee's work, and the employer is generally not liable for torts committed by employees traveling to and from work. In the travel context, a broader concept of scope of employment applies. When you travel to a distant city on your employer's behalf, your local travel from the place of lodging to the place of work and back is considered to be in the scope of your employment. Similarly, local trips to restaurants, grocery stores, banks, barber shops, places of worship, and other necessary local destinations are considered to be in the scope of your employment, when you are in a travel status.

If you drive the rental car from Miami to Atlanta for your own personal reasons, you would be clearly outside the scope of your federal employment during that trip. Accordingly, the Federal Government would not be responsible for any personal injury, wrongful death, or property damage that you might cause. You would be personally responsible. If you do not have liability insurance that covers the rental car scenario, or if that coverage is insufficient, this liability could easily cause a financial disaster for yourself and your family.

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<sup>5</sup> 28 U.S.C. 2679(b)(1) (emphasis supplied). This provision most often is applied to vehicle accidents and incidents of alleged medical malpractice, but it applies to all alleged torts committed by federal employees (civilian or military) in the course and scope of their employment.