



Legal Alert: New Rule Restricting Cell Phone Use by CMV Drivers

1/3/2012

Executive Summary: On January 3, 2012, the Federal Motor Carrier Safety Administration's (FMCSA) final rule will go into effect specifically prohibiting Commercial Motor Vehicle (CMV) drivers from using hand-held cell phones while operating their vehicles. Through the Pipeline and Hazardous Materials Safety Administration (PHSA), drivers hauling hazardous materials within a state are also included in the ban.

The Department of Transportation estimates that approximately four million commercial drivers will be affected by this final rule. Drivers who violate the rule will face civil penalties of up to \$2,750 for each offense. Significantly, the rule also provides that the employers are liable for violations by their employees. Civil penalties for employers can be up to \$11,000 for each violation. While the rule does not require employers to have a policy restricting cell phone use, such a policy is highly recommended to avoid these penalties.

The rule specifically prohibits a CMV driver from (1) holding a cell phone to conduct a voice communication, (2) dialing a cell phone by pressing more than a single button, or (3) reaching for a cell phone in an unacceptable and unsafe manner. Therefore, all hand-held cell phone communication is completely prohibited. A hands-free phone (i.e. wired or wireless earpiece or speaker phone function) can only be used if the call can be initiated by the use of a single button control. A "push to talk function" violates the rule if it requires the driver to hold the device or continue pressing a button while driving. Dialing a phone number while driving is prohibited even with the use of some hands-free voice devices where the number cannot be dialed by pressing a single button. If a driver must press a button to open a contacts folder and then press the contact's phone number to make the call, then the use is prohibited.

To initiate a hands-free call, the device must be located in close proximity to the driver. Essentially, the CMV driver must be ready to conduct a voice communication on a compliant cell phone before driving the vehicle. The rule prohibits reaching for the device. This prohibition includes reaching for any cell phone on the passenger seat, under the driver's seat, or into a sleeper berth. The driver must be able to easily access the phone while restrained by properly installed and adjusted seat belts and without interfering with the driver's view of the road.

Texting while driving is completely prohibited by this rule. Texting includes short message service, e-mailing, instant messaging, a command or request to access a World Wide Web page, or engaging in any other form of

electronic text retrieval or entry, for present or future communication. Texting does not include inputting, selecting, or reading information on a global positioning system (GPS) or navigation system. Texting does not include using a device capable of performing multiple functions, such as fleet management systems, dispatching devices, smart phones, citizens band radios, and music players for a purpose that is not otherwise prohibited.

For the purpose of the new federal restrictions, driving not only includes operating a CMV on a highway, but also includes operating a CMV while temporarily stationary because of traffic, a traffic control device, or other momentary delays. Thus, all of the restrictions will still apply in those situations. Driving does not include operating a CMV when the driver has moved the CMV to the side of, or off, a highway and has halted in a location where the CMV can safely remain stationary.

There is a limited exception to these rules when the use of a hand-held cell phone is necessary to communicate with law enforcement officials or other emergency services.

All employers using CMV drivers in their business must be familiar with this new rule. Employers should adopt a specific policy outlining these requirements and should train CMV drivers on these restrictions. The FMCSA and PHSA will hold the employer responsible for violations by their employees. The steps an employer takes to prevent violations could affect the amount of any fines issued.

The final rule can be viewed at http://www.fmcsa.dot.gov/rules-regulations/administration/rulemakings/rule-programs/rule_making_details.aspx?ruleid=347.

If you have questions about this Legal Alert, would like assistance complying with this rule, would like assistance drafting a policy or would like assistance training your drivers, please contact the author of this Alert, Jeffrey A. Lehrer, a partner in our Spartanburg office at jlehrer@fordharrison.com, or the Ford & Harrison attorney with whom you usually work.