FTR Now

Cell Phone And Blackberry Restrictions For Drivers Are Coming Into Force: Is Your Workplace Ready?

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CLICK HERE FOR UPDATED INFORMATION ABOUT THE COMING INTO FORCE OF BILL 118

Earlier this year, the Ontario Government passed legislation restricting the use of cell phones and mobile technology devices while operating motor vehicles. In anticipation of its coming into force later this fall, this FTR Now addresses the precautionary measures employers should implement in order to protect the health and safety of their employees and others, minimize potential liability, and ensure compliance with the law.

THE LEGISLATION

In April of 2009, Bill 118, the *Countering Distracted Driving and Promoting Green Transportation Act, 2009*, received Royal Assent. As reported in our June 2009 Legislative Update, this legislation amends the *Highway Traffic Act* and expressly prohibits the presence in a vehicle of a television, computer or other device with a display screen if the display screen is visible to the driver. This prohibition does not apply to global positioning system navigation devices, commercially-used logistical transportation tracking systems, collision avoidance systems or instrument display screens providing information regarding the status of systems in the vehicle.

Significantly, the Bill 118 amendments also prohibit the holding or use of hand-held wireless communication devices and electronic entertainment devices, including cell phones and blackberry devices. The hand-held device prohibition does not apply to the use of such devices in “hands-free” mode, nor does it apply if the vehicle is stopped, is off the traveled part of a road and is not obstructing traffic.

Neither of the above prohibitions apply to ambulance, fire or police services. Furthermore, the hand-held device prohibition does not apply if the driver is contacting ambulance, police or fire department emergency services.

Bill 118 is expected to be proclaimed in force sometime this fall, once the government has filed supporting Regulations.

IMPACT

Bill 118 does not directly impose liability on employers with respect to mobile technology use by their employees. However, in other jurisdictions where similar legislation exists, employers have been found liable for damages in certain cases. Employers in Ontario should therefore implement precautionary measures in order to protect the health and safety of their employees and others, minimize potential liability, and ensure compliance with the law.

The Bill 118 amendments will impact your organization if:

- your employees operate company-owned motor vehicles;
- your employees operate their own motor vehicles in the course of their employment; or
- your employees are provided with mobile technology devices by the company.

THE IMPORTANCE OF PUTTING POLICIES IN PLACE

In light of the broad impact of Bill 118, employers in Ontario are well-advised to review existing policies to ensure they reflect the new prohibitions and limitations described above. This may include cell phone and blackberry use policies as well as general policies relating to the operation of motor vehicles by employees, whether company-owned or not. If your organization does not presently address mobile workforce issues, consider drafting policies as a precautionary measure. Although policies cannot absolutely insulate employers in all cases, the existence and enforcement of such policies is the first step towards reducing employer liability.

WHAT YOUR POLICIES SHOULD SAY

Every workplace is unique, and the needs of your organization will depend on many factors. Having said that, subject to the exceptions identified above relating to emergency services and emergent situations, there are a number of key strategies your organization should consider adopting:

- develop a communications strategy to inform your employees about the new legislative changes and corresponding changes to existing policies, or the development of new ones;
- in the policy, expressly require all employees to comply with the applicable laws and explain the new prohibitions and limitations clearly;
- explain what mobile device use is permitted, and under what circumstances. For example, specify the company's position with respect to hands-free mobile technology;
- consider whether a complete ban on mobile technology use (including hands-free modes) is feasible, except in emergency situations;
- educate your employees about the policy through mandatory training sessions;
- include additional mandatory training when employees receive mobile technology devices from the company and consider issuing such devices with warning "stickers" or portable information handouts;
- provide employees with clear protocols for placing and receiving calls while they are in transit, and clarify what protocols apply to hands-free device use (if permitted at all). For example, require employees to switch off mobile devices while operating motor vehicles. Where operational needs require employees to be responsive to calls while in transit, consider requiring employees to pull over and stop the vehicle safely before placing, returning or answering calls or messages;
- obtain signed "acknowledgements" from employees to attest to the fact that they have received proper training and information about the policy changes;
- expressly protect employees who fail to answer calls or reply to messages in a timely fashion from reprisal, where those employees were operating motor vehicles at the time;
- require employees to acknowledge that employees who violate the policy are engaging in prohibited conduct for which they may be personally liable at law, should damages result from their misconduct; and
- require compliance, and consistently enforce with disciplinary measures that are clearly spelled out in the written policy.

CONCLUSION

While implementing policies and protocols cannot insulate your organization from liability in all cases, a pro-active approach supported by a strong communications and education strategy can effectively minimize the risks of such liability—and the risks mobile device use can pose to the health and safety of your employees and others.

Your Hicks Morley lawyer would be pleased to review your existing policies and help develop a strategy that will meet your organization's needs.

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