



Mobile Devices and Accidents

The RSPA website contains a sample policy statement for employee use of mobile devices while operating a vehicle. The policy is restrictive in the use of mobile devices while driving but essential to reduce a reseller's responsibilities. As many states and cities pass legislation to regulate the use of mobile devices, it is essential that every reseller have a written policy in place. The Department of Transportation has concluded that distracted driving is epidemic. We have all seen it and noted the danger; however, it is often the other guy being reckless while we are using our devices while driving in a safe and prudent manner.

Adopting a detailed cell phone policy can help protect employers from liability should an employee cause an accident while using an electronic communications device, but such policies do not provide absolute legal protection. An employee engaging in prohibited conduct must be established as not acting on the employer's behalf. In 2010, at least 3,092 people were killed in distraction related crashes and an estimated 416,000 individuals injured. With the damage awards raising significantly, it is best to take precautions.

A written policy is insufficient without properly training employees and holding violators responsible. That means all violators, including owners and managers. Training need not be elaborate, but requires periodic review of the policy and discussion of the requirements. This can easily be part of a company meeting and the policy should be reviewed at least twice per year. The policy should be reviewed with new employees at induction. Employees have a habit of ignoring company policies. By emphasizing that the policy is real, it will be enforced, and serious consequences will result for failure to adhere, employee compliance will be achieved at a higher level.

Due to the increased risk, law enforcement officials are placing an added emphasis on enforcement action against individuals who are texting while driving. Currently, texting while driving is illegal in thirty-nine states and the District of Columbia

with more states being added with each legislative session. Requiring employees to file reports, their status, or additional information following an end-user visit can expose employers to liability even with a mobile device policy in place. The courts have concluded that it is foreseeable that an employee would attempt to meet such reporting requirements while leaving a call and driving elsewhere. If reports are required, the policy should forbid that they be done while driving. Prohibited action that is deemed to have arisen in the regular course of the employee's duties renders the reseller is responsible as well.

Citations received for using a device while driving will affect the employee's vehicle insurance rate. Even though the employee is on company business the employer should not pay fines for moving violations. It is also acceptable to pass an insurance increase due to an employee violation on to the employee. If the policy is clearly communicated, employees will be more hesitant to risk a fine and insurance penalty. If an employee is known to be driving while speaking with the dealership, a written policy will be of little protection. States that allow hands free operation renders such permissible, yet as an employer, a total prohibition may be best. Some employers take a middle ground of using hands-free technology if the conditions allow it and the call is kept brief. Some resellers limit hands-free calls to incoming only.

There are now applications available that can disable electronic devices when they are detected in a moving vehicle. If you are issuing company phones or reimbursing employees using their own phones, such an application on the phone can be a requirement. It is imperative that the issue of mobile device usage not be ignored. Implement a policy by first discussing it with your employees. Seek their input, share the risks, the penalties, and develop a suggested policy that they help create. By making them part of the process compliance will be easier and greater. C



About Bob Goldberg

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Bob is a recognized authority in the area of trade regulation, antitrust, franchising, distribution channels, contract relations, and complex litigation. He advises several major corporations and numerous trade organizations including the Business Technology Association, Association of Independent Mailing Equipment Dealers, North American Retail Dealers Association and others. He has served as an Assistant Attorney General in the Antitrust Division as well as a staff attorney on the FTC.

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RSPA Freight Savings Plan Carriers Win Quest for Quality Awards



The RSPA Freight Savings Plan uses the best carriers in the industry to ensure great service as well as great savings. In a recent survey by Logistics Management magazine, FedEx Express, FedEx Ground and FedEx Freight were recognized for outstanding service.

FedEx Express was ranked No. 1 in the air express category, FedEx Ground won in the surface package category, and FedEx

Freight less-than-truckload (LTL) took top position in both the national LTL category and the multiregional LTL category. Participants in the survey rated their carriers in the following five performance areas: on-time performance, value, information technology, customer service, and equipment and operations.

RSPA members can enjoy savings on select services with these industry-leading carriers by joining the RSPA Freight Savings Plan. For more information call service provider Siriani at 800 554-0005 or go to www.siriani.com/rspafsp.

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