

LEADING THE WAY TO SAFER ROADS

By Wendy Canaday



Does your company have a policy on employees' on-the-job cell phone use? Chances are that it does not, but it should. Here is why.

News stories abound with statistics about the dangers of talking on the phone or texting while driving. In case you have missed them, here are some of the more staggering figures:

- A driver talking on the phone is four times more likely to crash (even talking hands-free) than someone who is simply driving. It is comparable to drunk-driving.
- A driver texting is a whopping twenty-three times more likely to crash than someone who is simply driving.

The bottom line is obvious: you are much safer if you are paying attention only to driving. We all know this.

The reality is, however, that it is convenient to use that cell phone to accomplish something while driving. This convenience is particularly compelling in businesses that rely on driving to serve customers, such as in the sales, installation and service businesses of the electronic security industry. In fact, electronic devices such as cell phones, navigation systems and on-board computers keeping track of drivers' locations and schedules are necessities in order to communicate with employees, find directions and expeditiously serve customers.

But couple a cell phone's convenience/necessity factor with the wide-spread it-won't-happen-to-me attitude people seem to have in assessing the risks of talking on the phone while driving, and you have a recipe for disaster. Indeed, distracted driving caused 5,870 deaths and 515,000 injuries last year.

Some states have reacted to the specific dangers of electronically distracted driving by outlawing the behavior. Currently, seven states have banned hand-held cell phone use while driving and eighteen states, plus the District of Columbia, have banned text messaging while driving.

President Obama signed an executive order in September 2009 banning all federal workers from texting while driving on government business or in government vehicles or equipment. And the administration plans to push all states to pass their own laws against distracted driving.

These laws – and the many studies linking electronic devices to accidents – open employers to new liability for their employees' actions. If an employee violates a law banning cell-phone or texting while driving and is in an accident, the employee's legal violation may be used as evidence that the employee's negligence caused the accident. And that employee's negligence can be imputed to the employer through a legal doctrine called "respondeat superior," which makes an employer responsible for an employee's actions that are committed in the course and scope of employment.

Plus, with all the attention it is getting, it is implausible to deny knowledge of the risks associated with electronically distracted driving. This could expose a company to punitive damages for deliberately disregarding the safety of others.

All told, if your electronically-distracted employee causes a traffic accident it could cost your company millions. Consider this case: In 2006, International Paper employee Vanessa McGrogan was driving on Interstate 16 near Dublin, Georgia, talking on her company-provided cell phone. Her car's cruise control was set to 77 mph, just seven miles over the 70 mph speed limit. Then, the unthinkable happened – she rear-ended a car driven by Debra Ford. The impact turned Ms. Ford's car on its side, with the driver's side hitting the road and sliding into the ditch, with Ms. Ford's arm pinned between the car and the road. Ms. Ford, a widowed mother of four, survived, but her arm had to be amputated.





IS THERE ANYTHING YOUR BUSINESS IS DOING THAT IS SO CRITICAL YOUR EMPLOYEES CAN'T PULL OFF THE ROAD FOR A COUPLE OF MINUTES TO ACCOMPLISH IT?

Ms. Ford sued International Paper, which her attorneys described as the “deep pocket.” International Paper had a policy allowing its employees to use cell-phones hands-free while driving. Her attorneys argued this policy “authorized something as bad as drunk driving,” citing studies that show even using headsets drivers face the same risks as handheld devices. They further argued that Ms. McGrogan’s cell-phone use violated a Georgia law prohibiting distracted driving. The law was not an outright ban on cell-phone use, but allowed reasonable cell-phone use. Ms. McGrogan’s use, they argued, was not reasonable because her cruise control was set for seven miles above the speed limit. Based on this, Ms. Ford sought punitive damages.

After many months of expensive litigation, the case settled out of court for \$5.2 million.

This case is not an anomaly; it is a trend. Other multi-million dollar verdicts and settlements involving accidents stemming from an employee’s on-the-job cell-phone use have been reported in Arkansas, Hawaii, North Carolina, Oklahoma, and Virginia, to name a few.

The insurance industry is also starting to take notice. In setting premiums, some insurance companies have started to consider whether a company has a cell-phone use policy.

Businesses are also starting to recognize the risks – to drivers and the bottom line – and are implementing policies prohibiting employees from using electronic devices while driving.

Here is a sample policy:

An employee who uses a company-supplied electronic device (cell phone, navigation system, on-board computer and the like) or a company-supplied vehicle is prohibited from using the electronic device while driving. This prohibition includes, but is not limited to, receiving or placing calls, text messaging, using the Internet, receiving or responding to email, checking phone messages, inputting or reviewing driving directions or receiving or reviewing work assignments.

This prohibition applies to all use of the electronic device while driving including personal use, and use related to your employment, the business, our customers, our vendors, volunteer activities, meetings or other civic responsibilities performed for or attended in the name of the company.

Any employee who violates this policy will be disciplined and may be terminated.

Banning electronic devices while driving gives your business a shield to defend against claims that you condoned employee behavior that caused someone’s traffic accident or death. If the employee violates the policy, which you have followed and enforced, you have a good argument that the employee was acting outside the scope of his or her employment.

I hear your cries: “Ban cell phone use? Crazy lawyers! Our productivity will tank!” Not so, say experts who have studied the brain’s ability to multitask. Apparently, no matter how good we think we are at multitasking, human brains can effectively perform only one task at a time. If a person tries to do more than one thing at a time, he or she won’t do it well: productivity, memory and learning all suffer.

Those businesses that have taken the leap to banning employee cell-phone use while driving also report no lost productivity. Exxon Mobil studied the effect on worker productivity before implementing a company-wide policy prohibiting phone use while driving. It found no loss in productivity and implemented a company-wide policy banning cell phones while driving. Another international engineering and project management company, AMEC, surveyed its workers after it implemented a ban on talking on the phone while driving and found that 95% reported anonymously that their productivity was not affected.

Is there anything your business is doing that is so critical your employees can’t pull off the road for a couple of minutes to accomplish it? If not, consider implementing a policy banning your employees from using electronic devices while driving. After all, electronic security companies are in the life-safety business. Let’s lead the way.

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