

Workers' Comp & Safety News



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Safety

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Can Technology Reduce Distracted Driving?

Technology caused the problem but maybe it has the solution as well.

Approximately nine people are killed and more than 1,000 are injured in car crashes reportedly involving a distracted driver each day in the US, according to the National Highway Traffic Safety Administration.

Distracted driving can be **visual** — taking your eyes off the road; **manual** — taking your hands off the wheel; and **cognitive** — taking your mind off driving. Using the car's navigation system or talking with passengers or eating while driving are forms of distracted driving. But the most common and lethal form of distracted driving involves using hand-held devices while driving, namely using a cellphone.



Should you Test Potential Employees for Integrity?

Frank Russo, senior vice president of risk and legal affairs and privacy officer for Irvine, California-based elder care firm Silverado, decided to start exploring the integrity of his job candidates.

Of the 15,000 potential candidates for jobs at Silverado over the past 3½ years, 24 percent were deemed “not qualified” according to the integrity testing it used. (There are several services that provide pre-employment integrity testing.)

Russo told *Business Insurance* that the biggest challenge is

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Texting behind the wheel is illegal in 47 states and the District of Columbia and 14 states make using hand-held cellphones illegal.

Most people are aware of the hazards and illegality of using cellphones while driving, but laws, common sense and company policies often have little impact. "More training is probably one of the worst solutions for this problem," said Michael Davis Sr. VP and risk control leader for Lockton Companies, Houston, in an interview with *Business Insurance*.

"It's an easy thing to adopt (for companies) because (they) can say, 'Hey, we sent out a memo,'" says Davis

He thinks technology offers the best solutions for reducing distracted driving. There are a growing number of firms starting to work on ways to keep people from using their cellphones, especially people who drive as part of the job.

Cell phone blocking: Blocking apps can be downloaded and activated to the cell phone or installed in vehicles as a "geofence" or virtual barrier around drivers, preventing them from sending or receiving transmissions. Many providers permit certain white-listed incoming phone numbers and will allow the driver to make an outgoing call in an emergency.

On board cameras or car "black boxes": Some units, called dash cams, record drivers ("cabin view") as well as the front view of the road ahead and can be useful in a variety of ways. The recorded video can be used to monitor driving habits, including ensuring that drivers refrain from cellphone use, as well as providing evidence in the event of a

traffic accident.

Eye-tracking software: Car safety experts are studying how to mitigate driving without awareness (DWA). Tobii Pro, an eye-tracking technology company headquartered in Stockholm, defines DWA as "the sense of operating a vehicle with little or no conscious attention to the surrounding traffic, also known as subconscious driving."

Car manufacturer Audi and others have been working with the technology to study driver awareness by tracking their eye movements. With results from these studies they hope to develop systems to provide feedback to drivers to help them maintain and improve their conscious attention to surrounding traffic.

Banned Cellphones and Productivity Concerns

The biggest obstacle to preventing distracted driving is often inertia on the part of companies. They either don't want to spend the money on funding technological solutions or they may be worried that doing more than paying lip service to banning cellphones would reduce productivity. A typical sales force may spend a bulk of their time on the phone, talking to customers, calling prospects, etc. while driving between appointments.

Yet, in a 2010 survey by the National Safety Council of Fortune 500 firms, only 7 percent of companies with cell phone bans in place reported productivity declines, while 19 percent thought productivity had increased.

David Teater, president and founder of Fo-

walking away from someone with a great resume and referrals when they don't pass the integrity test. Others in the company question Russo's approach sometimes. But he says, "I'm completely grateful for the integrity test because obviously the integrity test caught something I didn't."

The University of Arizona conducted an independent survey that showed non-test takers at Silverado hired two years prior to implementing integrity testing filed more workers' comp claims with higher payouts than workers hired after integrity tests were implemented.

"Those are pretty strong numbers," said Russo.

cusDriven LLC, and the father of a boy who was killed in a distracted driver accident, thinks productivity loss is a red herring.

"Being a former CEO myself and having probably spoken to hundreds of CEOs over the years and hundreds of companies that have put these policies in place, maybe thousands, I've never heard of, not only not heard directly, I've never even heard of a company saying 'we put this policy in place, and it hurt sales commissions; it hurt productivity; it hurt customer service; not even one comment on that anecdotally in the last 10 years, which I think is amazing,'" Teater told CNN.

Of course, in the long run, driverless cars could start making these concerns irrelevant. For help mitigating the problem of distracted driving in your company, please contact us.



Second Injury Funds

More than half of all injured workers have a pre-existing condition, according to one expert. When you have an employee with a permanent impairment who suffers a second injury, you are responsible for compensating only the most recent injury. Many employers fail to realize this, often spending thousands of dollars more than they need to.

More than 20 states have “second injury funds” that pay benefits to workers when an injury aggravates a pre-existing permanent health condition. According to Rupp’s Insurance and Risk Management Glossary, Second Edition, second injury funds have the goals of fairly apportioning “liability for compensation benefits and to overcome reluctance to hire handicapped or disabled workers.” Insurance carriers and self-insured employers fund second injury funds by paying an assessment, which is usually based on the percentage of workers’ compensation premium written in the state (for insurance carriers) or total benefits paid.

Second injury funds will reimburse an employer or insurer when a worker with a pre-existing condition suffers a second injury that aggravates the pre-existing one. However, reimbursement is not automatic — an insurer or self-insured employer must apply for it.

Generally, if you have a fully insured plan, your insurer will take responsibility for applying to the second injury fund for any eligible claims. The fund will either reimburse the carrier or self-insured employer for lost-time and medical benefits paid to a claimant, or take over payments to the claimant once he



or she is deemed eligible for second-injury fund payments. The state laws creating the fund will determine which method the second injury fund uses.

To be eligible for reimbursement by a second injury fund, the second injury must be more severe than it would have been if the individual did not have a pre-existing condition. And claims must meet a threshold, such as 104 weeks of indemnity payments,

before the fund applies. Second injury funds may cover claims where the pre-existing disability was not work-related. In other words, if you have an employee with a permanent partial disability, such as hearing loss, that was congenital rather than work-related, and a second injury worsened that condition, the state’s second injury fund might cover the second injury.

What do second injury funds mean for employers?

Most second injury funds require an employer to certify that it knew that the employee had a pre-existing injury at time of hire, or before the second injury occurred. To protect your organization from the unnecessary cost of second injuries, your human resources and risk management departments should identify every new hire with pre-existing conditions. Although employers might fear that asking employees about pre-existing conditions could violate the Americans with Disabilities Act (ADA), the ADA does not prohibit employers from obtaining information about a pre-existing injury, as long as the employer requires a medical examination or makes medical inquiries only after making a conditional offer of employment. The ADA also does not bar employers from sharing information on an employee's pre-existing condition with a second injury fund or state workers' compensation authorities.

When a worker with a pre-existing injury or condition files a claim, the employer should make the claims adjuster aware of the pre-existing injury or condition. The adjuster will calculate the settlement value of the claim, and/or file the claim with the second injury fund.

Submitting a claim to a second injury fund can help employers with experience-rated workers' compensation policies avoid a big premium increase. It can also make it more appealing to hire former military service persons, many of whom have service-related disabilities.

For more information on second injury funds, or more information on handling permanent partial disabilities in the workplace, please contact us. ■

OSHA Extends Electronic Form 300A Filing Compliance Date

The extension is being made to give the new administration an opportunity to review reporting requirements.

At the end of June, OSHA filed a proposal to delay the compliance date of its rule entitled "Improve Tracking of Workplace Injuries and Illnesses." The initial deadline "by which certain employers are required to submit the information from their completed 2016 Form 300A to OSHA electronically" was originally set for July 1, 2017. The action extends the submission deadline to December 1, 2017.

Waiting for the New Administration

The Department of Labor announced that it was extending the deadline "to provide the new administration an opportunity to review the new electronic reporting requirements prior to their implementation and allow affected entities sufficient time to familiarize themselves with the electronic reporting system, which will not

be available until August." This rule would simply require that employers with 250 or more employees and those with at least 20 employees in certain high-risk industries start to submit electronically information already being kept in their OSHA logs. (For establishments OSHA deems high-risk, please see this list:

<https://www.osha.gov/recordkeeping/NAICScodeforelectronicsubmission.pdf>)

Lack of Resources

"They just don't have the resources right now to be able to put all that into place," Edwin Foulke, an Atlanta-based partner at Fisher & Phillips L.L.P. and a former OSHA assistant secretary of labor told *Business Insurance*. "To me, it seemed like it was a stretch anyway to require all this. The (Occupational Safety and Health)



Act talks about recordkeeping and collecting data, but it never envisioned such a broad sweeping thing. I just don't think the agency is equipped to handle all the data they would get from a technical standpoint."

Proposal to Reconsider, Revise or Remove Certain Provisions

In addition to postponing the compliance effective date, OSHA "also intends to issue a separate proposal to reconsider, revise or remove other provisions of the prior final rule." OSHA is referring to the rule's public reporting and anti-retaliation provision, which employers have strongly objected to.

Much of the reason for delaying compliance and forestalling decisions about whether the other rule requirements will be "reconsidered, revised or removed" are in recognition of the fact that an assistant secretary of labor of occupational safety and health has not yet been nominated. That could change a lot of things.

But it doesn't mean employers should be lax about these rules. "Employers need to make sure the logs are right," Mr. Foulke told *Business Insurance*. "They should be making sure that all that data is in place and correct and available. Assuming that come Dec. 1 (OSHA) decides that they're not going to



change that, (employers) should be able to put that information quickly into the system."

Foulke also thinks that if OSHA was able to collect and mine all the data from OSHA 300A logs the information would be quite valuable for improving safety and health programs, investigating accidents and determining their root causes.

Employers however remain concerned

that the anti-retaliation law as proposed would ban or limit safety incentive programs. They are also concerned about making data from their logs public.

We'll try to keep you updated on when the new electronic compliance date takes affect and changes in the original provisions regarding public reporting and anti-retaliation.



What Safety Regulations Apply to Your Business?

When it comes to workplace safety, ignorance is no defense. OSHA safety and health regulations often apply to all businesses, regardless of size.

If you're not sure which regulations apply to your business, OSHA provides some resources. It has created a Web-based step-by-step guide to help small employers identify some of the regulations that might apply to them. You can find this OSHA Compliance Assistance Quick Start at https://www.osha.gov/dcsp/compliance_assistance/quickstarts/index.html.

OSHA also offers employers an on-site consultation service. Trained state government staff will visit your site and provide free advice. The service is completely separate from any enforcement programs that OSHA operates, and is entirely confidential. Sessions identify and uncover potential workplace hazards and are intended to help small business owners improve their workplace safety and health systems.

If that isn't sufficient incentive, then this might be — you could qualify for a one-year exemption from routine OSHA inspections if you participate! Find out more at <https://www.osha.gov/dcsp/smallbusiness/consult.html>.

Your insurance broker can also help you with compliance and safety issues. For more information, please contact us. ■



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