

## Companies Pay the Price for Distracted Drivers

By Holly Culhane, Contributing Columnist



If Transportation Secretary Ray LaHood has his way, federal law will prohibit more than 3 million drivers from using cell phones when driving trucks, buses and other commercial vehicles.

Since being appointed U.S. Transportation Secretary nearly two years ago, LaHood has waged an aggressive campaign against what he considers to be the growing epidemic of “distracted drivers” who are causing thousands of deaths and injuries each year as a result of their cell phone use.

Earlier this year, LaHood pushed through a federal ban on text messaging and e-mailing by commercial drivers while they are behind the wheel of their vehicles. Thirty states now ban text messaging, at various levels, by the drivers of all vehicles.

LaHood’s recent announcement that he now wants to prohibit commercial drivers from using cell phones has triggered outrage from some in the trucking industry, as well as from manufacturers of mobile communication equipment and providers of mobile service.

Political and industry observers doubt LaHood will achieve an all-out ban on cell phone use, including a ban on the use of hands-free systems. Citing accident statistics and scientific studies, LaHood contends talking on a cell phone – with or without hands-free systems – distracts drivers and causes accidents.

So far, only a handful of states require all drivers to use hands-free systems when driving a vehicle and talking on a cell phone. Likely what will result on the federal level will be rules requiring commercial drivers to use hands-free systems.

But the political debate over LaHood’s proposed ban is expected to be lengthy and loud. And it will draw increased scrutiny of all drivers’ cell phone use.

It also should serve as a wake-up call for employers to develop and enforce policies that will prohibit their employees from using cell phones while engaged in work-related driving.

Whether or not you concur with cell phone bans and believe behind-the-wheel use should be restricted to hands-free systems, there is no doubt about the liability cell phones pose for employers.

A worker’s excessive cell phone use and texting on the job can be a distraction and erode productivity. And work-related use of cell phones by employees after work hours – basically leaving an employee perpetually “on call” – can be the basis of a wage-and-hour complaint.

But a liability often forgotten includes an employee who drives a company car, or his own car for company business and plows into another vehicle while using a cell phone. Depending on the damage done and the injuries or death caused, the financial cost to the employer can be huge, and the suffering caused inexcusable. There is no shortage of tragic stories that illustrate this liability.

In 2001, the state of Hawaii agreed to pay \$1.5 million to a tourist who suffered a severe brain injury when he was run over by a vehicle driven by a state worker using a cell phone. In 2003, the family of a Pennsylvania motorcyclist killed during a collision with a vehicle driven by the employee of a major stock brokerage received \$500,000. Although the collision occurred after hours and the employee was driving his own car, the employee was making a work-related call at the time of the crash. In a 2000 Virginia case, a lawyer driving home from a meeting was talking to a client on her cell phone when she struck and killed a teenager. The lawyer's firm paid the girl's family \$30 million.

A company having a strict cell phone use policy in place will not eliminate the potential for accidents, such as these. It will not absolve a company from having liability for damages. But it may reduce the liability. And it may make workers more aware of the dangers of being distracted when using a cell phone.

When assisting clients in developing company policies and procedures, I urge them to include specific rules regarding cell phone use and text messaging on the job and while driving.

- Instruct workers, in writing, to refrain from using cell phones while driving.
- If brief cell phone communication is required, it should only be conducted through hands-free systems, which is the law in California.
- For longer calls, instruct workers to pull off the road and stop their vehicles.
- For *any* call, instruct employees to never risk their safety or the safety of others.
- The policies should apply to all workers, including managers.
- The penalty for violating company cell phone policies should be severe and include termination.

With technology seeming to change with the blink of an eye, company cell phone policies should be regularly reviewed to ensure that they are current and address the newest "must have" devices. And in the end, everyone will benefit.

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