

Cell Phones: Friend or Foe? Part One in a Three Part Series: Distracted Driving-A Potential Liability for Employers

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In a world where cell phone use is ubiquitous and multi-tasking is used by many to juggle work and life commitments, motor vehicle accidents involving an employee's distracted driving has become commonplace. In fact, recent data from the U.S. Bureau of Labor Statistics reports 40% of all workplace fatalities involve transportation incidents. In some cases, accidents arise from an employee's use of a cell phone while driving, resulting from distractions caused by talking, texting, or sending or receiving email while driving. This three part blog series examines: (1) employers' risks associated with distracted driving caused by employees use of cell phone use; (2) whether cell phones cause employees to work after hours necessitating overtime payments; and (3) whether or not employers should provide cell phones and if the information (i.e. texts) on such a phone are corporate documents.

Accidents Caused By Employees Using Phones While Driving May Impose an Employer's Liability

One need to look no further than recent case law concerning employers' liability with respect to an employee's distracted driving arising from cell phone use.

In 2012, a Texas court held Coca-Cola liable for \$21,000,000 dollars in damages when an employee, while using their cell phone and driving, struck another motorist. According to court documents, the jury heard overwhelming evidence that although Coca-Cola was aware of the dangers of using a cell phone while driving, including having a cognitive distraction of 37% while on a cell phone, the company failed to warn the employee driver of these risks as well as inform them about data concerning fatalities and injuries arising from cell phone use while operating vehicles. When asked about the company's corporate governance policies, Bob Hilliard, a lead trial lawyer in the case commented: "Today's verdict I hope sends a message to corporate America that you can't have employees on a cell phone and endanger the motoring public." [\[1\]](#)

Other notable cases reflecting similar risks include the following cases, reported by the *National Safety Council* in its publication "Employer Liability and the Case for Comprehensive Cell Phone Policies":

- An employee was involved in a fatal crash while making "cold calls" as he drove to a non-business-related event on a Saturday night. The firm did not own the phone or the vehicle, but the plaintiff successfully claimed that the company was liable because it encouraged employees to use their "car phones" and it did not have a company policy governing safe cell phone usage.
- A jury found that a driver and the corporation that owned the vehicle were liable for \$21,600,000 because testimony revealed that the driver may have been talking with her husband on a cell phone at the time of the fatal crash.
- An off-duty police officer was texting moments before a fatal crash and because he was driving a police cruiser, his employer was held liable for \$4,000,000.

See also: [The National Safety Council: Employer Liability and the Case of Comprehensive Cell Phone Policies](#), May 2015.

An Employer's Obligation

Employers are legally obliged to protect both employees and other drivers. In 2018, the [National Library of Medicine](#) reported that dozens of studies had linked the use of hands-free technology to poor driver performance and collisions. Therefore, restrictive policies are advisable to attempt to protect an employer from vicarious legal liability in the event that an employee does not follow procedures. **Generally, an employer may be held liable for the negligent actions of an employee acting within the scope of his or her employment at the time of an incident.** For this reason, the *National Safety Council* recommends that employers implement a total ban on the use of mobile devices while driving. However, most employers would deem such a policy unrealistic. Therefore, an employer's cell phone policies should, at a minimum, address the requirement of the use of hands-free mobile devices.

TAKEAWAY: Employers should implement clear policies regarding the use of mobile devices while driving.

If you are an employer concerned about HR policy and the use of mobile devices or another employment law risk, contact [Tracy Armstrong](#) or another member of the Wilentz [Employment Law](#) Team.

Resources:

[\[1\]](#) Vanice Chatman-Wilson v. Araceli Vanessa Cabral and Coca Cola Enterprises

Attorney

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- Employment Law