

Use of mobile phones whilst driving on company business

The law prohibits a person from using a hand held mobile phone, or an interactive hand held device used for accessing data, while driving.

The offence is committed if a person uses a hand held mobile phone whilst driving, or causes or permits another person to do so. A person may be regarded as driving if the engine is running, even if the vehicle is stationary – 'driving' will be inferred if it can be shown that the vehicle has stopped temporarily during the course of a journey. In addition to making and receiving calls, the offence also includes making or receiving text messages, and has even been held to cover any function being performed on a mobile phone or interactive device which requires the individual to hold the device in their hand in order to carry it out.

A person will be liable for causing or permitting a person to use a hand held mobile phone or similar device whilst driving. This means that:

- employers will be liable if they require employees to use a hand held mobile phone whilst driving
- employers may be liable if they fail to forbid employees to use hand held mobile phones whilst driving
- employers are unlikely to be liable simply because they have supplied a driver with a hand held mobile phone
- employers are unlikely to be liable simply because they happened to telephone an employee who was driving at the time

As part of their health and safety responsibilities (including risk assessments for work-related driving), employers should introduce a mobile phone policy that clearly states that the use of a hand held mobile phone or similar device while driving on company business or driving a company vehicle is strictly prohibited and breach of this policy will be considered a disciplinary offence. They should make clear that "driving" can include situations where the vehicle is stationary if the engine is running and that "using" the device could cover a number of different actions, not just making or receiving a call or text message. Employees should be made fully aware of their obligations concerning driving on company business or driving a company vehicle.

The employer should also consider if the policy should include guidance on the use of hands free systems, for example:

- that it is the Company's recommendation that hands free mobile phones are not used whilst driving on company business or driving a company vehicle
- that no outgoing calls should be made unless the vehicle is stationary, with the engine turned off
- that incoming calls may be taken but should be kept to a minimum

Contact

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