

GUNS AT WORK

Despite Supreme Court's ruling, employers should think twice before enacting policies that permit guns in the workplace

We Texans love our guns, and a recent decision by the U.S. Supreme Court makes it clear that any American, regardless of the state he or she lives in, is entitled to keep a lawfully owned gun at home, cocked and loaded.

Despite the court's decision, employers that believe firearms at the workplace offer protection against crime should think twice before rushing to adopt policies allowing employees to carry guns on the job. Just because the court ruled that people may possess guns at home doesn't mean employers should allow them at the office. Indeed, employers are authorized and encouraged to adopt policies prohibiting employees or customers from carrying weapons at work.

For the first time in 70 years, the Supreme Court recently considered the meaning of the words, "A well-regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed," contained in the Second Amendment to the U.S. Constitution. At issue in *District of Columbia v. Heller* was a law prohibiting the possession of handguns and requiring that residents keep lawfully owned firearms such as registered rifles unloaded and disassembled, or with triggers locked.

In a 5-4 decision, the court invalidated the law, based upon its interpretation — albeit some 217 years after the fact — that the Second Amendment protects both the militia and the individual's right to bear arms. The court emphasized that other reasonable, longstanding gun restrictions may remain in place.

Adopted more than 85 years later, the Texas Constitution is more specific on this issue, providing that: "Every citizen shall have the right to keep and bear arms in the lawful defense of himself or the state; but the legislature shall have the power, by law to regulate the wearing of



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arms with a view to prevent crime." In this regard, the Texas Penal Code prohibits carrying weapons intentionally, knowingly or recklessly without a license, and prohibits carrying firearms, illegal knives or clubs or other prohibited weapons within schools, polling places, governments, racetracks or airports, or during an execution.

Work-related homicides

A study published in the May 2005 *American Journal of Public Health* presents a compelling argument that allowing employees to carry weapons on the job substantially increases the risk of an employee being killed in the workplace. The research suggests that workplaces where guns were expressly allowed were about seven times as likely to experience a homicide as those where weapons were prohibited. The finding suggests that a policy allowing guns in the workplace may increase workers' risk of homicide.

Should the unthinkable on-site homicide occur, a competent trial lawyer would almost certainly assert that the employer was a contributing cause of the death. The potential exposure is compounded as most workers' compensation and employment practices policies exclude criminal and intentional violent acts from insurance coverage. For these reasons, employers should enact weapon and violence prevention policies. A solid policy should define what a "weapon" is and prohibit the carrying of weapons while employees are

on the employer's premises, or while they perform work-related activities off-site. An effective policy should also prohibit less violent — but just as intentional — acts, including assaults and threats.

Employers should post notices on public and private entrances, prohibiting all persons from carrying weapons on-site. The policy should require employees to report all violent acts or suspicious activities to both the employer and the local police department, and to cooperate in any employer-related investigations. Finally, in order to enforce such policies, employers must reserve the right to search employees and their property, including vehicles and desks, while they are on the premises.

The Walt Disney Co. recently fired a security guard who protested a company policy barring employees from keeping guns in their cars at work. When the employee arrived at Disney's Animal Kingdom, he refused the security manager's request to search his car, and refused to confirm or deny whether he had a weapon in his vehicle. He was fired shortly thereafter.

By refusing to allow the search, the guard violated company policy, including a provision that required the employee's cooperation with an investigation. No case has been filed yet, but it would appear on the surface to be unlikely to succeed.

Yes, the Supreme Court has clarified the rights of individual gun owners at home. A conflict occurs, however, when an individual's right to own a gun clashes with an employer's right to maintain a safe and crime-free work environment. As with other personal rights, an individual's right to bear arms extends as far as, but no farther than, the employer's right to regulate them.

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