

THE ELECTRONIC WORKPLACE

# Volume 1

Can ONE TEXT MESSAGE  
Destroy Your Business?

## HOW TO CONTROL EMPLOYEE USE OF CELL PHONES & TEXTING



# Bongarde Media Company

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## WHAT IS THE LACK OF A CELL PHONE POLICY COSTING YOU?

Talking on cell phones and texting at work is distracting and often minimizes productivity—especially when the communication isn't work-related. It can also increase the risk of accidents. And it's not just a traffic safety issue. While most of society has caught on to the dangers of cell phones and texting while driving, these practices may be even more dangerous to workers on assembly lines, operating heavy machinery or performing other safety sensitive jobs that don't involve holding a steering wheel in their hands. And while injuries at work are never a good thing, in this economy, the costs of a workplace accident can spell ruin.

Don't take solace from the fact that your company complies with Occupational Health and Safety (OHS) laws. Although the gap is starting to close, the safety laws are lagging far behind in terms of addressing the risks posed by cell phone and texting (which, for simplicity's sake, we'll refer to collectively as "cell phones") distractions. OHS laws don't are just beginning to grapple with the cell phone problem. What you need to protect workers against injury—and your company against liability—is a cell phone use policy that goes beyond the law and provides a real, workable solution. This article will show you how to create one based on the cutting edge examples developed by progressive employers across Canada. There's also a Model Form you can adapt on page x.

## HAZARDS OF CELL PHONES AT WORK

There's plenty of free information on the internet documenting the dangers of cell phones and driving.. But let's concentrate on the stuff that's scarcer and harder to find: information about the workplace risks caused by cell phones that aren't related to driving. Cell phones pose two kinds of risks to workers:

**Distractions** - It's not just the workers who drive that need to have their wits about them at all times. Cell phones are distracting not only because they require attention to operate but because the conversation itself engages the worker's mind on something other than the job at hand. For example, in a recent New Brunswick incident, a road construction worker talking on his cell phone was so distracted that he stepped in front of a half-ton truck.

**Entanglements** - Much like jewellery, which is often banned in industrial workplaces, cell phone devices can get entangled in machinery or interfere with the proper use of personal protective equipment. For example, hands-free earpieces might loosen hearing or head protection; or, a worker may remove his safety gloves to send a text on his cell phone.



## ALARMING STATISTICS

- 85% of respondents use their cell phones while driving, 30% use their phones while driving on the highway, and 27% use them during half or more of their duration driving\*
- 84% believe that using a cell phone while driving greatly increases their likeliness of being in an accident\*
- 81% believe that talking or texting on the phone are the TWO MOST DANGEROUS BEHAVIOURS that occur behind the wheel\*
- texting while driving causes a 400% increase in time spent with eyes off the road\*\*
- a car driver dialing a cell phone is 2.8 times more likely to get in a car crash\*\*
- a driver reaching for a cell phone is 1.4 times more likely to get in a car crash\*\*
- a car driver talking on a hands-free device is 1.3 times more likely to get in a car crash\*\*
- A DRIVER TEXTING IS 23.2 TIMES MORE LIKELY TO GET IN A CAR CRASH\*\*
- for every 6 seconds of drive time, a driver sending or receiving a text message spends 4.6 of those seconds with their eyes OFF THE ROAD\*\*\*
- 3000 Canadians die each year from traffic accidents - it is estimated that over half of those accidents are tied to driver distractions, LIKE TEXTING\*

\* 2008 Statistics Canada

\*\* 2008 Liberty Mutual Insurance Group study

\*\*\* 2009 Virginia Tech Transportation Institute



# IN THE NEWS - THE COST OF CELL PHONES



## TRAIN IN FATAL CRASH HAD EMERGENCY BRAKE ON

**Investigators also find evidence that the train was in automatic mode, meaning the onboard computer should have slowed it down. Monday's wreck killed nine people.**

Reporting from Washington — The operator of the Metro train that slammed into a stationary train apparently had activated the emergency brake in a failed effort to stop before the deadly collision, federal officials said Tuesday, as they searched for the cause of Monday's wreck that killed nine and injured 80.

Debbie Hersman of the National Transportation Safety Board said the emergency brake was depressed, and the steel rails showed evidence that the brakes were engaged.

**We have a fire problem, a medical problem and a possible haz-mat problem" from the leaked fuel, Davies told KNBC.**

Investigators also said the moving train had been in automatic mode, which means onboard computers should have controlled its speed and stopped it before it got too close to the stationary train.

In addition, Metro sources said, the first two cars of that train were two months overdue for scheduled maintenance of some braking components.

Taken together, experts say, these facts point to several possible scenarios: The operator activated the brake too late; the computers that are supposed to stop a train from getting too close to another train faltered; the train's brakes failed; or some combination of those. Some passengers on the striking train have said they never felt the train slow down.

A team of NTSB investigators painstakingly searched through the tangled heap of metal on the tracks just north

of the Fort Totten Station in northeast Washington. They were examining the trains, track and signals; the actions of the operator and her downtown supervisors; and the computers that control train movement and are supposed to prevent crashes. Investigators will also look at maintenance performed this month on the computerized train control system along the stretch of track where the crash took place.

Officials began to remove the train cars Tuesday and plan to experiment with similar trains to determine approximate speed and stopping distance, Hersman said. The crash, the force of which vaulted the rear train atop the other, occurred on a curve where the speed limit is 59 mph, Hersman said.

Today's experiment will also try to determine whether the curve, or anything else, obstructed the operator's view of the stopped train. The operator, Jeanice McMillan, 42, was among those who died in the accident. Investigators will examine her cellphone and text-messaging records, review her work and rest schedule, and analyze blood samples, all standard NTSB procedures.

By Lena H. Sun and Lyndsey Layton|June 24, 2009  
Reproduced from The Washington Post

*The NTSB confirmed the operator was texting and that this event led to the derailment.*

**18 Dead in  
Sept 13, 2008  
Metrolink  
Train Crash,  
over 130  
seriously  
injured**

## WHAT THE LAW SAYS

**E**mployers have a duty to safeguard workers from the risks posed by cell phone use at work. The obligation is rooted in three sets of laws:

### 1. OHS LAWS

**Cell phone use isn't one of the workplace hazards addressed in provincial OHS laws.**

Exception: Alberta's OHS Code 2009 restricts the use of cell phones near electric detonators used in blasting operations [Secs. 503(3) and (4)]. However, as we saw when discussing flu protections, every OHS act includes a "general duty" clause requiring employers to take steps to guard against known risks. This may include use of cell phones on the job, especially if you know or should know that such a problem exists at your workplace.

### 2. Traffic Safety Laws

**Several provinces, including MB, NL, NS, ON and QC, have or are considering adopting traffic safety laws that ban drivers from talking on handheld cell phones.** *In fact, at the time this report was being written, Ontario had just passed this law.* These rules cover all drivers, including workers driving to or from work or while doing their jobs. Even in jurisdictions that don't ban cell phone use while driving, drivers who get into accidents as a result of cell phone distractions can be charged with traffic offences such as reckless driving or even criminal negligence if the accident results in death or serious injury.

### 3. Negligence Laws

**Individuals and organizations also have safety duties under what's called "common law"—that is, law made up by judges in individual cases that serve as a precedent for future cases.** Negligence is an example of safety-related common law. A company may face liability for negligence when it fails to take reasonable steps to protect individuals from foreseeable risks and somebody gets hurt as a result. Failing to take reasonable steps might include allowing workers to do their jobs while talking on cell phones.



NL: Sec. 176.1(1) of the Highway Traffic Act bars people from using hand-held cellular phones while driving a motor vehicle on a highway. Sec. 177 bars a person from knowingly employing, causing or permitting another person to drive a vehicle in violation of this ban.



NS: Sec. 100D(1) of the Motor Vehicle Act bars people from using a hand-held cellular phone or engaging in text messaging on any communications device while operating a vehicle on a highway. Ban doesn't apply to someone using a cell phone to report an immediate emergency.



ON: Bill 118 amended the Highway Traffic Act to bar driving while holding or using hand-held wireless communications devices or electronic entertainment devices (such as iPods). Bill does permit the use of hands-free devices.



QC: Sec. 439.1 of the Highway Safety Code bars driving a road vehicle while using a hand-held device that includes a telephone function.





# HOW TO WRITE A CELL PHONE USE POLICY

Although you might not think of it as an HR issue, workers who use cell phones are creating safety and disciplinary challenges that you need to be prepared to confront. As with other forms of inappropriate behaviours, one of the best ways to regulate the problem of cell phones on the job is to write and implement a company policy addressing the issue.

But the policy must be sensible and enforceable. A complete ban on cell phone use in the workplace may not meet those criteria. In fact, it may represent one of those cases where the cure is worse than the disease. Some workers may need cell phones to do their jobs; and all workers want to have a cell phone in case family emergencies arise. Moreover, there are some situations where not letting workers have a cell phone is the safety offence, e.g., in AB, BC, MB, NL, NT, NU, SK and QC, where the OHS laws require employers to provide cell phones or other communication devices to workers who work alone and might need to call in for help during an emergency. So, rather than a complete ban, your policy should establish reasonable restrictions on use of cell phones at work.

## How to Create a Policy

The policy should be in writing, posted in strategic points across the workplace and distributed to all workers. A written policy is more likely to be obeyed and easier to enforce if it's not. Although each policy must be tailored to the circumstances of the particular workplace, you can use the Model Policy on page x as a starting point. Like the Model Policy, your policy should:

**List the policy's purpose.** Workers might feel that using their cell phone on the job is a God-given right. An explanation of the rationale behind the policy can ease resentment and resistance (Policy, Sec. 1).

**Cover a broad range of devices.** Don't confine the policy to devices literally called "cell phones." Cover "communication devices" and define the term broadly to include items such as cell phones, Blackberries, mobile phones, iPhones, text pagers, two-way radios and other wireless devices (Policy, Sec. 2).

**Say who's covered.** The policy should apply to all workers, contractors, consultants, temporary workers and other workers, including all personnel affiliated with third parties, who work at your site or facilities. It should also apply to all cell phones—whether owned by the company or the worker (Policy, Sec. 3).

**Spell out activities covered:** Say the policy applies not just at work but when workers are driving any vehicle on work-related business, again regardless of whether the vehicle is owned by the company or the worker (Policy, Sec. 4).

**Spell out prohibited uses.** Bar workers from using cell phones in the workplace while they're working. This ban should apply to any use of cell phones including, but not limited to:

- Holding personal conversations;
- Playing games;
- Surfing the internet;
- Checking email; and
- Sending and receiving text messages (Policy, Sec. 5).

**Spell out permitted uses.** List the permitted uses of cell phones, including when they may be used and where. For example, it may be reasonable to let workers on breaks use cell phones while they're not working in designated areas such as break or lunch rooms. Our policy bans both hands-free and handheld devices because studies show that it's the conversation rather than the operation of the device that causes the distraction. Still, while we don't recommend it, some employers do permit workers to use cell phones while driving provided they use a



hands-free device (Policy, Sec. 6).

Note penalties for violations. Warn workers that if they violate the policy, they'll be subject to disciplinary measures up to and including dismissal, depending on the circumstances (Policy, Sec. 7).

## Conclusion

Workers legitimately rely on their cell phones to maintain communications with their family during work. So the argument could be made that restricting cell phone use at work is discrimination against workers with families. In fact, at least one worker has brought such a case—and lost. The case was filed by a drug company warehouse worker who claimed that his company's policy of banning workers from carrying cell phones was family status discrimination because it prevented his mother, who didn't speak English, from contacting him. The federal Human Rights Tribunal disagreed. The company's policy was developed for safety reasons and didn't deliberately target or indirectly hurt workers with families [Li v. Novopharm Ltd.]. The company and worker eventually reached a compromise: the worker was allowed to take his cell phone on the warehouse floor as long as he set it to vibrate and agreed not to return the call until leaving the floor.

## SHOW YOUR LAWYER

Li v. Novopharm Ltd., [2009] HRT0 885 (CanLII), June 19, 2009

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# CELL PHONE POLICIES SHOULD

1. Cover all forms of communication devices, not just cell phones
2. Allow for appropriate and reasonable uses of cell phones by workers, e.g., to contact family
3. Cover not just driving but other work-related activity for which workers need full concentration
4. Cover not just your own employees but other workers at your workplace, including contractors' workers
5. Be enforced as consistently and forcefully as other important safety and conduct policies

# Cell Phone Use Policy

1. **Purpose:** The purpose of this policy limiting the use of cell phones and other communication devices at work is to protect you. Inappropriate use of communication devices at work can cause injuries because it's distracting and may interfere with their proper and safe use of equipment and machinery. Devices and headphones or wireless ear pieces may also get tangled in machinery or interfere with the proper use of personal protective equipment.
2. **Devices Covered:** The devices covered by this Policy include cell phones, Blackberries, mobile phones, text pagers, two-way radios and other wireless devices, whether owned by the Company or the individual worker (collectively referred to as "Devices").
3. **Persons Covered:** This Policy applies to workers, contractors, consultants, temporary workers and other workers at the Company, including all personnel affiliated with third parties working at Company facilities.
4. **Activities Covered:** The rules set out in this Policy apply to all work-related activities, including but not limited to driving to and from work and to conduct job-related activities, whether such vehicles are owned by the Company or the worker. The Policy applies to all conversations, whether personal or business-related.
5. **Prohibited Uses**
  - a. General. While in the workplace during work hours, workers are expected to focus on work and may not inappropriately use any Device in the workplace for any inappropriate purposes, including but not limited to:
    - Engaging in personal conversations;
    - Playing games;
    - Surfing the internet;
    - Checking e mail; and
    - Sending or receiving text messages.
  - b. Driving. While operating a vehicle, workers may not answer a communication device unless and until they pull over in a safe spot (or let a passenger answer the call). If it's urgent, workers may accept or return the call, provided that they remain parked off the roadway. They may not resume driving until their conversation is over. Workers may not make outgoing calls while driving. If workers need to place a call, they must first pull over in a safe spot.
6. **Permitted Uses:** Workers may use Devices while they're not working in the following designated areas [insert designated areas such as the company's break room, lunch room and offices]. Use of hands-free devices while driving is not permissible.
7. **Violations:** Workers who violate this policy will be subject to disciplinary measures up to and including dismissal, depending on the circumstances.

I have read and will abide by the terms of this policy regarding the use of communication devices at work.

Name (printed) \_\_\_\_\_

Signature \_\_\_\_\_

Witness \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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