Distracted Driving: What's In Your Policy?

Insights
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Long before cell phones, drivers faced various distractions: eating, grooming, attending to children, changing the radio station, rubbernecking someone else's accident, becoming absorbed in a conversation, or arguing. These distractions created safety hazards and, of course, still do. So just what is "distracted driving"? Anything that takes a driver's attention off the task at hand – driving safely.

Distracted driving clearly includes dialing or talking on a cell phone (even hands-free) and texting, emailing or accessing other smartphone or internet-based features. Yet most employers do not have a longstanding "distracted driving" policy but rather have just a hands-free-mobile-device-use policy. If they have a policy at all.

A Look In The Rearview Mirror

The laws related to the use of mobile devices while driving provide an interesting example of how law – and employer policy – often lag behind developments in employee behavior in the workplace. Mobile phones have been available since the early 1970s and readily available to the masses since the early 1990s. By 2002, almost half of the U.S. population owned a cell phone. As of May 2013, 91% of American adults had a cell phone and over half were smart phones.

Clearly, for many years, employees have been using cell phones for work or personal business while driving. Yet, until 2001, no state had a law regulating the use of cell phones while driving. New York began the tidal wave of legislation related to the use of cell phones while driving and now all but a few states have at least some limits on cell phone use or texting by at least some drivers (such as young drivers or bus drivers). Yet only about half of all employers have a policy directing employees to use hands-free devices and not to text while driving.

What Makes The New Distractions Different

Cell phone usage and texting are verifiable. When an accident occurs, records exist that verify whether a driver was using a cell phone. Multiple studies have validated that cell phone usage while driving (even hands-free) drastically increases the chance of an accident. In our legal system, such "proof" means trouble for the user of the cell phone and the user's employer if the user was either conducting work on the cell phone or driving for work – regardless of who owns the vehicle or the phone.

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Of course in accident lawsuits, the use of a cell phone can cut both ways. Traditionally, we think of a driver being liable for an accident while using a cell phone but there are plenty of cases where injured pedestrians or persons not directly involved in the accident still share in the liability because they were using a cell phone and were not fully aware of the environment.

Our Advice

Most employers likely have "made do" with a common sense, unwritten policy of "drive safely" for many years. Now, most recognize that they should have had a distracted driving policy or at least a hands-free policy. For an employer just now developing a new policy, the policy should be broad enough to cover all forms of distracted driving and not just limited to hands-free requirements. Most importantly, the policy should be practical and enforceable.

While what is "practical and enforceable" may vary by industry and the types of workplace driving that occur, you should require your employees to comply with any applicable state law. In addition, the policy should encourage employees not to engage in any form of distracted driving and offer basic alternatives like "pull over" or "wait until you get back to the office." The policy should clearly tell employees that you do not expect the employee to engage in work – other than safe driving – while driving.

Next, decide what level of compliance you are ready to enforce at all employee levels at all times. The worst policy an employer can develop is one that says "never ever engage in any form of distracted driving or you will be terminated immediately." While such a policy might be theoretically perfect, it is practically imperfect. Some form of distracted driving is inevitable and immediate termination may not be the answer. The worst possible scenario is an employer who sets a very high bar but fails to enforce the high bar and then has an employee who injures someone. In that case, the employer's policy will hurt more than it helps.

But the solution is not to avoid developing a policy. The solution is to develop a policy that works for your industry and your drivers and is a policy that you can enforce. If you'd like our help in developing such a policy, just let us know.

For more information contact the author at JSandberg@fisherphillips.com or (404) 231-1400.

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Jennifer B. Sandberg
Regional Managing Partner
Email

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