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New Federal Regulations Prohibit Commercial Drivers From Using Hand-Held Cellular Telephones

Effective January 3, 2012, regulations implemented by the Department of Transportation's Federal Motor Carrier Safety Administration and Pipeline and Hazardous Materials Safety Administration ban the use of **hand-held** cell phones by drivers of commercial motor vehicles engaged in interstate commerce and other vehicles carrying certain hazardous materials. Other regulations already ban text messaging for commercial drivers.

Motor-carrier employers also are prohibited from allowing or requiring their drivers to use hand-held cell phones. Employers violating this regulation face a maximum penalty of \$11,000. Additionally, employers could be held liable for the negligence of their commercial drivers who cause an accident while using a hand-held cell phone. Thus, it is highly recommended that employers subject to the regulations have written policies prohibiting their commercial drivers from using hand-held cell phones while driving.

The regulations define using a hand-held cell phone as:

1. using at least one hand to hold a mobile telephone to conduct a voice communication;
2. dialing or answering a mobile telephone by pressing more than a single button; or
3. reaching for a mobile telephone in a manner that requires a driver to maneuver so that he or she is no longer in a seated driving position, restrained by a seat belt that is installed in accordance with [49 C.F.R. § 393.93] and adjusted in accordance with the vehicle manufacturer's instructions.

One limited exception is where a commercial driver needs to communicate with law enforcement officials or emergency services. Drivers may place and receive calls using **hands-free** technologies such as wireless and wired earpieces, speakerphone functionality, a connection between the cell phone and the vehicle that provides for single-button control of the phone from the steering wheel or dashboard, or an accessible cradle holding the phone where a single-button push-to-talk function may be used.

The regulations establish significant penalties for drivers who violate the hand-held cell phone ban. A commercial driver faces up to \$2,750 in civil penalties for each offense. Two violations in a three-year period additionally will result in a 60-day disqualification of his or her commercial driver's license (CDL), and three or more violations will result in a 120-day CDL disqualification.

If you or your company have any questions regarding these changes in the law, or would like assistance drafting commercial driver cell phone use policies, please contact one of our Labor and Employment attorneys listed on this alert.