

## **PREVENTABILITY OF ACCIDENTS**

The decision on the preventability of an accident is based upon techniques of Defensive Driving and such decisions shall be made independently of any findings as to the driver's legal liability. If any violation of law is found, it is prima facie evidence that the accident was preventable.

However, in the application of the concept of preventability to fleet accident control, the converse is not true. An accident may well be found preventable on the part of a driver even though there is no legal liability and/or no violation of law on his/her part if the investigation shows that the driver failed to take some reasonable action that could have prevented the accident.

The concept of preventability is also an effective means of countering the rationalization by drivers to fix the blame for an accident on some factor other than their own driving. It places more of the burden of proof on the driver showing what could have been done to avoid involvement.

While the types of accidents listed below do not cover every accident, which may occur they are intended to provide guidance in determining the preventability.

### **DETERMINING PREVENTABILITY OF ACCIDENTS**

A. **Struck in Rear by Other Vehicle** - May be deemed non-preventable if:

1. Driver's vehicle was legally and properly parked.
2. Driver was proceeding in his/her own lane of traffic at a safe and lawful speed.
3. Driver was stopped in traffic due to existing conditions or was stopped in compliance with traffic sign or signal or the directions of a police officer or other person legitimately controlling traffic.
4. Driver was in proper lane waiting to make turn.

B. **Struck While Parked** - May be deemed non-preventable if:

1. Driver was properly parked in a location where parking was permitted.
2. Vehicle was protected by emergency warning devices as required by Federal and State regulations, or if driver was in process of setting out or retrieving such devices. These provisions shall apply to the use of turn signals as emergency warning lights under Federal regulations

C. **Accidents at Intersection** - May be deemed preventable if:

1. Driver failed to control speed so that he or she could stop within available sight distance.
2. Driver failed to check cross-traffic and wait for it to clear before entering intersection.
3. Driver pulled out from side street in the face of oncoming traffic.

4. Driver collided with person, vehicle or object while making right or left turn.
5. Driver collided with vehicle making turn in front of the Board vehicle.

D. **Striking Other Vehicle in Rear** - May be deemed preventable if:

1. Driver failed to maintain safe following distance and have the Board vehicle under control.
2. Driver failed to keep alert to traffic conditions and note slowdown.
3. Driver failed to ascertain whether vehicle ahead was moving slowly, stopped, or slowing down for any reason.
4. Driver misjudged rate of overtaking.
5. Driver came too close before pulling out to pass.
6. Driver failed to wait for car ahead to move into the clear before starting up.
7. Driver failed to leave sufficient room for passing vehicle to get safely back in line.

E. **Sideswipe and Head-on Collisions** - May be deemed preventable if:

1. Driver was not entirely in his or her proper lane of travel.
2. Driver did not pull to the right and slow down and stop for vehicle encroaching on the lane of travel when such action could have been taken without additional danger.

F. **Struck in Rear by Other Vehicle** - May be deemed preventable if:

1. Driver was passing slower traffic near an intersection and had to make sudden stop.
2. Driver made sudden stop to park, load or unload.
3. Vehicle was improperly parked.
4. Driver rolled back into vehicle behind while starting on grade.

G. **Squeeze Plays and Shutouts** - May be deemed preventable if:

Driver failed to yield right of way when necessary to avoid an accident.

H. **Backing Accidents** - May be deemed preventable if:

1. Driver backed when backing could have been avoided by better planning of the route.
2. Driver backed into traffic stream when such backing could have been avoided.
3. Driver failed to check proposed path of backward travel.
4. Driver depended solely on mirrors when it was practicable to look back.
5. Driver failed to get out periodically and recheck conditions when backing a long distance.
6. Driver failed to sound horn while backing.
7. Driver failed to check behind vehicle parked at curb before attempting to leave parking space.
8. Driver relied solely on a guide to help back the vehicle.

9. Driver backed from blind side when he or she could have made a sight side approach.

I. **Accidents Involving Rail-operated Vehicle** - May be deemed preventable if:

1. Driver attempted to cross tracks directly ahead of train.
2. Driver ran into side of train.
3. Driver stopped or parked on or too close to tracks.

J. **Accidents While Passing** - May be deemed preventable if:

1. Driver passed where view of road ahead was obstructed by hill, curve, vegetation, traffic, adverse weather conditions, etc.
2. Driver attempted to pass in the face of closely approaching traffic.
3. Driver failed to warn the driver of vehicle being passed.
4. Driver failed to signal change of lanes.
5. Driver pulled out in front of other traffic overtaking from rear.
6. Driver cut-in short returning to right lane.

K. **Accidents While Being Passed** - May be deemed preventable if:

Driver failed to stay in his or her own lane and hold or reduce speed to permit safe passing.

L. **Accident While Entering Traffic Stream** - May be deemed preventable if:

1. Driver failed to signal when pulling out from curb.
2. Driver failed to check traffic before pulling out from curb.
3. Driver failed to look back to check traffic if he or she was in a position where mirrors did not show traffic conditions.
4. Driver attempted to pull out in a manner which forced other vehicle(s) to change speed or direction.
5. Driver failed to make full stop before entering from side street, alley or driveway.
6. Driver failed to make full stop before crossing sidewalk.
7. Driver failed to yield right-of-way to approaching traffic.

M. **Pedestrian Accidents** - May be deemed preventable if:

1. Driver did not reduce speed in area of heavy pedestrian traffic.
2. Driver was not prepared to stop.
3. Driver failed to yield right-of-way to pedestrian(s).

N. **Mechanical Defects Accident** - May be deemed preventable if:

1. Defect was of a type which driver should have detected in making pre-trip or en route inspection of vehicle.
2. Defect was of a type which driver should have detected during the normal operation of the vehicle.

O. **All Types of Accidents** - May be deemed preventable if:

1. Driver was not operating at a speed consistent with the existing conditions of road, weather, and traffic.
2. Driver failed to control speed so that he or she could stop within assured clear distance.
3. Driver misjudged available clearance.
4. Driver failed to accurately observe existing conditions.
5. Driver failed to yield right of way to avoid an accident.
6. Driver was in violation of Board operating rules or special instructions, the regulations of any Federal or State regulatory agency, or any applicable traffic law or ordinance.

This guide, while it is designed to assist in determining the preventability of accidents, cannot list every type of accident that may be encountered, nor can it list all of the factors that may be involved in a given accident. Because it covers aspects of the usual types of accidents, it can serve as a guide for consideration of each accident, and as a point of departure for getting down to the fine points of preventability.

While evidence of a violation of the law is a clear-cut indication of the preventability of an accident from the standpoint of a defensive driving approach, the absence of any violation does not make the accident non-preventable.