

## Uninsured Motorist Insurance Coverage Explained

California law requires that motorists have automobile insurance. The bare minimum insurance limits allowed by law are \$15,000 per person per accident, to a total of \$30,000 per accident (regardless of the number of persons injured and the total amount of their damages), and property damage coverage of at least \$5,000. However, according to the Insurance Research Council, **18 percent of California motorists do not have any insurance**, making it the seventh-highest state in the nation when it comes to uninsured motorists. **And the data don't include the ones who don't have enough insurance limits (Underinsured). Other data shows that 1 out of 3 drivers is "uninsured and underinsured".**

**Estimated Percentage of Uninsured Motorists by State in 2007**

| <b>Estimated Percentage of Uninsured Motorists by State in 2007</b> | <u>Uninsured</u> | <u>State</u>   | <u>Uninsured</u> | <u>State</u>   | <u>Uninsured</u> |
|---|------------------|----------------|------------------|----------------|------------------|
| New Mexico  | 29%              | Montana        | 15%              | Kansas         | 10%              |
| Mississippi   | 28%              | Colorado       | 15%              | Connecticut    | 9%               |
| Alabama   | 26%              | D.C.           | 15%              | Virginia       | 9%               |
| Oklahoma  | 24%              | Indiana        | 14%              | South Carolina | 9%               |
| Florida   | 23%              | Missouri       | 14%              | Idaho          | 9%               |
| Tennessee   | 20%              | Rhode Island   | 14%              | Wyoming        | 9%               |
| California  | 18%              | Alaska         | 13%              | New Jersey     | 8%               |
| Arizona   | 18%              | Maryland       | 12%              | Utah           | 8%               |
| Michigan  | 17%              | Hawaii         | 12%              | Nebraska       | 8%               |
| Washington  | 16%              | Louisiana      | 12%              | West Virginia  | 8%               |
| Ohio  | 16%              | Iowa           | 12%              | Pennsylvania   | 7%               |
| Kentucky  | 16%              | Minnesota      | 12%              | South Dakota   | 7%               |
| Texas   | 15%              | North Carolina | 12%              | Vermont        | 6%               |
| Nevada  | 15%              | Georgia        | 12%              | New York       | 5%               |
| Arkansas  | 15%              | New Hampshire  | 11%              | North Dakota   | 5%               |
| Wisconsin   | 15%              | Oregon         | 11%              | Maine          | 4%               |
| Illinois  | 15%              | Delaware       | 10%              | Massachusetts  | 1%               |

An **uninsured motorist** is someone who does not have any insurance at all, has insurance but it is less than the state-mandated minimum limits of coverage, or someone who has insurance and causes an accident, but his or her insurance company denies the claim or is not financially able to pay it (that is, the insurance company is insolvent). A hit-and-run driver who leaves the scene of the accident without leaving sufficient information to identify himself or herself, is also considered to be an uninsured motorist for purposes of bodily injuries (but not property damage). Where a positive identification of the license plates in a hit-and-run accident has been made, insurance companies will generally deny the uninsured motorist's claim and will go after the registered owner of the car that struck you.

An underinsured motorist is someone who has at least the bare minimum of coverage as required by law, but the limits of their policy is insufficient to pay for all of the damaged caused by the accident.

Uninsured insurance coverage (UM) and underinsured insurance coverage (UIM) is coverage you buy from your own insurance company. It pays for bodily injury losses to you and your passengers if you get into an accident caused by a driver who does not have insurance, or has insurance but the limits are insufficient to cover all of the injuries and damages.

A handful of states mandate purchase of UM/UIM, but most do not. California law does not require that you have uninsured/underinsured coverage, but it is definitely something your insurance policy should have. If you do not have uninsured motorist coverage and get into an accident caused by an uninsured motorist, the chances are that you are going to have to bear the brunt of the expenses to treat your injuries and fix the damage to your car out of your pocket.

Studies show that the typical uninsured motorist is unemployed or employed at a low-paying job, rents an apartment, and does not have much in the way of savings accounts or other assets. In other words, the typical uninsured motorist does not have the money to pay you for your injuries or damage even if he or she wanted to. And if you do reach a settlement with the uninsured driver, you may be barred from pursuing compensation from your own uninsured/underinsured coverage.

Underinsurance means that the driver has the minimum limits of coverage required by law, but those limits are insufficient to compensate you fully for your injuries. When a claim is made under an underinsure motorist policy, **your insurance kicks in only after the other driver's insurance is exhausted and is deducted from your limits.** For instance, say you have an insurance policy with bodily injury limits of \$100,000, the driver who hit you has only the minimum of \$15,000, but your damage comes to \$115,000. Can you combine the other driver's \$15,000 with your policy's limits of \$100,000 to receive a total of \$115,000? **No.** The other driver's insurance will pay up to their limit (or \$15,000) and your insurance will pay the difference with your limits of \$100,000 minus what already paid (or  $\$100,000 - \$15,000 = \$85,000$ ).

Uninsured/underinsured coverage pays for your **medical expenses, lost wages, loss of earning capacity, pain and suffering, disfigurement, and other damages resulting from the accident, up to the limits of your policy.** Both UM and UIM apply to you and your passengers, and also covers you and other persons named in your insurance policy (such as family members) if you are injured in other cars.

Before paying you under the terms of an insured motorist clause of your insurance company, your insurance company will usually want the driver of the other car to sign a statement under penalty of perjury that he or she does not in fact have any insurance. In a case of a underinsured motorist, your insurance company will want to obtain at least a copy of the "Declaration Page" of the other driver's insurance policy, which states what type of insurance the person has and the limits thereof. You will also usually have to receive the full policy limits from the underinsured driver's insurance company before your own insurance company will pay you a penny. Before making a settlement with an uninsured or underinsured driver, contact an experienced personal injury law firm so you can be properly advised and not put in jeopardy your right to seek full compensation from your own insurance company.

Suppose you have health insurance that would take care of your medical expenses if you were injured by an uninsured motorist; should you have uninsured motorist bodily injury coverage as well? Absolutely. Health care insurance covers only the medical treatment you need because of the accident. But the typical policy has deductibles, co-payments, and limits on certain types of care. And a health insurance policy won't reimburse you for your other damages, such as lost wages while you couldn't work or pain and suffering.

UM and UIM also cover you as a pedestrian, for example, if you're struck by a car while walking across the street in a crosswalk. It can also protect you (and other named insureds) if you are injured while riding in someone else's vehicle. Workers can purchase disability insurance to cover periods when they are unable to work, but such insurance may be expensive.

Besides uninsured/underinsured motorists' coverage for bodily injury, you may consider getting insurance coverage for the property damage to your vehicle caused by an uninsured or underinsured motorist. If you have collision coverage, it may not be necessary to get UM or UIM coverage for property damage. If, however, you do not have collision coverage, you may consider getting UM/UIM property damage insurance at a reasonable price. The deductible for the UM/UIM property damage coverage is generally lower than the deductible for collision coverage with the same limits. However, you should be aware that uninsured property damage does not apply to hit-and-run accidents. The reason for this is that, because the deductible for UM property damage is usually less than the deductible for collision coverage, drivers may be tempted to tell the insurance company that the car was damaged in a hit-and-run when that is not the case. There is also the possibility that the motorist will purchase uninsured motorist property damage but not collision coverage. For this reason, you may wish to have collision coverage on your insurance policy.

Uninsured/underinsured coverage is **generally inexpensive, considering the protection you get**. You should have UM/UIM insurance to the same limit as your bodily injury limits. The legal limits for mandatory insurance of \$15,000 maximum per person to a maximum \$30,000 per accident and \$5,000 for property damage were set decades ago but today they are usually insufficient to fully cover anything more than a minor fender bender. At a minimum, you should have limits of \$100,000 per person, \$300,000 per accident, and \$25,000 in property damage. If you have substantial assets, you should have a policy of at least \$300,000 per person, \$500,000 per accident, and \$50,000 property damage. You should also seriously consider buying an "umbrella" policy that will protect you for \$1 million or more. To obtain an umbrella policy, you usually need to have your automobile insurance policy and homeowner's policy with the same company. Talk to your insurance agent if you wish to learn more about the benefits and costs of an umbrella policy.

If your insurance company refuses to pay you under an uninsured or underinsured motorist coverage, you may be able to sue the insurance company for breach of contract on the basis it did not live up to your agreement created when you purchased the uninsured or underinsured motorist coverage. Your insurance policy may, however, require that you arbitrate the claim rather than give you a right to sue in court. If you are successful and the insurance company had no reasonable basis for denying your claim, you may be able to sue your insurance company for "bad faith" denial of your claim. In a successful bad faith claim against the insurance company, not only would you be entitled to recover the damages you suffered from the accident, but also any and all damages you incurred as a result of the insurance company's bad faith refusal to pay your claim. You would also have the right to ask for "punitive damages" from the insurance company for their callous actions, resulting in a possible award in the hundreds of thousands of dollars, even millions, against the insurance company.

Let's look at the issue from the other side of the coin. Suppose you were the driver who was uninsured and were injured in an accident caused by an insured driver. Can you recover money for your injuries and damages from the insured driver? Partly. You are entitled to recover your so-called "economic damages," such as medical bills and lost wages.

You are not, however, allowed to receive compensation for your “non-economic damages,” such as pain and suffering, inconvenience, physical impairment, disfigurement, and other “non-pecuniary” damages. The limitation does not apply, however, if the person who caused the accident was convicted of driving under the influence. Also, you are entitled to sue for punitive damages where the facts indicate the person who hit you intended to do so, was driving under the influence, or was recklessly operating his or her vehicle without due regard for other motorists on the road, even though you have no insurance yourself.

If you are injured by an uninsured or underinsured driver and will be making a claim against your own insurance company, could you use an attorney to sue your own company? Yes.

If you have any questions don't hesitate to contact me. **Gérald Gaucher** [ggaucher@aaod.com](mailto:ggaucher@aaod.com). Or by calling me at 888-511-2234.

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