

Legal Solutions for the
Workplace

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GOVERNOR SIGNS LAW BANNING DWT
("DRIVING WHILE TEXTING")

Consider the following scenario:

- Bob, your employee, is headed to his job when he hits the back of a school bus loaded with twenty-five children.
- Many of the children are injured or worse.
- Bob was exchanging text messages with another employee at work during the time of the accident.

Questions: Do you have enough insurance to weather the coming storm? Shouldn't you have taken steps to keep Bob from texting while he was driving? (The parents of the students and their attorneys will think so, and so will the public.)

Now, one more twist to the story: What if Bob was off work, on his way home, but texting a coworker or talking on the phone with your office when the accident occurred? Are you off-the-hook?

Probably not. Chances are that the attorneys for the families of



the injured children will subpoena Bob's cell phone records. And when it's revealed that Bob was talking to your office, your company will promptly be added to the suit as the fall guy "with the deep pockets," as they say.

"... it's important not to get blindsided by an advance in technology that outpaces your employment policies...."

But that's not all the bad news. If Bob's injured too, he may be able to claim worker's compensation simply because he was on the phone with your office. In these situations some courts have found that time on the phone with their office is "work time".

In considering today's technological landscape, it's important not to get blindsided by an advance in technology that outpaces your employment policies. The most common blind spot is cell phone policies, or rather, the lack thereof.

How does your company communicate with its employees? Better yet, how do they communicate with you?

As illustrated by the scenario above ("nightmare" might be the better word), there are real consequences when people use their cell phones while driving. With ever increasing efforts, states are recognizing the dangers of cell phones in cars, and, more specifically, the dangers of DWT ("driving while texting"). Numerous news organizations have chronicled the unfortunate stories of those who have lost loved ones because a driver was distracted by his cell phone. Such situations have led many states to take action, including Tennessee.

Governor Bredesen has recently signed a new bill that makes clear that DWT is against the law. Tennessee's Attorney General has also weighed in on the issue, issuing an opinion in March 2009, that made it clear that DWT is already against the law because it constitutes unsafe driving.

Plaintiff's attorneys are looking to capitalize on the situation,

meaning that unwary employers who find themselves embroiled in a DWT/cell phone case will likely be met with excessive demands. No doubt the new law will be used to establish that your employee was negligent *per se* by virtue of violating the law, and to prove that your company contributed to the negligence by allowing him to text or talk on a cell phone while driving.

Your company must be prepared. Our proposed solution is an effective cell phone policy. Such a policy will protect your company in several ways. A good policy can:

- Define appropriate cell phone usage;
- Limit your liability to third parties; and
- Limit your liability to your own employees.

It's best to take action now to prevent this sort of accident from occurring in the first place. If an accident were to occur, nothing will keep you from being sued. But that does not mean that you're without options.

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**YOU COULD BE FOUND
GUILTY OF DWT**

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The key is building a good defense *before* an accident. Because if you wait until after, you'll need more than good insurance. You'll need a good PR firm too.

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