

Hands-off approach

Alex Blyth looks into what companies must do to comply with the new law governing mobile phone use in cars

Research by information provider Croner (part of Wolters Kluwer, which publishes *Accountancy*) has revealed that nearly one in three company car drivers uses a mobile phone while driving on company business. This is despite the fact that using mobile phones is now widely believed to be even more dangerous than drinking and driving.

In the words of Dr Stephen Ladyman, road safety minister: 'Using a mobile phone at the same time as driving is dangerous. Your concentration, awareness of what is happening around you, and your ability to react to situations, is dramatically reduced. Research shows that someone talking on a mobile at the same time as driving reacts even more slowly than someone who has been drinking.'

Perhaps spurred on by the fact that every week roughly 270 people are seriously injured and 20 people are killed on Britain's roads, the government has introduced new legislation in an attempt to stamp out the use of mobile phones while driving. Roughly one in three accidents on Britain's roads is caused by someone driving on company business, and this new law will pose significant challenges to most UK businesses.

New legislation

On 27 February 2007, penalties for using a hand-held phone while driving became much more severe. Before then, being caught had resulted in a £30 roadside fixed-penalty notice, but this has now increased to £60 and three penalty points added to the driver's licence. If a case goes to court, then, in addition to the points, discretionary disqualification is added.

Gwyn Lewis, the lead principal of drivingoffence.com, the road traffic division of law firm Burton Copeland, says: 'While the main deterrent for not using a mobile phone when driving is the potential for a serious accident, employees on the move need to be aware that

their licence could be at risk with the addition of three penalty points and a fine, which can be up to £2,500 for the driver of a goods vehicle, bus or coach. It's also worth noting that the new law and the penalties also apply to eating and drinking at the wheel.'

While this is clearly an issue for individual drivers it is also a matter for companies. Greg Campbell, head of employment at law firm Faegre & Benson, explains why: 'Employers are vicariously liable for the actions of their employees in the course of their employment. By way of example, had the Selby train crash been the result of a distracted employee driving off the road while taking a work-related call by cradling a phone between his ear and shoulder, the railway companies and victims of the disaster could have sued the employer, as well as the employee.'

Despite the potential financial, criminal, and reputational consequences of falling foul of this law, many companies will do as they are doing with much of the employment legislation being introduced by this government: ignore it and hope they avoid getting caught.

Yet the risks in this area are much higher than with other legislation, as David Faithful, solicitor with Realtime Risk Assessment, an online risk assessment tool, explains: 'The police have always held the view that use of a phone while driving, regardless of whether hand-held or hands-free, will result in a distraction to the driver. It is for this reason that the police will routinely seize mobile phones and will investigate phone records in cases where there has been a fatality or life changing injury.'





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they provided staff with mobiles or telephone them while they are driving, they will have to demonstrate that they gave guidance to employees and that they took reasonable steps to limit the risk, to avoid liability.'

Finally, company leaders should set an example. Everyone in the organisation, from the top down, should stop using them while driving. Mike Waters, head of Market Analysis at Arval, goes even further. He says: 'For businesses, best practice would be to implement a complete ban for their fleet. The introduction of a total ban on mobile phones in cars would encourage drivers to take more breaks, so would go even further to make Britain's roads safer.'

Ensuring compliance

There is much that companies can and should do in order to comply with this new law. They should begin by consulting with staff and their safety representatives, and ensuring that the company's policy on mobile phones and driving is up to date. As part of this, and beyond it, they should raise awareness of the dangers of using mobile phones while driving, the company's policy on mobile phones, and the benefits of switching the phone to voicemail, or completely off, while driving.

They should provide training to any staff who use their phones while driving, and they should inform all employees that they will cooperate fully with the police regarding enquiries resulting from a crash and will supply the police with all relevant information on the employee involved.

Perhaps most critically, companies need a culture change around driving and mobile phones. Alison Loveday, managing partner and head of employment law at law firm Berg Legal, comments: 'They need to stop expecting their employees to use mobile phones while driving. Although they may not be liable solely because

The danger of inaction

According to research by headset provider Jabra, managers are failing to act to address the problem. It found that, while 68% are aware of the law, 22% of them still do not have a policy in place on in-car mobile use for company business.

Andrew Doyle, UK country manager at Jabra, adds: 'There is a lot of confusion among employers regarding their responsibility under legislation governing in-car mobile phone use for work-related calls, and the survey from Jabra highlights this. Worryingly, the survey also found that 38% of managers said they would not feel responsible if one of their employees had an accident while taking a work-related call in the car.'

This new law means that it will not be long before the courts find a company manager responsible for the death of a person on the road. That manager will face criminal charges, but, perhaps even worse, they will discover that in the eyes of the law and of those around them, they were responsible for causing that tragedy. Anyone who wants to avoid finding themselves in that awful situation needs to act now.

Five steps to take now

Sikin Andela, a partner specialising in employment law at Glovers Solicitors, advises companies that want to comply with the new law to take these five steps:

- 1** Employers should introduce a mobile phone usage policy and ensure that this is communicated to all employees. This can be done during the recruitment process, through training and also during staff appraisals.
- 2** Employers should ensure that it is clear that any breaches of the mobile phone usage policy will result in disciplinary action being taken against the employee and, in serious cases, could lead to dismissal.
- 3** Employers should make it clear to employees that they will be personally liable for any fines, which range from £60 to £2,500, they receive for breaching the new laws, even if they were using their mobile in connection with company business.

- 4** Work practices should be reviewed to ensure that pressure is not put on employees to be contactable at all times and, if there is any such pressure from managers or customers, employees should be encouraged to report it.

- 5** Employers should think carefully before issuing staff with hands-free kits, as there is a risk that they could be in breach of health and safety laws if it was subsequently found that use of the phone had contributed to an accident.