



LABOR & EMPLOYMENT DEPARTMENT

ALERT

FEDS BAN HAND-HELD CELL PHONE USE BY DRIVERS OF BUSES AND LARGE TRUCKS

By Steven K. Ludwig

If a New Year's resolution to be a safer driver wasn't sufficient, a new federal rule prohibiting commercial drivers from using a hand-held mobile telephone while operating a commercial truck or bus will go into effect January 3, 2012. Approximately four million commercial drivers are affected by this rule.

Drivers who violate the restriction will face federal civil penalties of up to \$2,750 for each offense and suspension or disqualification from operating a commercial motor vehicle for multiple offenses. Commercial truck and bus companies that allow their drivers to use hand-held cell phones while driving will face a penalty of up to \$11,000.

According to the feds, research shows that using a hand-held cell phone while driving requires a commercial driver to take several risky steps beyond what is required for using a hands-free mobile phone, including searching and reaching for the phone. Commercial drivers reaching for an object, such as a cell phone, are three times more likely to be involved in a crash or other safety-critical event. Dialing a hand-held cell phone makes it six times more likely that commercial drivers will be involved in a crash or other safety-critical event. According to National Highway Traffic Safety Administration, nearly 5,474 people died and half a million were injured in crashes involving a distracted driver in 2009. Distraction-related fatalities represented 16 percent of overall traffic fatalities in 2009.

In September 2010, a rule was issued banning text messaging while operating a commercial truck or bus and a companion regulation was issued in February 2011 banning texting by intrastate hazardous materials drivers.

The new rule still permits hands-free use of a mobile telephone using either a wired or wireless earpiece or the speakerphone function of the mobile telephone. Wireless connection of the mobile telephone to the vehicle for hands-free operation of the telephone that would allow the use of single-button controls on the steering wheel or dashboard also is permitted.

But Push-to-Talk on a mobile telephone violates the prohibition against holding the phone. This includes the continuous holding of a button that is necessary to use a Push-to-Talk feature through a mobile telephone even when the driver is using a connected microphone or wireless earphone.

Dialing a mobile telephone while operating a commercial motor vehicle (CMV) is prohibited by the rule unless a driver can initiate, answer or terminate a call by touching a single button on a mobile telephone, earpiece, steering wheel or instrument panel – comparable to using vehicle controls or instrument panel functions, such as the radio or climate control system. If the mobile telephone is not close to the driver and operable while the driver is restrained by properly installed and adjusted seat belts, then the driver is considered to be reaching for the mobile phone, which is prohibited by the rule.

The new rule covers drivers of CMVs in interstate commerce and intrastate drivers who operate CMVs transporting certain hazardous materials.

Although the rule does not require motor carriers to establish written policies or training programs for their drivers, it would be prudent to do so. A motor carrier should establish policies or practices that make it clear that the employer does not require or allow hand-held

mobile telephone use while driving a CMV, particularly since the carrier is responsible for its drivers' conduct.

If you have any questions regarding this Alert, please contact Steven K. Ludwig at 215.299.2164 or sludwig@foxrothschild.com or any member of Fox Rothschild's Labor & Employment Department.



Fox Rothschild LLP
ATTORNEYS AT LAW

Attorney Advertisement

© 2011 Fox Rothschild LLP. All rights reserved. All content of this publication is the property and copyright of Fox Rothschild LLP and may not be reproduced in any format without prior express permission. Contact marketing@foxrothschild.com for more information or to seek permission to reproduce content. This publication is intended for general information purposes only. It does not constitute legal advice. The reader should consult with knowledgeable legal counsel to determine how applicable laws apply to specific facts and situations. This publication is based on the most current information at the time it was written. Since it is possible that the laws or other circumstances may have changed since publication, please call us to discuss any action you may be considering as a result of reading this publication.