

THOMAS W. RIECK  
trieck@rieckcrotty.com  
JEROME F. CROTTY  
jcrotty@rieckcrotty.com  
RONALD P. DUPLACK  
rduplack@rieckcrotty.com  
DOUGLAS C. CONOVER  
dconover@rieckcrotty.com  
KEVIN P. BROWN  
kbrown@rieckcrotty.com  
BERNARD A. HENRY  
bhenry@rieckcrotty.com

## RIECK AND CROTTY

ATTORNEYS AT LAW

A PROFESSIONAL CORPORATION

55 WEST MONROE STREET, SUITE 3390

CHICAGO, ILLINOIS 60603-5062

CHICAGO'S BUSINESS LAWYERS

TELEPHONE  
(312) 726-4646

TELECOPIER  
(312) 726-0647

FIRM WEB SITE:  
<http://www.rieckcrotty.com>

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### ***THE COURTHOUSE PERSONNEL DEPARTMENT***

#### **A CELLULAR TELEPHONE POLICY IS A MUST**

#### **IN TODAY'S BUSINESS ENVIRONMENT**

Given the ever-increasing use of cellular telephones to make calls, send text messages and forward photographs, it is essential that an employer maintain and enforce a cellular telephone policy. Such a policy protects an employer from the potential liability which arises when an employee injures another person while using his or her cellular telephone for business purposes.

For example, in 2001, the city of Honolulu paid \$1.5 million to a man hit by a city employee who was talking on his cellular telephone while driving. In another settlement, a construction company paid \$4.75 million as a result of an employee using a cellular telephone on his way to work causing a chain reaction accident severely injuring another man. Similarly, a \$20 million judgment was obtained against an employer whose salesman killed another driver while the salesman was on a business call. A \$20.98 million judgment was entered against an employer whose employee struck a car resulting in a 78-year-old woman being placed on a ventilator for life. Even lawyers and law firms are not immune to such claims: a family filed a \$30 million lawsuit against the law firm of a lawyer who killed their daughter while on a business call.

In addition to the liability issues, the policy should address other employer concerns such as the erosion of employee productivity resulting from the making or receiving of personal calls or text messages during normal business hours. In addition, cellular telephone records, which disclose the times and duration of an employee's call, could be used to support an employee's claim for overtime. Similarly, cellular telephone cameras could be used to photograph an employer's proprietary and trade secret information, processes or equipment.

In order to address these cellular telephone use issues, an effective cellular telephone policy should include the following:

- A prohibition against the use of cellular telephones while an employee is driving.

Rieck and Crotty, P.C. publishes *THE COURTHOUSE PERSONNEL DEPARTMENT* bi-monthly to keep employers and employees advised of current issues and decisions throughout the United States relating to employment law matters which may impact our readers. If you desire additional information concerning any of the articles, please telephone a member of the firm

- Alternatively, if the employer allows the use of cellular telephones while the employee is operating his or her vehicle, a restriction against the use of cellular telephones until the employee pulls off the roadway and stops his vehicle or a requirement the employee use a hands-free device while driving.
- A posted warning on company-issued cellular telephones and/or company vehicles regarding the improper use of cellular telephones and the requirement to comply with the employer's cellular telephone policy.
- A requirement that employees comply with all laws regarding cellular telephone use, such as the City of Chicago and State of Illinois laws requiring use of hands-free devices when making and receiving calls while an employee is operating his or her vehicle.
- A prohibition against the use of cellular telephones in adverse weather or during difficult traffic situations.
- A limit on the business use of cellular telephones to the employer's business hours.
- A prohibition against making personal calls on company-issued cellular telephones.
- A prohibition against the use of cellular telephone cameras to take photos of company documents or other proprietary information, processes or equipment.
- A requirement that personal cellular telephones be turned off during business hours and may only be used to make personal calls or text messages during breaks and lunches.
- A statement that employees who violate the cellular telephone policy are solely responsible for the liabilities resulting from such actions.
- A description of the disciplinary policy for any use of cellular telephones which violates the employer's cellular telephone policy.
- A requirement that each employee execute an acknowledgment form stating the employee has read the cellular telephone policy and agrees to its terms and conditions.
- A requirement that employees receive training regarding the employer's cellular telephone policy and the safe use of cellular telephones.

If you would like to discuss a cellular telephone policy, please telephone the member of the firm with whom you regularly work.

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