

## EMPLOYERS: PREPARE TO ENTER THE “DRONE ZONE”

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Like it or not, drones are becoming an ever-present part of modern life. These small, unmanned, aerial vehicles, controlled by a ground-based computer, smartphone, or remote control, are buzzing around the sky with increasing frequency. In fact, experts predict that up to one million drones will be sold this upcoming holiday season alone.

What do employers need to know about this 21st century phenomenon?

### **Commercial Drones v. Recreational Drones**

The Federal Aviation Administration (FAA) had been directed by Congress to develop rules and regulations for integrating commercial drones into our airspace by early October of this year. The FAA missed that deadline, which means businesses that want to fly drones must still do it the “old-fashioned” way: applying for a certificate of exemption, which requires that drone operators be licensed airplane pilots who only fly drones in their line of sight.

As of September 30, the FAA had granted 1,742 such exemptions. Companies that don’t have an exemption but operate unauthorized drones can face stiff monetary fines. For example, on October 6, the FAA announced it was pursuing a \$1.9 million fine against Chicago-based SkyPan International for alleged unauthorized drone flights over urban spaces.

Recreational drone users also face government regulation. On October 19, the FAA announced that it is developing a “drone registry” which will require recreational users to list their drones with the agency. This registry, which applies to

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all recreational drone users regardless of when they purchased their equipment, could be in place by the end of the year.

This development is likely in direct response to the reality that the government has not been able to adequately regulate drones in national airspace. For example, even though existing rules state that drones cannot fly above 400 feet or within five miles of an airport, the FAA received over 650 reports this year alone from pilots who saw drones violating these rules at altitudes as high as 10,000 feet.

### **The Time To Plan Is Now**

The proliferation of drones means that you should plan for the likelihood that they will enter your worksites in the near future, despite tighter government regulation. After all, if drones can crash onto the White House lawn, a tennis arena during the U.S. Open, a college football stadium in Kentucky, or any number of prison yards across the country – all of which occurred in just the past several months – you can bet that your workplace is not immune.

There are four things we recommend your company do to prepare for the increase in drone technology.

### **Control Your Airspace**

Minimizing drone access to your workplace is essential not only from a safety perspective, but also to ensure company trade secrets are protected and employee privacy concerns are addressed.

To date, few businesses have adopted policies specifically taking control of their own airspace. It is critical that you determine how to establish regulation of the “airspace” within your buildings and above your facilities, parking lots, and green spaces. You should begin by crafting a policy that identifies and establishes “no drone zones” within and outside of the facility.

Your procedure should specifically address how managers and employees should react if they witness policy violations. Your managers should be trained on whether to contact designated company representatives, law enforcement personnel, and/or the FAA if drones are spotted in or above your workplace.

### **Are Drones Right For You?**

Second, you should determine whether the use of drones

can benefit your business. Commercial application of drones is on the brink of being fully explored. Applications will differ by industry and could include both internal and external operational functions.

For example, the delivery industry (including the U.S. Postal Service) continues to examine how drones might be used for letters and packages in sorting and distribution. But drone use goes well beyond deliveries. Due to advances in multispectral and optical technology, a wide range of industries are taking advantage of drones, including film, agriculture, drilling, policing, and those businesses performing infrastructure inspections.

As your research and development departments identify how they might integrate drone technology into your business, your focus should be on developing appropriate legally defensible frameworks to support implementation, without stifling an environment that fosters innovations in evolving applications.

Once the commercial applications for drones in your business have been identified, you should consider any and all physical and digital points of access to control and use. You need to examine all points along this pathway to ensure appropriate roles and responsibilities are defined, operational safeguards developed, and monitoring systems created (keeping in mind that enterprising computer hackers might be in a position to take over your drone controls unless you have effective security measures).

### **Restrict Drone Usage By Employees**

Next, whether or not your company decides to take advantage of drone technology, your policies should provide specific instructions to your employees about the use of drones in the workplace. Your policies should place restrictions on the authorized use of company drones, and prohibit use of any non-company drones on your premises.

Obviously, any authorized drone usage should follow the strict FAA exemption requirements as outlined above. After your company receives the required government exemption, you should limit the handling of the drones to authorized personnel, and provide instructions on how to properly secure any audio or video recordings captured by the device.

You should prohibit all non-company drones, and tightly restrict authorized drones, to avoid unintended potential legal exposures. For example, a drone flown in a facility could capture footage which could become "Exhibit A" in later government investigations or legal proceedings against your company. This footage may or may not accurately depict or portray the state of a particular situation.

Prohibiting drones ensures that you can continue to maintain control of your workplace, and ensures that management retains the ability to adapt and adequately respond to issues as they become known.

### **Preparing For Implementation**

Finally, before any drones take flight, you should offer training to all of your employees about how drones will be integrated into your business practices. Don't forget to address how other policies that are not drone-specific will be impacted by these developments. For example, remind your workers that drones cannot be used to violate your anti-harassment and anti-discrimination rules, your privacy policies, and others. If your company is unionized, determine how your policies might be impacted by your bargaining obligations.

You should also schedule regular review meetings for the first several years of implementation to examine how to customize control of the drone technology and address any unanticipated uses or problems.

For better or worse, employers are now in the "drone zone," and there's no going back. Getting in front of these issues before they land on your desk – figuratively or literally – will help prepare you for the 21st century workplace.

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