



NEWSLETTER

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THE MOBILE OFFICE – RISKS OF DRIVING WHILE MULTI-TASKING

On October 26, 2009, new legislation ([Bill 118](#)) came into effect in the Canadian province of Ontario which bans the use of hand-held devices while driving . The new law makes it illegal for drivers to talk, text, type, dial or email using hand-held cellphones and other hand-held communications and entertainment devices. Ontario joined more than 50 countries worldwide and a growing number of North American jurisdictions that have similar distracted driving legislation including Quebec, Nova Scotia, Newfoundland and Labrador, California and New York.

Cellphone use behind the wheel is a growing problem. According to conservative estimates, each year in the United States more than 636,000 crashes, 330,000 injuries, 12,000 serious injuries and 2,600 deaths are caused by a distracted driver on a cellphone. In January 2009, the National Safety Council (NSC) became the first national organization to call for a total ban on cellphones.¹

Highway safety organizations across North America have highlighted the risks involved with various distractions involving everything from using cellphones, BlackBerrys and laptops to texting on smart phones. New technologies have permitted various organizations to promote the use of the mobile office. Employees, while on the road, can remain in instant and constant touch with organizations through telecommunications equipment and broadband networks tied directly into an organization's Intranet network. Increasingly, road accidents are being attributed to drivers who are attempting to multi-task while driving. Of course, there has always been a greater concern over any distractions which may create road risks for large commercial vehicles such as trucks and buses.

“For white-collar employees, pressures to multitask are largely self-imposed. For blue-collar workers, the demands to stay connected while driving are often imposed by their bosses. Truckers, plumbers, delivery drivers and others are tethered to dispatchers with an array of productivity devices, including on-board computers that send instructions about the next job and keep tabs on drivers' locations. Such devices can require continual attention — distracting drivers who are steering the biggest vehicles on American roads.”²

A 2007 study for the [Insurance Bureau of Canada](#) determined that overall driving behaviour of novices is poorer than that of experienced drivers. However, what was surprising was that the results also indicated that the driving behaviour of novices is not more affected by cellphone/CD-player interaction than is the driving behaviour of experienced drivers.

For all the perceived benefits of multitasking behind the wheel — like staying a step ahead of competitors — the dangers have begun to take their toll on companies. Some companies have weighed several factors including the safety risks and the cost of potential lawsuits, thus leading some organizations to ban the practice by employees.

¹ New Study in NSC Journal Shows Hands-Free Phones No Safer Than Hand-Held Phones: National Safety Council, News Release, July 9, 2009

² *At 60 M.P.H., Office Work Is High Risk*: Matt Richtel, New York Times, October 1, 2009

“Healthier organizations mean more productive employees.”

Why is multi-tasking while driving dangerous?

Increasingly, white-collar employees are using electronic devices while in transit. For example, an American survey released in 2005 by the [National Highway Traffic Safety Administration](#), found that eight percent of drivers, or 1.2 million people, were using cellphones during daylight hours in the previous year. This represented about a 50 percent increase since 2002.³

For some time, the risks associated with such multi-tasking have been well known. A 2005 study of Australian drivers, which appeared in *The British Medical Journal*, found that those using cellphones were **four times as likely** to be involved in a serious crash. This result was regardless of whether they used hands-free devices like earpieces or speaker phones that have been perceived as making talking while driving safer. The study was the first of its kind to use actual crash data and cellphone records to show a link between talking on the phone and being seriously injured in an vehicular accident. It was also the first to conclude definitively outside of a laboratory setting that holding a phone to the ear or talking through a hands-free device pose the same risks.⁴

There is no question but that some drivers become very distracted while using the cellphones and other electronic devices, with their distraction manifested by such driving errors as weaving, failure to maintain a consistent speed, or failure to adequately brake. There have been numerous cases where a driver, talking on a cellphone, have driven directly into the back of a stopped vehicle. Moreover, recent research has shown that the human brain is normally capable of performing only one task at a time that requires extensive focusing and a high level of concentration.

What are the implications for employers and employees?

Plenty of workers feel pressures to multitask while driving. IDC, an American market research firm, estimated in 2008 that there were 111 million mobile workers in the U.S., including all manner of people who do work outside an office, whether in a car, café, or airport lounge. In a 2007 survey, IDC found that 70 percent of owners of BlackBerrys and other smartphones used their device in a car at least once a week. Although noting that the survey did not specify whether the phone users were drivers or passengers, the IDC went on to report that 80 percent of people typically drive alone.⁵

Employers:

- ☞ Where the person who causes a motor vehicle accident is acting within the course and scope of employment, or is driving a company vehicle, there is potential for the recovery of damages not only against the negligent driver, but also against the employer. This is often referred to as “vicarious liability” whereby it is possible to hold an employer liable for injuries caused by an employee who is driving a vehicle as part of his or her work.
- ☞ Following accidents during which employees were making work-related cellphone calls while driving, some of the people injured in the accidents also brought claims against the employer. They were able to demonstrate that the employee was required to make phone calls while driving. There was then an attempt to hold the employer vicariously responsible for the injuries caused in the accident.
- ☞ Work-related accidents involving company vehicles or employee vehicles used for employment purposes will increase not only driver-related insurance premiums, but also premiums related to worker’s compensation and employee disability insurance.

³ *Crash risk 4 times higher when driver is using cellphone, U.S. study shows*: Ken Thomas, Canadian Press Tuesday, July 12, 2005

⁴ *Hands-Free Cellphone Devices Don't Aid Road Safety: Study Concludes*: Jeremy W. Peters, New York Times, July 12, 2005

⁵ *At 60 M.P.H., Office Work Is High Risk*: Op. Cit.

“Healthier organizations mean more productive employees.”

- ☞ As in the case of any work-related accident, costs are involved with respect to an injured employee's absence, rehabilitation and potential replacement.

Employees:

- ☞ Studies have shown that the extent of driver distraction varied with the device. Answering a phone call using a handset resulted in an average attention loss of over nine seconds. Answering with a hands-free device represented about 52 seconds. This means that there is reduced reaction time and a greater risk for road accidents.
- ☞ As in the case of driving a vehicle at any time, work-related accidents caused by distraction can occur. Serious injuries and even fatalities are always a possibility, meaning potential loss of income, lengthy periods of absenteeism from work, periods of rehabilitation, and impacts on personal lives, careers and families.
- ☞ Under laws regarding the safe operation of road vehicles, a driver can still be charged with a traffic violation if stopped for careless driving. In cases where serious injury or fatalities occur as the result of an accident, there is always the possibility of a charge of criminal negligence being laid by the authorities.

What can organizations do to prevent injuries as a result of the use of mobile offices?

Many organizations have responded by changing their policies with respect to driving even before new laws came into effect. New policies include those such as instructing employees not to make work-related phone calls, as well as not to use of other electronic devices, while they are engaged in work-related driving.

For example, the new Chair of the U.S. [National Transportation Safety Board](#), Deborah A. P. Hersman, announced at her swearing-in ceremony in September 2009 that Board employees could no longer text or make phone calls while driving on official business. They were also prohibited from using wireless devices issued by the board while driving their own cars.

In addition, federal employees will not be allowed to text while driving, according to an executive order signed in October 2009 by President Obama. The order covers federal employees when they are using government-provided cars or cellphones, and when they are using their own phones and cars to conduct government business. The Transportation Department said that the order was to take effect immediately and involved some 4.5 million federal employees, including military personnel.⁶

According to the U.S. National Safety Council (NSC), a nonprofit safety advocacy group, several hundred companies have banned employees from using their cellphones while driving. The NSC says such bans improve safety, help limit the liability of employers when accidents do occur, and free employees from feeling pressure to respond immediately while they are behind the wheel.⁷

Employers:

In a survey taken in August 2009 of its 13,000 member companies, the U.S. National Safety Council found 469 with bans on cellphone use while driving. Furthermore, some corporations that have imposed the bans have found that productivity has not suffered.

The following are some additional suggestions gathered from various sources that may help protect employees and provide a basis for a legal defence should an accident occur:

⁶ *Texting While Driving Banned for Federal Staff*. Matt Richtel, New York Times, October 2, 2009

⁷ Ibid

- ☞ Establish a policy that prohibits the use of cellphone or other electronic devices while driving, perhaps requiring that cellphones be turned off while vehicles are in motion. Such a prohibition should be enforced particularly where laws exist banning texting, cellphone or other electronic device use while driving.
- ☞ Provide training or handout materials dealing with cellphone safety.
- ☞ Place a sticker on company-owned cellphones, warning against talking on the phone while driving.
- ☞ Require employees to sign an acknowledgement of receipt of the company policy on cellphone and other electronic device use.
- ☞ Discipline employees for violating the policy.
- ☞ If reimbursement is provided for cellphone charges, consider having the employee sign an affirmation that the cellphone has not been used in violation of company policy.
- ☞ Decide whether to seek indemnification for any injuries or death caused by an employee who has violated company policy. As a practical matter, few employees will be able to satisfy a possible judgment involving multiple millions of dollars.

Employees:

In all cases, employees should obey the rules of the law, including those banning texting, cellphone or other electronic device use while driving.

Where there are no specific laws banning cellphone or other electronic device use while driving, the following are some additional suggestions for employees gathered from various sources:

- ☞ Turn your phone off before you start driving. Let callers leave a message.
- ☞ Use only a speakerphone or a hands-free phone. Make sure you put on the hands-free accessories before you start driving. Remember: hands-free isn't risk-free.
- ☞ If you must use a hand-held phone, place it where it will be readily accessible. Trying to retrieve a phone from a briefcase, handbag or pocket can be especially dangerous.
- ☞ If you must use the hand-held phone, pull over and stop before placing the call.
- ☞ It's also good etiquette to ask a caller to hold until you can park, or to say you'll return the call as soon as it's safe to do so.
- ☞ When receiving a call, let voice mail pick it up, and call back at a safer time.
- ☞ Avoid stressful, emotional or important conversations.
- ☞ Do not write or take notes while driving and talking on the phone. Do not make gestures while talking and driving.
- ☞ If you must use the phone while driving, remember that the conversation, in itself, will be a distraction. Keep the phone within easy reach. Know the location of the buttons or, better; yet, use a voice activation program or hands-free option. Pre-program commonly used numbers. Trying to find components, putting on a headset or changing settings while driving is risky.
- ☞ If there are passengers in the vehicle, let one of them take or make the call. If you're expecting an important call, let someone else drive.
- ☞ Stay in the right-hand lane, where driving may be less demanding.
- ☞ When reporting an emergency situation from a cellphone, pull over and ensure you are not in the flow of traffic. If you must keep driving, remember your primary concern is to avoid causing another emergency.
- ☞ Don't believe that text messaging while at a traffic light is safe; since most accidents occur at intersections.
- ☞ If the temptation remains too great, put your wireless devices in your briefcase -- and put the briefcase in the vehicle's trunk.

“Healthier organizations mean more productive employees.”

Recommended Reading:

- ◆ [The Road Safety Monitor 2006 - Distracted Driving](#): Traffic Injury Research Foundation, August 2007
- ◆ [Driver Distraction and its Impact on Operating a Vehicle](#): Summary of conclusions of joint investigation conducted by CAA-Quebec and TVA Network program JE, November 2007
- ◆ [Effects of Cellphone and CD Use on Novice and Experienced Driver Performance](#): Insurance Bureau of Canada, January 2007

Recommended Web Sites:

- ◆ U.S. National Safety Council – Distracted Driving: http://www.nsc.org/resources/issues/distracted_driving.aspx
- ◆ Transport Canada – Road and Motor Vehicle Safety: <http://www.tc.gc.ca/eng/roadsafety/menu.htm>
- ◆ Traffic Injury Research Foundation: <http://www.tirf.ca/main.php>
- ◆ Insurance Bureau of Canada: <http://www.ibc.ca/en/index.asp>