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Special Issue



Distracted Driving: Employers Cautioned to Pay Attention

by Carrie L. Sponseller

If your business has not already revised its policies to address distracted driving, now is the time to act. The dangers of distracted driving are widely known. In 2011, Ohio law enforcement agencies reported 33 fatalities, 450 serious injuries and more than 12,000 crashes that specifically were attributed to distracted driving. Many safety conscious employers, for years, have prohibited texting and the use of cell phones while driving for business purposes. New state and federal laws, however, provide added incentives for businesses to address this growing problem: potential employer liability.

Ohio's New Texting Ban: Effective August 30, 2012, Ohio joined more than 30 other states to prohibit texting while driving. Under Ohio's law, individuals less than 18 years of age are prohibited from using any mobile communication device while driving in Ohio. This means no texting, e-mailing, talking on a mobile phone (with or without a hands-free device) or playing video games – even while at a red light or stuck in traffic. This is a primary offense for drivers under 18; law enforcement can stop young drivers for any of the above reasons. Adult drivers are prohibited from texting and reading or sending e-mail while driving. For adult drivers, texting is a secondary offense, which means that law enforcement only can issue citations

About the photo: Lobby of Eastman & Smith's Toledo office

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if the driver is stopped for another traffic violation. Warnings will be issued for the first six months; thereafter, penalties are severe, particularly for young drivers. For drivers under the age of 18, a first violation will result in a fine and a 60-day license suspension. A second violation carries a heavier fine and a one-year license suspension. Adult drivers face a \$150 fine per violation.

OSHA: OSHA takes the position that employers have a duty to create and maintain a safe and healthful work environment and strongly has encouraged employers to declare all vehicles a “text free zone.” This duty requires that employers have a clear and unequivocal policy prohibiting texting while driving. Employers who, by policy or practice:

- require texting while driving;
- create incentives that encourage or condone texting while driving or
- structure the work day so that texting while driving is a practical necessity for employees to do their jobs

violate the Occupational Safety and Health Act. If OSHA receives a credible complaint that on-the-job distracted driving played a role in an automobile accident, the agency will conduct an investigation, including a review of cell phone records, and will issue citations where an accident involved texting while driving.

Department of Transportation: In a multi-modal approach, the Department of Transportation has prohibited texting while operating automobiles, trains, airplanes and other commercial vehicles.

Federal Employees: On October 1, 2009, President Obama signed an executive order prohibiting the more than three million federal employees from:

- texting while driving government vehicles;
- using electronic equipment supplied by the government; or
- while driving personal vehicles while on official government business.

The order also strongly encourages federal contractors and others doing business with the government to adopt and enforce their own distracted driving policies.

Businesses strongly are encouraged to develop and enforce a comprehensive “distracted driving” policy, which should accomplish all of the following:

- Advise employees of the company’s commitment to safety;
- Require employees to observe all traffic laws while driving for work related reasons, whether in company vehicles or personal vehicles;
- Expressly prohibit texting and sending and receiving e-mails while operating any vehicle or motorized equipment while performing work activities;

- Require employees to stop driving before conducting business electronically;
- Advise employees that electronic devices may be monitored to ensure compliance with the policy; and
- Advise employees of the consequences for failing to follow the policy.

For questions regarding your company's policies and procedures, please do not hesitate to contact Eastman & Smith Ltd.



Ms. Sponseller is a member of the Firm who focuses her practice in the areas of employment discrimination, workers' compensation and related litigation. She is certified as a Labor and Employment Law Specialist and can be reached in our Toledo office (419-241-6000).

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