

## How Leandra's Law could affect your company-vehicle policy

When 11-year-old Leandra Rosado was killed in a car accident, her father vowed to get legislation passed that could prevent such tragedies. Leandra died in the back seat of a car driven by a friend's intoxicated mother.

Leandra's father succeeded in getting the New York Legislature to pass the Child Passenger Protection Act, also known simply as Leandra's Law.

The law requires anyone convicted of driving while intoxicated (DWI) in New York to install and maintain an ignition interlock device on any vehicle he or she owns or operates. That's a condition of the person's probation or conditional discharge. An ignition interlock is a breath-analyzing device designed to prevent the vehicle from starting if the driver registers an illegal blood-alcohol level.

Leandra's Law has several important provisions that apply to employers of people who have been convicted of DWI.

### Employer obligations, rights

First, the new law does not require employers to install ignition interlock devices in company cars. Nor does it require employers to allow convicted drivers access to company cars.

Instead, the law provides a way for employers to find out about driving restrictions employees may have. Once employers learn of an employee's driving restriction, the law gives the employer the option to allow the employee to drive its vehicles without an ignition interlock.

The employee has the burden to notify the employer and request written permission from the employer to operate its vehicles. Such permission is limited to the operation of the vehicle in the course and scope of employment for business purposes, and only applies to an employer that is not owned or controlled in whole or in part by the employee.

### Should you allow an employee who has been convicted of DWI to drive company vehicles?

Leandra's Law doesn't force employers to allow employees with a restricted license to drive company vehicles. Often, it may be reasonable and prudent to deny permission, whether the vehicles are owned or leased.

*Here's why:* An employer that receives a request for permission should consider the potential vicarious liability it would face under Vehicle & Traffic Law Section 388, if the employee injures a third party while driving while intoxicated.

There is also a potential for punitive damages arising from the employer's knowing consent to the operation of its vehicle by an individual with a restricted license.

If the employer grants permission for the employee to drive its vehicles, the employee must notify the court and his or her probation officer, and the employee must carry notice of the written permission while operating the employer's vehicle.

The statute also prohibits knowingly leasing a vehicle to anyone who is subject to Leandra's Law. That raises additional practical issues for employers whose employees regularly travel on business.

What is not clear is whether employers will violate this leasing prohibition by granting permission to employees to operate vehicles the employer leases directly from a third party, or whether a court would conclude that the employer is free to grant permission because the leased vehicle is the equivalent of an employer-owned vehicle.

### Bias based on conviction

Other than denying permission, any employment action based on the employee's disclosure of a DWI conviction must be carefully considered.

The New York Human Rights Law and Correction Law prohibit discrimination against an employee based on a criminal conviction unless:

- There is a direct relationship between the individual's criminal offenses and the specific employment sought or held, or
- The employment would create an

unreasonable risk to property or to the safety or welfare of specific individuals or the general public.

The statutes require an employer to conduct an individualized, wide-ranging evaluation before making an adverse employment decision based on an employee's criminal conviction record.

In other words, while you can deny the employee access to company vehicles based on a conviction under Leandra's Law, you must be careful before punishing the employee in other ways. Consult your attorney before acting.

### Reasonable accommodation?

Alcoholism can be a covered disability, but the mere fact that an individual has been convicted of DWI and is subject to an ignition interlock restriction will not establish his or her disabled status under either state or federal law.

However, employers should evaluate their obligations under the ADA and the New York Human Rights Law if the employee:

- Asserts that he or she suffers from a disabling condition, such as alcoholism
- Contends that he or she is able to perform the essential functions of the position
- Identifies the ignition interlock as a potential reasonable accommodation.