



# LEGAL ALERT

www.swlaw.com

June 2008

## SNELL & WILMER

Snell & Wilmer has been providing exceptional service to clients since 1938. With more than 400 attorneys in offices throughout the Western United States, we are one of the largest, most respected full-service law firms in the region. Our diverse client base consists of large, publicly traded corporations, small businesses, emerging organizations, individuals and entrepreneurs. We have the experience and ability to address virtually any legal matter for both businesses and individuals. Over the years, Snell & Wilmer has earned a reputation for distinguished service by offering our clients what they value--exceptional legal skills, quick response and practical solutions with the highest level of professional integrity.

**Snell & Wilmer**  
L.L.P.  
LAW OFFICES

## New Hands-Free Cell Phone Law Affects Employers

Beginning July 1, 2008, California drivers are prohibited from using *hand-held* cell phones while driving. Employers who have employees driving on company business — which is nearly every company — will need to make some changes. This is a brief summary on the new “rules of the road” for a typical employer.<sup>1</sup>

The new law prohibits the driver of a vehicle from using a cell phone while driving —with a few exceptions noted below — *unless the driver is using a hands-free device*. Acceptable hands-free devices include earpieces or headsets (so long as they cover only one ear), Blue Tooth, or the phone’s speakerphone function. The new rules apply only to drivers, so any passengers can use hand-held cell phones in the traditional manner.

Fines for violations start at \$20 and increase to \$50 for each subsequent infraction. The conviction will appear on a driver’s DMV driving record, but the violation will not be added as a “point” and thus should not affect insurance premiums. The police can stop a vehicle for the sole reason

<sup>1</sup> The new law is The California Wireless Telephone Automobile Safety Act, found at California Vehicle Code § 23123. For more information, go the DMV website page, <http://www.dmv.ca.gov/cellularphonelaws/index.htm>.



that the driver was using a hand-held cell phone, but it is too early to tell how vigorously the rule will be enforced.

There are exceptions to the new laws. It will still be OK to use a hand-held phone:

- in an emergency, such as calling the police, fire or medical authorities, or
- for a truck driver, so long as the driver is using a digital two-way radio that operates by depressing a push-to-talk feature and does not require immediate proximity to the ear of the user.

The new law does not apply to school bus drivers, transit vehicle drivers, adults driving on private property, employees driving an emergency vehicle, and a variety of agriculture-related drivers. For drivers under age 18, the prohibitions are even more strict, eliminating virtually all forms of phone use while driving.

#### What do California employers do about the new “hands-free only” law?

Employers should consider taking proactive measures to avoid consequences for your employees and for your company. First, employers should inform their employees of the new law. Write a policy memo, require employees who drive on company business to sign the memo, and place a copy of the signed memo in the employee’s file.

Modify your employee handbook to restate the policy. Discuss it in driver meetings and among groups — such as with the company’s sales force — that are frequently on the road on company business.

If your company has regular truck drivers, this is a top safety issue for the current employees and all new hires. Train them on the law. Review the equipment they are currently using and make sure it meets all the criteria described above if you want them to use radio devices while en route. Truck drivers must be using vehicles requiring commercial class A or B licenses to get the benefit of the exception described above.

#### So what is your policy?

The extreme — and usually impractical — approach would be to prohibit employees from using cell phones of any kind while driving for work.

More practical: If the company provides cell phones for employees to use while driving on company business (or reimburses for cell phone use), *the company should provide the hands-free devices needed to use them safely and legally.* This can be as inexpensive as issuing employees earpieces (one ear only). Employers cannot charge employees for tools and equipment that is needed to



perform their jobs, so be prepared to absorb the expense.

So what should your written policy say? Here are some points to cover:

- you must always use hands-free devices while driving motor vehicles for work-related purposes during work hours or on company business;
- you are required to comply with all state and local laws regarding the use of cell phones while driving;
- you are responsible for any fines and penalties resulting from a citation;
- you may not send or read text messages while driving under any circumstances (while the new law does not address this point, it makes sense from a policy viewpoint);
- you should use hands-free cell phones only when it is safe to do so;
- you should take special care or cease using cell phones entirely when weather is inclement, traffic is heavy, or if you are unfamiliar with the driving area;

- when in doubt, pull over and make calls from a safely parked position.

For questions regarding the content of this newsletter, please contact Erin Denniston at 714.427.7008 | [edenniston@swlaw.com](mailto:edenniston@swlaw.com).