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# Employee Cell Phone Use

The New Hampshire Highway Safety Agency rates driver distraction as the number one cause of car accidents. Distraction is a steadily growing cause of accidents. However, studies show mixed results due to cell phones and accidents. In August 2004, AAA showed that the most potentially dangerous activity was "reaching or leaning." Cell phone use was ninth on the list.



More and more, employees conduct business on a cell phone while driving. Employers may be aware of the benefits of giving employees cell phones to use while driving, but they should be aware of their liability. There are a growing number of lawsuits involving employer liability for traffic accidents caused by employees talking on cell phones while on the job.

## Lawsuits

Cell phone risks fall into two categories: claims by third persons and claims by employees. Third party claims result from a plaintiff trying to sue the employee and employer. The employer may be indirectly liable if an accident occurred from use of a cell phone by an employee acting "within the scope of employment." Typically, making a business call is considered to be within the scope of employment.

Employees may make claims for health problems allegedly stemming from cell phones. Although studies are inconclusive, some employees contend that radiation emitted during cell phone usage may lead to various forms of brain cancer or other illnesses. Worker Compensation claims and lawsuits have been filed based on this theory.

## Minimizing Employer Liability

Here are the following tips to reduce municipal liability:

- Develop a cell phone policy and train employees about the dangers of talking on a cell phone while driving. Have employees sign a written acknowledgment of policies when issued a cell phone to limit an employer's potential liability.
- Require employees to observe all applicable laws regarding cell phone use while driving.
- Provide cell phones only to essential personnel.
- Check with the insurance company as to liability issues concerning employees and cell phones.
- Keep things in perspective. Consider whether it is worth the risk to have employees using a cell phone.

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## Milestones:

*SB138* (relative to motor vehicle liability for municipal workers) was signed by Governor Lynch in May 2005. Its effective date is January 1, 2006.

*Kelly Butler* has joined Enfield as the Highway Supervisor.

*Richard Crocker*, former Director of Public Works in Amherst died this past winter.

*Tom Dubey* is the new Road Agent in Thornton.

*Clark Hackett*, Master Roads Scholar, has retired from Farmington.

*Bryon McSharry* has joined Alton as the Highway, previously he was the Road Agent in Gilmanton.

*Paul Moynihan* is the new Director of Public Works in Laconia.

*Jim Wheeler*, Public Works Director in Berlin is becoming the Facilities Director at the Androscoggin Valley Hospital.

## Websites:

Highway Communication Exchange for Detectable Warning Devices.

<http://knowledge.fhwa.dot.gov/dw>

NCHRP Detectable Warning Device Report

[http://maintenance.transportation.org/Assets/Download/DetectableWarning20-7\(177\).pdf](http://maintenance.transportation.org/Assets/Download/DetectableWarning20-7(177).pdf)

NHDOT Detectable Warning Devices Report

<http://docs.nas.edu/00942591.pdf#search='FHWA NHRDMPS20022'>

Presentation assistance is available at [www.indezine.com/index.html](http://www.indezine.com/index.html)

Stormwater.

[www.StormwaterAuthority.org](http://www.StormwaterAuthority.org)



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- Siegel, Susan. "Employee cell phone use while driving: What is your company's liability," *New Hampshire Highways*, March/April 2005, p. 33
- "Driving on Company time," [http://biz.courtty.findlaw.com/business\\_commercial/legal/source/legal\\_briefs/b\\_cell\\_1.html](http://biz.courtty.findlaw.com/business_commercial/legal/source/legal_briefs/b_cell_1.html), May 2, 2005
- [http://www.axcessnews.com/technology\\_010804.shtml](http://www.axcessnews.com/technology_010804.shtml) May 2, 2005
- <http://www.transalt.org/press/magazine/041Winter/19metropolitan.html>, May 3, 2005

### PW.NET

Want to know what is happening in other towns? Learn the very latest in regulations? Need a place to ask questions of other public works officials? Want to be the first to receive notifications of UNH T2 Center workshops? Then, subscribe to PW.NET. It's free. Send an email message to: [kclayton@cisunix.unh.edu](mailto:kclayton@cisunix.unh.edu)

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Add pw.net your name

For instance: Add pw.net John Doe

### RunOff.Talk

RunoffTalk is listserve for NH public officials and managers, and private parties, to discuss NPDES II issues and concerns. Its purpose is to enable a dialogue that will help clarify the federal permits, and determine the best technical management actions for compliance. It is an easy way to announce meetings and conferences, and inform others of useful information. It's free. Send an email message to:

[ListProc@lists.unh.edu](mailto:ListProc@lists.unh.edu)

Leave the subject line blank, and in the body of the message write: subscribe runoff.talk yourname

For instance: subscribe runoff.talk John Doe