



Cell Phones – The Good, the Bad and the Ugly: Employer Liability for Employee Auto Accidents

Cell phones – they're useful, convenient and ubiquitous. You see them on the street, at the beach, in stores, restaurants, hotel lobbies, elevators, trains, planes . . . and in cars. Even long-time holdouts are getting cell phones because they serve a need and perform a valuable function, at home and at work.

The Good

Cell phones can make employees more productive and efficient. While out of the office, or in transit, employees can stay in touch with the office, respond to customer calls and conduct business at times and in places where such communications would previously have been difficult, if not impossible.

For this reason, employers may encourage and even require those employees whose job descriptions require significant time out of the office or in transit to carry (and use) cell phones. Frequently, an employer will provide employees with cell phones or install them in company cars. So far, so good....

The Bad

There is growing statistical evidence that cell phone use is a significant cause of motor vehicle accidents. Clearly, cell phones are not the only distraction to which drivers are subjected, but it appears lately that the urge to blame cell phones for accidents – and even fatalities – is nearly as strong as the urge to use them while driving. Many states and counties have proposed legislation or ordinances which would ban the use of hand-held cell phones while driving. Just last year, such legislation was defeated in Connecticut, but New York State has enacted a ban that takes effect November 1, 2001 (some counties in New York already have their own bans in effect), and the trend seems to be growing.

The Ugly

Under a variety of circumstances, employers may be held vicariously liable for the conduct of their employees. For example, if an employee injures a third party while driving a company car, or even while driving a personal car on company business, *the employer*, as well as the employee, can be held liable for damages incurred by the injured party. Employees should be urged to drive with care at all times, but especially when driving a company car, or while driving on company business.

Given the current concern with risks associated with cell phone use while driving – and the fact that it is becoming illegal in an increasing number of jurisdictions – employers whose employees do business on cell phones while driving may face significantly increased risks of vicarious liability. In a recently filed Virginia case, an employer has been sued for millions of dollars because an employee hit and killed a pedestrian while making a business call on a cell phone.

Recommendations

Employers today should seriously consider warning employees not to talk on cell phones while they are driving, or insist that they pull over to make their calls. An employer who encourages – or requires – an employee to make business calls while driving is asking for trouble.

If you would like assistance in preparing or reviewing your company's policies regarding cell phones usage, please contact Judy Rabkin or Dorit Heimer of our office.