

ARE “BRING YOUR GUN TO WORK” POLICIES A GOOD IDEA?

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As the national debate roils about how to handle the problem of gun violence in modern American society, employers are asking whether it makes sense to allow employees to carry firearms at work. Although office killings have actually declined over the past 10 years, highly publicized instances of workplace violence have made some employers seriously consider whether a “bring your gun to work” policy could save lives. One Republican Presidential contender recently summarized the rationale for such policies when he said: “You stop bad guys by using our guns.”

However, in situations where employees are not properly trained to use firearms in a volatile public setting, employers should be discouraged from adopting “bring your gun to work” policies. These policies are historically rare, so test cases are scarce. We do know, however, that such a policy could lead to increased physical harm and even death in the workplace. Moreover, you could also face liabilities in the form of a large negligence verdict or simply the steep price of defending against potential claims.

Legal Considerations Before Adopting A Gun Policy

There are substantial legal risks to consider before adopting such a policy. For example:

Negligence Claims And Workers’ Compensation

Negligence claims are governed by state law, and thus the legal standards vary across the country. In general, however, third-party victims of an employee’s violence may be able to sue you for negligent hiring, negligent supervision, or negligent retention, depending on the circumstances. Courts

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Corey J. Goerd

Director of Pro Bono &
Community Engagement

[404.240.4212](tel:404.240.4212)

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will look to whether you had a duty to prevent such violence from taking place, and if so, whether you took reasonable steps to minimize the risk of an attack.

If one employee injures a coworker at work (or perhaps even off premises), state law will also determine whether workers' compensation covers a resulting legal claim, or whether the injured party can bring a civil claim for negligence in court. If a civil claim can be brought, the injured party will almost certainly sue the employer in addition to the individual wrongdoer through a vicarious liability theory in an attempt to recover as much compensation as possible.

Occupational Safety And Health Act (OSHA)

The U.S. Department of Labor is authorized to enforce the General Duty Clause of OSHA, which requires you to provide workers with a place of employment that "is free from recognizable hazards that are causing or likely to cause death or serious harm to employees." Employers that allow workers to carry firearms at work could be on the hook for steep fines even without any injury if your gun policy is not carefully drafted to comply with the General Duty Clause.

State Gun Laws

At the beginning of 2016, at least 24 states have implemented specific laws to address weapons in the workplace. In some circumstances, a "bring your gun to work" policy without sufficient restrictions would violate state law.

For instance, Alabama generally allows employers to permit guns at work, but state law specifically prohibits the possession or carrying of firearms in some settings. Employers in Ohio are allowed to create and implement policies that restrict or prohibit employees from carrying concealed weapons on an employer's property, but the law also permits employers to implement policies that allow licensed employees to carry firearms in the workplace. Other states, including Texas, prohibit employers from adopting policies that bar anyone, including employees, from lawfully possessing or storing firearms in their parked vehicles while at work.

What To Consider Before Adopting A Gun Policy

In addition to the legal issues raised above, there are related logistical issues that you must consider before implementing a policy allowing your workers to take guns to work. For instance, at a minimum, you should consider the following:

- What types of guns will your employees be allowed to carry?
- Will there be a limit on the number of guns each worker can have, and if so, what is that number?
- Will employees be required to undergo firearm proficiency testing or psychological testing prior to being granted permission to carry a firearm in the workplace?
- Will you provide a secure storage area for employees to maintain their firearms during the workday? If not, what should employees do with their firearms when they need to remove them from their person?
- Do you own all of the workplace premises? If any portions of the premises are leased, such as common areas or walkways, have you verified whether the lease permits firearms on the premises?
- Do your vehicles contain a secure compartment for the maintenance of firearms? If not, what would an employee on a service call do if prohibited by law from carrying a firearm at the location being visited?
- Have you checked with your insurance broker or carrier to determine the impact that your policy might have on your rates?

If the worst-case scenario were to happen and an incident of workplace violence involving a gun were to occur after you implemented a “take your gun to work” policy, several factors would be examined in order to determine your liability. For example, a court would look to the wording of your policy (including possible subtle nuances in the policy language), the implementation of the policy, mechanisms in place to ensure compliance, and how consistently you enforced your rules.

The lesson behind this hodgepodge of laws and practical considerations: you need to think carefully before drafting and implementing a “bring your gun to work” policy.

For more information, contact the author at CGoerdt@fisherphillips.com or 404.240.4212.