



## Does Your Cell Phone Use Policy Cover Your Liability?

As an employer, you may be liable for punitive damages if your employee causes an auto accident while using a cell phone.

In 2012, Coca-Cola paid \$24 million to a woman who was injured by a company salesman using a hands-free device. In 2009, Holmes Transport paid \$18 million after a company driver caused an accident while checking messages on his cell phone resulting in the injured third party having permanent brain damage. International Paper settled for \$5.2 million due to an accident caused by an employee that was distracted on a cell phone—the injured woman had to have her arm amputated.

Jurors are awarding HUGE sums of money in cases that involve distracted drivers. Typically, the largest awards are in the form of Punitive Damages. Punitive Damages are considered punishment and are awarded to the suffering party when one's behavior is found to be especially harmful and/or negligent. In the cases of distracted driving, these punishments take the form of dollar signs, many of them!

How does this translate into YOUR company? Because the company has deeper pockets than the employee, a lawsuit will more than likely end up in the lap of the employer—even if it is not personally negligent. As an employer, the use of smart phones by your workers while operating a vehicle leaves you with a HUGE liability! So, what can you do to avoid such a liability?

- Verify and understand the State laws on cell phone usage while driving.
  - NEW MEXICO: *Texting or manipulating a cell phone while driving is banned. However, hands-free use is allowed.*
  - TEXAS: *Texting and hand-held bans exist when in school crossing zones and on public school property during reduced speed limit times.*

Source: <http://www.iihs.org/iihs/topics/laws/cellphonelaws/mapyoungcellbans?topicName=Distracted%20driving#map>
- Create and enforce a "Cell Phone Use" policy. This should be done whether your employees use a company cell phone or not.
- Periodically advise your employees on the hazards of using hand held devices while operating a vehicle and discuss solutions for safer driving habits.
- Keep in mind: employers who require their employees to text while driving or in any way encourage such acts are in violation of OSHA.

Attached is a sample policy that uses key wording to help enforce the rules and consequences of a cell phone policy. If you need help drafting or revising a current policy for your company, we are here to help you. However, always have your attorney review and approve the cell phone policy.



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## **[Company Name] Distracted Driving Policy**

**Please read the Distracted Driving Policy, sign and return to your supervisor.**

In order to increase employee safety and eliminate unnecessary risks behind the wheel, [Company Name] has enacted a Distracted Driving Policy, effective [Date]. We are committed to ending the epidemic of distracted driving, and have created the following rules, which apply to any employee operating a company vehicle or using a company-issued cell phone while operating a personal vehicle:

- Company employees may not use a hand-held cell phone while operating a vehicle – whether the vehicle is in motion or stopped at a traffic light. This includes, but is not limited to, answering or making phone calls, engaging in phone conversations, and reading or responding to emails, instant messages, and text messages.
- If company employees need to use their phones, they must pull over safely to the side of the road or another safe location.
- Additionally, company employees are required to:
  - Turn cell phones off or put them on silent or vibrate before starting the car.
  - Consider modifying voice mail greetings to indicate that you are unavailable to answer calls or return messages while driving.
  - Inform clients, associates and business partners of this policy as an explanation of why calls may not be returned immediately.
- [Company consequences for failing to follow policy]

I acknowledge that I have received a written copy of the Distracted Driving Policy, that I fully understand the terms of this policy, that I agree to abide by these terms, and that I am willing to accept the consequences of failing to follow the policy.

**"SAMPLE EMPLOYER CELL PHONE POLICY IS FOR INFORMATION  
PURPOSES ONLY AND NEEDS TO BE REVIEWED BY YOUR ATTORNEY  
BEFORE USING SUCH."**

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Employee Name (printed)