



The High Cost of Distracted Driving



Employees who drive distracted create substantial financial and other risks for their employers.

Distracted driving laws are now the norm in all provinces within Canada. Of the three territories, Nunavut is the only holdout. In addition to levying fines, the majority of the provinces and territories have imposed demerit points.

Even with fines and demerit points, many drivers are not convinced that distracted driving affects their ability behind the wheel. A March 3, 2014, news release from the Ontario Provincial Police stated:

In 2013, distracted driving fatalities surpassed both impaired and speed related fatalities in fatal motor vehicle collisions investigated by the OPP. A total of 78 people died from distracted driving-related crashes compared to 57 deaths in impaired driving related crashes and 44 people who died in speed related crashes last year.

Both owner-managers and employees should be concerned about these figures, not only because of the unnecessary loss of life, but also because a laissez-faire attitude could ultimately cost owner-managers their business and employees their jobs.

U.S. Lessons

To bring home the point, consider that within the United States, lawsuits have been brought against companies in which it was alleged the company was responsible for employees' actions:

- In Virginia, a law firm settled for an undisclosed amount after a \$25-million lawsuit was launched against one of its lawyers for allegedly striking and killing a 15-year-old girl while talking business on a cell phone.
- In Arkansas, a lumber company paid \$16.2 million when an employee seriously injured a woman in a vehicular accident.
- In Florida, a company sales person talking on a cell phone seriously injured a 78-year-old woman. The end result was a \$21 million settlement.

Although these actions took place in the United States, they demonstrate the need for employers to ensure all personnel are aware of the potential consequences of distracted driving. In Canada, under the legal doctrine of "vicarious liability," an employer may be





held legally responsible for negligent acts committed by an employee while the employee is on company business.

Due Diligence

Steps to establish that an employer has exercised due diligence and care include:

- determining the types of electronic devices used by employees in their vehicles
- developing a road safety policy that incorporates guidelines for the use of all hand-held devices
- developing a clearly worded distracted-driving policy for the use of hand-held devices. All employees of the organization should be required to sign off that they have read and understood the policy. A signed copy of the policy should be provided to the employee and one maintained in the employee's file.

In-house seminars should explain the risks of distracted driving.

In-House Awareness

Employers should make attendance at distracted-driving seminars a mandatory condition of employment. The seminars should explain clearly what constitutes distracted driving and its potential impact not only on the business but also on the employees.

Such a seminar should:

1. emphasize that the use of hand-held devices while driving is against the law and that company policy is consistent with the law
2. provide examples of the potential dangers involved in various distracted-driving scenarios
3. direct staff not to accept calls, make calls or text while driving
4. direct staff to pull over to the side of the road to take or make calls or to read and respond to texts
5. instruct staff to have a voicemail message that indicates they are driving and cannot respond to calls at that time
6. ensure staff understand that adjusting a GPS smartphone, MP3 player or other device while driving is distracting
7. ensure staff understand the no-phoning and no-texting policies apply whether they are operating a company vehicle or driving their own vehicle while working
8. ensure employees understand that disciplinary action may be taken if they do not follow company policy
9. ensure that all personally owned hand-held devices have hands-free capability





10. install hands-free capability on all company-owned devices
11. make it clear that employees who work in or travel to other provinces must follow the distracted-driving legislation of that jurisdiction

Other Issues

Staff must understand the impact distracted driving penalties may have on their driving abstract and their ability to work for your company. Demerit points, whether for distracted driving or impaired driving, negatively impact corporate vehicular insurance costs and could potentially lead to lawsuits or the cancellation of policies if individuals with bad driving records are involved in accidents.

Seek Legal Guidance

In that distracted driving infractions are a relatively new area of legislation, employers should have legal counsel review programs, contracts or agreements that address distracted driving and the rights of individuals. For instance, employers may wish to know whether termination policies for distracted driving can be incorporated into employment contracts.

Contact Your Insurance Company

Determine whether vehicular insurance policies and/or third-party insurance policies address distracted driving convictions and the potential impact of fines or convictions on your policy and premiums.

Seize the Initiative

Acceptance that distracted driving is as illegal and hazardous as drunk driving is a critical part of any employer-instituted program to increase awareness of the need for personal, company and third-party safety. In-house policies that demonstrate the responsibility of owner-managers for providing clear-cut practices to all employees will not only confirm corporate stewardship but may save your business from litigation and unnecessary costs.

Get Your Employees to Sign

A good example of a Distracted Driving Policy, which may be useful as a model for your own business, can be found at <https://www.osha.gov/distracted-driving/modelpolicies.html>. It is advisable to have your policy reviewed by legal counsel before asking your employees to sign.





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