

# NEW MEXICO INJURY ATTORNEY BLOG

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## Employer Liability for Texting Employees

Mobile phones clearly present a danger to the driving public. Mobile phone use causes over 500,000 auto accident related injuries each year. Texting and driving can be almost as dangerous as drinking and driving. Simply talking on the phone also poses dangers which led to Albuquerque and Santa Fe banning all but hands free devices while driving.

Unfortunately, a great deal of business is conducted in cars on mobile phones every day. All varieties of business activity is conducted by mobile phone from pizza delivery to the highest levels of business. Texting is an epidemic that reaches far beyond teenagers. Perhaps just as bad, email has come to dominate the business days of many. The lure and call of texts and emails is simply too great for many to resist despite the dangers. The problem is growing worse, not better.

So too do accidents, many extremely serious or fatal, continue to grow. The technology has become so widely accepted that drivers do not appreciate or choose to ignore the dangers of texting, emailing or even talking on the phone while driving. Over 500,000 people are injured and 6000 die each year from distracted driving as a result texting, emailing or talking on the phone.

The negligent driver is clearly at fault when they cause an accident due to mobile phone use. His or her employer may also be liable under respondeat superior or agency. In fact, there are businesses that not only encourage this dangerous practice but demand it. The most obvious example, but certainly not the only, is sales where sales personnel are constantly on the move and constantly in communication with their offices, clients and prospects. Rather than discourage the practice, it is as a practical matter required for performance.

In any serious auto or truck accident, it is important to determine the what the negligent driver was doing at the time of the accident. Certainly, it should be determined if mobile phone was involved. It should also be determined if the negligent driver was acting on behalf of an employer. This includes determining not just whether the negligent driver was on the job but whether the person was engaged in activity for the benefit of his or her employer.

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If the person was acting on behalf or in furtherance of an employer, the employer may have some liability for the accident. In some cases, the employer's liability may be significant. In cases of serious personal injury or wrongful death, the liability of the employer may provide the only real recovery for the injured person.

This is particularly the case in New Mexico which has a very high percentage of uninsured and underinsured drivers. New Mexico has the largest percent of uninsured drivers in the nation. Just as troublesome for those injured in auto accidents, New Mexico drivers are notoriously underinsured with the great majority carrying only minimal liability limits of \$25,000. As a result, the first and often greatest challenge in a New Mexico auto accident case is finding insurance.

Fortunately, most businesses carry a variety of insurance that will kick in cases where their employees or agents have harmed others, including those involved in auto accidents. In fact, the only real coverage may come from the employer's insurance. The very business activity that caused the accident may provide the only net available to those harmed by it.

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