

Car Accidents With Pedestrians

Here's what to do, and how to determine fault, if you hit a pedestrian.

Hitting a pedestrian while driving a car is a scary occurrence, but not uncommon. According to statistics gathered by the National Highway Traffic Safety Administration, over 60,000 pedestrians were injured in traffic accidents in 2006. Hitting a pedestrian at a speed of over 30 miles per hour results in more serious injuries and fatalities -- yet a driver can severely disable a pedestrian in a crash where the driver is traveling only 10 miles per hour.

As a driver, it's important to know what to do immediately after an accident with a pedestrian. By staying calm and speaking to the right parties, you can minimize your liability. Drivers should also learn the basic rules of fault, how injuries and damages will be compensated, and most importantly, how to avoid such accidents in the first place.

What to Do Immediately After the Accident

Most drivers that hit pedestrians are extremely upset immediately after the accident. Take a deep breath and focus on the following:

Safety comes first. First, get any injured people to a place of safety. Do not attempt to administer medical treatment beyond what is required of you in an emergency, such as CPR.

Get medical and legal help. Next, contact the police, medical care providers, and auto insurance providers (the driver's and the pedestrian's). If you are facing possible criminal charges for the accident, such as driving under the influence, contact a criminal defense attorney for yourself if you can. When the police and your insurance agent arrive, give truthful statements to them about how the accident took place.

Exchange contact information, but not much more. If the pedestrian is not incapacitated, exchange your name, phone number, and insurance information with them. Avoid talking extensively with the pedestrian or their friends or family members. Admitting fault, or making statements such as "I feel so guilty," could expose you to a personal injury lawsuit. You should also avoid speaking directly to the pedestrian's attorney or auto insurance company. It is important to have your auto insurance company communicate with the pedestrian's attorney, auto insurance company, or pedestrian themselves.

Who Is at Fault?

When a driver hits a pedestrian, often the biggest question is: Whose fault was the accident? Generally, fault is determined by the law of negligence. A person who fails to exercise a reasonable standard of care under the circumstances may be considered

“negligent.” For a detailed discussion of negligence in car accident cases, read Nolo’s article [Car Accidents Caused by Negligence](#).

However, both the driver and the pedestrian can be negligent. For example, the pedestrian may be crossing the street illegally while the driver is traveling in excess of the posted speed limit. This scenario is treated differently in different states.

Some states, such as Maryland and Virginia, follow what’s called a “pure contributory negligence” rule. This means that if the pedestrian contributed in the slightest bit to the accident, then he and his auto insurance company cannot recover damages from the driver and his auto insurance company.

Other states follow a “comparative fault” rule. This means that a pedestrian can recover some damages even if he was partly at fault. (To learn more about contributory and comparative fault, read Nolo’s article [Car Accident Defenses: Contributory and Comparative Negligence](#).)

Police Reports and Insurance Company Findings

The police will take statements from the driver, pedestrian, and witnesses to determine who was at fault. They may make a conclusive finding on the spot or conduct a detailed investigation to make the finding later.

The police report from the accident will indicate which party the law enforcement officer saw as being at fault. Auto insurance companies, however, may dispute this finding. Insurance companies typically send an adjuster to the scene of the accident, or view the damage to persons and property soon after the accident has occurred. If you believe that your insurance company will unfairly assign you a greater percentage of fault, consider retaining a personal injury attorney to argue that you have a lower percentage of fault.

Insurance Coverage for Pedestrian Accidents

Injured pedestrians are usually covered under their health and disability insurance policies, or worker’s compensation coverage, if the accident occurs on the job. They may also be covered under one or more auto insurance policies.

Payment Under Auto Liability Insurance

An injured pedestrian can usually file a claim against the driver’s or vehicle owner’s auto liability insurance policy. Almost all states require that vehicle owners and drivers carry liability insurance to cover personal injuries to third parties and damage to third parties’ property. Recoveries are dependent on whose fault the accident was and various state statutes. (For a primer on determining fault in car accident cases, read Nolo’s article [Car Accidents Caused by Negligence](#).)

Payment Under No-Fault Coverage

Some states, called “no-fault” states, require insurance companies to pay for the medical expenses and lost wages of their own policyholders, regardless of who is at fault. This is also known as personal injury protection (PIP).

When it comes to coverage for injuries to pedestrians in no-fault states, laws between the states vary. In some states, the driver’s insurance company pays the amount of the pedestrian’s medical expenses up to the PIP limit, even if the accident is the pedestrian’s fault. There are exceptions to this payment scheme. For example, in New Jersey, if a pedestrian is not insured, she or he may be paid out of a special state-mandated fund called the Unsatisfied Claim and Judgment Fund.

Seek a Lawyer's Advice

State laws vary widely when it comes to car insurance schemes, and each scheme has limitations and exclusions. In addition, recovery may depend on the particular insurance policies involved as well as judicial decisions in that state.

In order to sort this all out, injured pedestrians may want to seek advice from a professional, such as the pedestrian’s own insurer or a personal injury attorney. Pedestrians should ask an attorney which auto insurer they should approach first, and from which insurer they might be able to receive additional coverage.

Avoiding Pedestrian Accidents

The best way to avoid pedestrian accidents is to understand that “defensive driving” means being wary of people who walk, use a bicycle, operate a wheelchair, rollerblade, rollerskate, ride an electric scooter, and play in the road. Pay particular attention to young children and older adults. These individuals may be less aware of drivers on the road. They are more likely to stray outside crosswalks and not pay attention to traffic signals.

It is important to remember that individuals who are not in a motor vehicle and are in the road are extremely vulnerable and more likely to be seriously injured than a driver. If you take care to give pedestrians notice, room, and time to move out of your path, you may be able to avoid hitting a pedestrian.

To learn more about dealing with insurance company, settling claims, and handling your own car accident case, get *How to Win Your Personal Injury Claim*, by attorney Joseph L. Matthews (Nolo).

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