

Safety & Health

Employers Must Juggle Safety, Employee Rights on Gun Carry Rules

While mass shootings, many in workplaces, have raised safety concerns and a heated gun control debate, some states' laws protect the rights of gun-carrying employees.

Some employers have been sued when there are shooting casualties on their property. In a mixed ruling March 5, Georgia's Supreme Court held in *Lucas v. Beckman Coulter, Inc.* that the state's "Bring Your Guns to Work" law extends immunity to employers for actions taken to comply with the law's intent of letting employees keep firearms in their locked vehicles without getting fired, but that this immunity isn't total.

Neighboring Tennessee "has seen a fair amount of gun- and employment-related litigation over the past three to five years," Justin Furrow, a management-side attorney and shareholder at Chattanooga, Tenn., law firm Chambliss, Bahner & Stophel P.C., told Bloomberg Law March 19.

The state legislature has been trying to balance employers' rights as private property owners to determine whether and under what conditions to allow guns in the workplace with the rights of gun-owning workers, especially those with concealed-carry permits, Furrow said.

Tennessee requires employers to allow workers to bring their guns in the cars they drive to work and park in the employee parking lot. An employee who is fired for doing that has a right to sue the employer, Furrow said, adding that there have not been many lawsuits in this scenario.

Texas, West Virginia, and other "hunting states" have similar laws, Matthew Doherty, senior vice president of security risk management for Chicago-based security firm Hillard Heintze, told Bloomberg Law March 19. Some states also prohibit an employer from not hiring—or firing—someone because he or she has a concealed-carry permit, he said. Illinois and Tennessee allow employers to ban guns in the workplace only if they have proper signage, which in Illinois must quote the relevant state law verbatim, he said.

Taking Precautions The Second Amendment is not necessarily the determining factor when it comes to guns in the workplace because it restrains government action against gun owners, not employers' rights as property owners to decide whether to allow guns on their property, Michael Corcoran, founder and presi-

dent of the Workthreat Group LLC, Newport Beach, Calif., told Bloomberg Law March 19. Theoretically, he said, an employer could decide to allow employees who do not have concealed-carry permits to carry their guns in the workplace.

Employers have a responsibility to provide a safe workplace, as required by state and federal law and enforced by the Occupational Safety and Health Administration, Doherty said. So if an employer allows workers to carry guns in the workplace, it is even more vital "to have a workplace violence prevention program in place that recognizes the signs" that somebody poses a threat of violence, he said.

Most workers undergo background screening when applying for a job, and such screenings should be recurrent in workplaces that allow guns, Doherty said. "Just because you can legally possess a weapon does not mean you don't have troubling behaviors, so you have to have a program in place so that those behaviors are recognized and reported to management, and management knows what to do with the information."

Relying on employees with guns to stop a workplace shooter is foolish, he said, because the shooter is often familiar with the workplace and who there is likely to be armed. Responding police officers, however, will shoot first and ask questions later if they see anyone who is armed.

Employers that allow workers to carry guns should follow the three parameters under federal law, Doherty said: prohibiting guns to anyone undergoing court-ordered mental health treatment, anyone under a restraining order or protective order, and anyone who has been convicted of a violent crime. Employers that allow workers to keep a gun in a locked car must ensure the employee lawfully possesses the gun, that it is out of view, and that it is locked inside the car, in the glove compartment or trunk, in accordance with the law, he said.

In all cases, employers need to know state law and consult counsel when developing policies, he said, adding that employers face legal liability if someone is injured by gunfire on their property.

In Corcoran's view, "zero tolerance" policies on guns are impractical and should be replaced by more flexible "no tolerance" policies; for example, giving an employee a verbal warning if he mistakenly brings a gun to work after a trip to the shooting range.

By MARTIN BERMAN-GORVINE

To contact the reporter on this story: Martin Berman-Gorvine in Washington at mbermangorvine@bloomberglaw.com

To contact the editors responsible for this story: Joel J. Meyer at jmeyer@bloomberglaw.com; Martha Mueller Neff at mmuellerneff@bloomberglaw.com

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