

Implementing the Cell Phone Ban

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A recent Transport Canada study found that driver distraction is a contributing factor in about 20% of all collisions on the road. In the United States, drivers are now routinely being sued for causing serious accidents while driving and using their cell phones.

To deal with these issues, the Ontario government has enacted Bill 118, *Countering Distracted Driving and Promoting Green Transportation Act, 2009*, which will take effect in October, 2009. Known as the "Cell Phone Ban", this law will have dramatic impact for companies who provide cell phones, Blackberries or other Personal Digital Assistants (PDAs) to their employees, or who require their employees to use these means of communication as part of their jobs. Simply put, these devices can now be used only while the vehicle is parked, or if the device is in a hands-free mode.

General Provisions of the New Law

- Driving a motor vehicle with the display screen of a television, computer or other device visible to the driver is prohibited.
- Driving while holding or using a hand-held wireless communication device, cell phone or electronic entertainment device is prohibited.
- Use of such devices is permitted if used in the hands-free mode, or with an earpiece connected to the wireless device.
- Use of such devices is permitted when the motor vehicle is off the travelled part of the road, not in motion and not impeding traffic.
- The use of display screens for GPS navigation devices mounted on the dashboard, commercially used logistical transportation tracking systems, collision avoidance systems and instruments, gauges and systems providing information about the status of the motor vehicle are permitted.
- The new legislation does not apply to drivers of ambulances, fire department vehicles and police department vehicles.
- Anyone breaking this law will face a fine of up to \$500.

Workplace Policy for Use of Electronic Devices While Driving

Employers who do not already have in place a policy for use of electronic devices while driving should immediately consider implementing such a policy, in writing. Employers should also ensure that employees who drive as part of their duties are aware of the new restrictions on use of wireless devices while driving. The policy must include guidelines and procedures on the use of hands-free devices while driving during work hours or in the course of employment and the discipline to be meted out if the procedures are not followed. Emphasize the following:

- Include a statement about the type of electronic device or activity, if any, that is permitted. The nature of the workplace and the employer's own tolerance for risk would dictate this. In any event, if the employer continues to require cell phone use while out of the office, emphasize the following:
 - Keep both hands on the wheel and use the phone's hands-free or speakerphone feature. Never use a cell phone as a handheld device while driving.
 - Use should be kept to a minimum.
 - Remain alert to traffic and other vehicles around you.
 - Be completely familiar with the phone before using it while driving.
 - Be prepared to break conversation to respond to a traffic hazard.
 - Never take notes while driving.
- If hands-free cell phones or electronic devices are to be strictly prohibited while the employee is driving in the course of employment, recognize that there are occasions when instant cell phone communication is both necessary and valuable.
- The policy must dictate that drivers stop safely and secure the vehicle before using the cell phone.
- The policy should state that employees will not be disciplined for failing to answer their cell phones or participate in conference calls when they are driving.
- If an employee must make an emergency call (911), the vehicle should be parked in a safe location before the call is made.
- It should be made clear that employees who violate the policy will face escalating disciplinary measures up to termination.
- It should also be made clear that employees face legal responsibility if in the course and scope of their duties, they are involved in a car accident and there is evidence that they were using their cell phones while driving and the employer is sued. Since similar legislation is in place in a number of other Canadian provinces and in certain American states, this legal responsibility should extend to other jurisdictions where employees are likely to drive in the course of their work.

Lawrences' Employment Law Group has extensive experience in helping employers put in place policies that protect workers' health and safety while limiting employers' liability. Contact us if you have concerns about implementing the cell phone ban or any other workplace policy.

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