

Keeping Guns Out Of The Workplace — Not So Fast

Law360, New York (February 24, 2011) -- Gun violence again made news recently with the shooting of Rep. Gabrielle Giffords along with 17 other individuals in Arizona. In today's environment, it is hard to turn on the news without seeing another gun-related incident. While the incident involving Giffords or others like it may have employers reconsidering their workplace violence policies, employers need to be cautious in the breadth of their policies depending on the states in which they operate, especially if the employer's policy extends to the employer's parking lot.

It may seem like common sense that an employer should be able to control its own property, including prohibiting employees, customers or anyone else from entering its property with a gun. The last thing an employer wants is for a workplace dispute or an employee's discharge to turn into a shoot out at the OK Corral.

Employers have a hard enough time when employees resort to violence with their own fists without having to add guns to the equation. However, several states have passed laws that, ironically, protect an individual's rights to possess a gun, even if the individual's possession is on an employer's property (i.e., the employer's parking lot).

In 2010, Indiana joined a number of states including Alaska, Arizona, Florida, Georgia, Kansas, Kentucky, Louisiana, Minnesota, Mississippi, Nebraska, Oklahoma and Utah who have passed laws protecting employees from employment policies that prohibit them from possessing a gun in their employer's parking lot. A number of other states have introduced bills that would implement similar laws.

Pursuant to the Indiana law, for example, an employer cannot prohibit an employee from keeping a firearm and/or ammunition in the employee's locked vehicle as long as the firearm and/or ammunition is out of sight. Like the majority of the state laws, the Indiana law is limited to an employee's personal vehicle and does not extend to an employee's use of an employer provided vehicle. Violators of the Indiana law are subject to civil liability including actual damages, court costs and attorney's fees to the prevailing party.

Similarly, the Florida law, enacted in 2008, specifically prohibits public and private employers from conditioning employment on whether or not an employee is licensed to carry a gun in Florida or on an agreement by an employee that prohibits an employee from keeping a legal firearm locked in a private vehicle in a parking lot as long as the firearm is kept for lawful purposes. The Florida law also prohibits employers from even asking employees whether they have a gun in their vehicle or conducting searches of an employee's vehicle to look for guns.

It is yet to be seen whether the ability for employees to keep guns in their own vehicles will help prevent violence (i.e., I am less likely to pick a fight at work with Jimmy if I think he has a 9 mm handgun out in his truck) or simply increase the potential for a disgruntled employee to take out his anger for being fired on his boss or co-workers. Employees need to feel safe in their own workplace but more time is needed to better understand the potential benefits or drawbacks to these laws.

In drafting or revising workplace violence policies, employers should be aware of the specific state laws that apply to their operations, including any applicable exceptions. For example, the Mississippi law, enacted in 2006, allows employers to prohibit guns in their parking lots if they provide parking where access is restricted or limited through the use of a gate, security station or other means of limiting access of the general public to the employer's parking lot. Thus, employers in Mississippi have an alternative to allowing guns in their parking lots.

To the extent employers in the states mentioned above are not able to completely eliminate guns from the workplace, it is even more critical to have a comprehensive workplace violence policy that educates employees on how to deal with violence in the workplace.

Employees should be encouraged to take an active role in preventing workplace violence, including reporting concerns to management. Creating a safe working environment is everyone's responsibility. Defusing situations before they escalate to the point where an employee considers getting his gun is crucial.

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