Workplace Violence Prevention Policies and Gun Rights Laws

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Robinson Bradshaw Publication
January 10, 2017

For many employers and employees, the threat of workplace violence is a looming concern. Statistics from the federal Occupational Safety and Health Administration indicate that almost 2 million Americans report themselves each year as having been the victims of violence, harassment or intimidation while at work. And although the number of violent crimes in the workplace has decreased in recent years, those in some fields—such as health care and government service—have risen markedly. It is not surprising, then, that many employers have adopted robust workplace violence prevention policies to ensure the safety and security of their employees. Such policies often adopt a number of practical steps to make workplaces more secure—such as instituting thorough security and screening procedures, and prohibiting firearms on the employer’s premises.

As employers pursue the worthy goal of keeping their employees safe, however, they should be aware of another rising trend: the determination of many state legislatures (particularly in the South and West) to expand gun rights for their citizens. Such expanded rights include what are commonly known as “Bring Your Gun To Work Laws” – express statutory authority for employees to keep firearms locked in their private vehicles in employer parking lots. Employers must take care to heed applicable gun rights laws like these when crafting policies against workplace violence.

What Should an Effective Workplace Violence Prevention Policy Contain?

The cornerstone of any good workplace violence prevention policy is an unequivocal declaration by the employer that it will not tolerate violence, intimidation or harassment in the workplace—in any form. Many employers choose to supplement that declaration by encouraging their employees to treat one another with courtesy, dignity and respect. Such encouragement may help foster an atmosphere of tolerance and security.
Employers should fortify these declarations of principle with specific directives that require employees to report all observed incidents of violence, intimidation or harassment to the employer’s human resources department. Employers should assure employees that all such reports will be promptly investigated, and that no employee who makes a good faith report will be the subject of retaliation. Many employers also encourage employees to report any safety concerns whatsoever to human resources, including the existence of any restraining or protective order that an employee has obtained that lists the workplace as a protected area. Such information can help employers act to forestall dangerous situations or encounters before they arise.

In addition to these procedures, employers should review their security and screening protocols to determine whether additional precautions should be taken to increase workplace security. In particular, employers may consider adopting a specific emergency management protocol to train their employees how to respond to incidents of workplace violence. Employers may also consider adopting an Employee Assistance Program or similar initiative to help reduce workplace stress.

The Impact of Gun Rights Laws on Workplace Violence Prevention Policies

It is not uncommon for a workplace violence prevention policy to contain a broad prohibition against an employee’s possession of any weapon or firearm on company property or while performing work for the company. As noted above, however, such a provision may run afoul of statutes enacted to protect an employee’s gun rights. To be sure, virtually all states (including North and South Carolina) expressly permit an employer to prohibit the possession of a firearm inside company premises. Many states, however, require employers to use a particular form of notice to communicate that prohibition. In North Carolina, the prohibition must be communicated “by the posting of a conspicuous notice or statement by the person in legal possession or control of the premises.” (N.C. Gen. Stat. § 14-415.11(8)). South Carolina law is much more specific and detailed, requiring that the employer post a “clearly visible” firearms prohibition at each entrance to the premises that is at least 8 inches wide by 12 inches tall and that contains particular language and symbols. (S.C. Code Ann. § 23-31-235). An employer must heed these requirements if it wishes lawfully to prohibit the possession of firearms on its property.

North Carolina has adopted a statute that permits certain public employees to keep their guns in their cars while at work, so long as the firearms are kept in a glove compartment (or other “closed compartment”) and the vehicle is locked. (N.C. Gen. Stat. § 14-269.4). Almost two dozen states have extended the same “parking lot” right to private employees in recent years, but neither North nor South Carolina is yet among them. That may soon change. Employers outside of the Carolinas should review their policies to ensure they comply with local gun rights laws, and all employers should be prepared to revise their workplace violence prevention policies to accommodate new statutory protections for gun owners.

One issue that may be expected to receive increasing attention from legislators and judges, given the current political climate, is whether employers may prohibit employees from having firearms in their possession while traveling on company business away from the employer’s worksite. Some states expressly give employers the right to impose this restriction, but North Carolina does not. South Carolina law acknowledges an employer’s right to prohibit an employee from carrying a concealable weapon “while using any machinery, vehicle or equipment
“owned or operated by the business,” (S.C. Code Ann. § 23-31-220), but it does not address whether an employee may have a gun while traveling in his own car on company business. Employers should consult their legal counsel before adopting policies that restrict the rights of employees to possess firearms while away from the workplace.

Balancing the safety and security of your workforce with the rights of individual gun owners can be challenging, but it is necessary to implement an effective and lawful workplace violence prevention policy. Please contact a member of Robinson Bradshaw’s Employment and Labor Practice Group for more information or for assistance with your company’s workplace violence prevention policy.