

Keep Your Employees Safe on the Road:

Safety Issues for Cellular Phone and PDA Use

In January 2010, the National Safety Council (NSC) reported an estimated 1.6 million crashes (28 percent of all crashes) are caused each year by drivers talking on cell phones and texting.

The city of Chicago mandates a hands-free legislation and makes driving while using a cellular device illegal. Also, as of January 1, 2010, according to Public Act 096-0130, a person may not operate a motor vehicle on a roadway while using an electronic communication device to compose, send, or read an electronic message including electronic mail, text messages, instant messaging, or accessing an Internet site.

With the increased reliance on cell phones to conduct business outside the office, comes an increase risk of employer liability. This is especially true where employees use cell phones to conduct work-related business while driving. If an employee gets into a vehicle accident while using a hand-held device for work-related business, both the employer and the employee may be found liable. According to the Insurance Information Institute, under the doctrine of vicarious responsibility, employers may be held legally accountable for the employees' negligent acts committed in the course of employment. In fact, there have been a number of cases where employers have been hit with lawsuits.

Case in point:

- International Paper Co. agreed to pay \$5.2 million to settle a personal injury claim for damages resulting from an automobile accident that occurred while its employee was talking on a cell phone provided by the company.
- Dykes Industries had a \$20.9 million verdict against it from an accident and injuries caused by an employee using a cell phone while driving.
- The state of Hawaii settled a case for \$2.5 million when a person was hit by a state employee talking on her cell phone at the time of the accident.
- A \$2 million verdict came down in a Virginia case, when an attorney killed a teenage girl in a hit-and-run accident while talking on her firm-provided cell phone.

The impact of these cases is clear: not only is using a cell phone while driving dangerous, but employers can be held responsible for damages and injuries caused by their employees who talk on company cell phones while driving. Businesses like Exxon Mobil and Shell are increasingly prohibiting workers from using cell phones to conduct business while driving.

To reduce their risk of liability, Tandem HR encourages employers to update their employee manuals and policies to include a specific policy prohibiting driving and the use of cell phones (and other hand-held devices) for work-related purposes. The policy should state that employees who are in an auto accident or charged with traffic violations resulting from talking on the phone or using a hand-held device while driving will be solely responsible for any resulting liability. Hands-free equipment should be provided with company-issued phones and PDAs to help employees abide by these rules.

Employers should also encourage employees to:

- Pull off to the side of the road and safely stop the vehicle before placing or accepting a call or use hands-free operations
- Refrain from discussing complicated or emotional matters and keep their eyes on the road
- Take special care in situations where there is traffic or poor weather

Please do your part in keeping your employees safe and your company out of legal debacles. We advise you contact your Tandem HR Generalist if you have any questions or would like assistance in creating and administering a cell phone policy.

For more information, contact Tandem HR at 630.928.0510 or visit www.tandemhr.com. The staff at Tandem HR contributed to this article. It is intended as information only and is not a substitute for legal advice. Tandem HR is a professional employer organization specializing in strategic HR partnership with small and mid-sized businesses.

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