

Distracting Driving Policies Must Address Both Texter & Textee



Bans on texting while driving are a 2-way street.

- Nearly 50% of Canadians admit that they've typed on a cell phone while driving on at least one occasion
- People using a phone or other handheld device while they drive are 8 times more likely to get into a crash or close call than those who drive undistracted

Texting and other forms of distracted driving isn't just a highway issue; it's also a significant workplace safety challenge, especially in transportation, heavy manufacturing, construction, mining and other safety-sensitive industries where it's crucial for workers to pay close attention to what they're doing at all times. For these reasons, many employers have adopted distracted driving policies banning workers from texting while driving or operating heavy machinery and providing for discipline in the event of violations. While this is a completely justifiable policy, it can also be undone by a blind spot.

Texting & Driving Bans Run in Both Directions

Consider this scenario, which is based on an actual federal case. A railway adopts a strict policy banning the use of personal handheld electronic devices for workers carrying out safety-sensitive tasks requiring full attention. A train engineer with a history of discipline for violating the policy gets fired for using his cell phone to text a message while operating a locomotive. The engineer claims the locomotive was stopped but the evidence clearly shows that it was moving.

It's an open-and-shut case, right? Violating the distracted driving policy would clearly be grounds for termination. Or, so you might think. . .

Nobody denied that texting while operating a moving locomotive is a dangerous violation worthy of some form of discipline. But there was also a context. The person the engineer was texting with was his own supervisor. Even worse, it was the supervisor who initiated the conversation by texting the engineer and not the other way around. In effect, the supervisor empowered the engineer to violate the distracted driving policy.

This might not have been so damaging to the railway's legal case had this been an isolated incident. But it wasn't. Railway employees' testimony and other evidence showed that text conversations between supervisors and engineers happened all the time, suggesting that the railway not only knew about but accepted and even relied on the practice as a means of communication and managing workers in the field. Given this culture, the arbitrator reinstated the engineer after knocking the penalty down to 30 demerit points [*Teamsters Canada Rail Conference v Quebec-Gatineau Railways*, 2022 CanLII 30034 (CA SA), April 4, 2022].

Takeaway

Distracted driving is a real problem and bans on texting and driving are essential to dealing with it, especially for safety-sensitive operations. But those bans also run in both directions. If the person at the other end of the text is a co-worker, supervisor or other staff member, you're empowering the violation and seriously undermining the policy and your legal capacity to enforce it.

Bottom Line: You need to ensure that your distracted driving policy addresses both the texter and textee. Emphasize that supervisors and workers shouldn't text other workers while they're doing their job when they know or should know that the person they're texting is driving, operating heavy machinery or performing other safety-sensitive tasks requiring 100% attention.