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Becca Rainey (00:00)

Welcome to The FP 5: Five Things for Your 9-to-5. We help employers make sense of the fast-moving world of workplace law and compliance by breaking down topics into five parts. I'm Becca Rainey from the Fisher Phillips Content team.

The Supreme Court just handed down a major Second Amendment decision involving concealed firearms on private property. So today we're breaking down what the ruling means, where employers still have control, and how workplace safety fits into all of this.

Joining me is Travis Vance. Travis is the Regional Managing Partner of Fisher Phillips's Charlotte office, and workplace safety is a huge part of his practice. He's defended employers in more than 1400 OSHA and MSHA inspections across 46 states, as well as Puerto Rico, and regularly helps organizations respond to serious workplace safety incidents. Travis, thanks for being on the show today.

Travis Vance (01:00)

Appreciate it. It's nice to be here.

Becca Rainey (01:02)

Travis, you spend a lot of your time helping employers think about workplace safety before something goes wrong, and then helping them when something unfortunately does. How often do questions about firearms come up when you're helping employers think through workplace safety?

Travis Vance (01:18)

It actually comes up a lot more than you'd think. I'm actually at a conference right now and the number one question on the minds of the companies here is "We're worried about guns in the workplace." It usually happens more often in the summertime, but we do see this quite a bit. And especially with a large plant: manufacturing, food processing, whatever it might be, there are more opportunities for several people to get into the building, it's hard to check every one of them to see if they have guns on them. So this is something that comes up quite a bit and it's a very important question, especially when we see on the news if there's an active shooter situation, a lot of times an employee will have something going on at home and they get upset, and the only way they really know where people will be is to go back to their workplace and that's where they go, sort of take out their frustration. So it's very important to employers.

Becca Rainey (02:19)

All right, well let's move into our five-part conversation. So thing one, Travis, let's start with what happened. The Supreme Court struck down a Hawaii law that generally prohibited licensed concealed carry holders from bringing handguns onto private property that's open to the public. There are similar laws that existed in California, Maryland, New Jersey, New York, and Washington, DC. So give us a plain English version of *Wolford v. Lopez*. What did the Supreme Court actually decide?

Travis Vance (02:49)

Yeah, so in the Hawaii law here, it was interesting that the person that had the concealed weapon permit in Hawaii, the law was, so Johnny Permitholder, if he wanted to go onto the property of a gas station, which is a

private property open to the public, then he would actually have to seek the express consent of the owner of the gas station. So that's different than what the common law is or a lot of different states, where it'd be, you know, the gas station just posts a sign says no guns allowed, or even with a concealed weapon permit, you cannot come onto our property with the weapon. Here it actually put the burden on the permit holder, the individual, to go to the property owner and get their express permission to come onto the property. And the Supreme Court said that the Hawaii law was unconstitutional because it put that burden on the permit holder as opposed to the property owner, and therefore it struck down the law.

Becca Rainey (03:51)

And did the Supreme Court say that businesses now have to allow concealed firearms on their property?

Travis Vance (03:57)

No. So what it basically goes back to is the common law rule, which is it's up to the property owner. The property owner can follow state law generally and make a posting or put in writing that no weapons are allowed. And it's up to the property owner to decide that. So the burden is on the property owner to make sure that they exclude individuals with permits or without permits and weapons, instead of the burden being on the individual permit holder. So, the common law goes back to the employer or the property owner to exclude those individuals. Obviously there's some state laws you have to work through, but that's the general rule.

Becca Rainey (04:38)

So, in other words, the court didn't exactly eliminate the property owner's choice to ban or allow guns, rather, it really clarified who gets to make that choice, right?

Travis Vance (04:47)

Absolutely. So the Supreme Court didn't like the fact that the individual permit holder had the burden versus the property owner. And so the Supreme Court just basically eliminated the Hawaii law and basically put it back to status quo in the common law, which is, the burden is on the property owner.

Becca Rainey (05:05)

So how broadly does this matter? Is this primarily an issue for businesses in those six jurisdictions, or should employers be paying attention everywhere?

Travis Vance (05:14)

I think employers should pay attention everywhere because there are a lot of state laws that are unique with respect to a concealed weapon permit and who can come onto property and how do businesses exclude those individuals. Some actually literally require a sign, some require that the notice be in writing, like in an employee handbook, and there's various different laws that have different requirements. And so even though, somebody in Texas or Florida, this would not really pertain to them, it's a good reminder to go back and look at your policies. What do we allow onto the property? What do we not allow onto the property? Are we following state law? And there are there any issues that might be related to that? And maybe, you know, an employer in Florida is like, I didn't even realize that we had a requirement to do X, Y, or Z, to post our property, to say that concealed weapon permit holders could not be able to come onto the premises. So it's just a good reminder for all employers, but certainly in in those states, you know, if the laws are similar to Hawaii, then you know, the companies cannot put that burden on the individual. They have to take that burden as the property owner.

Becca Rainey (06:38)

Moving on to thing two. A no-guns policy is only useful if employees, customers, and managers know what it is. Businesses that want to restrict firearms should clearly communicate that decision through signage, written policies, or other notice. So, Travis, let's say I'm an employer and my decision is simple: I don't want firearms inside my workplace. What do I actually need to do?

Travis Vance (07:01)

Right. Well, the best policy is to make sure it's in writing. First of all, in employee handbooks, maybe a separate policy on "no guns in the workplace." Make sure it's communicated in writing and that you actually train your employees on that policy, whether it's orientation, refresher training, whatever it might be. And then you also need to follow state law. Take a look at state law, take a look at local law. Maybe there is a requirement to actually have a sign at your workplace that says no weapons, no concealed weapons, and make sure you follow that law as well.

So, it's always good to have it in writing, make sure we train the employees on all our written policies and make sure you follow state law, local law as to what's required with the actual posting. Does it just need to be in writing to your employees in the handbook? Or do you actually have to have a physical sign at the workplace to remind visitors that they are not allowed to bring weapons onto the property? So those are the two big things.

Becca Rainey (08:03)

So what happens if I'm a business that leases the space that we operate in rather than owning it?

Travis Vance (08:11)

Right. So I would make sure that you check with your landlord and communicate with them as to whether or not they are okay with you banning weapons. If they are, are they okay with the signage. A lot of times the signage may become an issue as a tenant. The landlord may not want a sign at a particular place, may have some restrictions on sizes and things like that. You should communicate with the landlord, but as the tenant, you should control who goes to and from the workplace. So if your company is renting out space, communicate with the landlord, but you should make the decision as the tenant and follow state law as to communication to entrants, to your employees, as to whether or not they can come and go with weapons on the property.

Becca Rainey (08:57)

And just practically, and of course we're speaking hypothetically here, what should managers be trained to do if they do discover that an employee or a customer, a vendor, or just a visitor has a firearm when their company policy prohibits it?

Travis Vance (09:13)

Yeah, this is a great question. This is probably the hardest part about this whole analysis. You know, I talked actually just this week with some companies about how did they discover firearms in the workplace. And there's some pretty interesting technology out there where they're not it's not really an x-ray machine, but they can look at people as they walk in through the technology and they can see objects like if you had something in your pocket, if you had something in the backpack that looked like a gun, and it would set off an alarm and then that's one thing. That's great. Technology is great.

But your question, Becca is, is right on point. And I think the hardest thing for employers is what do you do when somebody actually has a gun? And so you need to make sure that either it's your employees, your managers and

supervisors who are tasked with seeing who's coming in and what to do when the alarm goes off. They have to have very rigorous training on, what they would call confrontation training, on how to keep that situation calm, how do you approach that individual? Ask the question that you need to have. Very politely ask them to take it back out to their vehicle or take it back to their home, whatever your policy is on guns in the parking lot. Or make sure you hire a competent contractor that can, like a security team that can do that same job for you as opposed to having your own employees doing it. But I think that is the toughest question for employers. And it really takes talking to the right consultants, talking to the right security contractor, having the right training in place for their employees, but engaging those employees that appear to have weapons on them when they come into the workplace, that's a tough task. And it's something that employers, especially manufacturing large facilities with hundreds, maybe thousands of employees coming in every day, they really need take some time, spend some resources on "how are we gonna train employees or hire the right team to engage those employees who may appear to have a weapon in the workplace."

Becca Rainey (11:21)

Thing three. Your parking lot may play by different rules than your building. This is where the patchwork gets really important. Several states have guns at work or parking lot laws that restrict an employer's ability to prohibit employees from lawfully possessing or storing their firearms in their personal vehicles. Those laws generally don't mean employers have to allow guns *inside* the workplace. But this seems kind of like a trap for employers. It's our property, so we can ban firearms everywhere. But why isn't that necessarily true?

Travis Vance (11:59)

Yes, so that's a good question. And I mentioned it briefly earlier. But you know, again, going back to state law, there are states that say that employees, even on you know, the parking lot of private property of their employer, they can have a gun in their trunk, right? And they're very specific about it. It might say "trunk," it might say "glove box," it might say "center console," it might say just "concealed," right? So some states were gonna say that the employees can have a gun in their car. And so going back to the previous example, if you're screening the employees as they come in, they have a weapon, you know, you could just verify that they've locked it in their trunk because state law allows them to do that. Other states do not necessarily allow employees to have guns in their trunk if it's prohibited by the property owner. Again, going back to the decision from the Supreme Court, the burden here is on the employer, the property owner, and not the employee.

So employers need to take a close look at state law, at local law. Are employees allowed to have guns in their trunk? I will say after talking to several clients about this situation, a lot of companies are going to prohibit it from the physical building, but allow it to be in the trunk. And I'll be honest with you, the reason, one of the primary reasons is that if you look at rural areas throughout the South, especially out in the Rocky Mountain region, Pacific Northwest even, you have a lot of hunters. You look at October, November, December, this is probably something that people don't think about, but people are going to go deer hunting after they get off work and they're going to have their rifle in their trunk. And this is the type of thing that employers probably don't think about. And so if you prohibit them having guns in their trunk, especially if it's prohibited by state law, then the employees are not going to be very happy about it. So, you know, look at state law, take a step back. "Why would the employees have a gun in their car in November?" And figure out what's the best policy for your company and make sure it's communicated, the employees are trained, and if you need consulting help or you need a contractor, a security vendor, make sure you reach out to them as well.

Becca Rainey (14:10)

Yeah, and can you tell me what are these parking lot or guns at work laws designed to do? What is the onus behind them?

Travis Vance (14:17)

Well, I think it's a private property right. You know, I think it, you know, you're driving your car or you've got a Fourth Amendment right for your personal vehicle. And especially if it's in an area where you have to unlock a trunk, for example, glove box, what it might be, that's a private property right for the employee. And so the states are gonna be required to give a little bit more deference to the employee there. And it's since it's not an open space where the employee is around other people, or have easy access to the weapon, employees are gonna be given greater property private property rights in that context.

Becca Rainey (15:00)

So you're listening to The FP 5. I'm Becca Rainey, and we're here with Travis Vance. Travis is Regional Managing Partner of Fisher Phillips's Charlotte office. Just a quick reminder, you can find a link to our insight on the Supreme Court's concealed carry decision in this episode's show notes.

Thing four: Whether you allow firearms or prohibit them, this is also a workplace safety decision. Employers need to consider workplace safety and potential liability, particularly when employees may be armed. So Travis, you're a workplace safety lawyer. Let's look at this through that lens. How should an employer think about the safety side of deciding whether or not to allow firearms?

Travis Vance (15:42)

Right. Again, I mentioned the practical side. I always go back to the insurance question because it's so practical and certainly we don't want to put an a client or a company in the position where they, you know, have a guns policy, don't tell their insurance company about it and then there's a major issue or event and then the insurance company, you know, is not going to provide coverage. So that's the number one thing just overall. But with respect to workplace safety, you know, again, how much safer is the workplace gonna be with people with guns in the building, versus really good training and a very good security team and a very well thought-out policy that's trained to employees on "here's why you can't have guns in the workplace, here's what to do if you have a gun in the workplace," employees that are trained on active shooter situations, how to get out of the building, how to, you know, make sure the team gets out of the building, how to call 9-1-1. Those are the things I think about, is "let's focus on a really good policy that that follows state law, but does not allow employees to have guns, obviously knowingly, in the workplace. And let's do the training, let's take the steps to make sure that we're ready in case of a situation where there is an active shooter situation, which could be an employee, but also could be a third party."

So those are the things I'm thinking about. I'm not a huge fan of policies that say, you know, "let's have guns in the workplace." Again, for all the things I mentioned, the insurance, where we're going to get put the actual weapons, how are we going to secure them? And then what kind of training are we going to require for the individuals who have the weapons? So those are the things that I'm thinking about when I'm advising a company. Obviously, I'm, you know, I'm glad to listen, go through what the issues are at a particular site, but those are the issues that we always come back to when advising companies on a "gun in the workplace" policy.

Becca Rainey (17:45)

Yeah, and what does the federal workplace safety agency OSHA have to do with this conversation? And have they said anything about what employers should do with guns in the workplace?

Travis Vance (17:57)

Yeah, so it's interesting, you know, OSHA does not have a regulation on guns in the workplace. But let me give you an example. This, this actually happened. If you employed an individual as a security person at a mall, and there were a lot of people that were known to come to that mall with guns, and there was a lot of violence with guns at that mall. And then something happens to your employee, the security guard at the mall, OSHA can still cite you as an employer of that security guard in what OSHA calls the General Duty clause. Now that's not a standard, but it's the generic part of the OSH Act statute that requires employers to maintain a safe work environment. And it all comes down to knowledge, Becca. So like if you know that there are patrons, customers, even employees, neighbors around your company's facility that are bringing guns onto the workplace, that are, you know, there's been shootings in the area and you don't do anything to protect your workers, maybe security guards, making sure every perimeter access entry or entrance is locked at all times, that only individuals who work there are permitted with badge access. If you're not taking those steps, then OSHA can cite you under the General Duty clause. And that has happened and it happened specifically under that mall security guard situation that I just mentioned. And then, of course, you know, there could be a workers' comp claim. There could be a third-party claim. There could be an allegation that the individual gets outside of workers' comp and then can sue the employer directly. So there are a lot of buckets of liability there, and it all comes back to workplace violence. But OSHA specifically doesn't have a standard, but employers could be cited if employers know about a hazard related to workplace violence, to the use of guns, and don't take the steps to protect the workers.

Becca Rainey (20:13)

So, thing five. The time to review your workplace policies on firearms is now. Employers that restrict guns should examine their current policy, notice, and signage, training, enforcement procedures, and law enforcement contacts. Employers that permit weapons should likewise have a written policy defining what is allowed, where it is allowed, and how violations will be handled. Let's end with the employer listening to this who hasn't looked at their weapons policy in five years. Where do you start?

Travis Vance (20:43)

Well, I think you start with really, really good training on what to do if OSHA shows up. And you have to be careful about this. You have to get the right trainers. Sometimes the actual training is traumatizing for employees. But if you haven't looked at your weapons policy in five years, I would start with the active shooter training just to sort of broach the topic of "we're gonna take a look at active shooter situations and how to protect our workers." And then you can figure out does that include having weapons in the workplace? Does it include reinforcing that we're not gonna have a weapons policy? Or in other words, we're not gonna allow weapons in the building. So I think the active shooter training is a good refresher because that's the thing that's most important. If something happened tomorrow, we'd want to have that in place. And then we can take a step back and figure out what are we gonna do about our weapons policy? Are we gonna make sure, like are we gonna put in technology that can identify if anybody has a weapon? Are we gonna have a security team? What are we gonna do? But I think the active shooter training is a good start, if you haven't taken a look at your weapons policy in several years.

Becca Rainey (21:51)

And our last question today. If an employer does one thing after listening to this episode, what should it be?

Travis Vance (21:58)

I think the most important thing, you know, after looking at this decision from the Supreme Court is just knowing what the local and state laws are. You know, this Hawaii law was very interesting. It's not like a lot of other laws in the United States, but there are a lot of different requirements whether you're in Iowa, Florida, Texas, Georgia, anywhere throughout the country, there are different cultural sort of norms. It's, you know, people view guns differently throughout the country. So this is a great opportunity for employers to go back and look and say, "What does my city, what does my county, what does my state require?" And I think that's what the Supreme Court has taught us more than anything else.

Becca Rainey (22:49)

This is the part of the show where we get to know you a little better in five questions. Are you ready?

Travis Vance (22:54)

Sure, yeah, go ahead.

Becca Rainey (22:56)

Alright, so you have handled matters in almost every state. Which state do you most enjoy traveling to for work?

Travis Vance (23:03)

I really like Utah a lot, I like Salt Lake City. It's great. A lot of good food out there and the outdoors. And then I get to go to Alaska a lot, which is pretty cool. So I would probably say Utah and Alaska as my faves.

Becca Rainey (23:15)

Beautiful. I mean I've certainly never been to Alaska. I've heard very good things. It's on the bucket list, one day.

Travis Vance (23:20)

That's right, yeah. It's just so big, it's amazing.

Becca Rainey (23:24)

Second question: What is your favorite style of music?

Travis Vance (23:28)

Well, of course, you know, one of the things that's kinda like underground Fisher Phillips is that I started Hair Nation in 2017. It's like a subgroup of OSHA lawyers who like hair metal bands. So I would probably say like, you know, I love Aerosmith and Van Halen, a lot of stuff from the 80s and early 90s. So I would say pretty much anything in that era I'm a big fan of.

Becca Rainey (23:54)

All right, so like essential dad rock. I gotcha.

Travis Vance (23:58)

Yeah, pretty much, unfortunately. Yeah, that's what they call it now.

Becca Rainey (24:03)

Third question. What is one thing that you always have on you when you travel?

Travis Vance (24:08)

This is funny, but yeah, I always have BC Headache Powders. I tell people about BC Headache Powders all the time. It doesn't matter if you don't feel good, you got a headache, you just had a bad night of sleep, whatever, you can just pop a BC Headache Powder. It's amazing. I tell people about them all the time. It tastes awful, but it's a miracle little drug. You can just keep it in your bag, don't feel good, pop a BC Headache Powder, it's amazing. But that would be the one little thing I always have.

Becca Rainey (24:37)

I have never heard of this. And just to be clear, Fisher Phillips is not a sponsor of BP Headache Powder, it's just purely Travis.

Travis Vance (24:45)

BC, ha ha.

Becca Rainey (24:45)

BC! BC Headache Powder. There we go.

Travis Vance (24:48)

Yeah.

Becca Rainey (24:49)

All right. So are you an early bird or a night owl?

Travis Vance (24:54)

I would say these days early bird. I really like my sleep, but I'm also pretty good in the morning, so I like to get up, have coffee and then work out. So I would definitely say an early person at this point.

Becca Rainey (25:07)

Yeah, once you kind of get into that routine, it is like essential to like getting you going during the day and like keeping your energy, I feel like. Bad morning habits can really tank your day.

Travis Vance (25:20)

Right, absolutely.

Becca Rainey (25:21)

All right, last question. What's one skill outside of law that you wish you were really good at?

Travis Vance (25:28)

I always wanted to be like a songwriter or a playwright. Like I always thought about like if I could write songs or write plays, I thought that would be amazing. And I sort of like think about it all the time. Like the guy that was the lead singer for the Foo Fighters, Dave Grohl. If you listen to his book, but that was like, I mean, that would just, I'd love to have that life, of like Dave Grohl writing songs and playing every instrument. I just think that would be awesome.

Becca Rainey (25:57)

Something that, you know, as a writer on the content team, something I've always struggled with, I had no problem writing lyrics or putting that together. For me, it's the music part. It's like hearing the song to go along with the lyrics. That is such a skill.

Travis Vance (26:12)

Right. Absolutely. Yeah, that would be something I would love to do if I could be good at it.

Becca Rainey (26:18)

Alright, that's all the time we have for now. Thanks again for being on the show, Travis.

Travis Vance (26:23)

Thanks very much. It's great to be here.

Becca Rainey (26:27)

And thank you for listening to The FP 5. You can find our insight explaining the Supreme Court's concealed carry decision and practical steps for businesses in this episode's show notes. We'll see you next week.

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