

# WEB EXCLUSIVE: SHOULD EMPLOYERS ALLOW CONCEALED WEAPON PERMIT HOLDERS TO CARRY GUNS AT WORK?

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As mass shootings have continued with regular frequency in the United States, our country remains deeply divided, not only with the cause of these tragic events, but also on how to stop them from occurring. Many have called for increased gun control, including a ban on assault-style rifles like the AR-15 and universal background check requirements for all firearms transactions. Others have called for fewer restrictions on law-abiding gun owners' ability to carry concealed firearms at their places of work and on public property, arguing that additional guns on the scene often prevent unnecessary harm.

Employers are caught in the middle of this debate, as they often must resolve the issue of whether employees with concealed carry permits should be allowed to carry their firearms at work. Would doing so make workplaces safer or more dangerous? Are there potential legal liability issues to consider? In making this decision, you need to assess a constellation of legal and policy factors.

## LEGAL RISKS OF PERMITTING CONCEALED CARRY

Both federal and state laws impact whether an employer should permit concealed weapons at their workplace.

### *OSHA's General Duty Clause*

Under federal law, although there is no affirmative duty to *prevent* workplace violence, employers are required under the Occupational Safety and Health Act to provide a place of

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employment that is free of recognized hazards to employee safety and health. The Occupational Safety and Health Administration (OSHA) has interpreted this requirement, known as the General Duty Clause, to require employers to take steps to reduce the risk of harm in some cases where it is sufficient to be a recognized hazard.

State tort laws also pose risks to employers. For example, if an armed employee attacks another individual at work, could you be sued for negligence as a result? That answer may depend not only on the state where the incident occurred, but also on your efforts to protect the safety of your other employees from and what knowledge you had regarding the employee's past.

### *Assuming A Duty And Civil Liability*

You must be wary of "assuming a duty" to protect your employees. A [recent case](#) from Kansas is instructive. There had been several safety incidents already in a company parking lot, including theft and a kidnapping. To address these issues, the employer installed security cameras and made the improvident decision to create an ad hoc group of employees to provide security. The plaintiff in the case was an employee who had previously advised the company of safety concerns related to domestic abuse. As she was leaving work one day, she was shot by her ex-boyfriend in the parking lot. The employee sued the employer for negligence and was awarded a \$3.25 million verdict, successfully arguing that the employer had assumed a duty to protect her.

The relation to allowing concealed weapons at work is clear. If a workplace shooting occurs, and those employees who are permitted to carry firearms at work either fail to stop the shooter or injure another individual as a result, an injured person may argue that the employer assumed a duty to protect them when it allowed employees to carry firearms at the workplace.

## **LEGAL RISKS OF BARRING CONCEALED CARRY**

Alternatively, depending on the state in which you operate, there may be legal risk associated with prohibiting your employees from carrying concealed weapons. For example, several states have enacted laws permitting gun owners to keep firearms in their personal vehicles on the employer's

property. And some states require employers to post a notice if they have a ban on firearms on their premises. If you want to ban firearms at your workplace, you therefore need to examine your state's laws to determine whether any of these restrictions apply.

## **POLICY CONSIDERATIONS**

Aside from the legal implications associated with allowing concealed carry, there are several policy considerations to consider before forming a conclusion. First and foremost, before allowing some or all of your employees with concealed weapons permits to carry at work, you should review the policy with your liability insurer. They might determine that the policy increases liability risk, and therefore could raise your rates or cancel the policy.

Similarly, you should consider such a policy's effect on your workers' compensation coverage. While your rates may increase, you might also be required to cover an employee's claim in the event they are injured as a result of a gun-related incident at work.

Next, you should consider whether, on the whole, allowing concealed carry is wise based on your individual circumstances. Data released regularly by the Bureau of Labor Statistics consistently shows that workplace violence affects hundreds of thousands of employees each year, causes millions of missed workdays, and costs employers billions of dollars in lost productivity. You therefore must determine whether allowing concealed carry in your workplace will increase the risk or deter workplace violence or deter its occurrence.

Finally, you should consider whether such a policy would even help in the event of an active shooter situation. Many law enforcement personnel believe that such a policy may inhibit adequate response from law enforcement. In recent conversations with current state investigation bureau and former Department of Homeland security employees, each indicated that allowing concealed permit holders to carry at work created more risk than it was worth. They noted the danger of law enforcement officers mistaking a permit holder for the active shooter and the potential liability associated with the safe storage of guns in the workplace.

## **SO, SHOULD EMPLOYERS ALLOW CONCEALED CARRY?**

Probably not. There are many reasons not to allow employees with concealed carry permits to bring firearms into the workplace, from increased risk of legal liability, to the practical considerations of maintaining insurance coverage, and the question of whether the effect will be to stop active shooter incidents or simply prolong them. Moreover, the benefit from permitting concealed carry most likely does not outweigh the risks created, when the threat of such an incident may only be theoretical in nature (please see our previous [article](#) on how to prevent such incidents from occurring).

If you operate in any of the states that have passed laws permitting guns at the workplace, you should consult with legal counsel to help you develop a policy that minimizes associated risks. Some factors you might consider include:

- whether you have received substantiated reports of potential violence occurring at the workplace;
- whether your workplace is located in a high-crime area; and
- whether first responders are unable to respond to your workplace reasonably quickly.

## **LIKE IT OR NOT, YOU NEED TO BE PREPARED TO FACE THIS ISSUE**

Occurrences of workplace shootings continue at an alarming rate, yet many employers have not addressed this concern. It is not an issue to be ignored. When analyzing whether allowing concealed carry in your workplace will promote the safety of your employees, consider the factors outlined above and consult legal counsel and safety experts regarding this important decision.

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