

Employee Relations

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Put Your Calls on Hold While Driving

Karen W. Neely

The author advises employers to adopt a ban on cell phone use while driving. The author believes that a company with a firm policy on cell phone use may have better outcomes with respect to safety and potential liability.

Based upon a study issued by the National Highway Safety Administration, driver cell phone use increased significantly in 2005. Based upon the statistics, up to six percent of drivers regularly used hand-held phones while driving. This translates into 974,000 vehicles at any time being driven by someone using a hand-held phone. Even more frightening is a study conducted by Harvard University's Center for Risk Analysis which showed that over 1.5 million drivers using cell phones were involved in accidents—2,600 of which resulted in fatalities.

As a result of these statistics, since 1999, every state has considered a bill related to cell phone use and driving safety, according to the National Conference of State Legislatures. In 2001, New York became the first state to prohibit the use of hand-held cell phones while driving. Connecticut, New Jersey, and the District of Columbia soon followed with similar prohibitions. The importance of legislation suspending cell phone use has been driven home by five high verdict cases:

- One evening after work, a Smith Barney employee dropped his cell phone while driving and bent over to pick it up. While attempting to retrieve the phone, he drove through a red light and struck and killed a father of three. Although the employee was not on company business and was not using a company phone, the victim's estate sued the employee and Smith Barney. Concerned about the potential of a high jury verdict, Smith Barney settled for \$500,000.

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- In a 1996 case, a public school teacher in Hawaii struck and killed a tourist. A judge found that the teacher's cell phone use distracted her within a minute of the accident. The State of Hawaii paid the tourist's family \$1.5 million.
- Dyke Industries, a lumber wholesaler, settled an injury claim for \$16.2 million with an elderly lady who was severely disabled in an auto accident with one of its salesmen who was talking on his cell phone. The settlement came after the jury awarded the lady \$21 million.
- In 2000, a law firm settled for an undisclosed amount after one of its attorneys was conducting business on her cell phone when she struck and killed a 15-year-old girl. In addition to the settlement, the attorney was ordered by the jury to pay more than \$2 million, and she served one year in jail for hit-and-run.
- In February of this year, International Paper Co. agreed to pay a \$5.2 million settlement to a widowed mother of four who had to have her arm amputated after an accident involving one of its employees who was using a cell phone while driving.

The potential for exceptional verdicts in these lawsuits is particularly high because most jurors are familiar with the risks that are presented by inattentive cell phone use.

In light of state legislation and potential liability to employers, companies should consider adopting a cell phone policy that prohibits cell phone use while driving. The policy should include the following provisions:

- An absolute ban on cell phone use while driving, even with the use of a hands-free device;
- Requirement that employees pull over into a parking area to receive and place phone calls;
- Requirement that all employees sign an acknowledgement of the policy; and
- Emphasize that employees are required to comply with all applicable state and local laws.

Companies should not just stop at adopting a policy, but should diligently enforce the provisions—emphasizing that failure to comply with the policy may result in disciplinary action, up to and including

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States	Statewide Ban on Hand-Held Cell Phone Use While Driving
Arkansas	School bus drivers are prohibited.
Arizona	School bus drivers are prohibited.
California	Yes (effective July 1, 2008).
Colorado	Teens are prohibited.
Connecticut	Yes.
Delaware	School bus drivers and teens are prohibited.
District of Columbia	Yes.
Georgia	School bus drivers are prohibited. Drivers in Dekalb County can be fined when cell phone use causes an accident. State law requires all drivers to exercise "due care" while driving.
Illinois	No statewide ban. Prohibited in Chicago. School bus drivers and teens are prohibited.
Kentucky	School bus drivers are prohibited.
Maine	Teens are prohibited.
Maryland	Teens are prohibited.
Massachusetts	School bus drivers are prohibited. State law permits use for all other drivers as long as it does not interfere with operation of motor vehicle.
Minnesota	Teens are prohibited.
Nebraska	Teens are prohibited.
New Jersey	Yes.
North Carolina	School bus drivers and teens are prohibited.
Oregon	Teens are prohibited.
Pennsylvania	No statewide ban. Prohibited in Conshohocken, Lebanon, and West Conshohocken, PA.
Rhode Island	School bus drivers and teens are prohibited.
Tennessee	School bus drivers and teens are prohibited.
Texas	School bus drivers and teens are prohibited.
Utah	No statewide ban. Drivers in Sandy, UT, can be fined for engaging in distracting activity that causes an accident or violation.
Virginia	Teens are prohibited.
Washington	Yes (effective July 2008).
West Virginia	Teens are prohibited.

termination. In addition to adopting a cell phone policy, companies should consider revising employees' job descriptions so that they do not require employees to use the cell phone while driving. Although adopting such a policy is not a guaranteed defense, a company with a firm policy on cell phone use may result in a better outcome with respect to safety and potential liability.

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