

DOT Restricts Mobile Phone Use Effective January 2012

Insights

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A new rule restricts the use of hand-held mobile telephones and devices by drivers of commercial motor vehicles (CMV). This rule, which goes into effect on January 3, 2012, was adopted by the Federal Motor Carrier Safety Administration and the Pipeline and Hazardous Materials Safety Administration, which are part of the Department of Transportation. It amends both Federal Motor Carrier Safety regulations and Hazardous Materials regulations. The rule restricts CMV drivers from reaching for or holding mobile telephones while operating their vehicles, or pushing more than one button to operate the device.

Commercial motor vehicle drivers are still permitted to use mobile telephones and other mobile devices as long as their use complies with the new regulation. Essentially, drivers may initiate, answer or terminate a call if they can do so 1) with the push of a single button, 2) on a device within their reach, and 3) without holding it in their hand.

What this means is that the device must either be mounted or otherwise securely within reach at the control panel (in the area where the vehicle controls such as climate control and radio are located). The mobile device cannot be located on the passenger seat, sleeper berth or floor of the vehicle. Further, the driver must use the device without holding it in the driver's hand — requiring either a speaker phone, one-wire or wireless ear set for use. Finally, operation of the device may only be performed through the use of pushing a single button.

The popular Push-To-Talk (PTT) feature used by many drivers is prohibited by this new rule. While, functionally, the PTT feature is similar to the use of a CB or two-way radio (neither of which is addressed by the new rule and therefore still permissible), the final rule advises that PTT is prohibited because the device used for PTT comes squarely within the definition of a mobile telephone prohibited by the rule, and it also requires the driver or user to hold it and push a button more than once. Therefore, its use while driving a CMV is the same as that of a hand-held mobile telephone and is prohibited.

Employers should prepare and implement a policy consistent with the new regulation, and train their CMV drivers on the policy, prior to the effective date of January 3, 2012. The policy should clearly set forth what is prohibited, what is still permitted, consequences for failure to follow the rule, and a contact person for questions about the rule.

If you have questions about this Alert contact your regular Fisher Phillips attorney.

This Legal Alert provides information about a specific new federal rule. It is not intended to be, and should not be construed as, legal advice for any particular subject.