



YOU WANT AN EFFECTIVE CELL PHONE POLICY

Cell phones are everywhere, creating their own unique brand of annoyances or even dangers for employers and co-workers. In addition, they create some legal issues you should be aware of. The potential hazards only grow as more and more features are added to such phones, including cameras, text messaging, Internet and e-mail access, and games.

YOUR POTENTIAL LIABILITIES

- ✓ **HR issues** — An employee's use of a cell phone can annoy the living daylights out of co-workers. The distinctive ringing can be a jolt to co-workers, especially when it signals that the cellular employee is receiving personal phone calls or text messages while everyone else is working. Some resent the intrusion into places that normally are phone-free, such as the restroom. And the ability to take pictures with a phone adds a whole new dimension to that concern.

- ✓ **Distracted drivers** — The biggest potential danger (and liability for you) is that talking on a cell phone can distract employees who are driving on company business, greatly increasing the risk of accidents. Much attention has been focused on the physical tasks involved, such as dialing the phone and holding it with your hand or shoulder. However, the conversation itself — even with hands-free phones — can be a major distraction, making drivers less aware of surrounding traffic.
 - ❖ **Workers' comp** — Auto accidents are the leading cause of work-related fatalities, according to the federal Bureau of Labor Statistics. Employees who wreck while driving on company business typically can collect workers' comp benefits.
 - ❖ **Liability to others** — If an employee causes an accident while working, your company could be liable for deaths, injuries, and property damage suffered by nonemployees. In a lawsuit, your company's potential liability to nonemployees can be much, much higher than your workers' comp liability.

Free web article: "Can you hear me now? Courts impose liability for employees' cell phone use," *Oklahoma Employment Law Letter*.

- ✓ **Blurring work and home** — For many employees, cell phones make it easier to work anytime, anywhere — with or without the boss' permission. This can make it difficult to tell when an employee is working, which could create new legal issues for your organization:
 - ❖ **Liability during “work”** — In the case of a serious auto accident, the million-dollar question is whether the employee was working at the time. If he was working, your company could be liable for workers' comp and for nonemployees who are injured or killed.
 - For example, a stockbroker calls potential clients on a Saturday night while driving to a restaurant to meet his family. While reaching for the phone, he hits and kills a motorcyclist. The stockbroker's employer could be liable to the motorcyclist's family.
 - ❖ **Wage and hour issues** — For some nonexempt employees, cell phones make it easier to work during their off hours. This also makes it harder for their bosses to keep track of their hours worked to pay them as required by the federal Fair Labor Standards Act.

See “Wage and hour law — in general,” p. 166.

WHAT YOU SHOULD DO

- ✓ **Implement a cell phone policy** — If you don't have a cell phone policy, consider implementing one. If you already have one, review it to make sure it covers all the bases, including Internet access, e-mail and text messages, camera phones, any new features that may be available on cell phones in the future, pagers, and other electronic devices.

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Employment Law Letter subscribers: You can find a sample cell phone policy in the subscribers area of HRhero.com in the Policy & Procedure Manual. For information about HRhero.com, see "HR Resources," p. 418.

- ❖ **Personal calls** — Whether they're on a cell phone or conventional phone, excessive personal calls waste time. Your policy should set restrictions on when personal cell phones can be used.
- ❖ **Hang up and drive** — You should give employees rules for using cell phones and other devices while driving on company business. Some safety rules to consider:
 - Pull over to dial or take notes.
 - Pull over for conversations that are stressful, emotional, or require a lot of concentration.
 - Suspend conversations during heavy traffic or hazardous conditions. For example, tell the person on the other end to wait while you pull onto the highway, or tell him you'll call back in a few minutes.
 - The safest rule: Never talk on cell phones while driving. You could require employees to stop the vehicle to answer the phone or call the person back.
- ❖ **Reality check** — Cell phones and other devices will continue to grow in popularity and usefulness. Don't tilt at windmills with rules that are unrealistically strict. And if an employee complains about a co-worker's phone habits, maybe the real problem is the complainer being too sensitive.
- ✓ **Provide safe equipment** — If you allow employees to talk on phones while driving on company business, you may want to provide safety features like hands-free equipment and voice mail. They won't remove all distractions, but they'll help.
- ✓ **Provide cell phones for safety** — Despite the dangers of misuse, you may want to issue cell phones to some employees so they can call for help in an emergency. Consider this for employees who often travel or drive around town on company business or who work alone or in isolated areas.

NOTES

Research Tools

All articles cited in *HR Quick List* are available at no extra charge at www.HRhero.com/HRQuicklist/

Also available from M. Lee Smith Publishers:

HR Executive Special Report:
How to Avoid the HR Hazards of Your Electronic Workplace
Employment Law Letter subscribers: see the *Sample Policy & Procedure Manual* in the subscribers' area of HRhero.com — for details, see p. 424.