



Guns at the Workplace

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A Note describing state guns-at-work laws, sometimes known as parking lot laws. These laws generally limit an employer's ability to prohibit employees from bringing concealed firearms to work. This Note discusses the legal risks resulting from workplace violence, including incidents involving guns. It outlines the various types of restrictions and requirements typically included in guns-at-work laws and provides best practices for compliance with these laws.

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According to the US Department of Labor, in 2010 there were 16,910 non-fatal assaults and violent acts at private workplaces that caused employees to miss work. Workplace violence frequently results in:

- Physical and psychological harm.
- Losses to property and productivity.
- Workers' compensation claims.
- Increased litigation.

To minimize their legal risk and promote a safe work environment, employers often implement workplace violence policies that include a ban on weapons at the workplace.

Currently, there is no federal law that regulates weapons at private workplaces. However, beginning with Oklahoma, several states have enacted so-called guns-at-work laws. These laws, which are typically designed to protect employees' rights to possess concealed firearms, vary in terms of their restrictions.

The rapid influx of guns-at-work laws is concerning for many employers. On the one hand, without immunity, complying with a law that allows employees to bring concealed firearms to the employer's property can increase legal risk. In contrast, noncompliance with a guns-at-work law can lead to civil or criminal penalties in some states.

This Note examines state guns-at-work laws, and, in particular, it describes:

- The legal risks of workplace violence.
- The various types of restrictions and requirements typically included in state guns-at-work laws.
- Best practices for compliance.

OVERVIEW OF LEGAL RISKS FOR EMPLOYERS

While this Note discusses how employers can comply with the various categories of state guns-at-work laws, employers should also be aware that gun-related incidents can result in liability under several different legal theories, including:

- The Occupational Safety and Health Act (OSH Act).
- Workers' compensation law.
- Tort law, such as a negligent hiring claim from a third-party victim.

The General Duty Clause

While there is no federal law establishing an employer's duty to prevent workplace violence, an employer has a duty to provide a safe working environment under the OSH Act, which regulates workplace health and safety (see *Practice Note, Health and Safety in the Workplace: Overview* (<http://us.practicallaw.com/9-500-9859>)). Employers that violate the OSH Act general duty clause can be issued citations by the Occupational Safety and Health Administration (OSHA) (*29 U.S.C. § 654(a)(1) (2011)*).

For more information, see *Practice Note, Workplace Violence: The General Duty Clause and Workplace Violence* (<http://us.practicallaw.com/7-505-7511>).

Workers' Compensation

Employers' obligations to pay and employees' rights to receive workers' compensation benefits are largely governed by state law. Typically, employees can receive workers' compensation benefits for injuries arising out of and in the course of their employment. An employee injured as a result of a gun-related incident at work may be eligible for workers' compensation benefits.

For more information, see *Practice Note, Workers' Compensation: Common Questions: Which Injuries Are Compensable?* (<http://us.practicallaw.com/0-504-9497>)

Negligence Claims

Because workers' compensation laws do not limit a non-employee's negligence claims, an employer may face negligence claims from a third-party victim of gun-related violence. For example, if an employee with a known propensity for violence injures a customer, depending on the facts of the particular case, an employer may be sued for:

- Negligent hiring.
- Negligent supervision.
- Negligent retention.

Negligence claims are governed by state law. Primary considerations generally include whether the employer should have known that the employee could cause harm to others and, if so, whether the employer acted reasonably under the circumstances.

For more information, see *Practice Notes, Workplace Violence: Negligence Claims from Third-party Victims of Workplace Violence* (<http://us.practicallaw.com/7-505-7511>) and *Negligent Hiring, Retention and Supervision* (<http://us.practicallaw.com/2-506-0672>).

Vicarious Liability

Under common law, an employer can be vicariously liable for wrongful acts by an employee in the course and scope of their employment. In general, an employee who acts violently is acting outside the scope of his employment. However, depending on the facts of a particular situation, an employer could be liable if the employee was acting in the course and scope of their employment when they injured another person.

OVERVIEW OF GUNS-AT-WORK LAWS

More than 15 states have enacted some type of law addressing guns at work. Many of these laws share the common goal of protecting an individual's right to bear arms, but they differ about how much restriction is placed on an employer's ability to prohibit weapons at work. Specifically, a guns-at-work law may:

- Protect employees' rights to store firearms in their private vehicles even when parked in the employer's parking lot.
- Limit an employer's ability to search vehicles on its property.
- Prohibit discrimination against gun owners.
- Permit employers to prohibit weapons at work if they post a required notice.
- Subject an employer to fines for failure to comply with the law's restrictions or requirements.
- Provide protection to employers that comply, including immunity from injuries arising out of compliance.
- Specify that employers can allow weapons at the workplace without violating the OSH Act general duty clause (see *The General Duty Clause*).

PARKING LOT RESTRICTIONS AND EXCEPTIONS

More than 15 states have passed varying laws recognizing an employee's right to store an otherwise lawfully possessed firearm in his locked personal vehicle when it is parked on the employer's property. For example, under Louisiana law:

- An employee who lawfully possesses a firearm may transport or store the firearm in a locked, privately owned motor vehicle in any parking lot, parking garage or other designated parking area.
- Private employers cannot prohibit the employee from transporting or storing the firearm in their locked, privately owned motor vehicle in a parking lot, parking garage or other designated parking area.

(*La. Rev. Stat. Ann. § 32:292.1 (2011)*.)

Louisiana law does not prohibit employers from adopting a policy requiring that firearms stored in locked personal vehicles be hidden from plain view or locked within a case in the vehicle (*La. Rev. Stat. Ann. § 32:292.1(C) (2011)*).

Similarly, Indiana specifies that an employer cannot adopt a policy that prohibits employees from possessing a firearm that is:

- Locked in the trunk of the employee's vehicle.
- Kept in the glove compartment of the employee's locked vehicle.
- Stored out of plain sight in the employee's locked vehicle.

(*Ind. Code Ann. § 34-28-7-2(a) (2012)*.)

Like many other states with parking lot laws, Louisiana provides a number of key exceptions. The typical exceptions to parking lot restrictions include:

- Employees prohibited from possessing a firearm (see *Possession Prohibited by Law*).
- Vehicles owned or leased by the employer (see *Vehicles of the Employer*).
- Restricted parking areas (see *Restricted Parking Areas*).
- Providing alternate parking or temporary secured storage (see *Providing Alternate Parking or Temporary Secured Storage*).

Possession Prohibited by Law

Parking lot laws often provide an exception for employees prohibited by state or federal law from possessing a firearm (see, for example, *Ky. Rev. Stat. Ann. § 237.106(2) (2011)*). Similarly, state law parking lot restrictions may not apply to property where possession of a firearm is prohibited under state or federal law (see, for example, *La. Rev. Stat. Ann. § 32:292.1(D)(1) (2011)*).

For example, under Arizona law, employers can prohibit the employees from storing firearms if either:

- Possession of the firearm is prohibited by state or federal law.
- The employer's compliance with the law would violate another state or federal law.

(*Ariz. Rev. Stat. § 12-781(C) (2012)*.)

Vehicles of the Employer

While most guns-at-work laws establish an employee's right to store a firearm in their locked, personal vehicle, many state laws do not extend the right to vehicles owned or leased by the employer unless the employee is required to transport or store a firearm as part of his employment duties. For example, North Dakota's parking lot law does not apply to any motor vehicle that is owned, leased or rented by the employer or the landlord of the employer (*N.D. Cent. Code § 62.1-02-13(6)(e) (2011)*).

Restricted Parking Areas

For employers that have parking lots that are secure or where access is restricted, another exception that allows employers to ban firearms in certain circumstances may apply. For example, under Louisiana's law, an employer can prohibit employees from storing firearms in their vehicles in an employer's parking lot if access to the parking areas is restricted or limited, for example, by a fence or gate and the employer provides:

- Temporary storage for unloaded firearms.
- Alternative parking close to the main parking lot for employees that transport or store firearms in their locked personal vehicles.

(*La. Rev. Stat. Ann. § 32:292.1(D)(3) (2011)*.)

Similarly, under Arizona law, if an employer's parking lot is secured by a fence or other barrier and access is limited by a guard or security measure, the employer can implement a policy that prohibits employees from transporting or storing firearms if the employer provides temporary and secure storage that:

- Is monitored.
- Is easily accessible after entering the building.
- Allows for immediate retrieval of the firearm when an employee is exiting the workplace.

(*Ariz. Rev. Stat. § 12-781(C)(3) (2012)*.)

In contrast, Mississippi law does not require employers to provide alternative parking or temporary storage in order to take advantage of an exception. Mississippi employers with parking areas to which general public access is restricted or limited through a security measure such as a gate can prohibit employees from transporting or storing firearms in their vehicles. (*Miss. Code Ann. § 45-9-55(2) (2011)*.)

Providing Alternate Parking or Temporary Secured Storage

In some states, even if the employer's parking lot is not secure and public access is not limited, employers can prohibit employees from transporting or storing firearms in their vehicles in the employer's parking lot if the employer provides either:

- Alternative parking at no additional cost for those employees that transport or store firearms.
- A secured and monitored storage location for employees to store firearms before they drive their car into the parking area.

(See, for example, *Utah Code Ann. § 34-45-103(2)(a) (2012)*.)

For example, Arizona's restriction on an employer's ability to prohibit employees from storing a firearm out of plain view in a locked motor vehicle does not apply if the employer provides alternative parking that is:

- Reasonably close to the primary parking area.
- At no additional cost to employees who transport or store firearms in their vehicles.

(*Arizona Rev. Stat. § 12-781(C)(8) (2012)*.)

VEHICLE SEARCHES

Some state laws provide additional protection to employees by prohibiting employers from searching private vehicles on their property for the presence of firearms (see *N.D. Cent. Code § 62.1-02-13(1)(b) (2011)*). For example, in Florida, employers are not permitted to either:

- Ask employees about the presence of a firearm in a vehicle.
- Search a private vehicle to determine whether it contains a firearm.

(*Fla. Stat. § 790.251(4)(b) (2012)*.)

Georgia law prohibits employers from searching employees' locked, privately owned vehicles unless either:

- The search is done by law enforcement pursuant to a valid search warrant.
- The situation would lead a reasonable person to believe that accessing the vehicle is necessary to prevent an immediate threat to human health, life or safety.

(*Ga. Code Ann. § 16-11-135 (2012)*.)

However, Georgia's guns-at-work law includes an important exception. It does not apply (meaning an employer can conduct searches) if an employer either:

- Owns its property.
- Is in legal control of the property through an agreement such as a lease or rental agreement.

(*Ga. Code Ann. § 16-11-135(k) (2012)*.)

ANTI-DISCRIMINATION PROVISIONS

In states with anti-discrimination laws, employers can be liable for discrimination if a potential or current employee applies for a job and is not hired after disclosing his firearm status or is later terminated after disclosing his status. For example, Indiana employers are prohibited from asking applicants or employees to disclose information about whether they own a firearm unless it is used for employment (see *Ind. Code § 34-28-8-6 (c) (2012)*).

In several states, employers are prohibited from conditioning an employee's or applicant's employment status on whether that individual either:

- Has a concealed firearm carry permit.
- Stores a firearm in his vehicle.

(See, for example, *Fla. Stat. § 790.251(4)(c) (2012)* and *N.D. Cent. Code § 62.1-02-13(1)(c) (2011)*.) Florida also prohibits employers from terminating an employee on the basis that the employee chooses to exercise his right to bear arms as long as the firearm is not shown on company property other than for defensive purposes (*Fla. Stat. § 790.251(4)(e) (2012)*).

POSTING REQUIREMENTS

Several states require employers to post notices if they ban weapons at the workplace. For example, in Kansas and Minnesota, which have parking lot laws, employers that ban guns in their buildings must post conspicuous notice of the ban (*Kan. Stat. Ann. § 75-7c10(a) (2012)* and *Minn. Stat. § 62A.714(17) (2012)*).

Under Alaska law, employers can prohibit firearms in certain areas, for example, within secured restricted access areas and in employer vehicles. However, they must post conspicuous notice of the prohibition at the entrance to the area. (*Alaska Stat. § 18.65.800(d) (2011)*).

Similarly, Tennessee, which does not have a parking lot law, requires employers that prohibit possession of weapons on their property to post notices in prominent locations, including all entrances to the property or building where possession of weapons is prohibited (*Tenn. Code Ann. § 39-17-1359 (2012)*).

States with posting requirements often specify what must be posted for an employer to comply with the law. For example, Tennessee employers comply with the law's notice requirement by either:

- Posting a sign that has the exact language included in the law or language that is substantially similar.
- Displaying the international symbol with a circle and a slash through the item prohibited.

(*Tenn. Code Ann. § 39-17-1359(b)(1) (2012)*.)

Under Tennessee law, it is a criminal offense punishable by a fine of up to \$500 for an individual to possess a weapon in a building or on property that is properly posted (*Tenn. Code Ann. § 39-17-1359(c) (2) (2012)*). An employer's building or property is considered properly posted under Tennessee law if the required notice is:

- Of a size that is plainly visible to the average person entering the building.
- Posted in English.

(*Tenn. Code Ann. § 39-17-1359(b) (2012)*.)

EMPLOYER FINES AND PENALTIES

Several state laws provide for damages to the employee if the employer violates the law. For example, under Kentucky law, an employer that fires, disciplines, demotes or punishes an employee who is exercising his right to possess a firearm is liable for civil damages (*Ky. Rev. Stat. Ann. § 237.106(4) (2011)*). In addition, under Kentucky law, an employee can seek an injunction against an employer who is violating the law (*Ky. Rev. Stat. Ann. § 237.106(4) (2011)*). Similarly, under North Dakota law, an applicant or employee can bring a civil action and recover reasonable costs, losses, court costs and attorneys' fees (*N.D. Cent. Code § 62.1-02-13(5) (2011)*).

EMPLOYER IMMUNITY

Several states provide immunity to employers that comply with the guns-at-work law (see, for example, *N.D. Cent. Code § 62.1-02-13(3) (2011)* and *La. Rev. Stat. Ann. § 32:292.1(B) (2011)*).

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.
- Knew the person using the firearm would commit a criminal act on the employer's premises.

(*Ga. Code Ann. § 16-11-135(e) (2012)*.)

Under Idaho law, employers are not liable for civil damages resulting from the employer allowing or prohibiting employees from storing firearms in their personal vehicles on the employer's property (*Idaho Code § 5-341 (2012)*).

Similarly, under Texas law, private employers are not liable in civil actions for damages, including for personal injury, death or property damage, resulting from an occurrence involving a firearm that the employer is required to allow under the Texas guns-at-work law unless the employer is grossly negligent (*Tex. Lab. Code Ann. § 52.063(a) (2011)*). The Texas guns-at-work law specifically states that employers are not required to investigate, confirm or determine an employee's compliance with the laws related to ownership or possession of a firearm or transportation and storage of a firearm (*Tex. Lab. Code Ann. § 52.063(c)(2) (2011)*).

In contrast, Tennessee law does not provide for immunity. Instead, Tennessee's law states that nothing in the law shall be construed to alter, reduce or eliminate any civil or criminal liability that an employer may have for injuries arising on its property (*Tenn. Code Ann. § 39-17-1359(d) (2012)*).

LAWS PERMITTING EMPLOYERS TO ALLOW WEAPONS

Following the enactment of Tennessee's guns-at-work law in 2011, some employers that opted to allow handguns at their workplace faced complaints that they were failing to provide a safe working environment in violation of the state occupational

safety and health plan. In response, Tennessee clarified in the law that the decision of an employer to permit employees with permits to carry handguns on its property does not constitute an occupational safety and health hazard (*Tenn. Code Ann. § 50-3-201(d) (2012)*). In addition, an administrative law judge recently ruled against an employee who raised a claim that allowing handguns was an occupational safety and health hazard.

BEST PRACTICES FOR EMPLOYERS

Employers in states with guns-at-work laws can take certain steps to minimize their potential liability, including:

- Implement and maintain a workplace violence policy that informs employees that threats or violent acts at the workplace are prohibited. The workplace violence policy should:
 - be easy to read and understand;
 - cover acts of violence (regardless of whether the act results in physical injury), harassment, bullying and other intimidation;
 - prohibit employees from bringing weapons in the workplace as permissible by state law;
 - set procedures for employees to report threats or violent acts;
 - set a disciplinary procedure for employees that violate the policy;
 - explain the resources available to employees, including counseling services and an employee assistance program, if applicable; and
 - prohibit discrimination and retaliation against workplace violence victims (see *Standard Document, Anti-retaliation Policy* (<http://us.practicallaw.com/8-503-5830>)).

For a model policy, see *Standard Document, Workplace Violence Policy* (<http://us.practicallaw.com/3-506-4943>).

- Involve security personnel and consider informing local law enforcement if there is concern about a possible violent

The Tennessee Occupational Safety and Health Administration responded to that ruling by announcing that these decisions would be made on a case-by-case basis.

Under Texas law, the presence of a firearm or ammunition on an employer's property under the state guns-at-work law does by not itself constitute a failure by the employer to provide a safe workplace under the OSH Act (*Tex. Lab. Code § 52.063(b) (2011)*).

outburst or if terminating the employment of an employee with known violent tendencies. For more information, see *Practice Note, Employee Termination: Best Practices: Best Practices For Delivering the Termination Message* (<http://us.practicallaw.com/3-503-9595>).

For additional best practices, see *Minimizing Workplace Violence Checklist* (<http://us.practicallaw.com/8-505-8874>).

In addition, in states with parking lot laws, employers should:

- Remember that, at most, a parking lot law allows an employee to store a firearm in a locked personal vehicle in the employer's parking lot. Avoid expanding employees' rights, for example, by allowing them to bring concealed firearms in the employer's building.
- Consider security measures that control access to employer parking lots where firearms can be stored. Having trained security personnel monitoring such areas can limit the likelihood an enraged employee can access his firearm and return to the workplace to cause harm without notice.
- If permissible by state law, consider an employee concealed firearms registration process in order to confirm that employees who store firearms in their personal vehicles in an employer parking lot have valid concealed weapons permits. Be aware that certain states (for example, Indiana) prohibit employers from asking employees about firearm ownership.

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