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Employer liability for employee cell phone use while driving

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Studies have demonstrated that cell phone use while driving can increase the risk of an accident. Although cell phones have become an essential business tool, recent lawsuits highlight the potential liability of employers for damages caused by employees using cell phones while driving on company business.

Two key dangers associated with driving and cell-phone use are first the driver must take their eyes off the road while dialing or text messaging and second a driver's ability to concentrate on driving is severely impaired because they are so absorbed in their conversation.

If an employer provides cell phones to their employees, or cell phone use is a necessary part of a job, that employer may be liable for claims arising from their employees' use of cell phones while driving. Even if employees are not officially on company business, or not even making a business call, employers may still be held liable if an accident involves a cell phone provided by or permitted by the employer.

Employers may want to consider some of the following policies regarding employee cell phone use while driving to protect them from liability:

- * Prohibit employees from using cell phones while driving in states or territories where restricted by law.

- * Where cellular telephone use while driving is permitted by law, employers may still choose to prohibit use of cell phones for business purposes or may choose to allow employees to use cell phones while driving but only under the following conditions:

Cell phones must be arranged for "hands-free" operation

Employees may not text while driving

Employees must refrain from placing outgoing calls while driving

Incoming calls should be kept brief and limited to business discussions

- * Company owned cell phones may carry a sticker or warning that the use of the phone while driving is dangerous and should only be done where legally permitted and only in an emergency.

- * Employers should maintain documentation and written acknowledgements of their company policy from employees when issuing cell phones.

Although an employer with a strong cell phone policy will legally be in a better position than the employer who has no policy, having a policy will not guarantee a company protection from liability for the negligent conduct of its employees while using a cell phone. If you need assistance with drafting a policy, seek guidance from a risk management professional.

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