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The Wild West in Your Workplace?

Employers Need to Carefully Consider Policies Under Wisconsin's Anticipated New Concealed Carry Law

by Frank A. Gumina and Erik K. Eisenmann

With Governor Walker's signature expected in the next few weeks, Wisconsin will become the 49th state to allow the concealed carry of guns and other weapons. The law allows those with training and registration to carry concealed weapons in most settings, including workplaces, unless employers implement specific prohibitions. The law will go into effect in October or November 2011. In the interim, employers need to carefully consider appropriate rules for their workplaces.

The new law allows licensed individuals to carry concealed weapons (including handguns). To receive a license, an individual must: (1) be age 21 or older; (2) pass a background check; (3) complete a training program; and (4) not be otherwise prohibited from carrying a gun (*i.e.*, not a felon). The license is valid for five years, and license holders must have both the license and a photo ID on their person while they are carrying a concealed weapon.

The new law creates a set of challenges for Wisconsin employers, who must now implement a policy on the carrying of weapons. The law provides that an employer may prohibit a license holder from carrying a concealed weapon "in the course of the [license holder's] employment." This means that an employer is allowed to prohibit its employees from carrying concealed weapons in the workplace, or while they are on duty (*e.g.*, an employer can prohibit a sales employee from carrying a concealed weapon while he/she is working out in the field). However, the law specifically protects an

employee/license holder's right to store a weapon in his/her own motor vehicle. This protection applies even if the employee/license holder utilizes the vehicle in the course of his/her employment, or parks the vehicle on the employer's property.

Employers who operate places of public accommodation (*e.g.*, hotels, restaurants, stores) face additional decisions in light of the new law. The default rule would allow license-holders to carry concealed weapons almost anywhere. (There are narrow exceptions for places such as police stations, courthouses, and airports.) Therefore, if a business owner does nothing, it will effectively permit customers/frequenters to carry concealed weapons on its premises. If a

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business owner wants to prohibit the carrying of concealed weapons, the owner may do so by posting a sign that is located "in a prominent place" near all of the entrances to the building where the restriction applies.

Regardless of your position on the reasonableness of the new law, it clearly poses some challenges for employers. The law contains language providing that an employer

who allows its employees to carry a concealed weapon, or allows patrons to carry concealed weapons on its premises is “immune from liability arising from its decision.” However, these provisions may not completely insulate an employer from liability. Employers who currently have policies regarding handguns and other weapons (including policies regarding the presence of weapons in the employer’s parking lot) will need to revisit those policies to ensure they comply with the new law. In addition, those employers who do not currently have applicable policies will need to implement rules and post notices if they wish to maintain a gun-free workplace. We advise that employers carefully consider their policies in light of this new law and consult with an employment law professional to assist in the development and implementation of such a policy.

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