

Being Rear Ended: A Look into Who's at Fault and Why

Let's face it: car accidents happen. From head-on collisions with drunk drivers, being sideswiped on the highway, hit-and-runs on a busy street, to minor fender benders in parking lots after a long day at work. No matter the type of accident you're involved in or the severity, someone is at-fault. This is called liability, and as a safe driver, it's important to know the laws surrounding it while out on the road.

There's being rear-ended, which can cause some of the worst injuries and motor vehicle damage, leaving you in pain and with countless medical bills and costly insurance claims.

Determining fault, not always so simple

It's not always easy for the police who arrive on the scene of your accident to determine fault without a thorough investigation, but when you're rear ended by the driver behind you, you'd think it would be obvious. However, it's not so clear-cut in that scenario either! There are several key factors that determine who's at-fault when you're rear ended by another motorist.

Let's investigate how fault is determined when you're rear ended, and what steps you should take if you find yourself injured due to another driver's negligence.

It's important to know your rights when the distracted driver behind you slams on his or her breaks, sending you into traffic and damaging your vehicle, causing you serious injury.

What's considered negligent?

In previous blogs we've taken an in-depth look at *Negligence* and what it means. To refresh, negligence is defined by law as follows:

Failure to use reasonable care, resulting in damage or injury to another.

When a driver is negligent, they are often guilty of any number of the following:

- Failure to use turn signals
- Failure to yield the right of way
- Failure to respect the speed limit (too fast or too slow)
- Distracted driving: texting, looking for something in the back seat, eating, looking in a purse or backpack

An experienced attorney on your side

To be able to determine fault, the injured party's legal counsel must be able to prove the other driver was guilty of one or more negligent actions that directly resulted in the accident. Note that the above is only a brief list of scenarios that can be considered negligent by law and is in no way considered exhaustive.

Rear-end accidents: the driver behind you is at fault... most of the time!

There are so many situations that can pose a hazard on the road. As drivers, we must be aware of our surroundings and be able to quickly react to the ebb and flow of traffic as needed.

The reason for this is because at times, drivers are expected to stop suddenly to avoid a road hazard such as an animal, road work, or merely because traffic has slowed to a crawl and there is nowhere to

go. If traffic suddenly slows due to an accident ahead of you the forces road closures, you're at risk of being rear-ended by no fault of your own.

You are always, however, expected to have the required amount of distance between you and the car in front of you to prevent avoidable accidents such as rear-ending. On the flip side, lets look at scenarios where you'd be considered negligent even though you were the one who was rear-ended:

- You have a flat tire and neglect to properly employ your hazard lights
- You fail to repair brake lights that don't work and upon use, they don't function properly or at all
- A sudden stop in anticipation of turning, then failing to execute such a turn
- Distractions that cause you to keep the vehicle in reverse, backing up instead of driving forward

In these avoidable situations you would be at fault, even though you were the one rear-ended. It's important to follow the rules of the road and abide by the traffic laws in your state to avoid being at-fault for a costly accident!

Comparative vs. Contributory Negligence: a closer look

There are times when, both drivers or multiple drivers are at-fault, leaving no single party completely innocent. The laws regarding these types of cases are different from state to state. Few states still employ a strict "contributory negligence" policy, but most have now established a "comparative negligence" system instead. The different between the two is important, and are defined below:

Contributory negligence: in this situation under the law, if the driver bringing the suit can show evidence that the other driver was negligent in any way, that driver is now prohibited from obtaining any sort of compensation or damages in a lawsuit. This system is notoriously harsh, and few states even enforce it anymore.

Comparative negligence: this system, the one most states now employ because it allocates fault between drivers, deals with reducing but not eliminating liability of the other driver who may be partially at fault for the accident.

To go into further detail, there are two distinct types of **comparative negligence**.

Pure comparative negligence: this means liability is split according to the percentage of which is each driver is found to be at fault. The math to determine this is done in a way that distributes the cost of the damages between the parties fairly, not allowing one driver to claim above a certain amount from the other considering both drivers were in some capacity at fault. Each case is different and only an experienced attorney can help to determine the exact amount a party will receive.

Modified comparative negligence: in this instance, liability is split according to the percentage of fault as well, but only up to a certain level where damages can be recovered. It differs from *pure comparative negligence* in that once a plaintiff meets or exceeds the determined level of fault, they cannot recover anything. The level is usually 50% at-fault but is determined on a case-by-case basis and by an experienced attorney.

Being rear-ended can cause vehicular damage, injury, and financial strain

Being injured and out of work is stressful, pile on medical bills while trying to recover from an accident and you may feel you have nowhere to turn. Shaked Law Firm is here for you.

Contact us to schedule a complimentary consultation. There's no obligation. Take the first step and call today: (877) 529-0080

© Sagi Shaked Esq.