

## Should Companies Adopt Cell Phone Policies?

In the wake of several high profile lawsuits in which employers were sued for accidents caused by employees who were using cell phones while driving, many employers are asking whether their company should add a cell phone policy to its personnel handbooks. Certainly, there is no guarantee that a company would be shielded from liability if it adopted such a policy. Nonetheless, such a policy may, at the very least, provide a defense against punitive damages, and may also serve as a deterrent against unsafe use of cell phones by employees. ý

Further, this past year, almost forty states and the federal government introduced legislation regarding the use of cell phones while driving. Kansas, Illinois, Nebraska and Iowa all have litigation pending. Proposed legislation in Missouri died in committee but it is probable that similar legislation will be introduced next year. Accordingly, employers are encouraged to take a proactive step and establish policies that will most likely become the law in the near future.

What should a policy include? In general, the policy should inform employees that use of a cell phone while driving may be dangerous and is subject to company guidelines. For example, if the employee must make or receive a telephone call while driving, he or she should pull to the side of the road if possible. If that is not possible, the employee should only use a cell phone that is equipped with a hands free device. This will allow the employee to keep both hands on the steering wheel. Likewise, the employee should use a phone with speed dial or voice recognition dialing so the employee will not have to take his or her eyes off the road to dial a telephone number. If that is not possible, the employee should have a passenger dial the telephone number, or, wait to place the call until he or she is no longer driving. Moreover, telephone calls that are made or received should be kept brief. If it appears the conversation will be prolonged, the employee should either pull to the side of the road, or inform the caller that the call will need to be completed when the employee is no longer driving.

Employers should also inform their employees that cell phone usage may be improper when the employee is driving on an unfamiliar road, if the traffic or weather conditions are poor, or if the employee knows the telephone conversation is likely to become heated or intense. At all times, the employee's first responsibility is to the safety of other drivers, pedestrians and the passengers in their own car.

We will continue to monitor the progress of the pending legislation regarding cell phone usage while driving, both at the state and federal level, and notify you should new legislation be enacted. In the meantime, questions about cell phone policies should be directed to one of our labor and employment attorneys. ý

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