

Ohio to Ban Texting While Driving

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Ohio is poised to become the 39th state in the nation to ban texting while driving. Ohio's ban on texting while driving passed in the legislature and is awaiting the Governor's signature. The bill, HB 99, would ban writing, sending, or reading a text message on a handheld electronic wireless communications device while driving. An "electronic wireless communications device" includes a wireless telephone, a text-messaging device, a laptop or tablet computer, and other similar devices. Governor John Kasich has indicated he will sign the bill. The ban will go into effect 90 days following Governor Kasich's signature; however, drivers will have a six-month grace period following the effective date during which authorities are permitted only to issue written warnings to drivers found in violation of the ban.

A violation of HB 99 will be a secondary offense for adults. This means authorities cannot stop a motorist simply to investigate whether that individual was texting and driving. HB 99 provides 10 exceptions to the ban for adult offenders. These include texting for emergency purposes, texting while stationary outside a lane of travel, making or receiving a telephone call, using a device for navigation and safety purposes, and using the hands-free device feature or function of the vehicle.

HB 99 would make using a handheld electronic communications device in any manner while driving a primary offense for drivers under the age of 18. The law also requires instruction for new drivers under age 18 on the dangers of texting and driving. For these drivers, only three exemptions apply: texting for emergency purposes, texting while stationary outside a lane of travel, and using a hands-free navigation device requiring no manipulation while driving.

A person found in violation of HB 99 would be guilty of a minor misdemeanor; however, substantially equivalent municipal laws prescribing greater penalties (e.g., making texting and driving a primary offense) will not be superseded, preempted, or invalidated by HB 99. A driver found in violation of HB 99 will be fined \$150 and his or her license will be suspended for 60 days for the first offense. Subsequent offenses will subject the violator to a \$300 fine and a one-year suspension of his or her driver's license.

What This Means for Employers

Employers should have written policies banning texting while driving when employees are working. Given that many Ohio municipalities ban texting and driving or completely ban cell phone use while driving, employers also should consider banning the use of handheld electronic wireless communications devices unless hands-free technology is used. Such policies, in addition to helping employees avoid violating the law and making the roads safer, reduce the risk of liability for an employer on a theory of negligence per se or as respondeat superior. Moreover, proper handheld electronic wireless communications device policies extend a safe work environment to employees who must operate a motor vehicle as part of their employment and protect employees, employers, and other drivers.

Employers also should consider educating employees on the risks of "distracted driving," especially of texting while driving. Research shows texting while driving raises the risk of accidents many times over. Indeed, the Ohio

Highway Patrol has published sobering statistics regarding “distracted driving,” which includes behaviors required for texting (i.e., taking eyes off the road, taking hands off the steering wheel, and taking mind off what an individual is doing). In Ohio alone, there were 31,231 accidents that were caused by distracted driving between 2009 and 2011, including 74 fatal accidents and 7,825 injury accidents. Sending or receiving text messages takes a driver’s eyes from the road for an average of 4.6 seconds, which, at 55 miles per hour, is the equivalent of driving the length of a football field.

The state of Ohio and Ohio municipalities are taking strong measures to ensure a safe driving environment on Ohio’s roads by limiting the use of handheld electronic wireless communications devices. To promote safe driving habits and avoid liability for car accidents caused by employees while driving within the scope of their employment, employers should develop written policies on safe and lawful use of handheld electronic wireless communications devices and educate employees on the risks of using such technology while driving. Please feel free to contact your Jackson Lewis attorney to discuss Ohio’s ban on texting while driving and the relationship between your workplace policies and the new law and related municipal ordinances.

practices

Workplace Safety Compliance

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