



## MUST READ!

### Cell Phones – Corporate Blessing or *Nightmare*

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Everyone knows that driving and using a cell phone distracts you as a driver. In fact many states have instituted laws that prohibit use of cell phones while driving. But what does that mean to you or your business?

The “Big Brother” effect now in place to accommodate our technology needs makes it easy for law enforcement or an injury lawyer to determine where you were and what you were doing at the time of an accident.

 If your company allows employees to drive company vehicles or provides cell phones for business use, you must safe guard your liability by having a cell phone/company vehicle policy in place. 

Consider this:

- In the case *Dykes Industries* of Little Rock lost a \$20.9 million lawsuit for personal injuries sustained by a citizen in a car accident where a Dykes employee was using a cell phone at the exact moment of the accident.
- *Cooley Godward*, a Virginia-based law firm, was slapped with a \$30 million wrongful death suit where an employee of theirs was conducting business on her cell phone when she struck and killed a fifteen-year-old boy with her car.
- *The State of Hawaii* agreed to pay \$2.5 million as its share of liability for an accident involving a state employee who allegedly was talking on her cell phone when she hit a tourist from New Jersey and caused permanent brain damage to him. The state was found twenty percent liable for the plaintiff's injuries.

You may be tempted to say, “Oh that can’t happen to me, my employees are responsible and know better.” However, are you willing to take on the liability?

**Some notable points on employer liability involving the use of cell phones are listed below:**

- Employers can be liable for problems or accidents created by an employee's use of cell phones while driving if a company provides the phones, or if cell phone use is a necessary or encouraged option as part of their job.
- Employers can incur liability whether or not the call is personal or business related.
- Risks fall into two categories: claims by third persons and claims by employees.
- Employer liability in cases involving a third party is based on a legal principal called vicarious liability. It provides that an employer is responsible for the harm caused by its employee if that employee was acting within the course and scope of his or her employment at the time that the accident occurred.
- Plaintiffs often claim that an employer is directly negligent for its own conduct in encouraging or permitting employees to use cell phones for business without adequate training or consideration of safety issues.

- Workers who use cell phones while on the job have begun to file **workers compensation claims and lawsuits** based on the theory that radio frequency radiation from cell phones may lead to various forms of brain cancer or other maladies.
- Training and a firm company policy help, but are not an assurance that a company will not be charged and held liable for the negligent conduct of its employees while they are using a cell phone.

**Below are some liability considerations and examples of elements of existing cell phone policies:**

- On the extremely cautious side, some companies either **strictly prohibit the use of cell phones for business purposes while operating a motor vehicle**, or if necessary, require the use of a "hands-free" phone.
- Cell phone policy should inform employees of the potential health risks associated with the use of a cell phone, and even suggest or require using a hands-free phone.
- Some companies could require, as a condition of receipt, that the employee sign an **acknowledgment that these phones are not to be used while operating automobiles or other equipment**.
- Company owned cell phones may **carry a sticker** warning that the use of the phone while driving is dangerous and should be done only in an emergency.
- Some policies require employees to take precautions such as dialing phones only while stopped or pulling off of the road before making or receiving a call.  
*(One can wonder if an accident happened on the side of the road whether there would be a lawsuit claiming the company shouldn't have made the employee pull off the road!)*
- A policy may require **training on cell phone safety**. A brief training session or a simple **booklet** may be a good way to answer any questions asked by employees.
- Employers should maintain documentation, including written **acknowledgements of their company policy**, from employees when they are issued cell phones or related equipment. All training should be documented and records kept in personnel files.
- Employers who reimburse employees for business calls made from their cell phones may require employees to certify that they did not use the phone in any way that violates company policy. **Such certification can be added to the reimbursement form**.
- Policy could state that any violation of subjects the employee to disciplinary action. It should be demonstrated that the employer **is serious** about this issue.
- Policies should be firmly **enforced**.

*(Information provided by Braunconsulting.com)*

If you need help constructing a policy or would like to purchase liability insurance, please call me. I can direct you to the experts.

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