TECHNICAL ADVISORY

TA 351	Subject	Contents
August 11, 2021	**TNC (Uber/Lyft) and other freelance exposures in personal auto policies**	

Executive Summary

- Over 1/3 of all American workers now participate in the “gig economy” to some degree, and that number is only increasing.
- Most of the time, the master policy for the entity does not fully cover the freelance workers
- As an agent, you need to be able to:
  - Identify which of your insureds has these exposures
  - Identify the commercial exposures that your insured faces which are not covered by the company’s master policy
  - Find a policy that includes the appropriate coverages including no exclusions for the necessary commercial activities
- This can be a difficult and time-consuming process for agents, but it is exactly this type of effort and expertise that makes independent agents valuable to their clients

Necessary Action

1. Make sure personal lines staff understand the exposure and potential coverage gaps.
2. Ensure that new personal auto clients are being screened for freelance exposures and informed that the base personal auto policy does not provide coverage.
3. Consider measures for identifying freelance work exposures in your existing personal auto book of business
4. Identify personal lines carrier partners that can effectively cover freelance work exposures.
5. Provide appropriate coverages to policyholders with freelance auto exposures.

BACKGROUND

"THE GIG ECONOMY"

Transportation Network Companies and other, similar businesses continue to grow, and the gig economy is here to stay. Uber and Lyft have been household names for some time, but every year new companies find a niche in the freelance work-app space. The last few years have seen the rise of food delivery (Postmates, DoorDash, Waitr, Uber Eats), grocery delivery (Instacart, Shipt), package delivery outsourcing (Amazon Flex, Roadie), and innumerable of other niches. As these app-based gig opportunities continue to expand, an increasing percentage of people are participating to supplement or replace their income.

In fact, a 2018 Gallup poll showed that over a third of all American workers have a freelance work arrangement of some kind as part of their income stream, and the trend isn't slowing down. According to Forbes, the gig-based section of the economy is growing three times faster than the economy as a whole, and, if the current growth continues, over half of all workers will be doing at least some freelance work by 2027. Consequently, while few independent agents will ever write the master policy for a company like Uber, most independent agents WILL write coverage for some of the individuals who drive for one of these companies, and this can present some hidden challenges.

INSURING FREELANCE WORKERS

The contract that freelancers sign is different with each company, but in virtually every case, the company's insurance does not give complete protection to the worker. Most companies are careful to pay the worker as an independent contractor, not an employee, so they are not entitled to workers compensation benefits or other legal protections of a company's employees. Therefore, the freelancer is only protected by the company's master policy in the specific instances defined in the contract. Workers need to examine the terms of their agreement closely because they are usually structured to carve out insurance coverage where not required by law.

As an agent, you face three primary challenges in insuring freelancers:

1. How do I even know when one of my insureds is doing freelance work?
2. Where are the coverage gaps in the company's master policy that my insured is expected to fill with personal insurance?
3. Which insurance company will cover this exposure without requiring a full commercial policy which will likely be too expensive for the insured to justify buying, given their gig income?

HOW TO IDENTIFY WHEN INSUREDS ARE DOING FREELANCE WORK

The easiest and most obvious place to start identifying these exposures is in new business quoting. On every personal auto policy you write, best practices says that agents should be completing an application or quote sheet which denotes the facts as presented to you by the insured. This app should be signed by the insured, if possible, but (in the case of phone quotes or other instances where a signature is impractical) should at least be dated and maintained in the agency management system or document repository. To address potential coverage gaps, your personal auto questionnaire should include a line of questioning to determine if anyone covered by the proposed policy has exposure to a TNC or similar freelance, commercial enterprise. Additionally, agents should explain that the unendorsed personal auto policy will NOT cover these exposures fully, so if a covered driver starts working a gig-opportunity mid-term, the insured needs to let the agent know ASAP to provide the appropriate insurance coverages.

In practice, however, many insureds will not think to notify their agent of this exposure, and it can be more difficult to identify freelance workers in your existing book of business. So, what steps can you take to ensure that these insureds get the coverage they need and help you avoid the potential E&O exposure? In an ideal world, you would have time to meet with each insured as their renewal approaches to confirm that no exposures have changed and review their account, but that is often impractical. However, modern technology allows you to reach your entire book of business easily for quick, targeted communications. Consider running a report in your agency management system to identify all your clients with personal auto policies. Simply upload that list to your email management system or, if you prefer hard copy mail, produce form letters with a marketing piece on TNC coverage. Better yet, take this opportunity to update your customer profile by advising your policyholders that you are reviewing their policies in advance of the policy renewal and need to update their account information to confirm that there has been no change to the vehicles, drivers and driving exposures including a mention about TNC exposures, because you might be surprised how often insureds forget to notify their agent when, for instance, their teenager starts driving! In addition to helping cover your E&O exposure, this outreach demonstrates your value as a trusted advisor on all things insurance and improves customer loyalty.

Identifying Coverage Gaps: The national TNC model

Once you recognize that an insured has freelance exposure, the next step is to establish where they may have coverage gaps, which can be a daunting task. Fortunately, in the case of true TNC companies (Uber, Lyft, and a few regional carriers), the National Council of Insurance Legislators (NCOIL) created a model act which defines the responsibilities of each party and who is required to maintain insurance coverage during the ride-share. That act has been adopted throughout almost the entire United States including in Louisiana. In essence, it divides the ridesharing process into 3 distinct phases: Phase 1 is when the TNC driver has turned on their app but has not been matched with a passenger. Phase 2 begins as soon as the TNC driver accepts a passenger match and heads to the pickup location. Phase 3 begins when a passenger enters the vehicle and continues until that passenger is dropped off. After a ride, the driver either reenters phase 1, waiting for their next fare, or turns off the app, ending the TNC's involvement.

During phase 1, when the driver is waiting to be matched with a passenger, the TNC is required to carry liability limits of at least 50/100/25 on behalf of its drivers. However, the statute only requires them to carry uninsured/underinsured motorists coverage to the extent required by law, meaning that in Louisiana, TNCs typically opt out of carrying this coverage on behalf of their insureds. During phases 2 and 3, from the time the driver accepts a passenger match to the time the passenger has exited the vehicle and the ride is complete, the TNC is required to carry 1 million Combined Single Limits. Again, uninsured/underinsured motorists coverage is only required to the extent required by law, but (as of the writing of this Advisory) Uber and Lyft both DO carry UM/UIM on their drivers during this phase because many other states require this coverage. The statute also states the coverage in all phases carried by the TNC must be primary to any other insurance carried by the driver.

Therefore, for drivers of a true TNC (Lyft and Uber), the coverage gap exists primarily in phase 1, before they have accepted a match. The TNC carries relatively low limits of liability on their behalf, but any claim that exceeds that amount and ANY claim for UM/UIM would not be covered by the TNC's master policy, so the driver would need their personal insurance to respond.

IDENTIFYING COVERAGE GAPS: OTHER FREELANCE WORK

Outside of the TNCs, identifying coverage gaps identifying coverage gaps can be a murkier and more individualized process. Most personal auto policies have an extremely broad, boilerplate exclusion for commercial activity. Freelance exposures, however, are not created equal and nor are the coverages provided by the freelance employer. The only way to understand the extent of the coverage gaps is to look at the individual contract between the freelancer and the company. First, find out when the insured will be operating their vehicle in a commercial capacity. Often this involves delivery, but the diversity of these exposures continues to grow. Just look at these examples for a sample of what is out there: Rover, TaskRabbit, EasyShift, Handy, Dolly, HelloTech. Next, you must check the insured's contract with the company to see when, if at all, the company covers your client's insurance needs vs when they are expected to carry their own insurance. In most cases, the contract is designed specifically to exclude coverage, relying on the freelancers to provide their own insurance for most or all activities.

HOW TO COVER THIS EXPOSURE ON A PERSONAL LINES POLICY

As mentioned above, most personal auto policies have an exclusion that uses a broad brush to exclude commercial activities, but that doesn't mean a commercial policy is the only option. Many insurers recognize the growth in the freelance workspace and have created endorsements for their personal auto policies. Most of these endorsements are targeted specifically at TNCs, so it should be relatively simple to find coverage for Uber and Lyft drivers. If your client is working in another freelance niche, however, you will need to communicate closely with your company underwriter to ensure that their endorsement provides coverage for the necessary exposure and be sure to carefully document those conversations in your agency management system or file repository. In many cases, the "Ridesharing Endorsement" can be applied to other gig work, but it's always important to confirm with the underwriter.

ONE ADDITIONAL THOUGHT

Throughout this technical advisory, we've addressed auto exposure, and, in most cases, that is going to be the main risk that a client will face with their freelance work. However, in some cases there may exist additional liability exposures not covered by traditional personal lines policies. Freelance workers are virtually never covered by Worker's Compensation coverage for injuries on the job. From a general liability perspective, if your client is sued, for example, for accidentally injuring someone during a food delivery on someone's porch, where is the coverage? The business exclusion on Homeowners coverage likely precludes coverage there, and we are not aware of any carriers that offer a buyback on that exclusion for freelance work. It would be effectively covered by a Commercial General Liability policy, but the premium for such a policy would likely make it an impractical option for freelance workers. We don't know that there is a perfect solution to this issue, but it's something of which we, as agents, need to be aware.

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