

Labour & Employment Law Bulletin

British Columbia Bans Use of Electronic Devices While Driving

Upon proclamation of amendments to the *Motor Vehicle Act*, the use of handheld electronic devices while driving or operating a motor vehicle will be prohibited in British Columbia effective January 1, 2010. The ban includes communication by voice, electronic mail and text messaging but does not prohibit the use by fully licensed drivers of a hands-free device that is activated by a single touch. Once the ban is in place, in order to legally use a handheld electronic device while operating a motor vehicle, the driver must first pull over and safely park their vehicle at the side of the roadway.

Permitted Uses

The Ministry of Public Safety and Solicitor General has published information on the permitted uses of certain types of electronic devices while driving. For example, global positioning system ("GPS") devices may only be used while operating a motor vehicle if the device is programmed before the person begins operating the vehicle or if the device can be programmed through voice-activation. As well, certain devices used for commercial purposes such as two-way radios and mobile data terminals may be used by drivers if operated in the prescribed manner. A driver may listen to an audio player such as an MP3 or iPod, if the audio player is not held in the hand while driving and if the device is pre-programmed or is programmed by the driver when the vehicle is safely parked off the roadway.

A driver may make a 9-1-1 call to emergency services while operating a motor vehicle and persons carrying out duties in the police, fire, and ambulance services are permitted to use handheld devices while driving.

Penalties

Although the amendments are to be effective January 1st, the penalties for violations are not scheduled to take effect until February 1, 2010. From that date, a driver who uses a handheld device while operating a motor vehicle will be subject to a fine of \$167. If the driver is texting or emailing, then three penalty points will be awarded against the driver in addition to the fine.

New drivers under the graduated licensing program are subject to the \$167 fine plus the three penalty points for any use of electronic devices while driving and under the legislation are not permitted to use hands-free devices.



Action by Employers

This new law will be in effect on January 1, 2010. Employers should ensure that their employees are informed of the new legislation and required to comply with the law when operating any motor vehicle for business purposes, whether the vehicle is personally owned or provided by the employer.

In order to ensure compliance with the legislation, employers may consider taking the following actions:

- Inform employees of the provisions of the new legislation which prohibits the use of handheld electronic devices while driving;
- Establish a policy prohibiting the use of electronic devices while operating a motor vehicle for business-related purposes except as permitted under the legislation;
- Monitor compliance with the policy and address any breaches;
- Consider modifying employee voice and email messages to alert callers that messages will not be responded to while the recipient of the message is driving;
- Ensure that employees who are required to use GPS devices either program the device before driving or use a voice activated model;
- Monitor the employer's own expectations to ensure that employees are not being encouraged to respond to calls or messages while driving a motor vehicle; and
- Consider providing permitted hand-held devices to employees who are required by the employer to communicate by voice or text while driving.

Employers who operate in more than one jurisdiction should be aware that other Canadian jurisdictions have implemented similar legislation or have bills in progress to ban the use of handheld electronic devices while driving.

If you have any questions regarding the new legislation and how it may affect your workplace, please contact a member of the Labour and Employment Group.

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