



# Are You Enforcing Your Cell Phone Policy?

Insights

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## *You Do Have One, Don't You?*

Recently, the National Transportation Safety Board (NTSB) proposed a ban on all cell phone calls and texting while driving. The first ever proposed nationwide ban on driver use of mobile devices while driving certainly has a significant impact on employers given employees' increasing reliance on mobile devices.

More and more employees are using cell phones to stay connected to their work while out of the office. With this technology, employees are always accessible to their employers and clients. Employees can now consult clients, close deals, and engage in a variety of other work-related activities all while driving.

Employees are often encouraged to multi-task at the office but that same expectation should not exist for employees who are driving 70 miles per hour on the freeway. Recent studies have indicated drivers distracted by emails, texts, and phone calls are just as dangerous on the road as those impaired by drugs or alcohol. Distracted driving causes close to 8,000 accidents everyday, according to some reports.

For employers, the concern is what happens when one of your employees causes an accident because his driving is distracted by a client phone call or an email response to his boss? Can the employer be liable for the accident? Yes. Under the doctrine of "respondeat superior," employers have traditionally been held liable for the tortious conduct of their employees upon a finding that the conduct was within the course and scope of employment.

In the context of employee automobile accidents, courts look at whether the purpose of a given drive was for a business, or merely a personal purpose. Yet, given the proliferation of cell phones, the line between personal and business activity is becoming increasingly blurred. It is a challenge to define the course and scope of employment for an employee who uses a cell phone 24-7 as an extension of the office.

The NTSB's proposal is a fresh reminder that employers need a policy defining when and how employees may use a cell phone for work while driving. Cell phones have become a business necessity and a policy addressing their use can help limit liability in the event an employer is faced

with a vicarious liability lawsuit. In fact, employers could be found negligent if they fail to adopt a policy for the safe use of cell phones.

At a minimum, your cell phone policy should require compliance with state and local regulations governing cell phone usage while driving. If the NTSB proposal were adopted the policy would need to reflect a complete ban on cell phone use for work while driving.

As with any policy, you need to ensure it is enforced. If you know that your employees continue to send emails or conduct calls while driving and an accident were to occur, a plaintiff's attorney could argue that the company knew that the employee was utilizing a cell phone for business purposes, giving rise to vicarious liability.

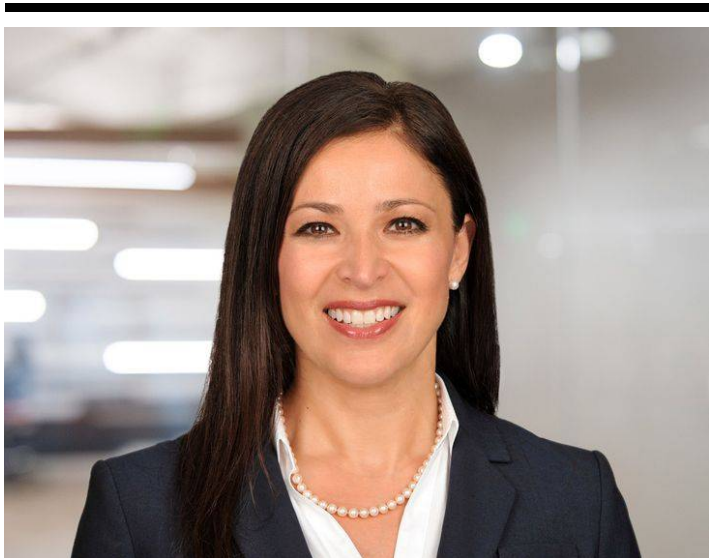
In the event of cell-phone-related litigation, a reasonable and enforced cell phone policy is the only way to potentially insulate your company from exposure to liability. A reasonable and enforced policy allows employers to assert that employees making work-related cell phone calls while driving are acting outside of the course and scope of their authority, so the company should not be vicariously liable.

While certainly not a ban to a potential lawsuit, the employer's cell phone policy is its best defense. If you'd like help drafting such a policy, contact your regular Fisher Phillips lawyer.

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