

Reciprocal News

Helping to Manage Your Risk

The MEARIE Group's Reciprocal Newsletter

A publication designed for the benefit of Ontario's Electricity Industry.

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Cell Phone Policy - Who Is Distracting Your Drivers and Are You Liable?

Cell phone use while driving continues to be more and more frequent in today's world of instant communication. The Province of Ontario is currently considering a ban on the use of cell phones while operating a vehicle.

The question has been raised: Is cell phone use while driving the next frontier of Employer Liability? Employers may be held vicariously liable for employees actions while on company business.

While there have been no decided cases in Canada, there have been several cases in the USA that should raise a red flag and cause employers to review company policies regarding the use of cell phones or other electronic devices, used for business purposes in a company vehicle. There have already been million dollar awards and settlements in the USA in instances where individuals were involved in accidents while using a cell phone on company business, during business hours in a company vehicle. According to the National Highway Traffic Safety Administration, cars driven by people talking on a cell phone were more likely to be the striking vehicle in an accident. And more than dialing, talking on a cell phone is the major distraction in cell

phone related crashes, while being startled by an unexpected call was also reported as a factor.

A study by Canadian researchers reported in the New England Journal of Medicine, likening the dangers of talking on a cell phone while behind the wheel, to driving while drunk. There are several

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examples from the courts sending a clear message to employers that permitting an employee to operate a company vehicle while legally impaired under the influence of alcohol can lead to employer liability. Employers can not knowingly, negligently or ignorantly permit dangerous situations such as impaired driving [potentially talking on cell phone or using other electronic device] to happen. If they do, the law potentially exposes them to vicarious liability for the dangerous acts of their employee, the driver. How long will it take for lawyers to try making the connection and thus begin court actions?

As a company executive, along with your fleet manager you need to be concerned about the potential risks and accidents that may result

from your employees using cell phones [or other electronic devices] while driving company vehicles. So what can you do to avoid or reduce the potential for vehicle damage, employee injury and limit liability in these instances?

The first step is to develop and implement a Corporate Policy regarding the use of cell phones and other electronic devices while operating a company vehicle. The policy should include the following:

Goal - Statement of purpose. This should be a brief statement related to Health & Safety of employees, reduction in potential for vehicle damage and liability to the company.

Application - Should apply to all employees driving any company

vehicles, from Senior Management to summer students.

Terms of Use - Should the device be used? When and how cell phone or electronic device can be used under normal conditions and in emergency situations.

Training - Confirmation of individual training including a sign off sheet to acknowledge training for HR file.

Consequences - Penalties, discipline for failure to follow corporate policy. This can range from loss of driving privileges to termination.

Management Support - Support statement from senior management as to the purpose of the program and its implementation.

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While a Corporate Policy includes best practices, you may choose to not have a Corporate Policy restricting the use of Cell Phones. If you do not wish to restrict use of phones - from a risk management standpoint - steps should be taken to reduce the potential for accidents. The following are some suggestions that in the absence of a "No Use While Driving Policy" reduce the accident potential:

1. Drivers should focus complete attention on the road.

2. Avoid talking on the phone in congested areas especially during bad weather. Pull over and stop, if necessary, to dial or complete conversation.

3. In heavy traffic or hazardous conditions allow an incoming call to go to voicemail. Check and return the call once your vehicle is pulled over and stopped.

4. Have a passenger dial or take the call. If not possible, remain in the right hand lane and pay particular attention to traffic conditions.

5. Don't take notes while driving!

6. Use hands-free features at all times where possible.

7. Be familiar with the phone's keypad. Use the speed dial function whenever possible and if possible add the voice activated dialing feature.

8. Keep your mind on driving at all times.

9. Keep your phone secure when not in use, so it will not move around and distract you while driving.

10. Know when to stop talking. Keep conversations brief so as to concentrate on driving. If a conversation is to be long, emotional or stressful, or driving becomes hazardous, end the call and continue when pulled over or stopped.

If you would like help in developing a Corporate Policy on Cell Phone Use or if you would like to discuss further, please contact The MEARIE Group, Gary Durie, Risk Analyst at (905) 265-5355 or gdurie@mearie.ca.

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The MEARIE Group, 1100 - 3700 Steeles Ave West, Vaughan, ON, L4L 8K8 T:905-265-5300 or 1-800-668-9979
F: 905-265-5301, Email: mearie@mearie.ca web site: www.mearie.ca.