

Employer Liability for Employee Cell Phone Use on the Rise

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Employers are facing increasing liability as a direct result from their employees' cell phone use. So why is this the next legal frontier? The number of lawsuits involving employer liability for traffic accidents caused by employee cell phone usage is steadily growing, as well as lawsuits based on health problems associated with cell phone use.

The principal of vicarious liability states that an employer is responsible for the harm caused by its employees if the employees are acting within the scope of their employment at the time an accident happened. In this situation, a company can be held accountable by a third party for auto accidents caused by an employee's cell phone use if the company provided the phone or if the cell phone is an integral part of the employee's job. The company can even be held liable for incidents resulting from personal calls made by employees on company-issued cell phones, or phones inside company cars.

There is also an emerging trend establishing that an employer can be found directly negligent if it allowed employees to use cell phones for business without proper training or in spite of safety issues, and an accident results.

Another exposure resulting from employee cell phone use is the rise in the number of claims brought by employees for health problems associated with their cell phones. Employees who consistently use cell phones as part of their job are filing workers' compensation claims and lawsuits alleging that radio frequency radiation from cell phones causes brain cancer.

The scientific evidence concerning whether or not cell phone use increases the risk of cancer is inconclusive. There are two studies that are most frequently quoted, and their results are contradictory. A study conducted at the Danish Institute of Cancer Epidemiology, whose results were released in December 2006, followed the health of over 420,000 cell phone users over the course of 21 years to determine if cell phone use causes cancer. The researchers concluded that the radio frequency energy produced by cell phones did not increase the risk of contracting brain cancer. However, a April 2006 study conducted by the Swedish National Institute for Working Life, examined the cell phone usage of 905 adults who developed malignant brain tumors. They found that people with more than 2,000 hours of total talk time had 3.7 times the risk of developing brain cancer as compared with non-users. The study also found an increase for tumors specifically on the side of the head where the cell phone was used.

While there is no way to alleviate all potential liability arising from cell phones in the workplace, companies can offer employees training on the safety issues and possible health risks associated with using cell phones. Promoting a safe workplace is a simple way to reduce the number of accidents and health risks associated with cell phones.

12 Revere Street, Winthrop, MA 02152 3 Centennial Drive, Peabody, MA 01960 www.ElliotWhittier.com
Chris Millerick Phone: (617) 846-5000 ext. 135 Fax: (617) 846-4735 cmillerick@ElliotWhittier.com

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