



# Employment Bulletin

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*“Employers can be found liable for the mistakes of their employees, and the new law most definitely broadens the range of possible mistakes that might fit into this category.”*

## DON'T TOUCH THAT DIAL! ONTARIO'S NEW LAW ON ELECTRONIC DRIVING DISTRACTIONS

Jack B. Siegel

The Ontario Government has just announced that October 26, 2009 will be the effective date for the new rules prohibiting the use of cell phones, PDAs, iPods, etc. while driving a motor vehicle. Following a three-month phase-in period during which the focus will be on educating drivers, the Province advises that police will start issuing tickets on February 1, 2010.

While the rules might be getting more clear, what is certainly less clear are the responsibilities and potential liabilities of an employer whose employees drive a motor vehicle in the course of their employment. Employers can be found liable for the mistakes of their employees, and the new law most definitely broadens the range of possible mistakes that might fit into this category.

### The New Rules

Up until now, while it has not been illegal to drive a vehicle while holding a cell phone to your ear or while typing away on a BlackBerry, it has certainly always been possible (and remains so) for a charge to be laid for careless driving, or

worse, if such behaviour were to cause a motor vehicle accident or injury. Under the new law, however, such activities (described in greater detail below) will be an offence regardless of such consequences, and we can expect that after the phase in period, police will be pulling drivers over and issuing tickets of up for \$500.00 to drivers who “multitask” in this manner. While it has long been the law that one cannot drive a vehicle that has in it a television set that can be seen by the driver, the new law modernizes that provision, and goes quite a bit further, to say the least:

- It will now be prohibited to drive a motor vehicle if the display screen of a television, computer or comparable device in the vehicle is visible to the driver. This will therefore preclude the use of a dashboard mounted PDA or MP3 player. There will be exceptions however, for dispatching devices, secured (i.e. not handheld) GPS units, logistical transportation tracking systems, collision avoidance systems, or usual dashboard instruments.
- Unless used in hands-free mode it will now be prohibited to use any hand-held wireless communication device such as a cell phone, BlackBerry, or other PDA while driving.

*“The Government has further indicated that, in order to help maintain the competitiveness of businesses that rely on some of the soon-to-be-prohibited technologies, there will be a three-year phase-out period...”*



Jack Siegel, a member of Blaneys' Labour and Employment group, focuses largely on workers' compensation, wrongful dismissal, occupational health and safety and human rights matters. Jack is a former Chair of the Workers' Compensation Section of the Ontario Bar Association. Jack has been rated by LEXPERT, a Canadian legal directory, as one of the recommended legal practitioners in the Worker's Compensation Law Category, and most recently, was named as one of the best lawyers in Canada in that field, in the Best Lawyers in Canada list published by the Financial Post Business Magazine for 2006 - 2007.

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- It will now be prohibited while driving to hold or use a hand-held electronic entertainment device such as an MP3 player except in hands-free mode.

There are, of course, some rather sensible exceptions. For telephones and PDAs, the driver of an ambulance, fire department vehicle or police department vehicle is exempt, and there is provision to allow others to be exempt by regulation. Similarly there is no prohibition on using the device to contact ambulance, fire or police department emergency services.

The Government has further indicated that, in order to help maintain the competitiveness of businesses that rely on some of the soon-to-be-prohibited technologies, there will be a three-year phase-out period for the commercial use of two-way radios, including mobile and CB radios, to allow for hands-free technologies to be developed.

More generally, it will remain acceptable to use either a communication or entertainment device where all three of the following conditions are met:

1. The vehicle is either off the road or legally parked;
2. The vehicle is not in motion;
3. The vehicle is not impeding traffic.

In a recent statement, the Ministry of Transportation has indicated that even dialing a telephone while driving constitutes a violation; accordingly even drivers who use hands-free

headsets or speakerphones will need to comply with these conditions, if they are unable to place an outgoing call using voice recognition.

#### **The Employer's Perspective**

A great many employers have employees who are required to drive a vehicle either for part or most of the time while in the course of their employment. The law will apply equally to the transportation industry and to small businesses in which employees might occasionally drive to see customers. In most if not all such cases, the common law principle of “vicarious liability” will also apply. This principle makes employers legally responsible for the acts of their employees committed in the course of their employment. In other words, an employer who fails to ensure that its employees comply with the law in this respect may well find itself on the hook for enormous damage awards should an employee cause a serious personal injury accident while driving in violation of this law. Employers would be well-advised to ensure that they are appropriately insured for any such risks.

In order to minimize these risks, employers whose employees drive in the course of their employment should take demonstrable measures to ensure compliance. These would include:

- Updating personnel manuals to include an express prohibition on using such devices while driving in the course of employment, except while using Bluetooth headsets or speakerphones or other similar hands-free

operation modalities. Telephones that are not compatible with hands-free use should be expressly prohibited for use by employees while driving;

- Issuing direct notices to all employees who drive, at the time the law takes effect, reminding them of the need to comply, and making it clear both that the employer will not pay any fines incurred by employees for violations and that serious or repeated violations may constitute cause for dismissal;
- Where employees simply must be on the telephone while driving, employers should consider the feasibility of taking the initiative to provide hands-free devices, and establishing protocols so that telephones are either dialled using voice dialling technology if available, or while a vehicle is pulled over to the side of the road and safely stopped.

As the law comes into effect, we will all gain experience in the practical realities of its implementation. While we are learning, though, the best approach is probably one of strict compliance, coupled with the delivery of repeated messages to employees to do the same. ■

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For a detailed description of what you can and cannot do in your own car please see [Stephen Moore's article "Using Cell Phones and Other Devices in Your Car"](#).

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