

Employee Cellphone Use While Driving

Cellphone use has become commonplace, and text messaging, emailing and conducting business via cellphone have become routine. While the convenience of cellphones can be enormous, problems arise when using a one while driving.

A Nationwide Insurance poll found that 81 percent of cellphone owners admitted to talking on a cellphone while driving. While employers may be aware of the obvious benefits of allowing employees to use cellphones to conduct business while driving, there are significant liability risks associated with cellphone use while driving. A National Safety Council survey found that of employers who had a cellphone driving policy, 70 percent saw no decrease in productivity and over 20 percent saw decreases in employee vehicle crashes.

According to Johns Hopkins University, as individuals focus on listening and engaging in conversation, the activity in the visual part of the brain decreases, even when using a hands-free device. In addition, the University of Utah found that drivers are as impaired on a cellphone as they are while driving under the influence of alcohol.

As a result, if you have employees driving on company time, you need to be aware of your cellphone use exposure and take the appropriate steps to mitigate your risks.

Case Studies

Recently, a Georgia employee making a business call while driving hit and caused serious injury to another driver. The employee's company agreed to pay \$5 million

in damages after the court found that the company was liable since the employee was making a business-related call. In a different case, \$2 million in damages were awarded to a child's family after an employee hit and killed her. The family also sued the employee's company after phone records revealed that the employee was talking to a client at the time of the crash.

Minimizing Employer Liability

While there is no guaranteed defense to liability, developing an appropriate employee cellphone use policy, training employees about the dangers of talking on a cellphone while driving and enforcing policies with signed written acknowledgments from employees can all help to limit an employer's potential liability.

In the policy, beyond setting clear-cut rules limiting cellphone use while driving, offer suggestions such as informing clients of driving schedules to avoid calls while on the road, pulling over to place or receive an important call or asking a passenger to handle cellphone usage. Be sure to emphasize that while productivity is certainly important, employee safety and the safety of other on

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the road is more important—safety that is neglected when using a cellphone.

Provided by Gallagher Franchise Solutions

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Even with a comprehensive cellphone use policy, courts may still hold employers responsible for any harm caused by employees while on company business, so it is important to ensure that your policy is being upheld and enforced. Be clear about the importance of following the policy, and follow through with consequences if employees are found to be disobeying it.

State Laws

Many states currently ban the use of hand-held cellphones while driving, and many states have taken an increasingly active role in addressing the relationship between driver cellphone use and traffic safety. These laws change frequently, so employers should always be aware of their state's laws and require employees to observe those regulations regarding cellphone use while driving. Include the current state law in your policy, and require employees to review and re-sign it whenever the law changes. While state laws do not directly address employer liability, they have the potential to increase employer exposure for cellphone-related accidents. For more information about state requirements, access the Governor's Highway Safety Association website at: www.ghsa.org/.

In addition to updating your company's cellphone policy and training program, employers should also review their insurance policies. For help assessing your company's risk regarding employee cellphone use or for assistance in developing a cellphone use policy, contact your representative at Gallagher Franchise Solutions.