



EMPLOYER ACTION PLAN TO PREPARE FOR CONCEALED CARRY

By: Attorney Greg Grobe, with assistance
from Jill Wegner, Summer Law Clerk
Liebmann, Conway, Olejniczak & Jerry, S.C.
E-Mail: grobe@lcojlaw.com

As of November 1, 2011, Wisconsin residents and non-residents who obtain the necessary license can begin carrying concealed weapons in public. These weapons include handguns, electronic tasers, billyclubs, and knives (except for switchblades). Those permitted to carry such weapons include both employees and non-employees. The areas in which such weapons could be carried, unless restricted in accordance with the new law, include the grounds, parking lots, and buildings of most businesses.

It is critical that all Wisconsin employers familiarize themselves with the new law prior to November 1 and take the appropriate steps necessary to enforce the policies they decide to implement in relation to concealed weapons.

Overview of the Law

The new legislation, 2011 Wisconsin Act 35 (also known as the “Concealed Carry Law”), was passed on July 8, 2011 and made Wisconsin one of 48 other states that allow licensed individuals to carry concealed weapons. The primary purpose of the law is to enhance an individual’s ability to defend themselves by allowing them to obtain a license to carry certain concealed weapons on their person or in their vehicles, watercraft, or aircraft. Under prior law, it was unlawful for individuals to carry concealed weapons.

Only four types of weapons are allowed by licensed concealed carriers – handguns, electronic tasers, billyclubs, and knives (other than switchblades). No other weapons can be carried in a concealed manner even by a licensee.

The language of the legislation is complex and often difficult to understand. Compounding this is its coverage of a wide variety of topics, such as licensing provisions, trespass laws, civil immunities and liabilities, self-defense, disorderly conduct, gun-free school zones, and employment practices. The law modifies a variety of existing laws contained in different sections of the state statutes. These challenges have already resulted in conflicting interpretations of the law in several recent articles.

In addition, the law contains a number of exceptions within each provision, and certain types of businesses are treated separately within the law. Thus, before taking final action, each business and employer should verify whether they are subject to some of the exceptions or specialized provisions, which are too numerous to be fully covered within this article. (Some additional information on the law appears in our general LCOJ newsletter issued on July 19, 2011.)

Impact on Employers

There are several provisions of the Concealed Carry Law that impact employers. These fall into the general categories of whether and how employers can restrict employees from bringing weapons into the workplace (including the building and surrounding grounds), whether and how employers can restrict non-employees from bringing weapons onto their grounds and buildings, and the procedures which must be used if the employee or non-employee is a licensed concealed carrier.

Initially, employers will have to determine what policy they wish to adopt concerning weapons (particularly concealed weapons) on their property. Their obligations will vary, depending on their goal.

1. Employers Seeking No Restrictions on Weapons. Some employers may elect not to restrict any weapons, meaning that both employees and non-employees would be permitted to bring any type of weapon onto the property or into the buildings. In this case, employers do not have to take any steps or implement any policies in order to accomplish their goal.

2. Employers Seeking to Permit Only Licensed Concealed Carriers to Bring Weapons. Other employers may support the concept of concealed carry as a proper tool for self-defense and wish to permit either licensed employees and/or licensed non-employees (such as customers, contractors, vendors, suppliers, and general public) to bring concealed weapons to the workplace. If this is the case, then employers may adopt and distribute policies and post signs that prohibit employees (and/or non-employees) from bringing any form of weapon onto their property or into their buildings unless the person has a valid Concealed Carry License and the weapon is covered by the license. There are no new or particular rules governing the language of the policy or the posting of signs in this instance (other than existing general trespass regulations).

3. Employers Seeking to Prohibit All Weapons, Regardless of Whether a Licensed Concealed Carrier. On the other hand, some employers may feel it is not safe to allow any person, employee or non-employee, to possess weapons on their grounds or in their buildings, regardless of whether they are licensed or not. These employers may feel that the increase in self-defense ability is outweighed by increased risks associated with more weapons on their property.

The Concealed Carry Law imposes new requirements on these employers, specifically in relation to any restrictions applicable to licensed concealed carriers.

As described above, these employers are free to ban both employees and non-employees who are not licensed concealed carriers from possessing any weapon anywhere on their property, including parking areas or buildings. Notice of the prohibition can be made through handbook policies, bulletin board messages, and posted signs. Again, there are no special requirements for the language of the policies or signs.

However, in order to validly prohibit a licensed concealed carrier (employee or non-employee) from carrying a concealed weapon onto their property or into their buildings, employers must follow several specific steps and be aware of certain limitations.

A. Prohibiting Weapons on Grounds or Buildings. In order to prohibit a licensed concealed carrier from carrying a concealed weapon onto their grounds or into their buildings, employers must post signs describing their policy. These signs must meet the following requirements:

- 1) The signs must be at least 5 inches by 7 inches in size.
- 2) The signs must state that all weapons, including concealed weapons or open firearms, are prohibited in the building or on the grounds.
- 3) The signs must specifically identify the areas covered by the prohibition.
- 4) The signs must be posted in a “prominent place” near “all entrances” to each part of a building covered by the restriction.
- 5) The signs must be posted near “all probable access points” to all grounds which are covered by the restriction.

Although not required by law, these prohibitions should also be included in the employee handbook so that employees who are licensed concealed carriers understand the consequences of violating the prohibition.

B. Exception for Parking Areas. Under the new law, employers cannot prohibit employees or non-employees who are licensed concealed carriers from leaving their concealed weapons in their vehicles, even if the vehicle is parked in a parking lot on company property. The right of the concealed carrier to store their weapon in a vehicle in a company parking lot is subject to the following conditions:

- 1) The employee or non-employee must have a valid Concealed Carry License (which the employer can demand to review). (Thus, employers can continue to prohibit non-licensees from having weapons in their vehicles in their parking lots.)
- 2) The only weapons permitted are handguns, electronic tasers, billyclubs, and knives (other than switchblades). (Thus, employers can prohibit rifles, shotguns, bows and arrows, explosives, and other weapons from being stored in vehicles in their parking lots.)
- 3) For employees, the exception is limited to the vehicle of the employee who is a licensed concealed carrier. There is no restriction on the vehicle of a non-employee.
- 4) The new law does not appear to prohibit an employer from requiring that the weapons be stored in a particular fashion in the car (i.e., in the trunk, glove box, or out of sight).

Once an employer decides which policy it intends to adopt, and complies with the applicable steps to enforce it, it should conduct training for its employees and supervisors.

New Immunity Under Concealed Carry Law

The new law provides employers with immunity for losses stemming from their decision to allow licensed concealed carriers to bring weapons onto their property. Employers who restrict licensed concealed carriers are not covered by this new immunity.

There are conflicting opinions concerning the intent and impact of this new immunity. Some employers appear to fear that the lack of the new immunity will somehow increase their liability risks.

The primary intent of the new immunity clause was to eliminate new liability stemming from a decision to permit licensed concealed carriers from exercising their right to carry a concealed weapon. Proponents of the law were worried that businesses and property owners would simply restrict licensed concealed carriers from carrying weapons on their property in order to avoid higher liability insurance premiums. The immunity clause was designed to alleviate this.

Employers who exercise their right to restrict licensed concealed carriers from their property, and thereby are ineligible for the new immunity, should not be exposing themselves to a new liability, according to most commentators. They have always had the right to restrict weapons from their workplaces, and, arguably, continuing to do so should not increase their existing workplace risks.

For example, suppose a disgruntled employee brings a weapon into the workplace where concealed weapons are prohibited and injures another employee. Assuming the injured employee was a licensed concealed carrier, he might attempt to claim that had he been allowed to carry his weapon to work, he could have defended himself. However, in most situations, the deliberate actions of the disgruntled employee would relieve the employer from liability, even if one could establish that the policy restricting concealed weapons was somehow negligent. (No Wisconsin case to date has held that such restriction constitutes negligence.) A closer case might occur if the employer restricted all weapons but blatantly allowed weapons to be brought into the workplace without repercussion. In this case, the negligence could be the repeated failure to enforce the policy, yet it is still questionable whether an employer could be liable for the deliberate actions committed by a disgruntled employee.

Questions over this new immunity are far from settled, so employers are encouraged to continue to follow public discussions concerning this clause.

Obtaining A Concealed Carry License

It is far from certain how many employees will elect to secure a Concealed Carry License and, of those, how many would choose to lug a weapon to work each day, and carry it on their person, even if permitted by the employer. The new law provides strict guidelines for licensing.

Individuals must apply for a license with the Wisconsin Department of Justice and meet the following requirements:

- They must be a Wisconsin resident (there are provisions for honoring concealed carry licenses from other states for non-residents);
- They must be at least 21 years old;
- They must pass a background check;
- They must not be prohibited under state or federal law from carrying a firearm; and
- They must have attended and completed a qualified training course.

A licensed concealed carrier must carry his or her license document and photographic identification card when carrying a concealed weapon. Employers are therefore entitled to confirm which employees are licensed concealed carriers before permitting the employee to bring weapons into the areas where such weapons are permitted.

Summary

The new Concealed Carry Law will present some initial challenges to Wisconsin employers. Those employers with facilities in other states should be able to use the experiences of their out of state facilities in determining what policies to adopt in Wisconsin. However, such employers need to be sure to comply with the Wisconsin rules on postings and prohibitions, as the rules may differ from those in other states.

Prior to November 1, 2011, each employer should determine what type of weapons policy they wish to adopt, both in relation to employees and non-employees, and in relation to buildings as well as land. Depending on what policy they wish to adopt, the new law spells out the steps that need to be taken to effectively enforce such policy.

Once a policy is adopted, employee handbooks and other written policies should be revised and re-distributed. Training and education should be provided to both supervisory staff and to employees concerning the employer's policy toward concealed weapons.

Employers should continue to monitor articles on the new law, especially on topics covering liabilities and the new immunity.

Finally, each employer should determine whether there are any aspects of the law, or any exceptions to the law, that apply solely to them due to the nature of their business.

Further information on the Concealed Carry Law and its impact on employers may be obtained from the author at grobe@lcojlaw.com or by calling any of the Liebmann, Conway, Olejniczak & Jerry S.C. employment team at 920-437-0476.