

Legal News: November 2003

Mobile Phones and Driving - Changes to the Law

You are probably aware that by additions to the Road Vehicles (Construction and Use) Regulations 1986 it will be a criminal offence to drive a vehicle while using a handheld mobile phone with effect from 1st December 2003. Calls to 999 in a genuine emergency are exempted. Hands-free mobile phones are not affected provided that the phone is in a fixed cradle in the vehicle. Simply using an ear piece does not count as hands-free as far as the regulations are concerned.

The Department of Transport has very recently produced guidance as to the effect of the newly inserted Regulation 110, on employers, which may have implications where they have employees who use mobile phones and drive on company business. It is the view of the Department that an employer will not be liable simply because it supplies an employee with a mobile phone or if it phones the employee when he or she may be driving. However, it does say that the employer may well be criminally liable (as well as the driver) unless it has expressly forbidden its employees to use a mobile phone which it has provided while driving on company business. What is unclear from the guidance is whether an employer will be liable if the employee uses his or her own mobile phone for company reasons while driving and has not been expressly told that it is forbidden.

It is our suggestion therefore that if you employ staff who drive on company business and whether you provide them with mobile phones or not, you should write to each employee stating clearly and unequivocally that it is company policy that the employees must not use a mobile phone while driving on company business and that any breach will be treated as a serious disciplinary matter. It is our suggestion that a copy of the letter should be kept in each employee's personnel file.

Should you have any queries about this briefing, or indeed any other issues regarding employment law, or if you require assistance in drafting the suggested letter, please do not hesitate to contact either Simon Huggins (Partner) or Michael Legister who will be pleased to assist.

Yours sincerely

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