FTR Now

Ban on Hand-Held Devices And Display Screens Starts In October

Date: October 1, 2009

In our *FTR Now* of September 24, 2009, "Cell Phone and Blackberry Restrictions For Drivers Are Coming Into Force: Is Your Workplace Ready?," we provided you with a detailed overview of the new legislation restricting the use of hand-held mobile technology devices and presence of display screens while driving.

Yesterday, the Ontario Government announced that the legislation will take effect on October 26, 2009. The government has also indicated that the police will not issue tickets to drivers for violations until February 1, 2010 in an effort to give drivers an opportunity to educate themselves about the new restrictions, and ensure they are compliant.

In addition to its announcement, the government has filed a Regulation under the *Highway Traffic Act* and created additional exemptions to the legislation. This *FTR Now* provides a detailed overview of these new exemptions. Given the technical nature of the Regulation, it should be consulted directly to determine to what extent it may apply to employees working in your organization. We have provided a link to the Regulation below.

STATUTORY EXEMPTIONS

The general prohibition against the use of hand-held wireless communication devices and presence of display screens while driving is subject to the following exceptions, which are outlined in the legislation:

- global positioning system ("GPS") 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;
- emergency workers and emergent situations;
- the use of hand-held devices in "hands-free" mode; and
- use of hand-held devices while stopped and safely pulled off the traveled part of a road.

NEW REGULATORY EXEMPTIONS

The new Regulation has created a number of additional exemptions that apply to specific classes of persons, devices, and activities. We have outlined these below.

DISPLAY SCREEN EXEMPTION

While engaged in the performance of their duties, the following classes of persons may drive a vehicle with a computer display screen or other device visible to the driver:

1. Law Enforcement and Other Enforcement Officers

- including police, special constables, peace officers, park wardens and conservation officers; and
- provincial offences and municipal law officers, Fire Marshals and Deputy Marshals, fire chiefs and guards.

2. Persons Performing Certain Evaluation and Monitoring Functions

- drivers performing evaluation and monitoring functions relating to certain road, radio and telecommunications work; and
- automobile technicians test driving a vehicle.

3. Persons Performing Other Public Functions

Mobile data terminal display screens may be used to communicate with a dispatcher or control centre by the following persons, in the performance of their duties:

- public utilities workers;
- electricity transmitter or distributor workers; and
- road authority workers.

4. Persons Engaged in Certain Commercial Activities

Mobile data terminal display screens may also be used by persons performing their duties, and who are engaged in certain commercial activities, including:

- drivers of commercial vehicles, as defined by section 16(1) of the *Highway Traffic Act*;
- courier delivery vehicle drivers;
- tow truck or roadside assistance drivers; and
- licensed taxicab and limousine drivers.

EXEMPT DEVICES

The types of display screen devices expressly exempt under the Regulation are as follows:

- devices displaying conditions on the use and immediate environment of the vehicle;
- an ignition interlock device; and
- car audio controls displaying only text or static images, and hand-held devices that do this while directly connected into the audio system.

All such devices must be secured to the vehicle so that they do not move while the vehicle is in motion.

HAND-HELD DEVICE EXEMPTION

An identical exemption applies to law enforcement officers and other enforcement officers as described at (1) above with respect to the use of hand-held wireless communication devices in the performance of their duties.

However, hand-held exemptions for the Persons Performing Other Public Functions or Engaged in Certain Commercial Activities outlined at (3) and (4) above are subject to two key limitations.

First, the exemption on hand-held device use by these latter classes of person is time-limited, and will be revoked effective January 1, 2013. The government has indicated that this three-year “phase-out period” is designed to provide an opportunity for new technologies to be developed.

Second, the exemption only applies to the use of a “two-way radio”, which is defined to mean a wireless communication device consisting of a main receiver unit and a separate hand-held microphone operated by a push-to-talk function. The device must be set on a set frequency and allow for voice communication, but not for the transmission and receipt of voice communication at the same time.

However, commercial vehicle drivers using the vehicle for “personal purposes without compensation” do not fall within the exemption, and are prohibited from using such devices.

Amateur radio operators are subject to a similar, time-limited exemption in respect of two-way radios.

“PRESSING BUTTONS”

The Regulation allows for “pressing buttons” on secured wireless devices worn on the head or ear or attached to clothing, or where the buttons are being pressed to engage a hands-free mode with a secured device that can be seen by the driver at a “quick glance” and easily reached “without adjusting his or her position”.

CONCLUSION

The new Regulation provides numerous, highly technical exemptions to the prohibitions outlined in Bill 118, and should be consulted directly to determine which employees at your organization fall within its scope if any, the nature of the exemption, and whether any such exemptions are subject to additional limitations.

Your Hicks Morley lawyer would be pleased to assist your organization in developing a communications strategy and policy approach tailored to your needs to ensure that your workforce is educated about these changes, and prepared for compliance.

The Regulation may be viewed by clicking here:

http://www.e-laws.gov.on.ca/html/source/regs/english/2009/elaws_src_regs_r09366_e.htm

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