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## Cell Phones Making You Dial 911?

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Unregulated use of cell phones by employees in the workplace can be harmful to a business by being distracting and causing a lack of productivity. Cell phones can also be used by employees in more overtly harmful ways to bully, harass and/or discriminate against co-workers. Although such perils exist, employers can take action against liability and harm by regulating their employees' cell phone use while engaged in work and/while they are at the workplace.

Note that the key to such regulation is to establish a policy that is preferably written and published, and distributed to employees. Many employers limit cell phone use to times when the employee is off the clock, for example at lunch time or break time. Others simply advise that personal cell phone use should be kept to a minimum. Both of these policies are legally acceptable and it is at the employer's discretion as to which will be a better fit for the workplace. Keep in mind that the employer's anti-discrimination policies should include a clause stating that the workplace anti-discrimination policy can be violated through telephone calls and text messages, and not just through face-to-face communication.

Employers should also note there are different consequences when employees use cell phones purchased by the employer versus their own personal cell phones, which they have purchased. An employer who purchases a cell phone for an employee should make known to its employees that the cell phone is the property of the employer and that these phones must be returned upon leaving employment of the company. Employers should make it a business practice to request the return of cell phones upon employee departure because if legal action is taken against the employer, the cell phone text messages, recordings or other information may be valuable in helping the employer in its defense.

Employees may believe that they have a right to privacy in a cell phone which they have purchased for their own use, which may be true generally. However, there are certain situations in which a court may order an employee to turn over cell phone communications. For example, if an employee is violating an employer policy, such as an anti-discrimination policy, through the use of texts, a court may order the texts be produced during the discovery phase of litigation. In addition, if an employee produces texts on his or her cell phone, the employer may be entitled to review additional employee texts that are relevant.

Whether employees use personal or work-provided cell phones, employer's cell phone policies should forbid talking or texting on handheld cell phones while driving or engaged in other similar work-related activities. Without such a provision, employers risk being held liable if their employees get into accidents while driving, whether driving is part of the employee's job, or the employee is driving to travel for work, or the employee is traveling to a work-related event.

**TAKEAWAY:** Use the above 411 to make sure you don't need to dial 911 regarding your employees' cell phone use.

### **Attorney**

- Stephanie D. Gironda