



## **TEXTING & DRIVING BANNED IN TEXAS: EMPLOYERS SHOULD CONSIDER USING DISTRACTED DRIVING POLICIES**

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### **I. TEXTING AND DRIVING IS NOW PROHIBITED IN TEXAS.**

Most of us know that texting and driving is dangerous. Until recently, however, Texas had no law prohibiting the practice. In September of 2017, Governor Greg Abbott signed a law banning texting while driving. It is now unlawful to read, write or send electronic messages through a wireless communication device. Texting while driving within the state of Texas will be punishable by a fine of up to \$99 for first-time offenders and up to \$200 for repeat offenders (it will not lead to points on a driver's license). Under the new law, if an accident that results in the death or serious bodily injury of another person is caused by texting while driving, the individual can be charged with a Class A misdemeanor punishable by a fine of up to \$4,000 and jail time of up to one year, in addition to other possible charges. Law enforcement will no doubt be on the lookout for drivers who have their heads down and are swerving or driving erratically, which is a known indicator of texting while driving.

Importantly, Texas absolutely prohibits the use of hand-held telephones in certain areas such as school zones, as well as for motorists who are under 18 years of age. Many Texas cities have enacted additional laws that are even more restrictive than the statewide ban, the majority of which prohibit the use of cell phones unless a hands free device is used. The problem is that, particularly during extended driving trips, an individual may drive through several different cities, all of which will have varying degrees of restrictions regarding the use of cell phones.

### **II. WHAT IS STILL PERMITTED, AND WHAT ARE THE RISKS?**

Unless the city in which a motorist is driving has enacted a more restrictive ordinance, the individual may continue to use a cell phone to perform functions such as to dial phone numbers, operate GPS navigation systems and use music applications. In case of an emergency, it is permissible to make a call for required assistance. While Texas does not ban texting while stopped at a red light because it is not technically "texting while driving," some Texas cities prohibit the practice so it should be avoided in favor of pulling over to a safe location to accept a call or to read, respond or create a text message.

A motorist could still be pulled over if the officer suspects that texting has occurred, and the individual could receive severe penalties if during a vehicular accident texting is suspected as a contributing factor. When an employee is driving a vehicle, this means that the employer is at risk for liability, increased insurance premiums and other consequences if this law is violated or an accident occurs.

### **III. DISTRACTED DRIVING POLICIES.**

It is recommended that employers institute their own distracted driving policies that prohibit the use of cell phones unless the motorist is pulled over to a safe location (or at a minimum using a hands-free device) for any purpose if the employees will drive company vehicles or drive their own vehicles in the course and scope of employment. A sample Distracted Driving Policy is set forth below, although different language may be appropriate depending on the particular business needs of the company.

## Sample Distracted Driving Policy

**Prohibited Conduct.** The Company strictly prohibits any practice that creates distracted driving while operating a company vehicle or using your own vehicle in the course and scope of your employment. This includes the use of cell phones or any other type of mobile electronic device at any time while driving a company vehicle or while driving your own vehicle while performing business for the company. Using cell phones or other mobile electronic devices includes, but is not limited to: sending or reading text messages, answering or placing phone calls, engaging in phone conversations, reading or responding to e-mails and accessing the Internet.

**Text Messaging.** Text messaging on a cellular telephone, I-pad or similar device while driving a company vehicle or driving your own vehicle for company business is considered grounds for immediate termination for cause. Texting while driving is not only a well-recognized hazard that dramatically increases the risk of a motor vehicle injury or fatality, but it is a violation of Texas law.

**Emergency Situations.** In case of emergency or if an urgent matter requires immediate attention, whether or not company related, an employee is still prohibited from using cell phones until they have safely pulled off the road and placed the vehicle in park. If a passenger is present it is acceptable for the driver to ask them to answer his or her cell phone until they are able to stop driving.

**Distracted Driving.** It is imperative that employees understand the hazards of distracted driving. We encourage employees to visit [www.OSHA.gov](http://www.OSHA.gov) to learn more about The Department of Labor and OSHA's initiative against distracted driving in order to reduce motor vehicle crashes and worker fatalities.

***Any violation of this Distracted Driving policy is grounds for immediate termination from employment for cause.***

*I, \_\_\_\_\_, have read and agree to comply with this policy. I understand that any violation of the Distracted Driving Policy may result in my termination from employment, and possibly have other legal implications if I am in violation of any law at the time of any such incident.*

**By signing below I agree not to engage in any cell phone use, including but not limited to text messaging, at any time while driving a company vehicle or driving my vehicle for company business.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

*Please note that the information contained in this article is not designed to address specific situations, and does not include rules or regulations that apply to all states. If you have questions concerning this topic, you should consult with legal counsel of your choice to obtain advice on fact specific matters.*

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