

## Car Accidents Caused by Negligence

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When a person is negligent, it means that he or she has behaved in a thoughtless or careless manner, which has caused harm or injury to another person. A person can be negligent by doing something that he or she should not have done (for example, running a red light or speeding), or by failing to do something that he or she should have done (for example, failing to yield, stop for a pedestrian, or turn on lights when driving at night).

Negligence is a legal theory often used in car accident cases. A driver must use care to avoid injuring other motorists, passengers, or pedestrians -- basically, anyone that he or she encounters on the road. If a driver is not reasonably careful and injures someone as a result, the driver is liable for injuring the accident victim. Elements of a Negligence Claim

The person who brings the lawsuit (called the plaintiff) must show that the defendant (the person being sued) was negligent. If you are the plaintiff, you must show all of the following:

The law required the defendant to be reasonably careful. In car accident cases, the law requires drivers to be careful when encountering anyone they meet on the road -- passengers, persons in other vehicles, and pedestrians -- so this one is a given. This is called the "duty of reasonable care."

The defendant was not careful. This is called "breaching" (or violating) the duty of care. In determining whether a driver was sufficiently careful, the law compares the driver's conduct with the conduct expected of a "reasonable person." The law asks: How would a reasonable, prudent person have behaved in the same or similar circumstances?

If the defendant's behavior falls short of how a reasonable person would have acted, the defendant has violated the duty of reasonable care. Examples of conduct expected of a reasonable driver include:

- stopping at a red light
- watching for crossing pedestrians, and
- following the vehicle in front at a safe distance.

The defendant's conduct caused plaintiff's injuries. You must also show that the defendant's conduct caused your injuries.

For example, Paula is suing Dan, claiming that she suffered whiplash when Dan rear-ended her car. Paula must provide evidence that the whip lash was due to being rear-ended by Dan and not due to some other accident or event. If Paula suffered whiplash the day before the collision while playing golf, she'll have difficulty establishing that Dan's conduct -- rear-ending Paula's car -- caused her injuries.

The plaintiff suffered losses and/or was injured. Car accident victims are entitled to compensation for injuries, lost wages or earning capacity, pain and suffering, and property damage (for example, damage to a car). If there aren't any monetary losses or provable injuries, the plaintiff can't recover anything. For example, if Paula in the above example doesn't suffer any physical injury, doesn't miss any work time because of the accident, and her car sustains no damage, she cannot recover compensation from Dan because there has been no injury or damage.

The plaintiff must show evidence of his or her injuries and other monetary losses to be compensated. If you are the plaintiff, it's important to keep complete and detailed records of all injuries, medical expenses, and property damage. What Duties Does a Driver Have?

The law requires drivers to use reasonable care to avoid harming anyone encountered on the road. But what exactly does this entail? Here are some examples of specific requirements that the law has imposed. If a driver fails to meet these requirements, he or she may be found to have violated the driver duty of reasonable care.

Driving at a reasonable speed. Drivers have a duty to drive at a reasonable, prudent speed. A person who drives at a speed that is unreasonable in light of the existing traffic, road, visibility, and weather conditions may be negligent. Even driving at the speed limit can be considered negligent if, for example, visibility is low, the weather is bad, or the circumstances warrant particular caution (driving by a school where you can expect children to be crossing, for example).

Vigilance and keeping a proper lookout. Drivers have a duty to be alert and to maintain a careful lookout for other vehicles, pedestrians, and road hazards. Drivers are expected to see the things that an ordinary, prudent person would see. A failure to keep a proper lookout -- by, for example, failing to take care when driving by a road construction site or a school crossing -- can constitute negligence.

Maintaining control of the car. Drivers are expected to keep their car under control by, for example, being able to stop quickly. Negligence may be inferred if a car loses control (such as overturning or leaving the road) for no apparent reason.

Maintaining and using the car's equipment. Drivers are expected to maintain their vehicles in safe working order. For example, lights and brakes should be working properly. Driver Duties Imposed by State Law

Each state has motor vehicle laws governing how drivers are expected to behave on the road. In certain circumstances, violating a motor vehicle law gives rise to a "presumption" of negligence -- meaning that the defendant must present evidence to prove that he or she was not negligent (rather than requiring the plaintiff to prove that the defendant was negligent).

Examples of conduct that may give rise to a presumption of negligence include:

- driving under the influence of drugs or alcohol
- violating right-of-way rules, including a pedestrian's right of way, and
- driving on the wrong side of the road. Car Accident Defenses

There are a number of defenses available to a defendant in a car accident case based on negligence. Using these defenses can lower or erase the defendant's liability (that is, the amount of compensation the defendant must pay the plaintiff). For example, if a pedestrian runs into the middle of the road and is hit by a car, the driver may escape all liability or may only have to pay for a portion of the pedestrian's injuries. Getting Help

Some small car accident cases are straightforward and can be handled without a lawyer. If, however, your car accident case is complicated, involves severe or permanent disability, or involves large damages, consider hiring a personal injury attorney. If you decide to consult a lawyer, go straight to Nolo's Lawyer Directory.