

It can wait

Employers need to do their part to ensure employees are safe on the road

INTERVIEWED BY MARK SCOTT

Employers that fail to enact distraction-free driving policies for their employees risk ending up in a really bad situation, says Rebecca Roderer Price, Of Counsel at Kegler Brown.

“I can think of no worse case for an employer than having an employee cause a catastrophic accident while distracted with an employment-related matter, whether it was responding to a phone call, a text or an email,” Price says. “You don’t want to be in that position.”

Distracted driving is a growing problem in the U.S. A total of 3,154 people were killed in motor vehicle crashes involving distracted drivers in 2013, according to the Department of Transportation. There’s no way to know what those people were doing that caused them to be distracted, but it’s inarguable that the roads are safer when motorists are focused on driving their cars.

Employers need to do their part by requiring employees to maintain that critical focus when they’re in the car.

“We’ve become a society where employers expect employees to always be accessible by phone or email,” Price says. “However, that should not be the case if the employee is driving.”

Smart Business spoke with Price about what employers need to know when employees take the road on behalf of the company.

How prepared are most companies to deal with a car accident involving an employee?

Employers are often under the impression that if they get sued for an employee’s negligence, they will have insurance to cover any judgment or settlement. That’s not always the case with a car accident. It really depends on who owns the car and what the facts are. Employers need to evaluate what they are asking of employees as far

REBECCA RODERER PRICE

Of Counsel
Kegler Brown Hill + Ritter

(614) 462-5411
rprice@keglerbrown.com

 **WEBSITE:** Want to know more about Rebecca? Check out her full profile at www.keglerbrown.com/price.

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as running business errands and carefully consider whether they have adequate insurance coverage. There are two different scenarios for business errands: either the company owns the car or it does not. When the company does not own the vehicle, there may not be insurance coverage if the company is presented with a claim.

Most companies have what’s called a commercial general liability policy that they believe will cover everything in terms of negligence or mistakes that happen in a business. However, most of these policies do not cover car accidents.

What is the ‘respondeat superior’ doctrine?

It stands for the notion that an employer can be held liable for an employee’s negligence if the employee is acting within the scope of employment. The rationale is simply that the employer is exercising some control over the employee while the employee is doing his or her job. An employer can therefore be vicariously liable under this doctrine where an employee is driving his or her own car on a business errand and has a car accident. The employer may not have insurance coverage for the accident.

If there is no insurance and the employer gets sued, it must then pay the attorney’s fees out of pocket. And if there is a settlement or finding of liability in court, the employer must pay that out of pocket as well. That’s a

big risk that some employers may not fully appreciate.

How can companies protect themselves?

First, talk to your insurance agent about the coverage you need to protect your employees and your business. Many insurance companies offer non-owned vehicle policies if your employees will be driving their own vehicles while working for you. Second, if you’re asking employees to drive as part of their job responsibilities, make sure they have a safe driving history. You don’t want to send an employee out on the road to further your business if that employee has a long history of unsafe driving. Third, you need to reduce the risk of an accident occurring in the first place and protect your business, your employees and other people on the road by creating a solid policy on distraction-free driving. Then you must enforce the policy, meaning there is a consequence for violating the policy.

It’s a hard thing to stay focused on the road when technology is just a swipe away, but it’s what needs to be done to ensure your employees are being safe on the road. A good policy on distraction-free driving isn’t necessarily going to insulate you from liability, but a solid policy at least will give you an argument against liability and will let employees know that it is OK to finish driving before taking the call. ●