

Distracted Driving Poses Large Risk to Employers

By Lori L. Dwyer, Esq. | October 7, 2010

Research proves that texting or talking on a cell phone while driving substantially increases the likelihood of an accident. Courts and legislators are recognizing this. Many states, including Massachusetts and New Hampshire, have banned texting while driving. Even where states do not ban cell phone use while driving, state and federal courts are now holding employers liable for the distracted driving of their employees. For example:

- In 1999, a Smith Barney investment broker was using his cell phone to make cold calls while driving. He drove through a red light, striking and killing a man on a motorcycle. Smith Barney settled the lawsuit for \$500,000.
- In 2004, a Virginia attorney struck and killed a teenage girl at 10:30 p.m. while on her cell phone conducting work-related business. The law firm settled with the victim's family. The attorney was held liable by a jury in a wrongful death action and disbarred.
- In 2007, International Paper Co. settled a personal injury lawsuit for \$5.2 million with an Atlanta woman who lost her arm after she was rear-ended by one of International Paper's employees while that employee was using a company-issued cell phone.

Employees not only talk on the phone while driving, but they now email, text and "facebook" from personal handheld devices. In a law suit, your employment practices and policies could be deemed to have encouraged this behavior and open you to massive liability should an accident occur.

"It is imperative that employers eliminate financial and other incentives that encourage workers to text while driving," said U.S. Department of Labor Secretary Hilda Solis in a statement issued just one week ago. Recently, U.S. DOT Secretary Ray LaHood launched the "Distracted Driving Summit" by announcing new anti-distracted driving regulations applicable to those transporting hazardous materials, commercial bus and truck drivers, and rail operators. The U.S. DOT and the Network of Employers for Traffic Safety now work together to encourage strict employment policies prohibiting distracted driving in connection with work.

What should you do?

- Examine current practices and determine who is using electronic devices while driving for work—whether personal devices or company-issued—and what the current practices and culture are surrounding the use of those devices
- Implement an anti-distracted driving policy specific to your work culture and applicable to all employees that bans the use of personal electronic devices while driving on company business
- Enforce these policies by disciplining employees who violate them and eliminating incentives that might lead employees to violate them
- Remind employees regularly of the anti-distracted driving policy

For more information or samples of anti-distracted driver policies, contact Lori Dwyer in our Portland, ME office, ldwyer@bernsteinshur.com, or Karen Aframe in our Manchester, NH office, kaframe@bernsteinshur.com.