



## Creating an Effective Distracted Driving Policy

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Distracted driving results from drivers' attention being taken 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 long-standing “distracted driving” policy, but rather have just a “hands-free” mobile device use policy, if there is a policy in place at all.

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, nearly half of the U.S. population owned a cell phone. As of May 2013, 91 percent of American adults had a cell phone, with more than half of those being 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 and/or texting. Even so, only about half of all employers have a policy directing employees to use hand-free and/or not to text while driving.

For an employer 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, which varies by industry and the types of workplace driving that occur, and must comply with applicable state laws. In addition, the policy should encourage employees not to engage in any form of distracted driving and offer basic alternatives like pulling over or waiting until they are back in the office. Further, the policy should clearly tell employees that the employer does not expect the employee to engage in work—other than safe driving—while driving. Next, an employer must decide what level of compliance it is ready to enforce at all employee levels at all times.

The solution is to develop a policy that works for your company and its drivers and can be enforced. As with many other policies, working with experienced employment law counsel to develop the policy appropriate for your company and state(s) of operation is time and money well spent.

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