

Mobile Technology and Workers Compensation

The goal of this bulletin is to alert employers to the increased exposure to workers' compensation claims if their employees are injured while using mobile technology while on the road, at home, after work hours, or in other situations besides the traditional workplace.

The workers' compensation statutes in most states provide for compensation of workers who are injured in the course and scope of their employment. In the traditional workplace, the course and scope of employment typically meant on the employer's premises, during normal work hours. Now that many workers have employer-supplied phones and laptop computers, and may also work from the road or home, the boundaries of the traditional workplace have blurred.

While there is as yet little or no case law on the topic, the following situations are examples of possible increased workers' compensation claim exposure for employers:

- A salesperson on a conference call while driving is involved in an automobile accident
- An employee working on a laptop computer in a home office develops carpal tunnel syndrome
- An employee who is texting while working at a construction site falls from an elevation
- An employee reading company email on a smart phone while crossing the street is hit by a car

These are all situations that could possibly be compensable, and they have all extended the boundaries of the traditional workplace.

Questions that a claim representative handling such a claim would have to answer include the following:

- Where was the worker going?
- Where was the worker coming from?
- Was the trip/email/text/conversation related to work?

- Even if the incident was not related to work, does the fact that the employer provided the mobile equipment make the claim compensable?

All of these and more questions will need to be answered as the claims are made and the case law is developed.

What Employers Can Do

In the meantime, employers need to have policies in place that define the course and scope of employment as it relates to the use of mobile devices. As with harassment cases, if the behavior is occurring, the employer will likely have some liability. Clear policies need to be in place to define the following:

- What is acceptable use of mobile technology
- When mobile devices are authorized to be used
- Whether talking or texting are permitted while driving

An additional benefit to these rules could be to help employees to maintain their work-life balance. Mobile devices add to efficiency and convenience, but all too often encroach on workers' personal lives and lead to longer work hours.

For assistance with these issues, Zenith has the following resources available:

- Cell Phone Policy
- Seat Belt Policy
- Driver Safety Program
- Motor Vehicle Safety Program Evaluation

Contact your Safety & Health Consultant for assistance with these resources.

Source: Simpson, Andrew G., "As More Workers Go Mobile, Workers' Compensation Exposure Grows," *Insurance Journal*, June 1, 2011

Zenith provides workplace safety resources at:

TheZenith.com

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