

Cell Phone Use

Boon to productivity, or dangerous safety liability?

By Paul Farrell

It goes without saying that the use of wireless communication devices (cell phones, PDAs, Blackberries, etc.) has grown significantly in the past two decades. According to the Cellular Telecommunications & Internet Association, current estimates suggest that over 236 million people in the United States today use a wireless device as compared with approximately 4.3 million in 1990.

The use of these devices helps bolster productivity by using otherwise “dead” time to engage in management updates and even sales calls. The danger comes from talking or “texting” while driving.

Even with hands-free devices, the conversations can be highly distracting. Although statistics vary, increasing emphasis is being placed on studying the role of wireless devices and vehicle collisions. A January 2007 survey of 1,200 drivers by Nationwide Mutual Insurance indicated that almost three out of every four drivers admit they talk on their cell phones while driving. “The 100 Car Naturalistic Driving Study”¹ conducted by the National Highway Transportation Safety Administration (NHTSA) confirmed that conversations were a major contributing factor in distracted driving crashes. Researchers at the University of Utah have even coined a term – “inattention blindness” – to label the driving distraction caused by these devices.

Beyond the obvious consequences of injury and vehicle damages from a collision, there are increasing threats that businesses must consider:

First, in a growing number of states, talking on a cell without a hands-free device while driving is illegal². The employee can



While talking on a cell without a hands-free device while driving is illegal in some states, employers may find themselves paying more than a ticket if an employee on a cell phone – hands-free or not – is involved in an accident.

be ticketed and fined. This causes a far greater disruption in their schedule (measuring lost productivity) than any amount of cell phone use while driving could offset.

Second, more litigation is focusing on the use of cells while driving, and some of these cases are raising eyebrows at many firms. In December 2004, a driver was talking on his cell and was involved in a crash. The employer was brought into the case because the call involved business matters. The driver’s employer agreed to pay \$5 million to settle.

In another example case, a Virginia jury awarded \$2 million in damages to

the family of a young girl who was killed by a driver who was using a cell phone at the time of an accident. The plaintiff also filed a suit against the driver’s employer after it became clear through an examination of phone records that the driver had been talking to a client when she hit the girl³.

In a third example, a stock broker was talking on his personal cell, making “cold calls” to prospective clients, on his way to a non-business dinner. The brokerage was brought into the suit and settled out of court to avoid a negative judgment⁴.

Vicarious liability is a legal concept that

says, simply put, that employers are responsible for the actions of their employees. An extension of this concept suggests that employers have a responsibility to implement policies to control their employees' behavior to avoid injuries and damages. In fact, more employers are instituting cell phone use policies and developing ways to monitor and enforce the policy. These policies vary from aggressive "no use while in vehicle" to "allowable use while pulled over or parked."

Even with a clear policy⁵ in hand, it can prove challenging to train employees and monitor their compliance with the policy. Companies that implement restrictions need to enforce the policy to make it effective and might even consider potential disciplinary actions against violators. Specialized training to highlight the dangers of distracted driving (and how to avoid it) is available from training providers such as Comprehensive Loss Management, Inc.⁶; the Network of Employers for Traffic Safety⁷; and GoldCross Safety⁸.

In summary, wireless devices have provided us with fantastic benefits:

- ▶ They help us keep in touch with remotely located crews
- ▶ They let us call for help when we're stranded or need additional resources at job sites
- ▶ They enable us to stay productive during breaks and downtime associated with set-up or clean-up periods

Unfortunately, they also have the potential to become the cause of pain and suffering due to distracted driving.

As employers, we are held to various standards of care ranging from the OSHA general duty clause to legal concepts such as vicarious liability. Litigation over business discussions held on wireless devices at the time of collisions is yet another compelling reason to consider adopting a policy, training employees and enforcing the policy on a consistent basis.

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