



THE WAY I SEE IT

Texting and driving: policies to prevent an accident

by Michael E. Barnsback

Effective July 1, 2009, Virginia outlawed texting and driving. Specifically, Virginia Code § 46.2-1078.1 makes it unlawful for a person operating a motor vehicle to:

- manually enter multiple letters or text in a hand-held personal communications device as a means of communicating with another person; or
- read e-mail or text messages transmitted to or stored within the device.

There is a \$20 fine for a first offense and a \$50 fine for a second offense.

Employers should pay attention

If you have employees who drive as part of their job duties, you should pay attention to this new statute. The relatively small fine isn't the reason for concern. The statute was enacted to prevent accidents, and that's why you should take notice.

Imagine one of your employees is driving to a meeting. She becomes distracted while reading an e-mail and causes an accident. You, as the employer, are legally responsible because the employee was engaged in your business at the time of the accident. Imagine the employee was injured, and the accident becomes a workers' compensation issue.

Imagine further that the driver of the other car was injured, making you a defendant in a personal injury suit. To complicate matters, because the accident was caused by texting while driving (a violation of a public safety statute), your employee's negligence is automatically established. There's a principle of law that stands for the proposition that a violation of a statute adopted for public safety constitutes negligence per se because the violation is a failure to follow the standards prescribed by the legislature. In other words, it's likely you'll have no defense to the accident.

All of these problems could have been avoided, however, if your employee simply hadn't been texting while driving.

Simple steps to take

There are simple steps you can take to avoid texting-while-driving accidents. Adopt and enforce a policy that strictly prohibits texting while driving. If successful, you will have eliminated the hazard.

Even if you aren't completely successful and an accident does occur, you'll have placed your company in a much better liability position. Now, because the employee violated your clear policy prohibiting texting while driving — an act of misconduct — you can make the argument that workers' comp should be denied. Further, in an attempt to avoid personal liability to others, you also may be able to argue that the employee was acting contrary to company policy.

In the end, it boils down to a simple safety issue. It is dangerous to text and drive. Make sure your employees don't do it.

Are you buckled up?

And while we're on the subject of safety, don't forget seat belts. Just as it is illegal to text and drive, Virginia Code § 46.2-1094 makes it illegal to drive without buckling up. Hence, the same considerations that apply to your policy prohibiting texting apply to mandating seat belt use.

The point was brought home recently when the federal Occupational Safety and Health Review Commission upheld a penalty against a company for a "serious violation" of the Occupational Safety and Health Act (OSH Act) after an employee was killed when he was thrown from the company vehicle he was driving. The Occupational Safety and Health Administration investigated the accident and found a violation of the OSH Act's General Duty Clause because the employee wasn't wearing a seat belt. Although the company argued that the employee had committed misconduct by failing to wear his seat belt, the argument didn't fly. The commission found that the employer had failed to adequately monitor or enforce its own seat belt inspection rules. *Secretary of Labor v. Burford's Tree, Inc.*, No. 07-1899 (1/18/10).

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The moral of the story is this: Have a policy requiring employees who drive company vehicles to keep their eyes on the road, keep their hands at 10 and two, and buckle up — and make sure the policy is enforced.



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