

KD Alert: Employers Face New Exposures: Pennsylvania Bans Texting While Driving

On November 9, 2011, Governor Tom Corbett signed SB 314 into law, banning texting while driving. Under the new law, which goes into effect on March 8, 2012, Pennsylvania becomes the 32nd state to make texting while driving a primary offense -meaning that a driver can be pulled over by law enforcement for this offense alone. A violation of the law, which carries a \$50.00 fine, occurs when a driver sends, reads or writes a text based message.

This new law impacts all employers that issue cell phones, smart phones or any other type of personal digital assistant to their employees, as the law will likely increase an employers' risk of being held vicariously liable in a civil action arising from accidents that occur while their employees' text while driving. Such liability can extend to the employer, even where the employer itself did not act negligently, under the doctrine of respondeat superior or vicarious liability.

In signing the bill, Governor Corbett remarked that "No text message is worth a life....if you have an urgent need to text, you must pull over and park. If it is not important enough to stop your car, then it is certainly not important enough to risk a life."

The law:

- prohibits motorists from using an interactive wireless communication device to send, read or write text based messages;
- defines an interactive wireless device as a wireless phone, personal digital assistant, smart phone, portable or mobile computer or similar devices that can be used for texting, instant messaging, emailing or browsing the internet (specifically excluding a device being used exclusively as a global positioning or navigation system; a system or device that is physically or electronically integrated into the vehicle; or a communications device that is affixed to a mass transit vehicle, bus or school bus.);
- defines a "text based message" as a text message, instant message, email or other written communication composed or received on an interactive wireless communication device; and
- makes it clear that this law supersedes and preempts any local ordinances restricting use of interactive wireless devices by drivers.

The law specifically excludes as a violation a motorist who is using an interactive wireless communication device for the purposes of activating or deactivating a telephone call.

The Pennsylvania State Police believe that voluntary compliance by motorists will significantly decrease texting while driving. In addition, the Pennsylvania State Police will enforce the law by observation, interviewing drivers and passengers, and in certain contested cases, obtaining a driver's cell phone records to assist in proving a violation. According to state officials, 1,100 of the approximate 14,000 distracted driving crashes throughout the Commonwealth in 2010 can be attributed to using a handheld cell phone.

What should employers do? At a minimum, Handbook policies must be reviewed and revised where necessary to reflect the law's prohibitions. Perhaps, a separate acknowledgement of the policy could be executed by the employee. Feel free to contact KD's employment attorneys should you need assistance.

For more information about this KD Employment Law Alert, contact Philip Voluck, Andrew Rosenbloom, or one of the attorneys from KD's Labor and Employment Law on Behalf of Management practice.

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