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Tweet Justice

If your employees are texting while driving, they might as well be drunk. Blitzed, in fact. The risk of a collision increases by 23 times when you go from driving responsibly to texting while driving. And the law is catching up. Increasingly, state law prohibits texting, talking on a hand-held cell phone and other distracted driving. But further danger lurks around the bend. Crash victims are filing multi-million dollar lawsuits against employers of dangerous drivers.

Distracting Evidence

A South Dakota motorcyclist, Randall Helwig, sued Old Dominion Freight Line of Virginia, alleging that a company truck driver was distracted by an on-board message device used by the company for communicating with drivers. In the July 31, 2009, collision, an Old Dominion truck struck Helwig's motorcycle, sending him flying 165 feet up the highway. The lawsuit accuses Old Dominion of encouraging drivers to use the messaging device while driving. The company denies liability but may have to pay significant damages.

A salesman for a lumber company, Dyke Industries, was driving a Ford Explorer on the way to a business meeting while talking on his cell phone. He broadsided Alicia Bustos, a 78-year-old driver who was making a left turn, leaving her severely injured. A jury awarded Bustos \$21 million. Ultimately, Dyke Industries and the salesman paid \$16.2 million to Bustos to resolve the case.

An employee for International Paper Co. struck Debra Ford's vehicle, forcing it off a highway, into a ditch and flipping it onto the driver's side. Ford's arm was trapped underneath the vehicle and later amputated. A witness testified that the International Paper employee was using her company cell phone when the collision occurred. Before the jury returned with a verdict, International Paper agreed to pay \$5.2 million to settle the case.



Distracted driving is deadly. In 2008, 5,870 people died and more than 500,000 others were injured by distracted driving, according to the U.S. Department of Transportation. And according to the Virginia Tech Transportation Institute, crash risk increases 2,300 percent if you're texting when driving a truck driving drunk only increases your crash risk by 700 percent. But it's all bad. When a car driver dials a cell phone, the risk of a crash or near-crash event leaps 2.8 times as high as non-distracted driving, and when a truck driver dials a cell phone, that risk skyrockets 5.9 times. Overall, National Highway Traffic Safety Administration estimates that distracted driving produces almost 80 percent of all crashes in the United States. So, whether you're talking, texting or tweeting, it's a problem.

Lawmakers are recognizing the problem and banning distracted driving. Effective Oct. 1, 2009, Maryland prohibited texting while driving. The Insurance Institute for Highway Safety reports that Virginia and 17 other states also ban text messaging. The District of Columbia went further. DC prohibits all use of hand-held phones while driving.

Wreck-Proof Your Business

These laws don't just make for safer roads. They bolster the argument that your company is liable when your employees drive distracted. If your employee gets into an accident while texting or talking on a handheld cell phone, your business may also get totaled. You may think it's far-fetched to prove that your business is to blame when an accident occurs. Actually, the opposite is true. With the phone records or data from an email server, the victim's lawyer can match the exact time of a call, text or tweet to the CSI's timeline for the collision. From there, it's only a small leap to proving your employee was distracted and negligently caused the crash. When that happens, your company can be found liable because an employer is responsible for what its employees do in the course of their employment.

Now we have one more tug-of-war adding to the stress of running a business. On one side, we're tempted to wring productivity out of every moment of the day. When we're stuck in traffic, that Blackberry beckons us to multitask. But on the other side, too much is at stake: people's safety and your company's existence.

So CEOs should save lives, and protect their businesses, with these guidelines:

- **Background Checks and Testing:** Don't issue a company vehicle to an employee until you've confirmed that he or she has a good driving record. Periodically re-check these records. Also, ask your lawyer if you should test company drivers for drug use.

- **Prohibit Distracted Driving:** Establish a policy prohibiting all distracted driving. Explain the policy to your employees and have them agree to it in writing.

- **Enforce the Policy:** Rules mean nothing if you don't live by them. check your insurance: Make sure you have the right insurance coverage and enough of it.

- **Work Hard for Success:** Celebrate when you achieve it. But leave out the drinking and the talking, texting, and tweeting when you're on the road. For so many reasons, it's just the smart thing to do.

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ABOUT JACK GARSON



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Jack Garson's practice focuses on Real Estate, Construction and Business law. He serves as a legal advisor for numerous local, regional and national companies. In his role as legal counsel, Jack also serves as a strategic advisor and lead negotiator. Further, Jack provides guidance on the structure of complex transactions, the resolution of business disputes, the growth and sale of companies, and the management of issues such as liability and risk reduction, employment practices, and enhancing profitability.

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In the past two years, we've grown by 50% through expansions in New York City and, most recently, Charlotte, North Carolina. This growth has provided immense value to our clients and attorneys.

Wherever your industry, Offit Kurman is the better way to protect your business, preserve your family's wealth and resolve your most challenging legal conflicts. At Offit Kurman, we distinguish ourselves by our quality and breadth of legal services—as well as our unique operational structure, which encourages a culture of collaboration and entrepreneurialism. The same approach that makes our firm attractive to legal practitioners also gives clients access to experienced counsel in every area of the law.

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