

## Employers Have New Role In Cell Phone Driving Law

On July 1, 2008, the long awaited California Wireless Telephone Automobile Safety Act finally goes into effect. The new law prohibits drivers over age 18 from using handheld wireless telephones while driving, unless the device allows for hands-free listening and talking. Drivers under the age of 18 will be prohibited from using wireless telephones altogether, even if employing a hands-free device, and from using "mobile service devices" such as Blackberries, a pagers and laptops.

So-called "push-to-talk" two-way radios are only exempt from the new hands-free law under very limited circumstances. Specifically, digital two-way radios that utilize a wireless telephone that do not require immediate proximity to the user's ear are exempt from the new laws, IF, the driver is driving:

- a motor truck or truck tractor that requires either a commercial class A or class B license to operate.
- a vehicle that is used exclusively in the conduct of agricultural operations.
- a farm vehicle that is exempt from registration.
- a commercial vehicle used in conducting certain commercial agricultural operations.
- a tow truck.

While the new laws do not impose any specific requirements on California employers, employers should consider implementing a written policy prohibiting employees from using a cell phone while driving to conduct company business, unless the employee utilizes a hands-free device. In addition, the policy should contain language stating that the employee, not the employer, is responsible for any citations for violating the new law. For those employees who are reimbursed for business-related cell phone charges or provided with a company cell phone, employers should provide a hands-free device or reimburse the employees for that expense. If the employee is required to use their own cell phone while on company business, the expense of outfitting the phone with a legal hands-free device must be borne by the employer.

Employers may not insist that employees violate the law when carrying out job responsibilities. Those that do could face wrongful termination claims from employees who are fired and from those who quit their job rather than comply. It is also a good idea to train supervisors and

managers to avoid giving employees any directive which is at odds with the new law.

The following FAQ's were written by the California Department of Motor Vehicles to provide further guidance on the new wireless telephone laws. You may access this information at [www.dmv.ca.gov](http://www.dmv.ca.gov).



**EMPLOYMENT  
LAW**  
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### **Q: When do the new wireless telephone laws take effect?**

**A:** The new laws take effect July 1, 2008.

### **Q: What is the difference between the two laws?**

**A:** The first prohibits all drivers from using a handheld wireless telephone while operating a motor vehicle, (Vehicle Code (VC) §23123). Motorists 18 and over may use a "hands-free device." Drivers under the age of 18 may NOT use a wireless telephone or hands-free device while operating a motor vehicle (VC §23124).

### **Q: What if I need to use my telephone during an emergency, and I do not have a "hands-free" device?**

**A:** The law allows a driver to use a wireless telephone to make emergency calls to a law enforcement agency, a medical provider, the fire department, or other emergency services agency. This is the only exception.

### **Q: What are the fines(s) if I'm convicted?**

**A:** The base fine for the FIRST offense is \$20 and \$50 for subsequent convictions. With the addition of penalty assessments, the fines can be more than triple the base fine amount.

### **Q: Will there be a grace period when motorists will only get a warning?**

**A:** No. The law becomes effective July 1, 2008. Whether a citation is issued is always at the discretion of the officer based upon his or her determination of the most appropriate remedy for the situation.

### **Q: Are passengers affected by this law?**

**A:** No. This law only applies to the person driving a motor vehicle.

### **Q: Do these laws apply to out-of-state drivers whose home states do not have such laws?**

**A:** Yes.

### **Q: Can I be pulled over by a law enforcement officer for using my handheld wireless telephone?**

**A:** Yes. A law enforcement officer can pull you over just for this infraction.

### **Q: What if my phone has a push-to-talk feature, can I use that?**

**A:** No. The law does provide an exception for those operating a commercial motor truck or truck tractor (excluding pickups), implements of husbandry, farm vehicle or tow truck, to use a two-way radio operated by a "push-to-talk" feature. However, a push-to-talk feature attached to a hands-free ear piece or other hands-free device is acceptable.

### **Q: What other exceptions are there?**

**A:** Operators of an authorized emergency vehicle during the course of employment are exempt, as are those motorists operating a vehicle on private property.

### **Drivers 18 and Over**

### **Q: Does the new "hands-free" law prohibit you from dialing a wireless telephone while driving or just talking on it?**

**A:** The new law does not prohibit dialing, but drivers are strongly urged not to dial while driving.

### **Q: Will it be legal to use a Bluetooth or other earpiece?**

**A:** Yes, however you cannot have BOTH ears covered.

### **Q: Does the new "hands-free" law allow you to use the speaker phone function of your wireless telephone while driving?**

**A:** Yes.

### **Q: Does the new "hands-free" law allow drivers 18 and over to text message while driving?**

**A:** The law does not specifically prohibit that, but an officer can pull over and issue a citation to a driver of any age if, in the officer's opinion, the driver was distracted and not operating the vehicle safely. Sending text messages while driving is unsafe at any speed and is strongly discouraged.

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