

Employers Should Consider Implementing Distracted Driving Policies

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Distracted driving has become one of the leading causes of fatal and serious car accidents, with cell phones and PDAs (“portable devices”) topping the list of major distractions. According to the National Safety Council, an estimated 1.6 million automobile accidents per year are caused by drivers using a portable device. Many of those distracted drivers are either: (1) engaged in a work-related activity; (2) communicating via a company-issued portable device; (3) driving a company-issued vehicle; or (4) engaged in some combination of the above.

While these employees would once have been praised for their ability to multi-task, employers are now confronting liability issues when employees are tending to electronic devices while driving. As a result, employers are encouraged to develop written policies aimed at prohibiting such risky behavior by their employees.

For instance, a court in Florida imputed liability to an employer for property damage and personal injuries when its employee caused an automobile accident while tending to company business on an electronic device (salesperson conducting business on his cell phone as he traveled between appointments). The employer was liable for \$21 million dollars. Other courts have similarly ruled. Indeed, some employers have even faced lawsuits for accidents caused by employees during their personal driving time merely because the employee was using a company-issued portable device.

In addition, employers must also consider their legal exposure beyond tort liability and contemplate the impact of various other state and federal laws. A workers’ compensation claim, for example, may arise if an employee is injured in an accident while using a portable device for a work-related purpose, regardless of whether the employee was at fault.

Accordingly, employers should take steps to limit their potential liability by adopting a written policy prohibiting the use of personal and company-issued portable devices for business purposes while driving. Such a policy will not only put employees on notice that the employer takes such dangerous, and in some states, illegal behavior seriously, it will also give employers greater latitude to discipline and even terminate employees who violate the policy. Courts will also likely consider the existence of such a policy when determining the employer’s potential liability and/or damages during litigation.

To be most effective, employers should require a written acknowledgement of the policy from all employees, regardless of whether they receive a company-issued portable device or vehicle. The policy should be clear that the employer does not expect employees to answer texts, phone calls, or emails while driving, and that they should stop driving before attempting to do so. It should also provide that employees are to obey all applicable local, state and federal laws, and that violations of the policy may lead to disciplinary action, up to and including termination. Further, to enforce the policy consistently, employees should be notified that company-issued portable devices and vehicles and/or driver records may be monitored to ensure compliance.

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