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PUT DOWN THAT CELL PHONE! NEW CALIFORNIA LAW WILL SOON BE IN PLACE

A new California statute that prohibits motorists from using a hand-held cellular telephone while driving becomes effective July 1, 2008. Motorists who are 18 years of age or older may use a “hands-free” device while driving. Motorists under age 18 are not permitted to talk on a cell phone at all while driving, whether via a hands-free device or otherwise. This prohibition only applies to drivers, not to passengers. There will be a \$20 fine for the first violation and \$50 per violation for subsequent offenses. The only exception in the law is for calls made during emergencies to 911 or a health-care provider. The new law does not specifically prohibit text messaging or the use of devices such as BlackBerrys while driving (so long as the BlackBerry is not being used as a hand-held phone), but the DMV warns that police officers may stop and cite motorists who appear to be operating a vehicle in an unsafe manner due to text-messaging or use of other devices while driving. Significance To Employers This new law raises some important issues for employers to consider. The first is whether the employer will be obligated to pay for hands-free devices, or for fines incurred by employees for using hand-held phones while working. If employees are required or expected to use a cell phone while driving as part of their job duties, then the employer should provide a hands-free device for the employee. California law requires employers to reimburse employees for costs incurred in the performance of their duties. If an employee is not required or expected to use a cell phone while driving for work and is cited for using a hand-held device, or if the employee is provided with a hands-free device and is cited for failing to use it, the fines should be the employee’s responsibility. Another key issue is employer liability for injuries to others caused by employees who have accidents while using hand-held cell phones in violation of this law.

Taking Action

Employers should implement a policy strictly prohibiting employees from using hand-held cell phones while driving where use of such a phone is related to the employee’s job duties. The policy should warn that the employer accepts no responsibility for any harm resulting from the employee’s violation of the policy and that disciplinary action, up to and including termination of employment, will be taken against employees who violate the policy. The policy might also require employees to report convictions for violation of this law to the employer, and employers must actually impose discipline against employees who violate the law in order to be able to credibly say that they do not approve of employees’ unlawful use of cell phones while driving for work.

The Bottom Line

Employers and employees alike may find this new law to be a nuisance and be inclined to ignore it. But the real danger is not in the potential for incurring a \$20 fine. The danger is that an employee will seriously injure someone while flouting the law, and that the injured person will sue. This new law should be taken seriously.

This column is intended to provide general information and does not constitute legal advice. Amy Lessa is a partner in the La Jolla office of Fisher & Phillips LLP. She may be reached at alessa@laborlawyers.com.