



CURB YOUR CELL PHONES

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Cell phones have become a permanent part of the American landscape. During technology seminars I often poll those in attendance regarding their use of certain technologies. When I ask about types of software, like case management, a smattering of hands go up. When I ask about Personal Digital Assistants (PDAs), about half the hands go up. But when I ask about cell phones, all hands go up.

Cell phones have so “invaded” our daily lives, that we now see signs on some restaurants prohibiting their use. In movie theaters the final preview asks us not to talk, and reminds us to turn off cell phones. Just about all seminars start with a reminder to turn off cell phones. We’ve probably all been annoyed at the person ahead of us in a check-out line who is so engrossed in a cell phone conversation they don’t notice that they are holding up the cashier and the rest of us.

I have noticed a steadily increasing number of drivers limping along in the left lane of the turnpike, totally oblivious to the traffic they hold up as they carry on cell phone conversations. I have been dodging an increasing number of teen drivers more interested in cell phone conversations than staying in their own lane. But the other day, when I noticed a SEPTA bus making a tight turn as the driver used one hand on the wheel and the other to hold his cell phone to his ear, I realized just how bad it has gotten.

Employees who drive their personal vehicles on firm business can expose your firm to liability. Most firms don’t give this much thought. But now that cell phone use is regularly added to the mix, the potential for a larger liability exposure has skyrocketed. It doesn’t matter if your firm has two employees or hundreds. The fact is that it is vital to screen anyone who will be driving their car for your business purposes. You should also have a written policy in place regarding use of cell phones during automobile trips—applying to everyone including partners and associates— in order to reduce your firm’s liability.

Here are some statistics, recently appearing in The Hartford Insurance Winter 2004 newsletter, which will make you sit up and take notice:

- A driver’s collision risk increases 400% when he/she uses a cell phone while driving. *Source: Department of Occupational Health & Safety, University of Delaware, 2000*

- Drivers who have cell phones in their cars have a 34% greater risk of being involved in accidents. *Source: Rochester Institute of Technology, 2002*
- Drivers using cell phones are four times more likely to have an accident. *Source: New England Journal of Medicine, 1997*
- Wrongful death lawsuits, brought as a result of automobile accidents involving drivers talking on the phone, have resulted in substantial jury verdicts, reaching as high as \$21 million. In a recent case of wrongful death in which an attorney was making business calls from her cell phone while driving and struck and killed a boy, the court ruled that the employer of the attorney could also be liable for the boy's death.

Any employee of the firm, regardless of status, who will be driving their own vehicle, or a firm vehicle, for your business purposes, should be checked each year to ensure that they have a current driver's license, and a sufficient amount of liability insurance. (A copy of the current driver's license and insurance certificate should be placed in their file each year.) If they are driving their own vehicle on firm business, you should also ensure it is properly and legally maintained. New employees under consideration by the firm, who will be driving on firm business, whether regularly or occasionally, should have a check of their Motor Vehicle Record as a normal part of the screening process.

In addition to the above, the firm should have in place a number of policies which cover at least the following:

- A prohibition against driving on firm business while intoxicated. The firm should plan on providing alternate transportation following firm events which include alcohol consumption, for those who need it.
- A prohibition against consuming any type of illegal drug, as well as any prescription or over-the-counter drug which warns of use while operating a motor vehicle, while driving on firm business.
- A prohibition against use of cell phones while driving. Require that the employee pull off to the side of the road and place the car in park before engaging in a cell phone conversation. Require that if they receive calls while driving, they hang up, drive to a safe parking spot, and then return the call.
- A clear statement that use of the cell phone while driving is outside of the scope of their employment. Likewise for use of drugs, legal or otherwise, that can compromise their ability to safely operate a motor vehicle.

If your firm provides cell phones for any employees of the firm, consider placing a sticker on each cell phone which warns of the dangers of talking on the phone while driving.



Some additional things to consider include personal commitments of employees, like having to pick up children at a certain time each day. If you ask employees to do firm business when they have family members in the car, you may wind up being responsible for injuries to more than just your employee. In fact, you may want to prohibit use of the auto for the combination of personal and business reasons. Lastly, you should probably establish an accident review process that details how you will investigate and document what went wrong, what you will do if willful violation of an established policy is discovered, and addresses how you may fix any preventable issues uncovered.

One final suggestion of a more personal nature comes to mind. If you have children of driving age with cell phones, consider establishing a cell phone policy for them as well. Teenage drivers are at high risk for serious, often fatal, accidents. They do not have the experience to help them avoid many of the potentially unsafe situations you do. Talking on the cell phone greatly exacerbates the problem. If you don't think they talk and drive, think again. Just start looking at the drivers in other cars.

Some of these suggestions may seem Draconian. Your firm will have to determine whether the discomfort level of implementing a particular policy outweighs the benefit of liability prevention. What is clear, however, is that you cannot simply ignore these issues and hope they will go away. There is entirely too much at risk for your employees and your firm.

[Note: this article is provided for informational purposes only and is not intended to provide legal advice or substitute for individual legal counsel. Consult your employment law attorney for specific advice.]

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