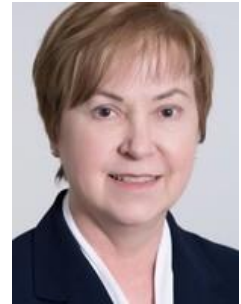


## E-Scooters May Present New Challenges For Employers

By **Sue Schaecher**

November 29, 2018, 11:47 AM EST

Eric Lazzari needed to get across downtown for a meeting and decided to use an electric scooter, according to the Denver Post.[1] He knew the law, and was properly operating the e-scooter on the sidewalk. While stopped at an intersection, an angry pedestrian approached him, told him scooters didn't belong on the sidewalk, and smacked him in the back of the head.



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Is an employer liable to an employee who gets injured, or injures someone else, while using an electric scooter for business purposes?

### Aside From Angry Pedestrians, What Could Go Wrong?

E-scooters began appearing in cities about a year ago and now operate in more than 125 U.S. cities. They can be unlocked through a smartphone app. Typically, the rider is charged \$1 to unlock the e-scooter and 15 cents per minute of riding. The battery-powered devices can travel up to 15 miles per hour.

There is no national database tracking injuries to e-scooter riders or pedestrians, but according to a recent article in the Washington Post,[2] emergency room physicians in seven cities reported an increase in severe accidents after the devices launched. Denver physicians also reported to the Denver Post that they are seeing increased visits. A number of news sources say there have been at least two deaths attributed to injuries sustained while riding e-scooters.

Confusion may be part of the problem. As the Denver Post story suggests, the laws for operating e-scooters are not well-known. They also vary from location to location. In Denver, for example, e-scooters are classified as “toy vehicles” and are not allowed in bike lanes or in general traffic. In California, e-scooters may not be ridden on sidewalks and must be ridden on the street or in bike lanes.

Some critics question the safety of the devices themselves, saying some fleets are poorly maintained by “a loose-knit flock of amateur mechanics.” Compounding the problem, e-scooters are left outside in all kinds of weather and are vulnerable to abuse by the public.

Moreover, the newness of the devices means operator error is likely. Education is up to the e-scooter provider and varies from company to company. Some e-scooter companies provide basic safety information on labels on the e-scooters themselves. Others provide information on their apps. Review of the app and agreement to certain safety conditions may be required before operating an e-scooter.

Despite these challenges, e-scooters may be around for a while. Companies like Uber and Lyft are investing significant sums in this new form of transit. Ford is buying an e-

scooter startup. Many people are excited by this option for sustainable and economical car-free commuting. Companies like Google are providing e-scooters to their employees for business use. It is inevitable that employees in cities with the devices will use them on the job.

## **Legal Risks**

Generally, workers' compensation insurance doesn't cover injuries sustained by an employee while commuting to a fixed place of employment, but can cover injuries that occur while traveling on work-related business (travel in the course and scope of employment). When an employee travels between offices or to and from meetings, or runs errands for his employer, it doesn't matter if the employee is in a car, on an e-scooter or on foot.

Employers can also be held vicariously liable for accidents and injuries their employees cause others while traveling in the scope of their job. Injured persons may have limited recourse against the e-scooter companies — user agreements limit users to binding arbitration and/or disclaim liability — which may lead some injured persons to look elsewhere for relief.

## **Preparing a Policy**

As a result of the risks, some employers have already taken steps to protect employees from injuries related to the use of e-scooters, e-bikes and bike-share systems. One approach is to adopt a policy that e-scooters and bicycles (propelled or otherwise) are not acceptable for business use and are barred during working hours. The Charlotte Observer reports<sup>[3]</sup> that Duke Energy instituted such a ban due to the risks associated with e-scooter operation. The company also warns employees to be on the lookout for e-scooters when walking, riding a bike or driving a car.

Other employers who wish to allow e-scooter use for business may find that their existing vehicle use policies can be extended to the use of such devices.

Provisions to borrow from vehicle use policies may include statements that:

- Employees must know and abide by all applicable laws and regulations.
- Employees are responsible for all citations received.
- Headphones, earphones and cellphones may not be used during operation.
- Only devices with the required, functioning safety devices (lights, reflectors) may be used on company business.
- Users must have a valid driver's license.
- Passengers are not allowed.

- Users are responsible for being in control of the device at all times so as not to endanger the safety of themselves or others.

Employers with large campuses may want to identify where such devices may and may not be used and parked.

In instances where local government codes fail to address safety issues (e.g. helmet use, speed limits), employers may address these issues in their policies. For example, a policy might state that the speed of devices shall be limited to a prudent rate for the conditions. A policy could require that helmets — either the employees' own, helmets provided by the e-scooter provider or helmets provided by the company — must be worn and must meet appropriate safety standards. A general prohibition against participating in any activity that reasonably presents a risk of injury to persons or damage to property while using a device may cover stunts, intoxication and a lot of other ground.

Any policy should be sure to distinguish the proper use of medical devices and devices used by persons with disabilities.

It won't be long before other new transportation technology is on the scene, including self-driving cars. Employers need to be aware of what technologies their employees are using for business and set reasonable terms for use.

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[1] <https://www.denverpost.com/2018/10/01/denver-dockless-scooters-confusion-injuries/>

[2] [https://www.washingtonpost.com/business/economy/scooter-use-is-rising-in-major-cities-so-are-trips-to-the-emergency-room/2018/09/06/53d6a8d4-abd6-11e8-a8d7-0f63ab8b1370\\_story.html?noredirect=on&utm\\_term=.45eaaad2548c0](https://www.washingtonpost.com/business/economy/scooter-use-is-rising-in-major-cities-so-are-trips-to-the-emergency-room/2018/09/06/53d6a8d4-abd6-11e8-a8d7-0f63ab8b1370_story.html?noredirect=on&utm_term=.45eaaad2548c0)

[3] <https://www.charlotteobserver.com/latest-news/article217290350.html>