



# Cell Phone Policy Update Keeps Employees Safe and Reduces Employer Liability

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Recently, the National Transportation Safety Board (NTSB) proposed a ban on all cell phone calls and texting while driving. The first-ever nationwide ban on driver use of mobile devices while driving would certainly have 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 with 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 75 miles per hour on the freeway. Recent studies have indicated that drivers distracted by e-mails, 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 every day.

For employers, a concern is what happens when one of your employees causes an accident because his driving is distracted by a client phone call or an e-mail 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 keep employees safe and help limit liability in the event an employer is faced with a vicarious liability lawsuit.

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