

Aiming to Please: Guns in the Workplace

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What will you do when the CEO calls tomorrow morning and says, "I just got a report that two of our employees are carrying loaded guns at work, or they have them in their cars in the employee parking lot?"

Given the spotlight on guns since the devastating shootings in Sandy Hook, Conn., it would be good to have an answer ready. The trouble is that the correct answer is "it depends."

In Texas, for example, state law permits employees to store weapons in their vehicles while at work, even if they are prevented from carrying firearms in the course of performing their jobs. ([See our article published in the Texas Lawyer in September 2011 on this issue](#)). Other states allow employees to carry firearms into the workplace, while still others have no laws on the subject at all.

The law adopted January 15, 2013 in New York specifically prohibits anyone, including employees, from carrying firearms into school buildings or onto school grounds without authorization from the educational institution, but does not otherwise affect the ability of employers to control firearms in the workplace. In this way, New York is like many states that have laws regulating specific kinds of workplaces (e.g., schools, hospitals, government buildings). Other states allow employees to carry firearms into the workplace, while still others have no laws on the subject at all. Companies that operate in several states may find it difficult to develop any uniform policy on guns at work. Even employers with only a single worksite will find that they cannot please everyone no matter what policy they adopt. So what should you do? Here are our suggestions:

First, find out the ground rules.

State laws on this subject are all over the place. [Here](#) is a **50 State Summary** that discusses significant aspects of the law in each state. With this information you can decide whether you can adopt a single policy or must have local variations. Issues to consider:

- Can the company ban firearms at all on its property or in its vehicles?
- If so, are there posting requirements so employees or visitors know the rules?
- Can the company prohibit employees from parking on company property if there are guns in their vehicles?
- If state law permits employees to have guns in their vehicles, can the employer require the vehicles be locked or the guns or ammunition be stored so that they are not visible?
- If the state law allows employees to carry concealed weapons, does it allow the employer to designate areas where such weapons may be prohibited?
- What rules govern employees whose work takes them across state lines during the work day, or into schools or hospitals or onto federal land?
- Can employees or their vehicles be subject to search?
- Do you have any union contracts that limit the range of the policy you can adopt?

Second, consider how your rules will dovetail with your approach to workplace violence.

Homicide is now the third highest work-related cause of death in the United States. It is the leading cause of death for women at work. OSHA has been focusing on workplace violence for years and has identified a number of factors that are related to an increased risk of violence for workers at certain types of worksites. How will your policy affect workers, patients, clients, visitors, contractors and anyone else who may come in contact with company personnel?

Third, remember that any rule you adopt may face resistance depending on the culture of your workplace.

Guns are an emotional subject for many people. Legislating a strict rule, or deciding not to have any rule at all, may be controversial in the context of particular workplaces. Heavy handed approaches to this issue are likely to meet with backlash. Besides the content of your policy, consider carefully how you will communicate it and what additional resources might be appropriate to deploy. These can include:

- Training,
- Implementing staffing or engineering controls to maintain a safer workplace, and
- Negotiating with union representatives over the substance of the policy or its effects on bargaining unit personnel.

Fourth, consider liability issues.

When it comes to guns, the issue isn't whether you can be sued, but by whom. In deciding how to deal with guns in the workplace, see if there are ways you can protect the company from claims by employees or third parties.

For example, some state laws allow employees to sue for discrimination or retaliation if an employer interferes with their right to carry firearms. Other states make it unlawful for employers even to ask as part of a job interview if the applicant has a permit to carry a weapon.

Third parties can also bring claims if they are shot and may name the shooter's employer as a defendant. Some state laws provide specific immunity to employers from such claims if the employee kept the weapon locked in a vehicle on the employer's parking lot. Consider whether an employee can make a successful claim against an employer if attacked by a third person on the way from the company exit to the parking lot where the employee's weapon is stored.

Fifth, no matter what you do, things can go wrong.

Consider developing a plan to address emergencies that might arise if a problem develops. Consider what would happen if an employee or outsider were to brandish a weapon at work. Worse yet, what will you do if there is an actual shooting? These possibilities should be considered as part of your disaster planning. As part of your plan, consider:

- How will you communicate with employees in an emergency?
- Who is responsible for calling police or rescue personnel?
- What services does your employee assistance plan offer?
- Who will determine and handle any mandatory notification to OSHA?
- Who will be in charge of relations with the media?

Any plan needs to allow the company to respond quickly to reasonably anticipated events so that internal players know their roles and outside service providers, such as security consultants, media relations firms and legal advisors, understand in advance what will be required of them rather than having to learn it on the fly.

To discuss any questions you may have regarding the opinion discussed in this Alert, or how it may apply to your particular circumstances, please contact:

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