

IT SHOULDN'T TAKE AN ACCIDENT followed by an expensive trial to convince businesses to implement effective policies on distracted driving. And even if the company has a policy, it also shouldn't take a distracted driving case to make the business enforce it.

David Bobrosky and Sue Ben-david are attorneys specializing in personal injury and employment, respectively, at the law firm of Lewitt, Hackman, Shapiro, Marshall & Harlan in Encino, Calif. Both cite that all too often employers wish they had implemented a policy once an accident occurs. "And from the plaintiff side, that's what we look for: Did they really enforce the policy?" Bobrosky says. "And that's what OSHA (Occupational Safety & Health Administration) wants to see too."

Negligence in not effectively enforcing a policy will put you on the losing side, and cases are surfacing to prove it. In *Ford v. McGrogan & International Paper*, for example, a

woman's arm had to be amputated after a driver for International Paper rear-ended the plaintiff's car while on a cell phone in 2008. The company had a policy banning employees from using cell phones while driving but still had to pay \$5.2 million to settle the case.

These types of cases, in which a company had a policy but an employee ignored it, can be avoided as we see examples from companies that put in policies protecting their fleet, employees and other drivers.

GAINING CONSENSUS

John Kenner, executive vice president of The Jankovich Company, a Southern California-based petroleum distributor, makes "safety first" the company's mantra. Jankovich installed iZup in each of Jankovich's 30 fleet vehicles. The smartphone software allows operators to control cell phone usage while on the road. The company has set the software to prohibit all cell phone use, including

hands-free. The company consistently reviews data from iZup to ensure employees are using it correctly and not trying to override the control functions while driving.

Before implementing the software, though, Jankovich had already placed extensive safety measures. For example, Kenner created an employee incentive program in which groups competed for a \$250 bonus for going incident-free. "Everyone got the bonus," he says, adding that when he began implementing the safety tracking protocols he was sure to include the drivers in the discussions.

Employee response to the software and policy was "90 percent positive," according to Kenner. "It has taken a little relief off the temptation to communicate while driving," he says.

Some worried the ban would affect dispatchers' ability to change or cancel a delivery on the fly. Kenner's counter is simple: "I'd rather have [to wait] to turn the truck around than have the driver kill someone in

6 KEYS TO AN EFFECTIVE CELL PHONE POLICY

Just having a policy against distracted driving isn't enough — your company could still be considered negligent if the policy isn't enforced. Employee education and managerial support are vital steps toward preventing this dangerous practice.

BY JOANNE M. TUCKER



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FLEET MANAGEMENT

Bakersfield for the efficiency factor.”

In fact, studies reveal the loss of productivity may be overblown. A 2009 National Safety Council survey reported that 99 percent of companies that banned cell phone use while driving cited no decrease in productivity; many respondents actually experienced an increase.

Kenner says Jankovich underwent a similar change when it implemented the policy and software. Since iZup runs on smartphones, the company bought BlackBerrys for its drivers, who previously were issued basic flip phones. Drivers were now able to take advantage of the BlackBerry's email functionality for work tasks and updates while off the road. “At the end of the day it addressed one thing, and then we got a secondary surprise because it pushed us into email,” Kenner says.

But this type of safety technology implementation requires buy-in across the board. Matt Howard, co-founder and CEO of Zoomsafer, a Herndon, Va.-based developer of safe driving software for mobile phones, recalls one client that canceled the program after a month. “They had a revolt from their sales people,” says Howard, who believes the main problem was the client's failure in forewarning its employees, and the way it dictated the policy without any educational workshops or training sessions. Zoomsafer has since revamped its website to include white papers that address policy solutions and best practices.

Dan Ross, CEO of Needham, Mass.-based Illume Software, the maker of iZup, partners with several organizations working to prevent distracted driving. “We try to address behavior, and you can change behavior with education,” Ross says.

CREATING THE POLICY

The following steps will help prevent distracted driving in the workplace:

1 Engage in internal communications. Tell your employees that a cell phone policy is going to be is-

THE NUMBERS:

- **855,175:** NSC's estimated injuries so far this year
- **5,474:** Fatalities caused by accidents involving cell phone use in 2009
- **30 to 39:** Age group with the largest percentage of distracted drivers whose cell-phone use caused a fatal accident
- **35:** Number of states including Washington, D.C. that have banned texting while driving
- **24 seconds:** Estimated frequency at which an accident related to driving and cell phones occurs
- **20 percent:** Estimated injury crashes due to cell phone use while driving in 2009
- **9:** Number of states, including D.C., that have banned handheld use

SOURCE: NATIONAL SAFETY COUNCIL AND NATIONAL HIGHWAY TRAFFIC ADMIN.

sued. Hold open meetings, show examples from other companies and get feedback on appropriate penalties. Review distracted driving facts and show that top management is in support of a policy.

2 Make safety part of your company's credo. According to a Network of Employers for Traffic Safety (NETS) survey, companies with the lowest crashes per million miles (CPMM) issue monthly reports to their employees, track crashes, have safety-oriented messages throughout company statements and training, issue full bans on cell phones while driving and share the details of any accident — whether it involves injury or not — with the entire staff.

3 Plan tracking protocols. How will your company keep track of employee cell phone use? Besides considering safety software, Bendavid suggests reviewing call logs for company-issued phones.

4 Write out a policy. Make sure you're following your individual

state laws. Assess severity of punishment: 83 percent of companies with low CPMM respond with disciplinary action, not just a warning, according to NETS, which also suggests implementing the strictest option: termination. Once the policy is finalized, send out an internal press release and a companywide voice-mail. Sample policies can be found at nsc.org and trafficsafety.org.

5 Build staff buy-in. Having your employees sign the policy is a good start, but it's not enough. When you introduce the policy, use real stories of people who have been killed in distracted driving incidents. The official government website distraction.gov has videos and keeps track of distracted driving accidents and fatalities. Create and distribute a sheet explaining why the company has decided to implement the policy. Remind employees that signing the policy opens them up to liability as well; if they violate the policy, the company can take legal action against them.

6 Enforce the policy. After education and buy-in, stick by your measurement protocols and incentive programs, and keep employees in the loop of results. Gather survey information about individual productivity, especially since the effects are likely to be positive. Other tactics include reminders in fleet vehicles, such as NSC's “Pull Over and Park” poster, and pocket cards for each employee with a summary of the policy. Make sure there are clear chains of command so there are alternative contacts if someone is on the road. **BF**

The Network of Employers for Traffic Safety (NETS)'s national event, **Drive Safely Work Week**, will be held Oct. 3-7. This year's theme is **Focus 360°** and more information can be found at trafficsafety.org.

See **Page 34** for more information on fleet software that prevents cell phone use while driving.