

Risk Control Bulletin

Driver Distractions

This document is intended to assist our customers in developing a program that will assist in the control of driver behaviors. When addressing the exposure of distracted driving, essential components of a program should identify:

- Information on severity of the problem
- Steps that help to control exposures
- Support materials
- Sample recommendations

The University of North Carolina Highway Safety Research Center study found an estimated 284,000 distracted drivers are involved in serious vehicle accidents every year. Factors that contributed to accidents:

- Distractions outside the vehicle
- Cell phone use
- Adjusting radio or CD player
- Talking to other occupants
- Adjusting vehicle or climate controls
- Eating or drinking
- Smoking

More than 80% of the nation's 94 million cell phone owners use them while driving, at least sometimes. Many states have legislation to regulate cell phone use in moving vehicles. At least 13 nations, including England, Germany and Japan, have banned the use of cell phones in cars.

In the past few years, cell phone usage has been an issue in several lawsuits, and employers are being held responsible if a worker causes an accident while talking on the phone. Cell phone usage is a distraction while driving, like a lot of other things. So why are employers worried?

- Cell phone records can be subpoenaed to prove the employee was on the phone.
- Other distractions cannot be identified to a specific time, and many drivers don't want to say they were distracted and not driving safely.
- Liability cases against employers from cell phone use by employees.

For example, in 2000, a lawyer struck and killed a teenage girl in Virginia. The attorney who was returning from a work meeting was allegedly talking on her cell phone with a client at the time of the accident. The deceased's family filed a \$30 million lawsuit against the employer. In October 2004, the jury awarded \$2 million in damages to the family of the young girl. Plaintiff's lawyer filed suits against both the driver and the driver's employer after it became clear through an examination of phone records that the driver had been talking to a client when she hit the girl.

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The driver was also convicted of criminal charges and sent to prison for two months for punitive and compensatory damages. In his suit against the employer, the plaintiff's lawyer argued the case on the grounds of common law negligence since the employer required drivers to be available to clients via cell phone, use their driving time productively, and that an employer is responsible for bad acts committed by an employee while on the job. The article discusses the case and its ramifications in detail, noting that it is one of several cases in recent years where an employer has been held liable for an accident caused by a driver using a cell phone. The suit against the employer was settled for an undisclosed amount.

In December, 2001, a Miami jury awarded \$21 million to a woman who was hit and severely injured by a lumber industries salesman while he was on his cell phone. In 2001, an appeals court ordered the State of Hawaii to pay \$1.5 million in damages after a state teacher, who had just completed a cell phone call, struck a pedestrian while driving to work.

Interestingly, the distraction problem does not seem to exist with two-way radios, which are as much a staple of contractors as cell phones. This is because those calls are usually much shorter. However; some states that ban hand held phones may consider two-way radios the same. Check with your state's regulations on the use of two-way radios.

For protection, companies should consider establishing a written policy that employees must read and sign restricting use of cell phones. The restriction should include the use of hands-free headsets, since studies indicate it's the conversation not the physical act of holding the phone that contributes to accidents.

An insurance company's sample policy states:

- Cellular phones should not be used while operating a vehicle.
- Allow voice mail to handle your calls. Return the calls and messages when you are not driving.
- If you need to place a call or send a text pull off the road to park in a legal and safe location.
- Ask a passenger to make or take the call.
- Inform regular callers of your driving schedule and when you will be available to talk.
- Keep your hands on the wheel and your eyes and mind on the road while driving.

While there is no guaranteed defense to liability, developing appropriate policies, training and enforcement mechanisms can help limit potential liability and increase public safety. Some companies prohibit employees from using cell phones while driving on company time. In contrast, other companies adopt cell phone safety guidelines and focus on training and enforcement. Each company should determine whether the benefits of employee cell phone use outweigh the risks. Some examples of cell phone use policies include:

- Completely banning cell phone use while driving.
- Directing employees to comply with all state and local laws governing cell phone use.
- Requiring employees to pull over to take phone calls.
- Instructing employees to avoid or terminate phone calls involving stressful or emotional conversations.
- Prohibiting cell phone use in adverse weather or difficult traffic conditions.
- Restricting driver cell phone use to brief conversations.

Sample Recommendations for Reducing Risk

Driver Distractions

A policy to control cell phone use and other distractions inside vehicles will be most effective when developed and implemented at all locations where employees have occasion to operate a company vehicle or drive their personal vehicle for company business. The number one cause of workplace fatalities is vehicle accidents. Studies have shown that inattentive driving is a leading contributor to

vehicle accidents. The purpose of a fleet safety policy addressing driver distractions is to aid management in their efforts to increase vehicle operator safety and control exposures to loss. This policy should be reviewed with all new hires as part of their orientation and with existing employees on a periodic basis. Documentation (employee signatures) should be obtained to ensure all drivers have received, reviewed and understand the policy. A fleet safety policy regarding distractions should include at least the following items:

- (1) A driver acknowledgement form that explains what the employee is responsible for while driving for the company.
- (2) A cell phone use policy that limits or restricts usage and provides safe use instructions.
- (3) A process to inspect vehicles not only for mechanical items but for items that may cause unsafe behaviors such as radar detectors, objects hanging from mirrors, loose materials, writing pads designed for use while driving, etc.

Cell Phone Usage

In order to minimize the risks associated with wireless phone usage when driving and to reduce the exposure to employees and the general public to injuries and/or property damage, it is the responsibility of all employees to use wireless phones in a safe manner. Suggested guidelines include:

Use of a non-hands free wireless phone is prohibited while operating a company vehicle, when operating a personal vehicle on company business, or when driving on company property.

- Finger dialing by the driver, while the car is in motion, is prohibited.
- Reading or writing while operating the vehicle is prohibited.
- Plan calls prior to traveling or while on rest breaks whenever possible.

If a motor vehicle law of a state is more stringent than this policy, that law will supersede this policy.

Sample "Fleet Safety Program" Policy

As an authorized driver, you are required to do the following:

- Do not take chances. To arrive safely is more important than to arrive on time.
- Drivers should be mentally and physically rested and alert prior to each trip.
- Drinking alcoholic beverages while driving or driving under the influence of alcohol or restricted drugs, is prohibited.
- Drivers must have a valid driver's license for the type of vehicle to be operated and keep the license(s) with them at all times while driving.
- Traffic laws must be obeyed.
- Speed shall never be faster than a rate consistent with existing speed laws and road, traffic and weather conditions. Posted speed limits must be obeyed.
- Never attempt to exercise the right-of-way. Always let the other driver go first.
- Keep to the right except when overtaking slow-moving vehicles or when getting into a position to make a left turn.
- Never follow another vehicle so closely that you will not be able to make a safe stop under any conditions. Observe timed interval and following distance guidelines.
- Turn signals must be used to show where you are heading while going into traffic and before every turn or lane change. Remember, signaling intentions neither gives the driver the right of way nor guarantees a safe lane change.
- Slow down and watch for children in school zones.

- Vehicles are to be driven by authorized drivers only.
- Do not give rides to hitchhikers or strangers.
- Seat belts should be worn by drivers and passengers.
- Check your vehicle daily before each trip, and check the vehicle visually each time before driving. Check lights, tires, brakes, and steering particularly. An unsafe vehicle should not be operated until repairs are made.
- Drivers must report all accidents immediately, as required by law and their company rules.
- Drivers must report all arrests and traffic convictions to their company. Repeated traffic convictions or failure to report traffic accidents or convictions may result in disciplinary action.
- Adhere to other safe driving rules adopted by your company, prescribed by state or local laws or by the applicable DOT Motor Carrier Safety Regulations.

Sample Driver Acknowledgement Form

When in possession/driving a vehicle provided by the company or any vehicle on company business I acknowledge and agree that:

- 1) I will abide by the following operating rules/procedures including those specified by the company's Car & Van Drivers' Policies and Procedure Manual.
 - a) I will notify the company (my supervisor/manager) if I am charged with a DUI/DWI and/or my driving privileges have been revoked, suspended or withdrawn, within one business day following receipt of the notice.
 - b) I will not operate a company vehicle:
 - i) If my ability or alertness is impaired through illness or fatigue; or
 - ii) When impaired or intoxicated by alcohol and/or drugs; or
 - iii) If my driving privileges have been revoked, suspended or withdrawn.
- 2) I understand that my Motor Vehicle Record will be reviewed:
 - a) Once a year.
 - b) At any time at the discretion of the company.
- 3) I understand the following safety rules/policies:
 - a) I will follow all motor vehicle laws for each state in which I operate a company vehicle.
 - b) Wireless telephones: I realize communication is important; however, conflict exists between safety and the utilization of a wireless phone in a vehicle. Therefore, wireless phones are not to be used when driving the vehicle.
 - c) Seat belts: As the driver, I must wear my seat belt at all times. The driver must also assure all passengers are wearing their seat belts. I will inspect belts periodically for possible cuts in the fabric or fabric loosening at the buckle or anchor brackets. I will keep the seat belts and shoulder harnesses clean and dry.
 - d) I will turn on my low beam lights in rain, fog, darkness or any other time visibility is hampered.
 - e) I will inspect tires at least weekly for pressure and wear.
 - f) I will lock the vehicle and not leave keys inside the vehicle.
- 4) I understand the following maintenance rules/policies:
 - a) I will contact the Fleet Maintenance Department to schedule an appointment for periodic maintenance every 5,000 miles the company vehicle has traveled.

- b) When obtaining gas from the company gas pumps, I will fill out the Fuel Logbook in the fuel shack correctly, neatly and in print form. The logbook includes vehicle number, gallons pumped and driver's name.

5) Accidents - I will take the following steps if I am involved in an accident in addition to completing the Drivers' Accident Report Kit located in each vehicle:

- a) Take care of any injured persons. Don't try more than basic first aid (unless qualified), and move the injured as little as possible.
- b) Call for medical aid (if required).
- c) Call the police.
- d) Report accident to Fleet Maintenance as soon as possible, no later than 24 hours.
- e) Get names and address of all parties and witnesses.

6) I understand the company has the right to implement appropriate disciplinary/corrective actions and/or revoke the use of my company vehicle at any time. Examples of reasons for the above actions include, but are not limited to the following:

- a) I have had my driver's license revoked, suspended or withdrawn for any reason.
- b) I have been charged for operating a vehicle while impaired or under the influence of alcohol, drugs or controlled substances.
- c) I have been charged for leaving the scene of an accident.
- d) I have had two or more at-fault accidents, or three or more moving violations, or one at-fault accident and two moving violations in a three-year period.
- e) There is evidence of gross negligence, recklessness or incompetence in operating a vehicle.
- f) Making a false accident report.
- g) Allowing use of the company vehicle by an unauthorized driver.

7) I understand that if I allow an unauthorized individual to use the company vehicle and it is involved in an accident, I am responsible for all damages to the company vehicle and to any other vehicles, property, and/or individuals involved.

I have read and understand my obligations listed above concerning the possession and use of a company vehicle. Further, I understand that failure to abide by this agreement shall result in suspension/revocation of my company vehicle privileges and/or disciplinary action.

Name (print)

Signature

_____/_____/_____
Date

Resources

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