

MANITOBA CELL PHONE BAN: IMPLICATIONS FOR EMPLOYERS

Changes to *The Highway Traffic Act* banning talking or texting on hand-held cell phones while driving become law on July 15, 2010. Fines for using a cell phone while driving could cost \$191, but the costs to employers could be much greater.

Employers that allow their employees to use hand-held electronic devices while driving in the course of their employment, may face serious legal consequences such as:

- liability for injuries suffered in an incident, if an employee has an incident while using a cell phone in the course of their work
- liability if the incident occurs outside Manitoba borders, in a "fault" jurisdiction:
 - In Ontario, Alberta, the Maritimes, and the majority of US States, an employer may be sued and ultimately held responsible for the injuries suffered in an incident, and pay a heavy price in damages
- serious legal consequences under Manitoba's *Workplace Safety and Health Act*:
 - Under the WSH Act, employers must, so far as reasonably practicable, ensure the safety of their workers while at work. A failure to do so can result in criminal charges, with fines as high as \$250,000 for a first offence, and \$500,000 for a second or subsequent offence
 - **No insurance can be purchased for WSH related fines and penalties. The only insurance is an effective Safety Management System.**



DID YOU KNOW?

A driver dialling a cell phone is 2.8 times more likely to crash**

A driver talking hands-free is 1.3 times more likely to crash**

A driver texting is 23.2 times more likely to get in a crash**

For every 6 seconds of drive time, a driver sending or receiving a text message spends 4.6 of those seconds with their eyes OFF THE ROAD. ***

In 4 seconds a vehicle travelling 60 mph will travel a distance MORE than the length of a football field! (That's 88 feet / second)

3000 Canadians die each year from traffic accidents - it is estimated that over half of those accidents are tied to driver distractions, LIKE TEXTING*

* 2008 Statistics Canada

** 2008 Liberty Mutual Insurance Group study

*** 2009 Virginia Tech Transportation Institute

With respect to **Workplace Safety and Health related liability**, **Jamie Jurczak a lawyer with Taylor McCaffrey LLP** states "If an employer provided a hand-held device to the employee and instructed them to be using it for work purposes, there is a very real possibility that the employer could be held responsible, for failing to do everything reasonably practicable in the circumstances to ensure the safety of their workers. Even if the employer has not provided the device, but the employee is using the device in the course of their duties, and was of the view that they were required to be using the device in the course of their work related duties, there is a good chance the employer will be liable as well."

What you need to do

**Do you have questions about liability or your current Safety Management System?
Contact us at 1 Life Workplace Safety & Health...we can help you. 204-231-LIFE**

Our Preferred Providers:



Jamie Jurczak a lawyer with Taylor McCaffrey LLP. Her practice focuses on Labour and Employment law. She can be reached at E-mail: jjurczak@tmlawyers.com Direct: 988-0393



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Prohibited Devices

- Hand-held cell phones
- "Smart" phones unless they are being used to make a hands-free phone call
- Devices that are primarily cell phones but have a walkie talkie function

Permitted Devices

- Cell phones used in a hands-free manner to make telephone calls
- Two-way radios, Fleet Net radios, GPS
- CB and Family Band radios, Walkie-talkies
- MP3 players/iPods
- Mobile data terminals - text based dispatch devices that are mounted in a vehicle used for business purposes
- Collision avoidance systems
- In-vehicle diagnostic devices

"USE" refers to such things as:

- holding the device in a position in which it may be used;
- operating any of the device's functions;
- communicating by means of the device with another person or another device, by spoken word or otherwise;
- looking at the device's display

AS AN EMPLOYER - WHAT YOU NEED TO DO

Employers can protect themselves by ensuring they have policies and procedures in place which indicate that employees are required to comply with all provincial and state laws with respect to hand-held devices and driving, discouraging, if not outright prohibiting, employees from using hand-held devices while driving, and imposing disciplinary measures for non-compliance."
- Jamie Jurczak a lawyer with Taylor McCaffrey LLP

- 1 **Establish written policies and procedures** ensuring you have the consultation your Workplace Safety and Health Committee or employees at the workplace.
- 2 **Communicate / educate** your employees about:
 - i. Your company policies and procedures
 - ii. The hazards of cell phone use while driving (to them and the company)
- 3 **Enforce your policies and procedures**; a lack of enforcement can be seen by the courts as a lack of complete due diligence.
- 4 **Document**; Remember that if it wasn't documented, it didn't happen
 - i. Document the development of policies and procedures with employee involvement, communication / training and enforcement.

NOTE: Any reference to the Manitoba Workplace Safety and Health Regulation or the Highway Traffic Act is for convenience sake only. The original text must be consulted for all intents and purposes of applying the law.

CELL PHONE POLICIES SHOULD

1. Cover a broad range of devices.
2. State who the policy applies to; not just your own employees but other workers at your workplace, including contractors' workers.
3. Address all other work-related activity for which full concentration is required.
4. Spell out permitted and prohibited uses.
5. State that cell phones are not to be used while driving and are not a requirement of work.
6. State that if a cell phone is used while driving, a hands free device must be used.
7. State enforcement for non compliance.
8. Be consistently enforced, the same as other important safety policies.



mySafetyAssistant subscribers, be sure to download your draft cell phone Policies & Safety Talk!