



Top 10 Things All Employers Need To Know About Autonomous Vehicles

Insights

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We're living at a time when a unique convergence of multiple trends is ensuring that autonomous vehicles (AVs) will soon change life as we know it. On the technology side, vehicles are trending towards being electrified and connected with one another, while the exponential growth and viability of artificial intelligence creates new pathways never before imagined. On the social side, society is becoming increasingly urbanized, while people demand immediacy and continue to adopt an advancing usage mentality (think Airbnb). Meanwhile, as environmental, safety, and economic factors impact our thinking and our everyday actions, it's simply a question of if—not when—AVs will regularly populate our streets.

In some respects, the future is already here. Several states and local jurisdictions have already cleared AVs to be tested and driven on public roads. One of the industry leaders in this space—Google's self-driving offshoot, Waymo—logged its 4 millionth mile of driverless road travel earlier this year, while Uber has reached 2 million such miles and Lyft has completed over 5,000 driverless rides in Las Vegas alone.

While there may be no disputing these facts, you still may be wondering how employers will be impacted and why you should care about these issues, especially if your business is not specifically in the AV industry. That's where we come in. Fisher Phillips has just launched its [Autonomous Vehicles Practice Group](#), including 24 attorneys drawing on their deep experience from numerous relevant practice areas. We have compiled a list of the top ten ways in which all employers could be affected by the rise of autonomous vehicles, providing you a glimpse into the future and offering you a chance to prepare for seismic changes well ahead of time.

1. AVs Will Create General Employment Law Issues

Some have described AVs as “offices on wheels,” and your employees will soon be able to work on the move no matter how they commute to the workplace. This could present a whole new spectrum of wage and hour issues. Similarly, you will soon need to reconsider whether driving is “an essential function of the job” when providing accommodations and engaging in the interactive process with disabled employees. Employees who are unable to drive for medical or religious reasons may see AVs as potential accommodations, leading you to alter the way you conduct your HR practices.

2. **Your Labor And Collective Bargaining Playbooks Will Need To Be Rewritten**

Once you utilize AVs to handle basic functions, you will be able to reduce the number of employees in driving occupations. If you have a unionized presence at your company, you will need to plan far ahead to address these reductions. You should start negotiating terms in new collective bargaining agreements that will provide you with more flexibility when this change comes. Just as has occurred with automation in manufacturing, you must anticipate that the unions will fight the loss of these jobs

3. **Your Data Privacy And Cybersecurity Initiatives Will Need A Refresh**

To ensure maximum safety, AVs will need to communicate with each other, the surrounding infrastructure, and a host of third-party platforms. Data privacy and cybersecurity will continue to be a serious concern given widely recognized worries about hacking. Companies in the AV space, and employers whose employees utilize connected vehicles, will need to take certain steps to ensure compliance with federal and local laws.

You will first need to identify applicable statutory and regulatory requirements so you are clear about your obligations. Then, you can identify information vulnerable to a breach and prepare breach incident response plans to proactively address the worst case scenario. As an added precaution, you can then train your managers and employees to spot and respond to data breach incidents.

4. **Providing A Safe Workplace Could Be A Challenge**

As AVs become more prevalent in industrial settings, they will continue to impact your safety programs. AVs present unique safety concerns that must be addressed in order to avoid accidents and potential citations under OSHA's machine-guarding standards and general duty clause. You will need to consult with lawyers and industry experts with experience and depth in this space to provide advice and identify unique safety concerns.

5. **Employee Defection Problems Will Need To Be Addressed**

Billions of dollars have been spent developing AV technology, and stakeholders must protect the confidentiality of their information by limiting the disruption that can be caused by defecting employees. Any employee who walks out the door could present a risk of unfair competition activities, which means you need to take steps to prevent that from happening and preparing yourself for litigation should it occur.

Much has been written about [the trade secret litigation filed by Waymo](#) after a former employee was alleged to have stolen thousands of secret company documents related to self-driving vehicles before forming a company subsequently acquired by Uber. Employers on both sides of the coin need to prepare for such situations; as workers become more mobile and transitory and information becomes more easily portable, the threat of a defection causing a headache for companies on either side of the transition increases. You will need to prepare for the possibility of an emergency application for injunctive relief, and develop relationships with attorneys who are accustomed to rapidly deploying to initiate or defend temporary restraining order actions in any

location with little advance notice. Just in case you want to see more “Top 10” lists on this issue, click [here](#) and [here](#).

6. Trade Secrets Could Be Exposed

The AV industry is technology-based and information-driven. You face the risk of trade secret theft from current workers, former employees, and third-party bad actors who might seek to take advantage of your system weaknesses. Because sensitive information is frequently shared throughout the supply chain continuum, including to business partners who may not have the protection of your trade secrets on the top of their minds, you must ensure you adequately protect your information through carefully drafted, enforceable contracts and a robust cybersecurity platform. In addition, you must audit and update applicable policies and procedures, train your employees, and ensure you have physical and electronic security controls.

7. Your Government Advocacy Efforts Will Need To Increase

The introduction of AVs promises to increase business needs for effective legislative and regulatory advocacy at the federal, state, and local levels. Areas apt for additional regulatory and legislative action include data privacy, labor matters, wage and hour issues, and workplace safety. If you are not already in the game advocating for the creation and maintenance of a business atmosphere supporting your AV efforts, you will need to quickly jump on board.

8. Government Contract Compliance Could Become Critical

To achieve their full potential, AVs must communicate with the world around them. Vehicle-to-infrastructure (V2I) communication involves the exchange of safety and operational data between vehicles and the transportation infrastructure that supports them. Massive upgrades to infrastructure will be required, but state and federal governments lack the technical expertise to implement these changes. They will need to partner with the private sector.

Employers supporting this intensive infrastructure effort should consider the impact of contracting with government agencies that will subject them to Office of Federal Contract Compliance Programs (OFCCP) jurisdiction. You should also consider whether you will be providing supplies or services necessary to the performance of a federal contract such that you become a federal subcontractor under OFCCP’s jurisdiction, leading to a whole host of additional compliance challenges. Various state governments also impose affirmative action compliance requirements.

9. You Will Need To Take Private Equity And Venture Capital Into Account

It’s no secret that, just as with other recent technological innovations, acceleration of the AV space will be propelled by private equity and venture capital, both of which will drive rapid expansion. This means investors managing portfolio companies will need to ensure newly acquired fledgling portfolio companies comply with employment laws and have effective employment policies and protective measures. They also need well-drafted equity-based compensation arrangements to help secure top operational talent.

10. Your Gig Economy Compliance Efforts Will Need To Be Shored Up

Finally, to the extent that you utilize the services of gig economy workers—any member of a

contingent workforce that gets connected to a certain job or task through a digital platform such as a smartphone app or computer program—you will need to ensure that your classification structures are up to date and compliant with the latest legal standards. The average gig worker is considered an independent contractor by the hiring entity helping to connect them to their next task or willing consumer, but many workers are challenging such classification systems and claiming they are actually employees. You will need a thorough review of your business practices before you hit the road to assess whether you can employ a contractor model, and an at-the-ready law firm prepared to defend you should a misclassification effort be launched against you.

Conclusion

In short, like all technological advancements before them, AVs will drive employers crazy. Forward thinking law firms can help you rise to the challenge, and our [Autonomous Vehicles Practice Group](#) stands ready to assist every step along the way.

For more information, contact the author at MGreco@fisherphillips.com or 303.218.3655.

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Michael R. Greco
Regional Managing Partner
303.218.3655
[Email](#)