



LABOR & EMPLOYMENT DEPARTMENT

ALERT

NEW INTERIM RULE ENCOURAGES FEDERAL CONTRACTORS AND SUBCONTRACTORS TO PROHIBIT TEXTING WHILE DRIVING

By Andrez Carberry

Effective September 29, 2010, an interim rule issued by the U.S. Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council “encourages” covered federal contractors and subcontractors to develop and implement policies prohibiting employees from text messaging while driving in connection with federal government business. The interim rule implements Executive Order 13513, which was issued on October 1, 2009 (Federal Leadership on Reducing Text Messaging While Driving).

The interim rule applies to all federal contractors and subcontractors with solicitations, contracts, grants and cooperative agreements awarded, or entered into, on or after September 29, 2010, but excludes subcontracts below the micro-purchase level (generally \$3,000). The interim rule is **not** mandatory. However, contracting officers are **encouraged** to modify existing contracts in accordance with the interim rule. Specially, covered contractors and subcontractors are encouraged to adopt and enforce policies that ban:

- Text messaging while driving company-owned, rented or government-owned vehicles; or
- Text messaging while driving privately owned vehicles when performing official government business, or when performing any work for or on behalf of the government.

The interim rule also encourages federal contractors to:

- Establish new rules and programs, or re-evaluate existing programs, to prohibit text messaging while driving; and
- Develop and implement educational and outreach programs to inform employees about safety risks associated with texting while driving.

The interim rule defines driving as “[o]perating a motor vehicle on an active roadway with the motor running, including while temporarily stationary because of traffic, a traffic light, stop sign or otherwise.”

Text messaging is defined as “[r]eading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information or engaging in any other form of electronic data retrieval or electronic data communication.” The definition permits the use of a secured navigational device that was programmed before driving or while legally parked.

The clause at 52.223-18, titled “Contractor Policy To Ban Text Messaging While Driving,” must be included in all covered solicitations, contracts, grants and cooperative agreements awarded or entered into on or after September 29, 2010.

Although the rule in its current form does not mandate “No Texting” policies, according to the Governors’ Highway Safety Association, approximately 30 states have laws prohibiting texting while driving. Therefore, contractors should draft and/or revise their policies, handbooks or educational materials to incorporate “No Texting” rules/policies. Such policies will comply with the current interim rule, respective state and local municipality laws, and may insulate employers

from liability if an employee violates the “No Texting” policy and is involved in a traffic accident.

Interested parties should submit written comments to the Regulatory Secretariat on or before November 29, 2010.

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