

## Health, Safety, Phones and Cars

From 1 November 2009, using a mobile phone while driving has been illegal, unless the driver is using a hands-free device. Those caught by the Police face an \$80 fine and 20 demerit points on their licence.

While employers do not have any obligation under the new law to provide hands free kits to their employees, they ignore the issue at their peril.

Employers have an obligation under the Health and Safety in Employment Act 1992 to take all practicable steps to ensure the safety of their employees while at work. If an employee is expected to use both a mobile phone and to drive a company vehicle to perform their duties, the employer should give careful consideration as to how these requirements will co-exist. After all, the Act makes it clear that a vehicle can be a 'place of work'.

Consider the following scenario:

- An employee is provided with a company car and a mobile phone;
- The employee is expected to field calls from customers, suppliers and colleagues at the office;
- The employer has not provided the employee with a hands-free kit, but neither has it provided instructions about using the phone while driving; and
- The employee has an accident while driving and using the phone.

The employer will not be liable for any penalty imposed by the Police. However, by failing to provide a hands-free kit or to advise the employee not to take calls while driving, the employer may not have taken all practicable steps to ensure the employee's safety.

Employers should provide employees with specific instructions on how they expect them to deal with incoming calls/texts while they are driving. Should they pull over at the earliest opportunity to respond to a call/text, or ignore the phone until they reach their destination or even turn the phone off whenever they are using their vehicle? Alternatively, employers should make hands-free kits available to every employee with a mobile phone and who drives a company vehicle.

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