



The GSH 60-Second Memo

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Laurie Wiedenhoff,
Esq.

www.gshllp.com

(515) 453-8509

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Unsafe at Any Character Length: Employee Texting While Driving Update

By Laurie Wiedenhoff, Esq.

It seems like everyone is texting, from the teenager in front of you at the grocery store to your retired parents. Since we last mentioned this topic in May of 2007, cell phone and smartphone usage has increased significantly. The number of monthly texts sent has risen from 14 million in 2000 to more than 150 billion in 2009. Studies have shown driving while e-mailing or texting may be more dangerous than driving while intoxicated. The increase in cell phone usage and the accompanying safety risks of texting while driving has not gone unnoticed by state legislators - reading, writing, or sending messages while driving is currently banned for all drivers in 30 states and the District of Columbia. Nearly half of those bans were enacted in 2010.

The dangers of texting while driving has not escaped the federal government's notice either. In October 2009, President Obama signed an Executive Order banning federal employees from texting while driving government vehicles. That prohibition extends to federal contractors as well. The Occupational Safety and Health Administration (OSHA), which regulates workplace safety, has even officially declared texting while driving to be a workplace hazard and an OSHA violation. In its recent open letter to employers, OSHA explained that:

It is the employer's responsibility and legal obligation to create and maintain a safe and healthful workplace, and that would include having a clear, unequivocal and enforced policy against the hazard of texting while driving. Companies are in violation of OSHA if, by policy or practice,

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they require texting while driving, or create incentives that encourage or condone it, or they structure work so that texting is a practical necessity for workers to carry out their job.

A poll by the AAA Foundation for Traffic Safety found that while 92% of people polled thought it was unacceptable to text or e-mail while driving, 24% of those people reported texting or e-mailing while driving at least once in the month before the poll.

It is not unreasonable to assume that your employees might be sending messages while driving, even if it is illegal in your state. But the liability risks to your company should not be overlooked: just last month, the State of Illinois was ordered to pay \$8 million to the family of two teenagers killed by a state trooper who was speeding and reportedly texting and talking on his cell phone.

It is normal for employees to want to check every message that comes in as soon as possible, even when driving to or from work. Yet given that many negligent driving lawsuits involving liability for employers turn on whether the employee was performing work for the employer at the time of the accident - such as checking e-mail or texts on a smartphone - employers are wise to prohibit such acts through a clear and coherent company policy.

Company policies prohibiting texting, e-mailing, or talking on a cell phone while driving should be clear and coherent. Any such policy should cover the use of a personal or company cell phone for a business purpose at any time, including driving to or from work. The policy should also prohibit any personal cell phone use while the employee is driving on company business. As with all company policies, remember to get an employee's signed acknowledgment, and enforcement of policy violations should be consistent.

While these policies by themselves do not guarantee success in preventing risks associated with distracted driving, having these rules may help reduce a company's exposure and send a clear safety - and common sense - message to employees.

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