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**WORKPLACE VIOLENCE****PREVENTING GUN INCIDENTS**

There are now 22 states that guarantee employees the right to possess firearms while commuting to and from work, and to store them in their locked vehicles while at work. This article discusses the security challenges presented by guns in employee vehicles, and how their presence can eviscerate the moderating effects of a “cooling off” period after a corrective action or workplace incident. It also offers recommendations for new management protocols to help employers maintain workplace safety in BYOG (Bring Your Own Gun) states.

**BYOG and the Workplace: Seven Proactive Protocols for Personnel Actions**

By JAFFE D. DICKERSON AND CORINN JACKSON

**O**ne afternoon last year, an employee who had just been told he was fired, responded by retrieving a handgun from his vehicle parked in the employee parking lot and opening fire in his workplace. The shooter killed several co-workers before killing himself.

Unfortunately, the story doesn't end there. The family of one of the slain workers filed a wrongful death lawsuit, which is still pending. The family claims the company was grossly negligent because the shootings were reasonably foreseeable based on the shooter's history of misconduct and his known propensity for violence. In support of the claim, the family argues that the company (1) should have known the shooter was mentally ill and could hurt or even kill others; (2) acted carelessly and was negligent when it gave the shooter advance notice about his possible firing; (3) negligently allowed this employee to go unescorted to his vehicle; (4) negligently retained the shooter for years; and (5) failed to take appropriate security precautions.

There are 22<sup>1</sup> states that guarantee employees the right to possess firearms in their vehicles while commuting to and from work, and to store them in their locked vehicles once at work. Forty-eight states have

laws that authorize citizens, including employees, to carry concealed weapons in public areas, and 38 states have laws that prevent public disclosure of the names and personal identifying information of right-to-carry permit holders, which impedes employers from obtaining that information about their employees.<sup>2</sup> Putting politics aside, easy and immediate access to firearms near or on company property presents challenges for employers and their duty to provide “a safe and healthy work environment.”<sup>3</sup> Easy and immediate access raises concerns about the potential for employee violence as an emotional response to anything from the imposition of disciplinary action to simple interpersonal conflicts in the workplace.

This article discusses the security challenges that may arise as a result of state laws requiring employers

<sup>2</sup> Source: NRA-LA, [www.nraila.org/gun-law-map.aspx](http://www.nraila.org/gun-law-map.aspx).

<sup>3</sup> According to federal OSHA's website, although there are currently no specific standards for workplace violence, under the General Duty Clause, Section 5(a)(1) of the Occupational Safety and Health Act (Pub. L. 91-596), employers are required to provide their employees with a place of employment that “is free from recognizable hazards that are causing or likely to cause death or serious harm to employees.” The courts have interpreted this General Duty Clause to mean that an employer has a legal obligation to provide a workplace free of conditions or activities that either the employer or industry recognizes as hazardous and that cause, or are likely to cause, death or serious physical harm to employees when there is a feasible method to abate the hazard.

<sup>1</sup> Alabama, Alaska, Arizona, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Michigan, Minnesota, Mississippi, Nebraska, North Dakota, Ohio, Oklahoma, Tennessee, Texas, Utah, Wisconsin.

to allow employees to store guns in their vehicles at work, and suggests some protocols for employers when engaging in corrective action.

### **Elimination of a ‘Cooling Off’ Period.**

One concern for employers in states that guarantee employees the right to bring guns to work, and to store them in their locked vehicles while at work, is the elimination of a “cooling off” period, i.e., time to calm down after an emotional event in the workplace. For employers who are engaged in discipline or counseling of employees, ready access to a firearm by a disgruntled or emotionally unstable employee immediately after a personnel action can create a serious potential for workplace violence.

### **Protocol 1: Know and Comply With State and Local Laws and Ordinances.**

The patchwork of state laws that govern the possession of firearms in public<sup>4</sup> may create challenges for employers, especially employers who do business in numerous states and retailers with workplaces that are open to the public. While no state currently prevents an employer from prohibiting firearms on company property (excluding parking lots), some require signage of a specific type, size and location prohibiting firearms on the premises. In addition, some cities (e.g., Chicago, District of Columbia) also regulate gun possession and ownership.<sup>5</sup> Given the changing legal landscape and the cutting-edge nature of this issue, employers may want to task someone in the company to stay abreast of changes in gun laws in all jurisdictions where the company does business, and update company policies as appropriate.

### **Protocol 2: Implement a Legally Compliant Policy.**

Along with staying legally compliant, employers should consider adopting a “guns in the workplace” policy. Generally, employers will want such a policy to state that guns are prohibited on company property except as allowed by applicable law. Depending on factors such as state law and local custom, adopting such a policy may also require consideration of several ancillary issues:

- For multi-state employers, should they have a “one size fits all” national policy, different policies for different states and/or different policies for different cities or localities?
- Related to the above, should the policy reflect local customs, mores and even political attitudes?

<sup>4</sup> These include 22 states that guarantee employees the right to possess firearms while commuting to work and to store them in their locked vehicles while at work; 48 states that have laws that authorize citizens, including employees, to carry concealed weapons in public areas; 38 states that have laws that prevent public disclosure of the name and personal identifying information of right to carry permit holders, including employees; and 24 states that have laws that allow employers to prohibit employees from carrying concealed firearms onto company premises.

<sup>5</sup> Updated information on state and local laws can be found on the National Rifle Association website (NRA-LA, [www.nraila.org/gun-law-map.aspx](http://www.nraila.org/gun-law-map.aspx)) and on Littler GPS®.

- Does it matter what the company’s competitors are doing?

When the company adopts a policy on guns in the workplace, the company should distribute the policy to the workforce in a manner similar to the company’s other significant policies. The company should provide copies to all employees, and obtain written acknowledgment of receipt of the policy to file in each employee’s personnel file.

### **Protocol 3: Require Employees to Notify the Company Whenever They Bring Guns Onto Company Property.**

In those states that allow employees to keep guns in their vehicles while at work, employers may consider implementing a gun policy requiring all employees who carry weapons in their vehicles to “sign in” each day that they are carrying a firearm in a vehicle parked on company property, and acknowledge their understanding of the employer’s firearms policy regarding possession and storage of weapons on company property.

However, employers operating in multiple states should be cautious regarding incorporating a blanket sign-in provision into a gun policy. Laws that prevent public disclosure of the name and personal identifying information of right-to-carry permit holders can likewise prevent employers from obtaining that information about their employees. Employers operating in the 38 states that protect the privacy of right to carry permit holders should therefore avoid incorporating a sign-in provision into a gun policy.

### **Protocol 4: Designate Separate Parking Areas With Added Security for Employees With Concealed Weapons.**

One effective way to respond to the tension between the right to carry and the company’s need for reasonable security is to implement enhanced security measures to control and monitor guns on company property. Employers operating in a multi-tenant building with a shared parking lot may want to consult with the building owner to discuss how they can implement these measures. As discussed above, businesses should only consider adopting these measures in jurisdictions that do not prohibit the disclosure of the name and personal identifying information of right-to-carry permit holders:

- If not otherwise prohibited by state or local law, designate a separate, gated and secure area in the company parking lot for employees transporting guns in their cars. Further security for this area might include surveillance cameras and dedicated security personnel to control and monitor access to and from the “gun lot.”
- Require all employees who transport guns in their vehicles and park on company property to park only in the designated area, and to lock their vehicle and store the weapon out of sight as required by state law. If security personnel are monitoring the designated parking area, the monitoring process can include regular checks to make sure vehicles are locked and weapons are secured out of view. Employees should also acknowledge company policy that possession of a firearm outside of

the specific parking area is strictly prohibited, and failure or refusal to adhere to this policy may result in disciplinary action up to and including termination.

### **Protocol 5: Train Managers, Supervisors and Employees on Warning Signs of Potential Violence (“See Something, Say Something”).**

Regardless of the number of surveillance cameras and armed or unarmed security personnel the company employs, a trained workforce committed to maintaining a safe workplace can be the most effective safety tool. In fact, employees are often the company’s “first responders” to instances of real or potential violence in the workplace. Training that addresses effective responses to workplace violence helps avoid (1) an understandable inclination by employees not to get involved, (2) panic or (3) actions that exacerbate an already volatile situation.

It is important to stress to all employees that for their safety and the safety of others they must be proactive in recognizing the warning signs of workplace violence and immediately reporting what they see or hear to management. Warning signs may include:

1. Direct or veiled verbal threats of harm.
2. Intimidation of others. (This can be physical or verbal intimidation. Harassing phone calls and stalking are obvious examples.)
3. Fascination with incidents of workplace violence and approval of the use of violence under similar circumstances.
4. Fascination with automatic weapons, particularly their killing power.
5. Paranoid behavior (e.g., perceiving that the whole world is against them).
6. Moral righteousness and believing the company is not following its own rules and procedures.
7. Inability to take criticism of job performance (e.g., holding a grudge, especially against a colleague or supervisor, often verbalizing hope for something to happen to the person against whom the employee holds a grudge).
8. Expression of extreme desperation over recent family, financial or personal problems.
9. History of violent behavior.
10. Anger, particularly unusual displays of unjustified anger, which does not dissipate.
11. Drug or alcohol abuse.

Importantly, an employee who exhibits the above behaviors may not commit any acts of workplace violence. However, these behaviors may be warning signs, and employees should feel comfortable spotting and reporting warning signs to management.

Above all, it is critical that management create and maintain a workplace environment in which employees are encouraged to come forward with good-faith concerns, and that management respond with appropriate confidentiality, professionalism and respect.

### **Protocol 6: Establish Security Protocols for On-Site Personnel Actions Such as Suspensions and Terminations.**

The company’s most important security consideration is ensuring that the company conducts on-site personnel actions safely. The company should designate a “Threat Assessment Team” (TAT), which may include a behavioral psychologist, retained to advise and assess workplace threats, a security specialist (or local police), human resources and legal counsel. The TAT should perform a workplace violence assessment on all workplace corrective actions that raise concerns about violence—from a minor counseling session or written warning to an involuntary termination. Key factors related to the individual employee should be assessed, including:

- Number of years with the company.
- Prior work history and performance.
- Prior disciplinary history.
- Any prior history of violence or workplace conflicts.
- Recent relevant and legally accessible criminal history, such as convictions for crimes involving violence, including domestic violence, assault and battery, vandalism or threats of violence.<sup>6</sup>
- Circumstances leading to the current personnel action.
- Severity of the current personnel action.
- Any statements or conduct by the employee that suggest a potential for violence.

When reviewing the situation through the lens of the risk assessment checklist, management or the TAT should focus on two key issues:

- Does this situation pose a risk to the health and safety of employees, customers, vendors or members of the public?
- If so, how serious is the risk, and what reasonable and prudent steps should be taken to mitigate the risk?

Although the company should take appropriate security measures on a case-by-case basis, generally companies should employ additional security measures in all cases involving an employee with a history of conflict, threats or violence in the workplace. Likewise, a company may want to take additional security measures when instituting personnel actions with an employee (1) who has a history of conflict in the workplace, and (2) who the company is aware has easy and immediate access to a firearm in his or her vehicle parked on company premises.

For example, if the company plans to terminate an employee with a history of workplace conflict or violent behavior, and the employer is aware that the employee has a firearm in his or her vehicle in the company park-

<sup>6</sup> Note that several states and local ordinances limit the use of criminal histories, including and especially arrests that do not result in a conviction, expunged records, certain downgraded felonies and records that are known to be inaccurate, for personnel actions.



ing lot, a multistep termination protocol might include the following:

1. Arrange for a meeting with the employee at the end of the workday or shift, or a time when the majority of the workforce is not present.
2. Escort the employee from his or her work area to the meeting, ensuring that the employee is accompanied by company personnel at all times.
3. Arrange for security personnel to be present at the meeting or nearby, and readily available if a potentially serious situation arises. One technique is to have private, armed security in a room adjacent to the meeting room with the employee. In this scenario, the door to the meeting room is not entirely closed, which allows security to monitor the conversation and the employee's reaction. Establish a code word or phrase between management and security (e.g., "This meeting is over!"), which alerts security that the matter has escalated from a personnel matter to a security matter. This code word or phrase signals to security that the company is authorizing security to immediately take appropriate steps to protect company personnel and property and escort the employee from the premises.
4. Advise the employee that based upon the reasons or circumstances leading to the disciplinary action, the company is placing him or her on a paid administrative leave until further notice, and that further investigation and determination of future action is expected. Inform the employee that he or she should be available by phone during normal business hours (since he or she is on paid leave) and that he or she is not to enter company property without prior written authorization from the company.
5. At the meeting, retrieve all company property in the employee's possession (keys, laptop, mobile phone, parking pass/card, credit cards).
6. Have security escort the employee back to his/her work area to retrieve whatever personal items he or she wishes to take at the time.
7. Escort the employee out of the building to the parking lot, and continue surveillance until the employee exits the property.
8. All company personnel involved in the meeting should immediately leave the premises at the conclusion of the meeting, while the employee is gathering his or her personal belongings.
9. Immediately alert security and all affected personnel that the employee is on leave until further notice; provide security with a picture of the employee and a description of his or her vehicle; and give instructions to notify management immediately if anyone sees the employee on or near company property.
10. Conduct a post-meeting briefing as soon as possible or practicable to determine if additional actions are necessary.
11. Notify the employee by mail that the company has terminated his or her employment, and include the final paycheck and related termination documents (e.g., COBRA notice). Some employers may choose to have armed private security professionals serve the termination notice, which would allow them to do an informal threat assessment of the employee's reaction when he or she receives the notice.
12. Maintain enhanced security procedures for the next three to five workdays or as dictated by the circumstances.<sup>7</sup>

### **Protocol 7: Coordinate With Local Law Enforcement.**

Trying to simultaneously establish and utilize relationships with local law enforcement in a workplace crisis is difficult. Accordingly, it is critical to establish and nurture relationships with emergency contacts and administrative liaisons before they are needed.

While the safety of the workforce has always been a concern for employers, laws protecting the rights of employees to bring firearms onto company property can present new challenges for businesses. Employers should take proactive steps to ensure that the work environment is as safe as possible, particularly when implementing personnel or corrective actions that may involve disgruntled employees with easy access to weapons. The above seven protocols provide a checklist for businesses to help establish and maintain a safe and productive workplace.

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*Jaffe D. Dickerson is a shareholder in the Los Angeles office of Littler Mendelson. He represents public and private sector employers in all aspects of labor and employment law, while also advising in specialized practice areas such as alternative dispute resolution, workplace privacy issues and performance evaluation.*

*Corinn Jackson is an attorney in the Los Angeles office of Littler Mendelson. As a member of Littler's Knowledge Management Department, she creates and manages legal and electronic resources to assist in counseling employers in all areas of labor and employment law and regularly works in numerous practice areas, including staffing and contingent workers, background checks, and competition and trade secret law.*

*This article does not represent the opinions of Bloomberg BNA, which welcomes other points of view.*

<sup>7</sup> In a unionized environment, these termination protocols may be subject to collective bargaining.