

Legal Updates & News

Bulletins

July 1, 2008: Hands-Free Cell Phone Use Mandatory

April 2008

by [Heather L. Skidmore](#)

Employment Law Commentary, April 2008

Related Practices:

- [Employment and Labor](#)



Effective July 1, 2008, California joins Connecticut, the District of Columbia, New Jersey, New York, and some local jurisdictions in prohibiting the use of handheld mobile phones while driving. The California Wireless Telephone Automobile Safety Act prohibits the use of cell phones in moving vehicles unless the driver is using a hands-free device.^[1] In addition, drivers under the age of 18 are prohibited from using cellular phones while operating a motor vehicle, *even if* equipped with a hands-free device.^[2]

In its findings, the California Legislature acknowledges that there are significant safety benefits associated with the availability of wireless communication technologies, including providing assistance that helps save lives and minimizes property damage.^[3] In fact, on a daily basis, California drivers make thousands of emergency 911 calls from their cellular phones.^[4] The Legislature also found that there is a growing public concern regarding the safety implications of the widespread practice of using handheld wireless telephones while operating motor vehicles.^[5] Accordingly, the Legislature found it necessary to enact one uniform law that establishes statewide safety guidelines for use of wireless telephones while operating a motor vehicle.^[6]

Governor Arnold Schwarzenegger stated in a press release on September 15, 2006 (after he signed SB 1613): “The simple fact is it’s dangerous to talk on your cell phone while driving. CHP data show that cell phones are the number one cause of distracted-driving accidents. So getting people’s hands off their phones and onto their steering wheels is going to make a big difference in road safety. The ‘Hands-Free’ cell phone bill will save lives by making our roads safer.”^[7]

Distractions while driving are numerous, including eating, drinking, changing the radio station, looking for a CD under the seat, reading, and using a cell phone. For many of these distractions, however, there is no practical alternative other than banning the activity. With cell phones there is a practical alternative – using a hands-free device. In fact, hands-free devices are very inexpensive, and most new phones come with an earpiece.

What exactly does the new law prohibit? California Vehicle Code § 23123 makes it illegal to use a wireless telephone while driving a motor vehicle, “unless that telephone is specifically designed and configured to allow hands-free listening and talking, and is used in that manner while driving.”^[8] With respect to drivers under the age of 18, Vehicle Code § 23124 not only prohibits the use of cell phones, even if equipped with a hands-free device, but also prohibits operating a motor vehicle while using a mobile service device.^[9] A “mobile service device” includes, but is not limited to, a broadband personal communication device, specialized mobile radio device, handheld device or laptop computer with mobile data access, pager, and two-way messaging radio.^[10] Passengers are not affected by the new laws – they apply only to persons driving a motor vehicle.^[11]

If you are pulled over and issued a citation, the infraction is punishable by a base fine of \$20 for the first offense and \$50 for each subsequent offense.^[12] With the addition of penalty assessments, the fines can be more than triple the base fine amount. The conviction will appear on a motorist’s DMV driving record; however, the violation will not be added as a point and therefore should not affect insurance premiums.^[13] The new law also provides that a law enforcement officer may not stop a vehicle for the sole purpose of determining whether the driver is under the age of 18.^[14] For drivers under the age of 18, operating a motor vehicle while using a hands-free device is considered a secondary violation, meaning that a law enforcement officer may cite you for using a “hands-free” wireless device if you were pulled over for another violation.^[15] However, the prohibition

against using a handheld wireless device while driving is a primary violation for which a law enforcement officer can pull over any person, regardless of age or suspected age.^[16]

There are a number of exceptions to the new laws. The prohibition against using a handheld wireless device while driving does not apply to any person using a wireless phone for emergency purposes (such as an emergency call to a law enforcement agency, health care provider, fire department, etc.).^[17] It also does not apply to an emergency services professional using a wireless telephone while operating an authorized emergency vehicle, in the course and scope of his or her duties.^[18]

The prohibition likewise does not apply to a person (over the age of 18) using a digital two-way radio that utilizes a wireless telephone that operates by depressing a push-to-talk feature and does not require immediate proximity to the ear of the user, if the person is driving: (1) a motor truck (as defined in Section 410 of the Vehicle Code, but not a pickup truck as defined in Section 471) or a truck tractor (as defined in Section 655) that requires either a commercial class A or class B license to operate; (2) an implement of husbandry (a vehicle that is used exclusively in the conduct of agricultural operations); (3) a farm vehicle that is exempt from registration and displays an identification plate as specified in the Vehicle Code; (4) a commercial vehicle used in conducting certain commercial agricultural operations, as long as the vehicle is registered to and driven by a farmer or an employee of the farmer; or (5) a tow truck.^[19] School bus and transit vehicle drivers subject to Section 23125 are similarly exempt from the prohibition, as is a person (over the age of 18) driving a motor vehicle on private property.^[20]

Hands-free devices include, for example, speaker phones, earpieces, wired headsets, and Blue Tooth. Though using a hands-free device when driving may help ensure that drivers have two hands free to place on the wheel, it does not eliminate all of the distractions that come with using cellular phones while operating a motor vehicle. Talking on the phone, dialing, and hanging up the phone also create distractions. However, at least for the time being, other than requiring the use of a hands-free device, the law does not place restrictions on these activities.

What does all of this mean for California's employees and employers? Technically, the new laws do not affirmatively require employers to do anything. However, practically speaking, employers should consider providing employees with hands-free headsets, which can be purchased at a relatively low cost, if employees are expected to be using their cell phones while driving on company business. Providing a compatible headset for employees will encourage compliance with the law and promote safe driving. Employers should also review the company's Employee Handbook and consider whether the cell phone use policy should be revised. For instance, Employee Handbooks can easily be amended to include a provision relating to the use of wireless telephones for work-related purposes while driving a motor vehicle, or for personal use while operating a motor vehicle during work hours or on company business. Any changes made to Employee Handbooks should be acknowledged by each employee in writing.

A "Cell Phone Policy" will help ensure that employees are aware of their obligations under federal, state, and local rules and regulations regarding the use of cellular phones while driving. While not required by the new law, employers may also consider including provisions (1) that limit an employee's ability to use hands-free cellular devices as well, such as permitting use of such devices "only when it is safe to do so" and advising employees to take special care in situations where the weather is inclement, traffic is heavy, or the employee is unfamiliar with the driving area, and (2) prohibiting, under all circumstances, the use of text devices to type or review text messages while driving.

Another issue to consider is whether employers should adopt policies that not only deal with the use of hands-free and text devices, but also address the act of *dialing* the cell phone. The new law does not prohibit dialing ... but employers could express a preference for voice-dialing as opposed to manual dialing of cell phones. Even if you have not heard any of the cautionary tales about employers being sued for torts arising out of an employee's use of a cell phone for business purposes, you can imagine that the scope of potential liability an employer can face, including defense and settlement costs, can be substantial.

Every employer and place of employment is different, and any policy regarding the use of cellular phones must be tailored to the particular needs of the company. It is also important to remember that putting a policy in place is never enough. In addition to implementing an appropriately tailored policy and communicating it to employees, employers must also take steps to enforce the policy if it is to be effective. By taking appropriate steps, employers can begin to build a defense to possible tort claims that may offer some protection should an employee become involved in an accident while driving.

Footnotes

[1] California Vehicle Code § 23123.

[2] Cal. Veh. Code § 23124(b).

[3] Cal. Veh. Code § 23123 & Notes.

[4] *Id.*

[5] *Id.*

[6] *Id.*

[7] September 15, 2006 Press Release from the Office of the Governor.

[8] Cal. Veh. Code § 23123(a).

[9] Cal. Veh. Code § 23124(b).

[10] Cal. Veh. Code § 23124(g).

[11] Wireless Telephone Laws FAQ, <http://www.dmv.ca.gov/cellularphonelaws/index.htm>.

[12] Cal. Veh. Code §§ 23123(b) and 23124(c).

[13] Wireless Telephone Laws FAQ, <http://www.dmv.ca.gov/cellularphonelaws/index.htm>.

[14] Cal. Veh. Code § 23124(d).

[15] Wireless Telephone Laws FAQ, <http://www.dmv.ca.gov/cellularphonelaws/index.htm>.

[16] *Id.*

[17] Cal. Veh. Code §§ 23123(c) and 23124(f).

[18] Cal. Veh. Code § 23123(d).

[19] Cal. Veh. Code § 23123(e).

[20] Cal. Veh. Code § 23123(f), (g).