

USE OF CELL-PHONES WHILE DRIVING

By Bill Balmat

This summer there was a Cell-Phone Law E-mail Hoax that was spread throughout the state. The truth of the matter is that ONLY two states had 'hands-free' laws that went into effect on July 1, 2008 – California and Washington.

However, while there currently is not a state-wide cell-phone or hands-free driving law, local municipalities may have created their own laws regarding driving and cell-phone use that make it illegal to talk on a cell-phone while driving.

Remember that you do not need a law to be found at fault for some activity. See the following:

- An employee dropped his/her cell phone while driving. In trying to pick it up, they ran a red light and killed a father of three. The family sued the firm even though the worker was neither driving on business nor using a company phone. The employer settled out of court for \$500,000.
- An employee struck and severely injured a woman while driving and talking on a cell phone. The company settled for \$16.2 million dollars.
- An employee struck and killed a 15 year old girl while talking on a cell-phone. The employer settled for an undisclosed amount AND the employee was ordered to pay \$2 million dollars.

For many of the reasons highlighted in the above scenarios – and most importantly for the safety of all concerned – experts are suggesting that employers create a cell-phone use policy for their employees. Some factors to be considered for this type policy might include (but not be limited to the following):

- An absolute prohibition of cell-phone use while driving – OR
- A requirement that drivers pull over to the side of the road to take or make calls
- If use of a cell-phone is deemed to be necessary, then require the mandatory use of a hands-free headset
- Use of speed dialing when initiating a call
- Notice to the called party that you are driving and may have to abruptly end the call if driving conditions become hazardous
- A BAN on any electronic messaging or the reading of any electronic messaging
- Written acknowledgement by the employee that the policy has been read and will be followed, with violation subject to discipline, up to and including possible termination

Remember that any policy that you may develop should be reviewed and approved by your own local legal counsel.

Sometimes it is simply the right thing to do – even if there isn't a law telling us we have to do it!



Bill Balmat is Director, Risk Management Services for Hylant Administrative Services. He specializes in providing operational risk management support, advice, and counsel to public municipalities, public schools and colleges and universities.

Contact: Bill.Balmat@hylant.com