



Sammy Hagar Says He Can't Drive 55. OSHA Says Your Workers Can't Drive Distracted.

Insights

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According to the Occupational Safety and Health Administration (OSHA), motor vehicle crashes cost employers \$60 billion annually in medical care, legal expenses, property damage, and lost productivity. Motor vehicle crashes are responsible for more worker fatalities than any other cause, including machine guarding and lock-out tag-out violations.

Given these statistics, it should come as no surprise that OSHA will target and fine employers who permit or encourage distracted driving. The agency has taken the position that distracted driving is a recognized hazard under the General Duty Clause of the OSH Act, and, as of January 2019, penalties for willful violations of the General Duty Clause can range up to \$132,598 per occurrence.

It should be noted that OSHA and the OSH Act may be preempted with respect to commercial carriers by the Federal Motor Carrier Safety Administration (FMCSA). OSHA and the FMCSA have issued guidance with respect to their respective responsibilities for transportation safety which employers should consult. Typically, however, OSHA claims jurisdiction over safety and health where the OSH Act is not preempted by another federal agency. Examples may include vehicles engaged exclusively in intrastate travel or those that do not meet the definition of a commercial carrier.

Technology And Distracted Driving

While distracted driving can result from multiple sources, hand-held and hands-free cellular technology have exacerbated the problem. National Highway Traffic Safety Administration (NHTSA) estimates that nearly one-quarter of all motor-vehicle crashes involve distracted driving. The NHTSA defines "distracted driving" as anything that diverts the driver's attention from the primary focus of driving. This includes use of a cellular or smart phone, texting, watching a video, eating or drinking, changing the radio station, grooming, looking at a map or GPS, or talking to a passenger. Perhaps the most distracting activity was texting-while-driving.

A 2013 study by researchers from the University of Utah concluded that motorists distracted by a cell phone were as impaired as drunk drivers. Perhaps more surprising was that researchers concluded the hands-free use of cellular technology was not any less distracting than hand-held use. Researchers determined, in fact, that voice-to-text was potentially more distracting than physically texting-while-driving.

Employers Must Implement Distracted-Driving Policies

Employers that require their employees to use mobile technology and require their employees to drive on company time (whether in a company vehicle or the employee's own vehicle) will find themselves in OSHA's crosshairs if they do not have competent distracted-driving policies. Even if you do not formally require texting or cellular usage, you may run afoul of the OSH Act if you organize work so that texting or distracted driving is essentially a necessity, or if you provide incentives that could foreseeably result in the employee texting or using hand-held devices while driving.

Effective distracted-driving policies should clearly set forth your expectations and should, at minimum, contemplate the following:

- A prohibition on impaired driving or being under the influence of alcohol and/or drugs;
- A requirement that employees use seatbelts while driving;
- A prohibition on texting or emailing while driving;
- A prohibition on the use of hand-held devices while driving; and
- A prohibition on eating and drinking while driving.

Given the studies regarding hands-free devices being a distraction, you may wish to consider prohibiting employees from using hands-free mobile devices while driving. In crafting such policies, you should be aware of all state and local laws and regulations.

Employers Must Consistently Enforce Distracted-Driving Policies

Even the best written policies are ineffective if employees are not properly trained on the policies and if you do not enforce your policies. The best practice is to train all employees on distracted-driving policies and the consequences for an employee's failure to follow a particular policy. You should have employees sign a written acknowledgment proving they received the distracted-driving policy and were trained on your expectations. Requiring periodic refresher training on your distracted-driving policy can assist with enforcement and compliance.

Employees who fail to follow your policies should be disciplined. Discovering a violation of a distracted-driving policy can be difficult because employees may often drive or travel alone and unsupervised. Some employers have implemented controls on company-issued mobile devices to prevent employees from texting or calling while a vehicle is in motion. Others have installed cameras or monitoring systems in vehicles to discourage distracted driving. Regardless of how you become aware of a violation of your distracted-driving policy, you must consistently audit your workplace for violations and discipline employees who fail to meet the policies' requirements.

Conclusion

In our digitally connected world, you must be proactive in implementing and enforcing policies to keep your workers safe while they are driving on company time. A failure to do so will prove costly in terms of litigation costs, OSHA fines, medical expenses, and lost productivity. You should consult

knowledgeable legal counsel when developing and implementing such distracted-driving policies to ensure that you are following the best practices and are protecting your employees and business in the best manner possible.

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