



Risk Insights

Employee Cell Phone Use While Driving: What is Your Company's Liability?

According to the Cellular Telecommunications & Internet Association, as of May 2007, 236 million people have a cell phone as compared to 4.3 million in 1990. In keeping with this trend, conducting business on a cell phone while driving has also become a commonplace practice. While employers may be aware of the obvious benefits of allowing employees to use cell phones to conduct business while driving, they may be unaware of their liability risks.

Currently, there is conflicting evidence regarding the link between cell phone usage and car accidents. According to Johns Hopkins University, as individuals focus on listening and engaging in conversation, the activity in the visual part of the brain decreases. This is true even with the use of a hands-free device. In addition, the University of Utah found that drivers are as impaired on a cell phone as they are while driving under the influence of alcohol. Furthermore, with the advancement of technology, cell users can e-mail clients, surf the Internet and receive faxes from their hand-set. These features only increase the likelihood that the driver will get distracted while also trying to concentrate on the road. In contrast however, the AAA Foundation for Traffic Safety found that the most potentially dangerous activity while driving was "reaching or leaning" — cell phone use placed a distant ninth on the list of distracting activities. Despite these inconsistent findings, there are a growing number of lawsuits involving employer liability for traffic accidents caused by employees talking on cell phones while on the job.

Case Studies

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In 2004, a Georgia employee making a business phone call while driving hit and caused serious injury to another driver. The employee's company agreed to pay \$5 million in damages after the court found that the company was liable since the employee was making a business-related call.

Two million dollars in damages were awarded to a little girl's family after an employee hit and killed her in 2004. The family also sued the employee's company after phone records revealed that the employee was talking to a client at the time of the crash.

In addition to third-party claims resulting from accidents, employers increasingly face claims by employees for health problems allegedly stemming from cell phone use. Although the science appears contradictory and inconclusive, some employees contend that the radio frequency radiation emitted during cell phone usage may lead to various forms of brain cancer or other illnesses. Employees who use cell phones while on the job have begun to file Workers' Compensation claims and lawsuits based on this theory.

Minimizing Employer Liability

While there is no guaranteed defense to liability, developing an appropriate employee cell phone use policy, training employees about the dangers of talking on a cell phone while driving, and enforcing policies with signed written acknowledgments from employees when they are issued cell phones and related equipment all can help to limit an employer's potential liability.

Considering that several states currently ban the use of hand held cell phones while driving, and many states have taken an increasingly active role in addressing the relationship between driver cell phone use and traffic safety, employers should require employees to observe all applicable laws regarding cell phone use while driving. While state laws do not directly address employer liability, they have the potential to increase employer exposure for cell phone-related accidents. For more information about state requirements, access the Governor's Highway Safety Association Web site at: www.statehighwaysafety.org.

In addition to updating your company Cell Phone/Hand Held Use Policy and training program, employers should also review their insurance policies. To help you assess your company's risk of employee cell phone use, contact us to review your unique liability risks and for assistance in developing a comprehensive Cell Phone Use Policy.

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