

Weapons in the Workplace

U.S. gun laws vary by state, and employers must carefully consider the legal landscape when crafting policies and procedures.

By Eddie Sorrells, CPP, PCI, PSP

In late 2017, a photograph surfaced of three construction workers from American Sewer Services carrying weapons on a job site in Milwaukee. In the photo, two men clearly displayed their weapons in holsters, while another held a pistol in his hand.

As a result, the three construction workers were fired. The city of Milwaukee cited its policy that prohibits employees from bringing weapons to their jobs, including employees of subcontractors.

One gun advocate defended the workers and said the geographic area where they carried their weapons was “infamous” for its crime rate, *The Blaze* reported.

On the other end of the spectrum, a Wisconsin state legislator told the media outlet that carrying guns openly on the job was “irresponsible.”

While the city of Milwaukee has a clear policy on guns, for most private employers, the issue is anything but cut-and-dried. There is currently no U.S. federal law regulating weapons at private workplaces, but many state legislatures have taken up the cause of protecting the Second Amendment rights of employees while on the job. These laws, which are typically designed to protect employees’ individual rights to possess concealed firearms, vary in terms of their restrictions and make it tough for employers operating in multiple U.S. states to implement one weapons policy across the board.

Workplace shootings have become increasingly common in the United States over the last few decades. The number of these incidents rose 15 percent in 2015 to 354 shootings, according to the latest numbers from the U.S. Bureau of Labor Statistics, and resulting homicides grew by 2 percent that year.

Gun advocates cite such cases as reasons to allow guns

in the workplace, while critics say these shootings are exactly why employers should ban firearms. As the debate rages on, employers are left grappling with the question of how to comply with state law and institute their own policies that promote a safe work environment.

While there are many legal twists and turns surrounding the issue, security practitioners must deal with the question of how current laws affect their responsibility to keep employees and property safe from external and internal threats.

Workplace gun laws allow employees the right to have firearms in their locked, private vehicles...on company-owned property.

By understanding the legal landscape surrounding firearms on work property, and ensuring that existing policies and procedures properly address workplace violence, security professionals can help promote a safe work environment without infringing on the legal rights of their employees.

PARKING LOT LAWS

Most commonly, workplace gun laws allow employees the right to have firearms in their locked, private vehicles while parked on company-owned property. Additional obligations may be placed on the employer, such as a prohibition on searching vehicles and discriminating against an employee because he or she is a gun owner.

Twenty-three U.S. states provide some level of protection for employees who bring their firearms to company property. These so-called “parking lot laws” were part of an effort by state legislatures in the early 2000s to allow

workers to exercise their Second Amendment rights at work, with some restrictions.

For example, often the gun must be locked in the trunk or glove box, or be hidden from view through the vehicle's windows. But the business community sees many issues with these laws and fears they will have a far-reaching impact on both employee safety and legal liability.

Parking lot laws vary in the level of protection they offer gun owners. Most prohibit employers from asking workers if they own guns, and from firing employees

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for owning firearms. These laws frequently conflict with existing workplace policies, which limit the employee's ability to bring firearms to work.

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In 2002, an Oklahoma employer terminated several employees for having guns in their vehicles, which were parked on the employer's property. In response to the outcry that followed, the Oklahoma legislature amended the Oklahoma Self-Defense Act to ban employers from establishing any policy or rule that has the effect of prohibiting employees from transporting and storing firearms in a locked vehicle that is parked in employers' lots.

This caused great concern among the business community, which felt certain that the law would not

survive legal scrutiny. In response, a group of Oklahoma employers challenged the state law, arguing that the legislation conflicted with the U.S. Occupational Safety and Health Administration (OSHA) general duty clause, also known as the Occupational Safety and Health Act of 1970 (OSH Act), a U.S. federal law.

The plaintiffs argued that the general duty clause says employers must maintain a safe and secure workplace free of violence, and preempts any existing U.S. state

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law. The U.S. District Court for the Northern District of Oklahoma agreed with the employers.

The district court reasoned that under the general duty clause, gun-related workplace violence is a “recognized hazard.” Therefore, any employer allowing firearms in the workplace lot may be in violation of U.S. federal law by promoting an unsafe workplace.

The case went to the U.S. Court of Appeals for the Tenth Circuit, which reversed the decision. The court reasoned that “OSHA has not indicated in any way that employers should prohibit firearms from company parking lots,” according to court documents. “OSHA’s website, guidelines, and citation history do not speak at all to any such prohibition.”

Because OSHA does not indicate that employers should prohibit firearms from company parking lots, the appellate court ruled that there is no U.S. federal law that would preempt Oklahoma’s amendment to the Self-Defense Act.

This initial case was a signal that employers would not be able to simply dismiss these laws by citing safety and security concerns or by arguing that U.S. federal regulations created an obligation to keep the workplace free of employees' weapons.

EMPLOYEE RIGHTS

More lawsuits can be expected regarding employee termination based on gun-free workplace policies. An intriguing case comes out of the state of Florida, which passed a comprehensive law in 2008 that prohibits public and private employers from discriminating against any employee, customer, or invitee for exercising the right to keep and bear arms.

Under the Florida law, employers are barred from many actions, including: prohibiting employees or invitees from possessing legally owned firearms in their vehicles; inquiring about the presence of a firearm in the employee or invitee's vehicles; searching a private motor vehicle; and taking any action against an employee or invitee based on any verbal or written statement regarding the possession of a firearm in a private vehicle.

The law also says that companies are barred from conditioning employment on the following: whether an employee or prospective employee holds a concealed-weapons permit; an agreement by the employee or prospective employee that forbids the employee from keeping a legal firearm locked in his or her vehicle when the firearm is kept for lawful purposes; or prohibiting any employee or invitee from entering the parking lot because the employee or invitee's vehicle contains a legal firearm.

Finally, the law bars employers from terminating or otherwise discriminating against an employee or expelling an invitee for exercising the right to keep and bear arms

or to exercise self-defense, so long as the firearm is not exhibited on company property for any reason other than lawful defensive purposes.

In December 2015, an employee who worked for Universal theme park in Orlando, Florida, had a concealed weapon in his vehicle in the employee parking garage. The employee, who had worked for Universal since 1993, commonly left his gun in his car at work. One day, the

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handgun was stolen from his vehicle, and he reported it to the police.

When park officials learned that he had a firearm on company property, they terminated him, claiming that he had violated Universal's gun-free zone policy.

The employee sued Universal in Orange County Circuit Court, citing the 2008 law. The lawsuit argued that he had an express right to bring his gun onto the lot and leave it in his vehicle.

Universal claimed that the Florida law didn't apply because schools and prisons are exempt from state weapons policies, and Universal has a program for school children on its property. Before the litigation could play out, Universal gave the employee his job back in April 2016 and he withdrew the lawsuit, the Orlando Sentinel reported.

Comparable cases have been filed in similar circumstances in other states. In Kentucky, a man was fired from UPS Supply Chain Solutions in May 2013 for transferring a gun lawfully stored in his personal vehicle to another worker's personal vehicle.

The man, who had a concealed carry permit, said he experienced car trouble on the way to work, and moved the weapon because he was taking his car to be repaired. The fellow employee storing his weapon as a favor soon became uncomfortable and reported it to his supervisor.

The company then placed the employee on suspension and eventually fired him, citing that its policy only allowed for weapons inside a private vehicle. The company claimed that by removing the gun from his personal vehicle, he violated the workplace policy.

In the lawsuit, the employee claimed that under a Kentucky Revised Statute, a firearm may be “removed from the vehicle or handled” when it is done so in “defense of property.”

But the court ruled that the employee was attempting to interpret their law too broadly. “However inclined we might be to believe that such an exception would be a good thing, we decline to construe the term ‘defense of property’ as broadly as the employee suggests,” the court wrote. (*Holly v. UPS Supply Chain Solutions, Inc.*, U.S. Court of Appeals for the Sixth Circuit, March 2017)

EMPLOYER PROTECTIONS

Several U.S. states have included some liability protections to provide conditional immunity to employers that comply with their state’s guns-at-work law. This is mainly in response to the business community’s outcry over what liability they will face for workplace violence involving guns on their property.

For example, under Georgia law, an employer is not liable for any criminal or civil action for damages arising from an occurrence involving the transportation, storage, possession, or use of a firearm, including theft of the firearm, unless the employer commits a criminal act

involving a firearm, or if the employer knew the person using the firearm would commit a criminal act on the employer's premises.

While the Georgia law provides some cover for employers, it also leaves them vulnerable to lawsuits if they knew the person would commit an act of violence. This raises many questions as to how to handle someone who may have violent tendencies. How do you restrict that person's access to firearms in his or her vehicle? Can you

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terminate him or her based on that assumption alone?

Policies. Although these laws at face value complicate certain aspects of workplace violence policies and active shooter response plans, there are many steps that employers can take. Most importantly, security practitioners should educate themselves on relevant U.S. state guidelines, and confer with their general counsel on these issues to avoid unknowingly breaking the law.

For example, signs that read "no weapons" in parking lots are illegal in some U.S. states in certain circumstances. Knowing the limitations will allow companies to properly respond without risking legal liability.

If located in a state with current legal provisions for weapons in the workplace, companies should educate their workers on the boundaries of that law. For example, some employees will unintentionally assume they have greater rights, such as open-carry or storing the weapon inside the workplace.

Workplace violence. Policies on workplace violence

should include a thorough explanation of relevant state law regarding guns on workplace property. Employers should be comprehensive in creating policies that outline how to report and respond to employees who are potentially violent or otherwise pose a threat to the safety of others.

Many employers lose their conditional immunity in a workplace shooting or incident if the perpetrator was someone who had a history of violence, or was otherwise known to the employer to be a threat.

In U.S. states that make provisions for weapons on workplace property, conducting high-risk terminations are of greater concern. Employees who store weapons in their cars, abiding by the law, could inadvertently become a threat during termination.

When firing any individual considered to be high-risk, companies should consider providing a security escort to the parking lot. Security should ensure that the former employee has left the property, and front desk or other reception team members should be alerted that the person is not allowed back on the premises. Organizations should train security officers, as well as human resource employees, in the use of de-escalation techniques.

Finally, for workplaces that must comply with parking lot laws, there are several steps that will help protect the employer while respecting the legal rights of employees.

Organizations may consider increasing security in parking areas, such as adding an access control point; conducting patrols around the building and in parking lots; installing or enhancing video surveillance systems; and implementing proper lighting.

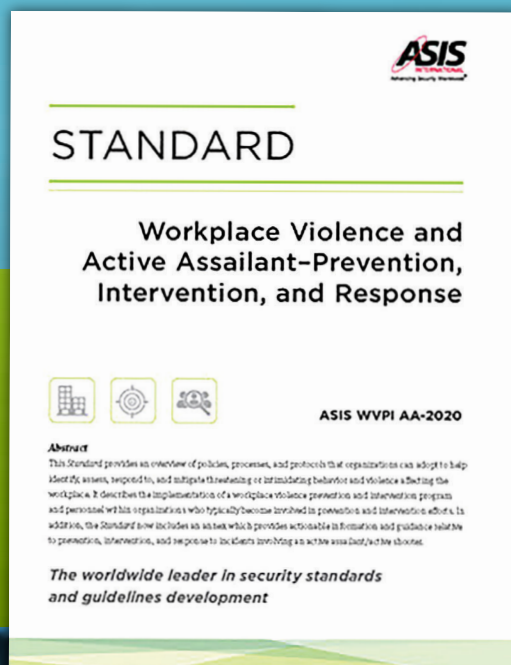
In some cases, bag searches or magnetometers may be installed at building entry points, but legal requirements should be checked before implementing such measures.

Deterring the carriage of weapons outside the vehicle will generally serve as a reminder of the law and keep both employers and employees safe.

AT FIRST GLANCE, THE LAWS SURROUNDING WEAPONS IN THE WORKPLACE MAY SEEM LIKE A JIGSAW PUZZLE THAT IS DIFFICULT TO COMPREHEND, BUT THERE ARE STEPS EMPLOYERS CAN TAKE TO ENSURE THAT ASSETS AND PEOPLE ARE PROTECTED. UNDERSTANDING THE LAW AND ESTABLISHING STRONG POLICIES WITHIN THE EMPLOYERS' LEGAL RIGHTS WILL ENSURE THAT WORKPLACES ABIDE BY THE LAW WHILE KEEPING THEIR ASSETS AND PEOPLE SAFE. ■

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