4 The Office℠

FLEET DISTRACTED DRIVING

WHITE PAPER

4 The Office℠

Authorized Reseller

cellcontrol

MOBILE DEVICE DISTRACTIONS AND DRIVING: THE NEW EXPOSURE IN FLEET LIABILITY

Employees who bring mobile phones and other devices into your vehicles create an unaddressed liability, putting your organization at serious risk financially and legally. Forward-thinking fleets are proactively eliminating this risk, taking steps to ensure drivers aren't using mobile devices while on the road.

As a fleet professional, you can be liable for all of your drivers' actions, which is why many fleets seek to hire drivers who are risk-averse. In the past, fleets would use driver MVRs to gauge the potential risk to your fleet. However, there's a driving hazard that the majority of the population is falling victim to. It's a driving hazard that's becoming increasingly pervasive when it comes to fleet liability: using mobile devices while driving, whether it's texting, emailing, or other mobile device distractions.

This series will educate you on the dangers of mobile distractions behind the wheel, from a safety and liability perspective. It will also arm you with all the stats you need to gain management buy in to ban cell phone use in your fleet, providing strategies on how to prevent it altogether.

HOW MOBILE DEVICES INCREASE DRIVER DISTRACTION AND RISK

Numerous studies and reports have shown the dangers of cell phone use while driving. One of the more shocking reports came out of a University of Utah study comparing drivers who use their cell phones to drunk drivers. The report highlighted that the impairments associated with using a cell phone while driving can be as profound as those associated with drunk driving.[1] Cell phone users had slower reaction times, which resulted in a higher number of accidents. Compared to a regular driver, the risk of a crash is four times more likely when a person is using a cell phone, according to the National Safety Council.[2]

> "…the risk of a crash is four times more likely when a person is using a cell phone, according to the National Safety Council.[2]"

What's more alarming is that this type of driver behavior is becoming more commonplace. A national survey by AAA Foundation for Traffic Safety found that 69% of drivers reported having talked on their cell phones while driving in the past 30 days, and 24% admitted to texting or emailing while driving.[3]

Law enforcement is aware of this growing epidemic and as a result 46 states have banned texting while driving; meanwhile only 14 states have banned hand-held cell phone use altogether, considering it a primary offense.[4] Since June 2013, the penalty for using a cell phone while driving in New York, for example, equates to 5 points on your license and a fine of up to $200 for the first offense, while a second or third offense within 18 months of each other results in a $250 and $450 fine, respectively.[5] To put that into perspective, in New York, "reckless driving" is also a 5-point violation, while "failure to obey a traffic signal" is only 3 points.[6]

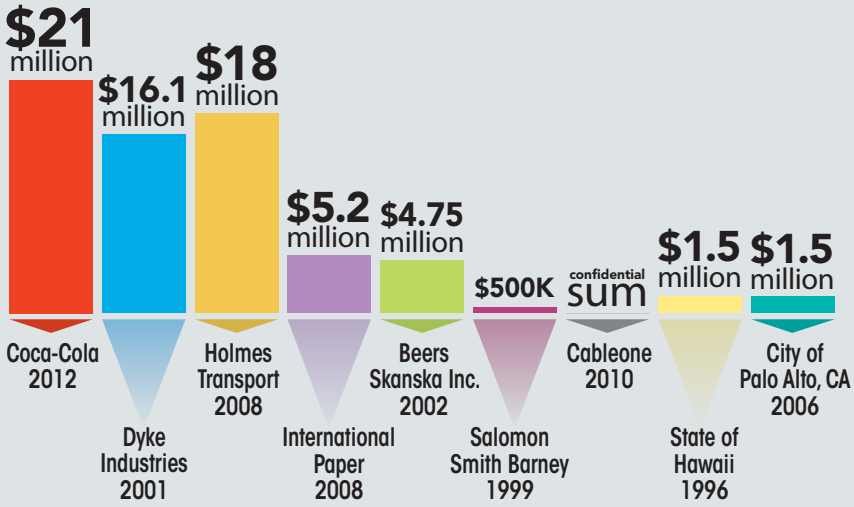
This also means that illegal cell phone use will start appearing on MVRs, which can have a profound impact on individual driver profiles. If the violation happens while the person is a driver for your fleet, this means it can tarnish your fleet's overall risk profile — not to mention the potential loss in brand equity.

Fleets need to be proactive in preventing cell phone use while driving, and this goes beyond training and awareness programs and simply having your drivers sign a company policy.

THE CONSEQUENCES OF A DISTRACTED DRIVING ACCIDENT

Similar to other risky lifestyle behaviors we know to be dangerous but don't fully apply the consequences of the activity to ourselves, mobile technology increases fleet exposure to "at-fault" liability for accidents involving your drivers. A recent AT&T study surveying 1,000 drivers revealed 98% of those who text and drive are aware it's dangerous, but 75% say they continue to do it.[7] We ignore better judgment, take the risk and hope nothing bad happens. This is not an effective approach. Your

Distracted Driving Lawsuits & Judgements



goal is to reduce and eliminate risk in your fleet, but without addressing distracted driving in your company, you're essentially placing control of the risk with the very same employees who are knowingly practicing unsafe and illegal mobile device use behind the wheel. It's not a matter of if your fleet will experience an accident caused by distracted driving, but when. Moreover, savvy fleet managers know that they can't just hope for compliance with awareness campaigns or a written policy. Others are learning the hard way, through multimillion-dollar lawsuits, what the consequences can be for crashes involving distracted drivers.

If you have been working in fleet for a few years, you're probably aware of one noteworthy case involving Coca-Cola. In 2012, a Texas jury slapped the beverage company with a $21 million verdict after a Coca-Cola employee struck a woman with a company-owned vehicle while talking on a hands-free device. While the company had a written policy that required the use of a hands-free device, which was consistent and even exceeded Texas state law requirements, the company was called out for its cell phone policy being too vague and ambiguous. The plaintiff's attorneys in the case argued that Coca-Cola knew the cognitive dangers of talking on a cell phone while driving but didn't share this information with employees.

"Today's verdict I hope sends a message to corporate America that you can't have employees on a cell phone and endanger the motoring public," said Bob Hilliard, a lead trial lawyer in the case. "From the time I took the Coca-Cola driver's testimony and obtained the company's inadequate cell phone driving policy, I knew we had a corporate giant with a huge safety problem on our hands."[8]

This case made it clear to the fleet industry that even having a cell phone policy in line with state law wouldn't necessarily protect a company from potential liability and litigation, making fleets consider banning cell phone use altogether — hands free or not.

> "Today's verdict I hope sends a message to corporate America that you can't have employees on a cell phone and endanger the motoring public."
>
> *Bob Hilliard, a lead trial lawyer in the case against Coca-Cola.*

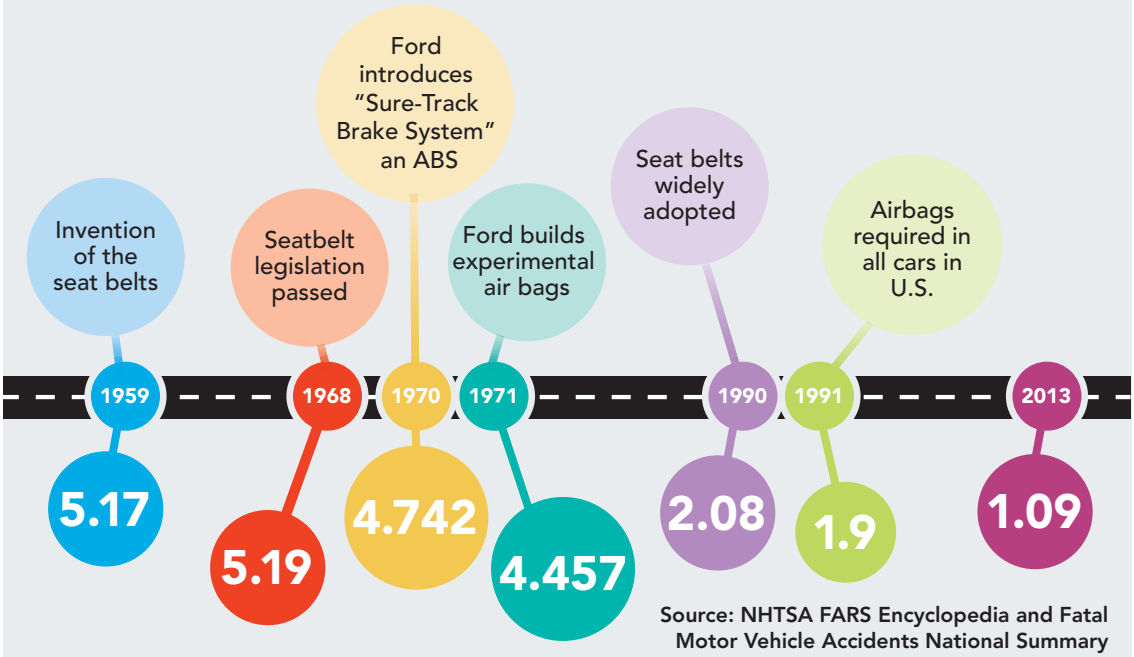
The Coca-Cola case garnered an onslaught of media attention but there are countless other distracted driving lawsuits with numerous victims and multimillion dollar judgments. In 2007, a jury fined a technology company $21.6 million. Their employee was using her cell phone while driving and rear-ended a vehicle, resulting in a fatality. In 2001, a lumber distributor paid $16.1 million after an employee struck an elderly woman and severely injured her. The employee first claimed he only used his cell phone after the crash, but his phone records showed he had been on the phone prior to the accident. Additionally, a construction company in Georgia paid a plaintiff $4.75 million to settle a case over a cell phone-related driving accident.

Avoiding lawsuits and large fines are eye-opening reasons for you to ensure you're finding ways to enforce your cell phone policy. Another motivator for being proactive with your policy is driver safety. The previous lawsuits emphasized the monetary loss, but the following crashes show how looking down at your cell phone even for a few seconds can result in lives lost. In 2010, a semitrailer crossed a median and entered oncoming traffic where it was struck by a 15-passenger van. This crash resulted in the deaths of 11 people in Mundfordville, Ky. In the same year, a distracted truck driver set off a chain reaction of accidents. The driver rear-ended another tractor-trailer, which hit a school bus carrying 23 passengers. Moments later a second school bus rear-ended the first school bus. Two people were killed and 38 were injured, according to the National Transportation Safety Board (NTSB).

A high-profile case involving an Arizona truck driver, who was browsing Facebook and YouTube and killed a police officer, illustrated how an attempt to curb cell phone use through an on-board video recorder proved unsuccessful. The video captured the driver crashing his semi into three police cars and two fire trucks that were responding to a roadside accident. Although the driver's company installed a video recorder in the vehicle, the driver placed his wallet in front of the recording device, attempting to hide his cell phone use, according to police records. The recording captures everything leading up to the accident and the driver's 65 mph impact with each one of the emergency vehicles. In the video the driver's phone flies from his hands after impact. Officers involved in the accident say they were waving down the driver in an attempt to catch his attention before jumping out of the way. The driver claimed he had been looking in his mirror at the time of the accident, but investigators found that the driver was browsing the Internet. The driver was charged with second-degree murder.

The on-board video event recorder detailed the specific driving negligence to crash investigators, while creating a chain of evidence proving culpability, however, it could

Fatality Analysis Reporting System (FARS) Rates as Safety Enhancements Come into Play



Source: NHTSA FARS Encyclopedia and Fatal Motor Vehicle Accidents National Summary

not prevent the driver from using his cell phone — the one thing that would have prevented the accident in the first place.

Founder of distracted driving organization EnDD Joel Feldman has been speaking on the topic since the death of his 21-year-old daughter. Feldman is a personal injuries lawyer in Philadelphia, but travels around the country to train professionals on distracted driving. In a blog post written by Feldman he says he sees a trend of more and more employers who want to do everything they can to keep their employees safe. "Given that car crashes account for more than 20% of all work-related fatalities, employers have a good reason to worry," Feldman says.[9]

THE REALITIES OF ADOPTING SAFETY TECHNOLOGY

NTSB compiles an annual "Most Wanted List" representing the top priorities that need to be addressed on the road, and for the last three years driver distraction has been toward the top. In fact, "Disconnecting from deadly distractions" claimed the No. 1 spot on the 2015 list.

Although awareness is growing, it doesn't always coincide with adopting a solution. History has shown that it takes a significant amount of time from invention to wide-scale adoption, even with some of the most significant safety enhancements in the automotive industry. The three-point seatbelt was invented in 1959 by Swedish engineer Nils Bohlin. Automobile manufacturers began installing the new safety belts in cars, but only 10-15% of passengers nationwide used them, according to NHTSA. It took seat belt legislation and public education before people started wearing them. From 1984 through 1990 seat belt use grew from 14% to 62%.[10]

As you can see in the timeline below, the national rates of fatalities per 100 million vehicle miles traveled has declined since seat belt legislation was passed. The continued decline in fatalities also coincides with the introduction of other major safety technologies. Another pivotal safety feature that took time to be considered a necessity was the airbag. Ford introduced an experimental airbag system in 1971, but they didn't become standard on cars until 1998. Today, air bags save thousands of lives every year — imagine the number of lives saved if they had been implemented into every vehicle since their inception.

The proliferation of safety features, stricter safety regulations and better driver training are all contributing reasons for the decline in fatalities. But why does it take the industry so long to adopt new approaches, as was the case with the three-point seat belt?

Backup cameras, premium vehicle upfit packages with ABS and roll-stability control are all examples of safety features that fleets have to weigh the increased capital cost of the vehicle with the benefits. Before adopting these technologies fleets tend to ask, "What's the ROI?" instead of "Am I likely reducing the frequency/severity of crashes and/or exposure to liability?" Innovative fleet managers realize that being an early adopter of safety technology will likely pay off in the long run, reducing accident costs and even potentially increasing vehicle resale value.

WHERE DO YOU FALL ON THE CURVE?

The technological adoption lifecycle can be seen in the Rogers' bell curve.

Just like any other product, fleet technology is applicable to Rogers' innovation adoption curve. Are you presenting new innovative/cost saving ideas to your company? Do you talk to others in your industry about what the latest trends are and bring those back to your organization? Or on the other end, are you resistant to change

and wait before embracing new solutions within your fleet? Or are you skeptical of new technologies until you see them widely used elsewhere before deploying? Depending on how you answered these questions will tell you where you and or your company fall on this curve.

When it comes to the lives and health of employees, and risk and expense to the fleet, best-in-class fleets are on the left of the innovation adoption curve. With new technology solutions constantly emerging, it makes it easy to get overwhelmed and avoid innovation and even become complacent with your fleet operations. Early adopters tend to achieve the greatest advantage due to the time they leverage solutions and the impact they have on shaping the solutions moving forward.

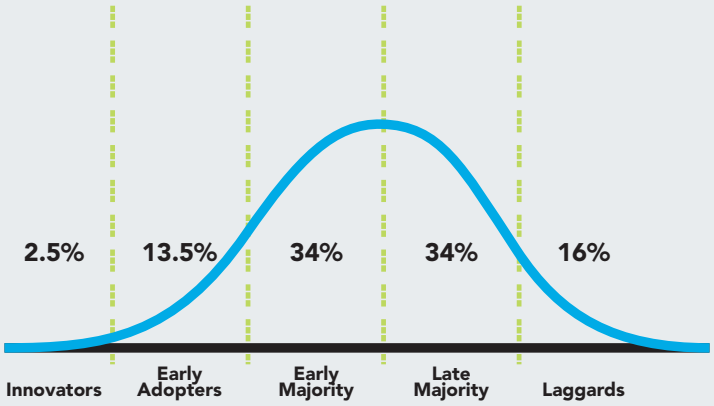
Being an early adopter of driver distraction technology is the proactive way to manage the problem, avoid the consequences of an employee making a mistake that could result in a catastrophic lawsuit, and shape the future of the solutions. In the next section, we will look at distracted driving technology and how to adopt a preventive method.

HOW SAFETY TECHNOLOGY CAN PREVENT DISTRACTED DRIVING

With high-profile cases like the Arizona truck driver who was caught using his cell phone to browse Facebook and YouTube, it's clear that mobile technology is causing driver distraction, accidents and loss. Moreover, education and awareness alone aren't curing the urge to use devices. While technology may be at the root of mobile distractions behind the wheel, ironically it can also provide the solution for ending those distractions in the first place. There's an increasing public outcry for services to manage and restrict cell phone use in vehicles. Many fleets are using GPS tracking and onboard video systems to manage vehicle location services to understand driver in-cab activities associated with severe events. However, these technology solutions don't proactively and automatically enforce mobile phone policies; they simply give fleets a way to monitor that behavior, not prevent it. At best, these systems showcase the symptoms and consequences of distracted driving, and in the case of video, only provide a damaging chain of evidence highlighting poor behavior at the time of an incident.

New to the marketplace is mobile device policy enforcement technology that guarantees drivers cannot inappropriately use their phones while driving, except for emergency calls.

The Adoption Curve



The technological adoption lifecycle can be seen in the Rogers' bell curve.

First-Hand Experience with Cellcontrol's DriveProtect

DeCrescente Distributing Company has a fleet of 75 company-owned vehicles that service 7,500 square miles in eastern New York. For the beverage distribution company, driving is really the bulk of its business. Tom Turcotte, vice president of operations for DeCrescente put in place a zero-tolerance policy.

"Hands-free use of cell phones via Bluetooth was really no better than picking up the phone when it came to safety," Turcotte says. "Even though hands-free cellphone use is still legal in New York State, we decided to block usage entirely while a vehicle is in motion." Research supports DeCrescente's approach showing that using hands-free technology doesn't reduce the risk of distraction. A 2014 AAA study found that voice-activated systems can be categorized as a level 3 distraction, which means a high level of impairment due to cognitive distraction.[11]

Turcotte admits it was an adjustment at first since the instant gratification of reaching a driver was no longer possible, but he says management has learned to be patient, resulting in an overall improvement in the company's safety culture.

Cellcontrol DriveProtect has also benefitted fleets on a larger scale. A national company who provides engineering, construction and installation services to firms in telecommunications, broadband and satellite industries recently implemented the driver distraction solution on more than 700 Windows and Android mobile devices. Some of the results included a reduction in rear-end accident rates by 82% and a drop in overall accidents by 42%. The company also reduced operating and risk costs, improved safety through policy enforcement and gained legal protection against punitive claims.

One direct store delivery company in the southwest has reduced crashes by 50% in the last four years. The company has also lowered its insurance costs by thousands of dollars. "It has also kept us in compliance with both state and federal safety regulations,

along with their support team that has been able to answer and solve any problems that may arise," says David Eichermuller, assistant safety director, North Florida Sales.

A national business services company is balancing safety and productivity by eliminating texting, emailing and unnecessary phone applications while simultaneously enforcing only hands-free inbound/outbound calls. This means if a company wants to allow hands-free, that's also an option.

In Cellcontrol's most recent quarterly distracted driving report, its DriveProtect technology has stopped 24 million attempts to open a cellphone application and/or SMS/text messages by a driver behind the wheel.

How does it work?

Cellcontrol hardware comes in several trigger options depending on the fleet need. The hardware detects vehicle motion and communicates change in status directly with the DriveProtect software loaded on any mobile device in the vehicle. A company's enforcement policy activates when vehicles move, and deactivates at the conclusion of a trip. Fleets customize the parameters of their Cellcontrol policy on the Cellcontrol Management Web can Portal. Everything from music apps, hands-free calls, navigation apps and auto-responding SMS can be tailored to each fleet's specific policy.

After placing the Cellcontrol Trigger in the vehicle and pushing the Cellcontrol app to each driver's mobile device, the technology detects when a vehicle is in motion and actively enforces the employer mobile device policy until the vehicle stops — at which point the policy is lifted and the driver is able to use the phone.

Cell phone policies can be as restrictive as preventing drivers from making/receiving calls, sending or receiving texts and emails, or accessing any phone functions until the vehicle is stopped. Or, policies can be less restrictive, allowing activities like hands-free calls, navigation, and/or custom applications. "The DriveProtect Management Console allows our customers to customize policy at the fleet, region, branch, vehicle, or even individual level," says David Coleman, VP of Strategy and Market Development for Cellcontrol. "We recognize fleets are balancing safety against the productivity gained by having employees carry mobile devices, and our technology platform fully supports that goal."

Cellcontrol's hardware is specifically designed to be quickly installed. Setup takes less than five minutes per vehicle and requires no mobile device pairing. Cellcontrol's software and hardware is tamper resistant and notifies you via text or email alerts if there are any attempts to tamper with a trigger device or software.

The technology is compatible for all Android, Apple, BlackBerry (up to V10) Windows 5 and 6, and a number of non-smartphones.

CONCLUSION

Texting, emailing and cell phone use while driving are prevalent distractions in all fleets and present a temptation that even your best fleet drivers are susceptible to. It's naïve for fleets to expect that a paper policy and occasional reminders will keep your drivers from accessing their phones while behind the wheel. More than just naïveté, case law has shown it to be classified as a negligent practice.

The state and federal highway regulatory bodies and legislatures are aggressively seeking enforcement against drivers who violate handset use laws. The legal system sees distracted driving lawsuits as easy wins against employers whose vehicles are involved in distracted driving incidents.

Exhibited in some of the cases mentioned earlier, distracted driving lawsuits can not only tarnish your company's reputation, but also be catastrophic in terms of lives and cost. The solution is to proactively prevent distractions. It's clear that being an early adopter of Cellcontrol is the answer to eliminate negligence and liability exposure caused by employees using mobile technology while driving.

RESOURCES

[1] **A Comparisons of the Cell Phone Driver and the Drunk Driver (March 2005)**
http://www.distraction.gov/downloads/pdfs/a-comparison-of-the-cell-phone-driver-and-the-drunk-driver.pdf

[2] **Annual Estimate of Cell Phone Crashes in 2013 (July 2015)**
http://www.nsc.org/DistractedDrivingDocuments/Attributable-Risk-Estimate.pdf

[3] **Distraction and Teen Crashes: Even Worse Than We Thought (March 2015)**
http://newsroom.aaa.com/tag/cell-phone/

[4] **Distracted Driving Laws (September 2015)**
http://www.ghsa.org/html/stateinfo/laws/cellphone_laws.html

[5] **Distracted Driving, Talking & Texting (Retrieved: August 2015)**
http://safeny.ny.gov/phon-ndx.htm

[6] **About the NYS Driver Point System (Retrieved: August 2015)**
http://dmv.ny.gov/tickets/about-nys-driver-point-system

[7] **It Can Wait Compulsion Survey (May 2014)**
http://about.att.com/content/dam/snrdocs/It%20Can%20Wait%20Compulsion%20Survey%20Key%20Findings_9%207%2014.pdf

[8] **Jury Awards More than $21 Million Against Coca Cola Refreshments USA, Inc. (May 2012)**
http://www.prweb.com/releases/prweb2012/5/prweb9478383.htm

[9] **What are Employers Doing About Distracted Driving? (August 2015)**
http://www.legalexaminer.com/automobile-accidents/what-are-employers-doing-about-distracted-driving/

[10] **America's Experience with Seat Belt and Child Seat Use (June 2013)**
http://www.nhtsa.gov/people/injury/airbags/Archive-04/PresBelt/america_seatbelt.html

[11] **Imperfect Hands-Free Systems Causing Potentially Unsafe Driver Distractions (October 2014)**
http://newsroom.aaa.com/tag/dr-david-strayer/