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Wisconsin’s Newly Enacted Concealed Carry Law Impacts Employers

By Jason N.W. Plowman

This month, Wisconsin became the 49th state to legalize the carrying of concealed weapons (Illinois being the lone state without a concealed carry law). In doing so, Wisconsin joins a growing list of states with “parking lot laws” which allow employees to bring guns to work and leave them in their cars.

Effective November 1, 2011, residents 21 years and older can carry a concealed weapon – a handgun, electric weapon such as a taser, knife (other than a switchblade knife), and billy club – virtually anywhere in the state, including most places of employment. Wisconsin will issue licenses to carry concealed weapons, subject to background check and training requirements.

Employer Prohibitions

The new law contains provisions that specifically apply to all employers within the state (regardless of the number of employees). First, employers may still prohibit employees from carrying weapons during the course of their employment (at both work sites and off-site locations where employees are working). Significantly, however, employers cannot prohibit an employee from carrying or storing a weapon in his or her own vehicle even if that vehicle is used in the course of employment or where the motor vehicle is driven or parked on property used by the employer. In addition, an employer is not permitted to bar an individual from employment because he or she is licensed to carry a weapon.

While many other states’ laws address storage of weapons in employee vehicles, the Wisconsin law does not. Thus, without running afoul of the law, Wisconsin employers may impose reasonable restrictions (short of prohibitions) on the storage of weapons. For example, employers could potentially require weapons to be stored out of plain view, placed in a secure location within the employee’s vehicle, or require employees to park in a specific section of the employer’s parking lot. Under the new law, employers can continue to prohibit weapons in employer-owned vehicles and may also prohibit persons other than employees (e.g., visitors) from carrying weapons anywhere on the property (including parking lots).

Businesses prohibiting persons (e.g., employees, visitors, customers, etc.) from carrying a weapon on their premises must post signs (no less than 5" x 7") prominently near entrances and other locations where persons entering the property or building can be expected to see the signs.

Immunity Provision

The new Wisconsin law contains a fairly unique provision that expressly provides employers who do not prohibit employees from carrying a concealed weapon on their premises immunity from any liability arising from that decision. It is unclear how far liability "from the decision" to not prohibit concealed weapons will extend. For example, an employer may still be liable for an injury or damage caused by its negligence in hiring, training, or supervision (unrelated to the decision to allow concealed weapons in the workplace). In addition, the immunity provision would not eliminate any potential forms of liability under federal law. For those employers who do prohibit employees from carrying concealed weapons on their premises, liability will continue to be determined with regard to whether the employer was in some way responsible for the injury/damage (as is the case under current law).

Employer Response

Employers should consider the impact of the new law on their particular business and determine an appropriate response. At a minimum, a broad workplace violence policy prohibiting weapons anywhere on the employer's property or premises (including parking lots and garages) will likely need to be adjusted to comply with the new law. Employers must, however, also be cognizant of any federal laws applicable to their business that restrict or prohibit guns in the workplace, as such federal provisions preempt the state law. While reviewing policies, employers should consider adopting a policy imposing reasonable restrictions on storage of weapons and ammunition in employees' vehicles. Employers should also ensure that their workplace violence policies provide for risk assessment, prompt investigation and response to violence issues. If security personnel are utilized, consider revising policies so that security personnel escort all discharged employees off employer premises and are then charged with monitoring parking areas and building entrances.

Because the immunity provision is ambiguous and may not eliminate all potential forms of liability, and for general safety reasons, employers are well-advised to continue prohibiting weapons, of any type, from their place of business (except the areas affected by the new law, e.g., parking lots). To the extent that weapons will be prohibited on premises, the required signs should be created and posted at the appropriate locations.

National Trend Continues

Wisconsin's new law is part of a national trend, arising largely in the last five years, of "gun-at-work" laws. Alaska, Arizona, Florida, Georgia, Indiana, Kansas, Kentucky, Louisiana, Maine, Minnesota, Mississippi, Nebraska, Oklahoma, Utah, and Texas are among the states to have enacted legislation allowing employees, subject to varying conditions, to store guns in their vehicles while at work. Multi-state employers should be particularly cognizant of this patchwork of state laws as they implement company-wide policies addressing weapons in the workplace.

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