

Cell Phone Safety: Do You Need a Policy?

By Timothy Pajak

New York has become the first state to prohibit the use of handheld cell phones while driving, except in emergencies.

Considering that there is similar legislation pending in approximately 40 states, and more than a dozen localities have already established bans, employers should consider developing a policy on employees' use of cell phones.

Too many distractions

There are two studies commonly cited by both supporters and opponents of a ban on using cell phones while driving. A 1997 report published in the *New England Journal of Medicine* finds that using a phone quadruples a driver's chance of getting into an accident. But the study also concludes that using a hands-free kit does not lower the probability of getting into an accident. (The New York ban permits drivers to use hands-free technology.)

According to the National Highway Traffic Safety Administration's Fatal Accident Reporting System, 10.3 percent of all fatal crashes in 1999 were caused by driver distractions. But there is only anecdotal evidence that phoning while driving is a potential cause of traffic accidents.

Moreover, a more recent analysis by the University of North Carolina Highway Safety Research Center says that using a cell phone while driving is *not* a significant cause of accidents.

Analyzing 32,303 accidents between 1995 and 1999, the UNC study puts distractions in the following order:

- An outside object, person or event (29.4 percent of accidents)
- Adjusting the radio/cassette/CD player (11.4 percent)
- Distractions from other occupants in the vehicle (10.9 percent)
- Moving objects in the vehicle (4.3 percent)
- Other objects or devices in the vehicle (2.9 percent)
- Adjusting vehicle/climate controls (2.8 percent)
- Eating or drinking (1.7 percent)
- Cell phone use (1.5 percent)
- Smoking (0.9 percent)

Despite the lack of tangible evidence that automotive cell phone use causes more traffic accidents, public support was cited as a reason the New York ban passed with ease. But opponents of the ban question the singling out of cell phone use over other driving

distractions.

Whatever number it ranks in the list of causes, there is at least some evidence that cell phone use can distract a driver and possibly increase his or her chance of having an accident. As such, employers should follow legislative efforts at both the state and local levels and act accordingly.

Don't wait until it's too late

Even without significant regulations on the books, HR should nonetheless consider drafting a policy. If an employee were involved in an accident while conducting business on his or her cell phone, the company could potentially be liable for damages to the injured party. Robert Nobile, a partner at Seyfarth Shaw, cites two real-life examples: In *Johnson v. Rivera*, an employer escaped liability because a jury found that the employee was not acting within the scope of her employment at the time of the accident. The employee was driving her own vehicle home from a client meeting and received a page on her employer-provided pager. In response to the page, she reached for her cell phone, momentarily took her eyes off the road and struck another vehicle. However, the jury concluded that the employer should not be liable for the injuries caused by her accident because the page she received was from her daughter. Had the call been from her employer or a client, the result might have been different.

In *Roberts v. Smith Barney, Inc.*, while driving to a restaurant on a Saturday night, an employee's cell phone cord accidentally wrapped around the gearshift of his car while he was using the phone to call a potential client. The phone was yanked from his hand and landed underneath the gas pedal. Attempting to retrieve the phone, he took his eyes off the road, drove through a traffic light and struck the driver of a motorcycle. The driver was thrown from the motorcycle and killed. Smith Barney denied any wrongdoing, but settled out of court for \$500,000.

Putting it in writing

"It's kind of a double-edged sword for employers because if you don't have a policy then they say 'well, you're negligent, you should have had a policy to prevent it,' " Nobile tells *HRWire*. "And if you do have a policy and the employee disregards it, then you are going to be deemed negligent for not enforcing the policy. How does an employer enforce that kind of policy?"

Nonetheless, Nobile says an across-the-board approach to employer liability should include:

- Safety training;
- Periodically checking the motor vehicle records of employees who are required to drive a vehicle in the normal course of employment;
- Requiring employees to report moving violations; and
- Purchasing the appropriate equipment for use by employees (e.g., a hands-free kit).

Safety recommendations from the Cellular Telecommunications Industry Association and the American Automobile Association include:

- Ensure that employees know how to use the features available on

their wireless phones, including speed dialing and redialing.

- Instruct employees to use hands-free devices, as well as one-button or voice-activated dialing.
- Instruct employees to make sure the phone is within easy reach.
- Advise employees to inform all persons with whom they speak that they are driving.
- Instruct employees to avoid using the phone during hazardous weather and traffic conditions.
- Instruct employees not to take notes while driving or look up phone numbers.
- Instruct employees to ask passengers to dial the number for them.
- Advise employees to place calls when not moving or before pulling into traffic.
- Advise employees to avoid stressful or emotional conversations while driving.

Arguably much of today's business is conducted on the roadways of America, and as such it's now time for HR to get involved and make sure there are policies in place detailing what the company expects from its mobile workforce.

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