



August 3, 2011

Concealed Carry Law Requires Businesses to Make Policy Decisions

As we discussed in our previous E-alert “Are You Ready for Conceal and Carry?”, public and private sector employers are facing the question of prohibiting concealed weapons in their place of business. This question, however, lends itself to a number of other considerations for employers, such as:

- May employers distinguish between prohibitions for employees and third parties?
- Is the immunity protection provided by the law really worth it?

As you know, Wisconsin Act 35 created the right of individuals to carry properly licensed concealed weapons onto property unless specifically prohibited by the owner of the property. The law also creates a limited immunity from liability for the decision to allow an individual to carry a concealed weapon onto property providing some protection for owners allowing concealed carry. A number of questions have arisen regarding the interpretation of this new legislation. Two of the more important questions are addressed below.

May we prohibit our employees from carrying concealed weapons, but allow third parties to enter our premises with concealed weapons?

The new law creates several new definitions of trespass which are classified as Class B forfeitures and are subject to fines. This gives the owner or occupant of a public or private building the ability to give notice orally, in writing, or by posted notice that firearms are not allowed on the premises (building and grounds). Even though the law allows oral and written notice to be provided, the consensus is that posting signage, as a practical matter, is the best method.

Employers may decide they are not comfortable banning concealed weapons on their premises completely, but that they do wish to prohibit their employees from carrying weapons while engaged in work. This is a decision employers are free to make under the new law. An exception to this rule is that an employer may NOT prohibit an employee, as a condition of employment, from possessing a concealed weapon in the employee’s own motor vehicle, even if the employee may carry the concealed weapon during the course of employment.

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An employer may not prohibit any individual from possessing a concealed weapon if the weapon is in a vehicle driven into or parked in a parking facility even if the vehicle is used for company business. A business may, however, prohibit individuals from carrying or possessing a concealed weapon in the parking lot of the business outside of his/her vehicle. However, an individual cannot be charged with trespass merely for possessing a firearm in a vehicle driven or parked in the parking facility.

If employers choose to prohibit their employees from carrying concealed weapons as a condition of employment, this policy must be reasonably enforced. Posting signs in the building is presumably one way to provide notification to employees, but it is also a good idea to include language in the employee handbook or personnel policies. Weapons will not practically be prohibited if an employer says “no concealed carry,” but then fails to enforce the policy when employees bring weapons to work.

Is the statutory immunity actually worth it?

This is an important question that employers must consider. The consequence for an employer’s decision to prohibit its employees from carrying concealed weapons is that it will no longer be “immune from any liability arising from that decision.” In other words, because the employer does not allow its employees to carry concealed weapons while working, it could be liable (but is not automatically) for injuries in the workplace. For example, if the employer prohibits its employees from carrying weapons at work, and a disgruntled customer comes to the office and injures one of the employees, what sort of liability does the employer face? This is very undecided however, employers are protected through workers’ compensation insurance.

The same immunity implications apply if a company chooses to prohibit third parties from carrying concealed weapons on the premises. By doing so, the company makes it a violation of the new trespass law for an individual to carry a concealed weapon onto the property of an owner who has posted sufficient notice. A company may be liable for injuries arising from this decision, but to what extent? For example, if a disgruntled former employee brings a concealed weapon back to the office and injures a current employee, could the employer be held liable? The answer will always depend on the specific facts.

It is important for employers to recognize that prohibiting employees or third parties from carrying concealed weapons does not automatically make the employer liable. In fact, it may not make the employer any more liable for injuries than it was prior to the new law being passed. It still means that there must be some sort of legal basis for holding the employer responsible for the acts of its employees or third parties should an injury result from a concealed weapon. Presumably, the test for this will still be based on some sort of reasonably foreseeable standard.

Aside from the legal implications associated with the employer’s decision to condone or prohibit concealed weapon carry, management must consider the public image of the corporation or municipality. Business may be won or lost with the way employers handle their options in terms of concealed carry. Serious thought should be given before implementing a policy, continuing a policy, or deciding that no policy is necessary in terms of concealed weapons.

Please feel free to contact Sara Ackermann or Kevin Terry, the authors of this article, or any of the attorneys in the Employment, Benefits & Labor Relations Practice Group of Ruder Ware: Dean Dietrich, Ron Rutlin, Mary Ellen Schill, or Bryan Symes, if you have questions in regard to this update.

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