

Guns in the workplace and employer liability

by Amy Lombardo

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Recent news of shooting incidents in or near business establishments may have employers considering the question: What if?

If a similar event happened at your business, do you have a responsibility to protect employees? Could your company be liable if the unthinkable happened?

This fear is not entirely without foundation. The U.S. District Court for the District of Colorado has ruled that a wrongful-death lawsuit can go forward against Cinemark USA (parent company of the Colorado movie theater where 12 people were killed in a mass shooting last summer).

Individuals have a constitutionally protected right under both federal and state law to possess a firearm. The U.S. Supreme Court, however, has not ruled upon the intersection of an individual's right to bear arms and a business's right to limit weapons on private property. With all of these constitutional considerations, is there any practical advice for an employer to rely upon when setting workplace policies?

Although the Occupational Standards Hazard Act provides that employers have a general duty to employees to furnish a workplace free from recognized hazards that are likely to cause harm, OSHA standards have not established firearms as a "recognized hazard." In fact, in 2006, OSHA declined to set standards banning firearms from the workplace. Thus, the federal OSHA statute and accompanying rules do not strictly prohibit guns in the workplace, nor is an employer required to do so under current regulations.

Under state law, employers should be aware that if a tragic event such as a shooting occurs, worker's compensation provides potential assistance for an employee injured at work. On the other hand, if a customer or client is injured by an employee bringing a gun to work, a civil lawsuit for negligence may result. That type of lawsuit would be based upon an employer's duty to use ordinary care to prevent reasonably foreseeable risks to an invitee upon their property. This standard includes the requirement that any negligence be the direct and proximate cause of the injury. Without an employer affirmatively taking on this responsibility (which could be done in a number of subtle ways), or having specific knowledge or notice of a dangerous situation – such as an explicit threat from an individual with a weapon – an employer does not have a heightened duty to protect employees from every potential harm.

Here, the Legislature has established that Idaho public policy favors employer policies that do not limit firearms on their premises. In 2009, the Legislature passed a bill granting immunity from civil lawsuits for employers who allow employees to store firearms in their vehicles while at work. This law is fairly narrow and has not yet been tested by Idaho courts, but on its face, the statute purports to wholly limit liability for employers who either specifically allow, or do not prohibit, firearm storage by employees. There is no accompanying immunity for employers who choose by written policy or otherwise to limit or prohibit employees from bringing guns onto their premises.

Although this Idaho statute likely benefits some employers, the immunity is very limited, because it applies only to claims that arise out of the employer's policy to allow firearms in personal motor vehicles on the employer's business premises. Furthermore, should a business wish to limit firearms on its premises, there are many potential legal issues in establishing a written policy of this nature.

Companies would be wise to revisit any policies regarding firearms and seek the advice of counsel to strategically plan a prudent strategy that meets business objectives and provides the most protection from any potential litigation.

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