

**GUNS & BUSINESS DON'T MIX**  
**A GUIDE TO KEEPING YOUR BUSINESS GUN-FREE**

**THE CENTER TO PREVENT HANDGUN VIOLENCE**  
**LEGAL ACTION PROJECT**



Founded in 1983, the **Center to Prevent Handgun Violence** is a national non-profit organization working to reduce the tragic toll of handgun violence in America through education, research, and legal advocacy. The programs of the Center complement the legislative initiatives of its sister organization, Handgun Control, Inc. Sarah Brady chairs both organizations.

The Center's Legal Action Project provides pro bono representation to victims of gun violence in lawsuits against the gun industry. The Project is also engaged in the defense of gun control laws challenged in courts.

This Guide was written by Brian J. Siebel, Staff Attorney for the Legal Action Project. Rick Poulson provided extensive research assistance and helped draft portions of the Appendix. Clifford J. Bernstein also helped with research. Dennis Henigan, Luis Tolley, and Robin Terry provided editorial assistance.

This Guide represents the views of the Center to Prevent Handgun Violence on the matters discussed, and should not be regarded as legal advice, nor should it be treated as a substitute for the independent advice of counsel. This material is provided for general discussion and reference purposes only.

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## **EXECUTIVE SUMMARY**

Until recently, the practice of carrying concealed weapons outside the home has, for the most part, not been legal in America. States either prohibited the practice altogether, or restricted “carrying concealed weapons” (“CCW”) licenses to persons who could demonstrate a specific need for a weapon to local police.

This status has now been reversed. Over the last several years, thirty-one states have enacted new CCW legislation, requiring state authorities to issue CCW licenses to virtually anyone who applies, regardless of whether the applicant can demonstrate a need to carry a gun. As a result, instead of a few hundred people being permitted to carry guns with them wherever they go, including into stores and workplaces, there are now -- or soon will be -- hundreds of thousands of individuals carrying guns in practically every CCW state.

The impact on businesses of the new CCW laws is obvious. Under prior CCW laws, businesses could expect, with rare exceptions, that only police officers and their own security force would carry weapons on company property. Under the new CCW laws, businesses that have not adopted a policy prohibiting the carrying of concealed weapons on company property can expect to be inundated with people carrying guns.

This change in CCW laws has serious security implications for companies concerned about the welfare of their customers and employees. Can businesses trust that the new wave of CCW licensees are law-abiding, non-violent, well-trained citizens? Unfortunately, they cannot. As this manual demonstrates, hundreds of CCW licensees have committed crimes both before and after CCW licensure. See Section One. Many dangerous CCW applicants slip through faulty state background checks, while others are marginal applicants who nonetheless must be issued a CCW license because they do not fit within a narrow, pre-set list of excluded persons. In addition, state training in handgun safety is cursory at best, and only one CCW state requires any training in non-violent conflict resolution to help CCW licensees exercise proper judgment when carrying a firearm. Allowing hundreds, or perhaps thousands, of CCW licensees to carry guns on company property can only increase the already-significant danger of violence in workplaces and stores.

The new CCW laws also increase legal liability risks for businesses that permit gun-carrying on their premises. Companies have an obligation in most cases to protect employees and customers from foreseeable acts of violence on company premises. Given the uncertain character of and lack of training for CCW licensees, coupled with the pervasive problems of workplace violence, an increase in the number of guns on company property will likely increase the chances for gun violence. The foreseeability of that fact could lead to considerable damages if a gun injury were to occur. A gun incident can also balloon into a public- and employee-relations disaster. Insurance companies have already foreseen the risks posed by firearms, and have canceled policies for companies that permit even personal firearms on business premises.

Moreover, while states have protected themselves from dangers posed by CCW licensees, by prohibiting damages claims against the state for any injuries such licensees may cause, and by barring the carrying of weapons on most state property, they have done nothing to protect businesses from similar risks.

As a result of these new laws, businesses are faced with a choice. They can adopt a gun-free policy, prohibiting customers and employees from carrying guns onto company property, or they can do nothing, and risk losing control over the safety of customers and employees. The former approach most closely approximates businesses' security conditions before states greatly eased the limitations on who could carry guns. With the latter approach comes increased risks of workplace violence and attendant legal liability. As with other issues facing businesses, such as problems of sexual harassment, workplace violence, or general security concerns, those companies that are unprepared are the most likely to be hurt by the new laws.

Fortunately, businesses can choose to remain gun-free. In all thirty-one CCW states, private property rights, trespass laws, and the rights of employers to determine simple terms and conditions of the workplace, enable businesses to adopt a gun-free policy despite the new laws. Moreover, such a policy can easily be implemented, by putting up signs at entrances to property and placing a provision in employee manuals.

This manual is a complete guide to choosing the gun-free approach. The Introduction identifies and outlines the problem businesses face under new CCW laws. Section One articulates the reasons why permitting guns on businesses premises can increase risks of violence, and legal liability stemming therefrom. Section Two explains why a gun-free policy lessens those risks. Section Three points out that businesses in every state can choose to remain gun-free. Section Four discusses how to formulate and enforce a gun-free plan. A comprehensive Appendix reviews state-by-state the notices required to keep your premises gun-free.

If you have any questions about any part of this Guide, or would like a copy, please call or write to *Gun-Free Guide for Businesses*, Center to Prevent Handgun Violence, 1225 Eye Street, N.W., Washington, D.C. 20005, (202) 289-7319. The Guide is also available on the Legal Action section of our web site at [www.handguncontrol.org](http://www.handguncontrol.org).

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## **INTRODUCTION: THE NEWLY-ARMED POPULOUS**

Although firearm ownership in America is widespread,<sup>1</sup> the practice of carrying concealed weapons outside the home has not been. Until recently, most states either restricted gun-carrying licenses to those who could demonstrate a specific need for a weapon to the local police or sheriff's department,<sup>2</sup> or prohibited the practice altogether.<sup>3</sup> Under that regime, the number of need-based licenses issued in any given state always remained very small -- from a few dozen to a few hundred.

The limited number of gun-carrying licensees has meant that American businesses for the most part have not had to contend with an armed workforce or a steady flow of armed customers. Company security plans -- including security guards, locks, lighting, safekeeping of money, and other precautions -- have thus been premised on the assumption that only security guards and the police would be armed in the normal course of business. Anyone else carrying a firearm on business premises would likely have been doing so illegally.

These conditions have now changed dramatically. With passage of new "carrying concealed weapons" ("CCW") legislation in numerous states in the past few years, thirty-one states now allow practically anyone to carry a concealed firearm with them wherever they go, including into stores and the places they work.<sup>4</sup> To obtain a CCW license in these states, applicants need do very little -- fill out a form, pay a small fee, and provide proof of residence in the state. While minimal training in firearm safety is required in some states, ten states require no training at all. The states with new CCW legislation are known as "shall issue" states because a license to carry a concealed handgun shall be issued to any resident thereof who meets predetermined state and federal requirements.

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<sup>1</sup> As of the end of 1994, there were an estimated 192 million firearms in America, including about sixty-five million handguns. Philip J. Cook & Jens Ludwig, *Guns In America: Results of a Comprehensive National Survey of Firearms Ownership and Use* (1996). Moreover, 41% of American homes have at least one firearm, with 24% of homes having a handgun. 1994 Bureau of Justice Statistics Sourcebook.

<sup>2</sup> Twelve states -- Alabama, California, Delaware, Hawaii, Iowa, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, New York, and Rhode Island -- and the District of Columbia still limit concealed-carry licenses to individuals who establish a need for the weapon to the satisfaction of local law enforcement. Need-based licenses are usually reserved for persons required to carry large amounts of cash as part of their jobs, or others who demonstrate a heightened risk of being violently accosted.

<sup>3</sup> Seven states -- Illinois, Kansas, Missouri, Nebraska, New Mexico, Ohio, and Wisconsin -- prohibit the carrying of concealed weapons altogether.

<sup>4</sup> As will be seen below in Section One, states have enacted very few safeguards in the new CCW laws to protect businesses from the dangers of handguns.

### **States With "Shall Issue" Carrying Concealed Weapons Laws<sup>5</sup>**

- Alaska
- Arizona
- Arkansas
- Colorado<sup>6</sup>
- Connecticut<sup>7</sup>
- Florida
- Georgia
- Idaho
- Indiana
- Kentucky
- Louisiana
- Maine
- Mississippi
- Montana
- Nevada
- New Hampshire
- North Carolina
- North Dakota
- Oklahoma
- Oregon
- Pennsylvania
- South Carolina
- South Dakota
- Tennessee
- Texas
- Utah
- Vermont<sup>8</sup>
- Virginia
- Washington
- West Virginia
- Wyoming

Under the new "shall-issue" licensing regime, instead of a few hundred CCW licensees in a given state, there may now be hundreds of thousands of licensees carrying guns. For example, in Florida, where the CCW law has been in effect for ten years, approximately 200,000 people currently have CCW licenses.<sup>9</sup> Pennsylvania has issued almost 600,000 five-year CCW licenses since 1992. In Texas, more than 254,000 applications were submitted in the *first year* of the new law.<sup>10</sup> In South Carolina, more than 7,000 people picked up applications for licenses in the *first month* after the new law took effect.<sup>11</sup> In Utah, up to 50,000 persons are expected to obtain licenses, up from 136 people before the new law was enacted.<sup>12</sup> More than 52,000 Virginians were licensed in the new law's first eighteen months.<sup>13</sup> Thus, while the totals may vary from state-to-state, every state with a "shall issue" CCW law has seen a dramatic increase in the number of persons carrying loaded concealed handguns. Moreover, with many "shall issue" states enacting reciprocity laws -- which permit out-of-state CCW licensees to carry concealed weapons into any state where both the state of licensing and the state where a weapon is carried have enacted such laws -- the numbers of persons licensed to carry concealed weapons in any given state will multiply further. Over time, the numbers could become staggering.

<sup>5</sup> This listing includes "shall issue" CCW states as of October 1997. Such laws are subject to change. However, even if new states adopt "shall issue" CCW legislation, the principles in this Guide will continue to apply.

<sup>6</sup> Colorado is technically not a "shall issue" state. If the police determine that an applicant is a danger to himself or others, he or she can be denied a permit. However, because no showing of "need" is required, it is included here.

<sup>7</sup> Connecticut is also not a "shall issue" state. Its law lets the police decide, at their discretion, whether the applicant wants the firearm for "lawful" uses and is a "suitable" person. Because the statute does not require the showing of "need," however, it is included here.

<sup>8</sup> Vermont does not require a CCW permit to carry a concealed weapon.

<sup>9</sup> Florida Department of State, Division of Licensing, CCW Statistical Report (July 31, 1997).

<sup>10</sup> Armando Villafranca, *Gun Law Up For Modifications*, Houston Chronicle, June 10, 1996.

<sup>11</sup> Across the USA: News From Every State, USA Today, Sept. 16, 1996, at 16A.

<sup>12</sup> Dan Harrie & Tony Semerad, *Gun Law May Override Weapon-Free Zones: Law Not Clear On Concealed Guns*, Salt Lake Tribune, June 2, 1996, at B1.

<sup>13</sup> Brooke A. Masters, *Virginia to Issue Weapon Permits Without FBI Check*, Washington Post, March 13, 1997.

For businesses, the net effect of the new CCW laws is that unless a business adopts a “gun-free” policy, it can expect hundreds, if not thousands, of customers and employees, over time, to carry concealed weapons on its business premises. This change in the citizenry’s ability to carry guns in public has profound implications for a company’s plans to secure the safety of its employees and customers. If not addressed, it also raises potential new legal liabilities and public relations problems.

This Guide is intended to steer businesses through the maze of new CCW legislation and its potential impact on business. It is comprised of four sections. Section One reviews the problems and risks -- including the legal risks -- of allowing guns onto company property. Section Two illustrates how a gun-free approach can limit a business’s problems and risks. Section Three explains that businesses have a clear right -- in every state -- to prohibit concealed weapons and remain gun-free. Section Four discusses how to adopt a comprehensive gun-free policy to minimize the risks associated with an armed populous. A detailed Appendix gives a state-by-state breakdown of the types of notices required to keep your business gun-free. A sample gun-free sign is also included.

# **SECTION ONE:**

## **THE PROBLEMS AND RISKS OF ALLOWING CONCEALED WEAPONS ON BUSINESS PREMISES**

The new “shall-issue” CCW laws have allowed thousands of members of the general public, including unstable people near society’s fringe, to dramatically change their gun-carrying habits. Instead of a populous that is almost entirely unarmed when away from home, relaxed CCW laws permit thousands of persons in each state to carry concealed handguns wherever they go.

This change raises several questions for business people seeking to minimize security and liability risks for their companies.

- *Who makes up this newly-armed group of CCW licensees? Can businesses be assured that all CCW licensees are law-abiding, non-violent individuals?*
- *Are all CCW licensees well-trained in handgun safety and non-violent conflict resolution?*
- *What assurances do states provide for businesses concerned about the presence of gun-carrying citizens in their stores and workplaces?*
- *Will the presence of guns increase violence in the workplace and in other business settings?*
- *Are businesses more likely to be held legally liable if they permit guns on their business premises and a gun injury occurs?*
- *From a public- and employee-relations standpoint, what is a business’s proper response?*

These are just some of the questions that companies must face when deciding whether to permit or prohibit guns on their business premises. This Guide attempts to answer these questions, and others, to help businesses formulate an appropriate concealed weapons policy.

## A. **Dangerous People Receive Concealed Weapons Licenses**

***What type of people carry concealed firearms? Can businesses be assured that they are all stable, non-violent, law-abiding citizens?***

Under the new “shall-issue” CCW licensing procedures, there are no guarantees that those issued licenses to carry concealed firearms will be stable citizens possessing good judgment. The CCW laws have stripped police of their discretionary authority to prevent dangerous applicants from obtaining gun-carrying licenses.<sup>14</sup> Unless an applicant is barred by falling into one of the following categories of persons prohibited from obtaining a license, most states must issue a concealed weapons license to that person.<sup>15</sup>

### ◆ **Potentially dangerous persons prohibited by federal law from carrying concealed weapons**

Federal law prohibits nine categories of persons from possessing or being sold firearms, and therefore, from obtaining a CCW license. These categories include:

- Convicted felons;
- Fugitives from justice;
- Controlled substance abusers;
- Persons adjudged mentally defective, or those committed to a mental institution;
- Illegal aliens;
- Dishonorably discharged veterans;
- Persons who have renounced their U.S. citizenship;
- Persons under court order for stalking or threatening an intimate partner; and
- Persons convicted of domestic violence or child abuse.<sup>16</sup>

What is noteworthy about this list of barred CCW applicants, however, is the type of people who are not excluded by it.

### ◆ **Potentially dangerous persons generally *not* prohibited from carrying concealed weapons**

Numerous categories of potentially dangerous persons are not barred under federal law from obtaining CCW licenses and carrying concealed weapons on business premises. Such persons include:

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<sup>14</sup> The only exceptions are in Colorado and Connecticut. See *supra* notes 6, 7 (discussing police discretion in those states).

<sup>15</sup> If a state fails to issue a license, applicants are entitled to legal recourse against the state.

<sup>16</sup> See 18 U.S.C. § 922(d), (g).

- Indicted felons;<sup>17</sup>
- Persons who have pled guilty or “no contest” to felonies, but who have been placed on probation and had their adjudication withheld;<sup>18</sup>
- Most persons convicted of violent misdemeanors;
- Criminals who have not been caught and convicted of their crimes;
- Stalkers who have not yet been restrained by a formal court order;
- Mentally unstable persons who have not been formally committed or held mentally defective by a court;
- Parolees;
- Alcohol abusers;
- CCW licensees while they are drinking;
- Persons free on bond or subject to arrest;
- Persons whom the sheriff determines have a history of violence;
- Adults who have committed violent crimes when they were juveniles that would bar them if they had been adults at the time;
- Tax and child support payment delinquents;
- Persons who lie on their CCW application or violate its provisions; and
- Felons who have had their firearms privileges restored.

Under most states' CCW laws, most, if not all, of the potentially dangerous people in these categories must be issued a license to carry a concealed weapon. Certain states have prohibited individuals in some of these categories from obtaining concealed weapons licenses, but such prohibitions are by no means universal among the thirty-one “shall-issue” states, and many states have added little or nothing to federal restrictions.<sup>19</sup>

Another major problem is that states cannot guarantee that out-of-state background checks of CCW applicants will eliminate those dangerous individuals who are not entitled to receive CCW licenses. CCW licensing must be completed in most states in an expedited manner -- within fifteen-sixty days -- without regard to whether the state has had time to verify an applicant's fitness. One of the best means of verifying an applicant's criminal background -- an FBI fingerprint check -- alone takes at least sixty days.<sup>20</sup> If an FBI check has not been completed, a “shall issue” state's system is “just not as accurate . . . . Depending on what jurisdiction someone committed a crime in, [the state] may or may not pick it up.”<sup>21</sup> Despite this fact, a

<sup>17</sup> Federal law prohibits only *convicted* felons from possessing guns, even though indicted felons cannot legally *purchase* guns. Those who have been charged with a felony, no matter how serious, may still possess a firearm until they are convicted. 18 U.S.C. § 922(g).

<sup>18</sup> See *United States v. Willis*, 106 F.3d 966 (11th Cir. 1997) (person who conceded guilt on felony weapons charges whose adjudication of guilt was withheld was not “convicted” within meaning of federal firearms statute).

<sup>19</sup> Only two of these fifteen categories of potentially dangerous persons -- those who have been convicted of violent misdemeanors and alcohol abusers -- are prohibited from obtaining CCW licenses in a majority of the thirty-one “shall issue” CCW states. None of the other listed categories of potentially dangerous persons is barred in more than a few “shall issue” states.

<sup>20</sup> Masters, *supra* note 13.

<sup>21</sup> Peter Finn, *FBI Stops Checking Va. Gun Applicants*, Washington Post, July 12, 1996, at B1.

dozen “shall issue” states do not require an FBI fingerprint check. Other states rely on a national crime reporting system which lacks criminal records data from numerous states.<sup>22</sup>

Even some of those criminals who are banned by law from obtaining CCW licenses end up slipping through in-state checks and receiving them. In many states, criminal records are often not complete. For example, in Ohio, where “shall-issue” CCW legislation was defeated, a report uncovered the fact that as many as 74,000 statewide arrests in one year -- a full 20% of the total -- were not recorded in a manner which could be checked.<sup>23</sup> In one Florida case, a drifter later named in several murder warrants, who had several prior convictions and listed an address as a soup kitchen, was nevertheless issued a CCW permit.<sup>24</sup> In West Virginia, a gunman who shot a man five times but was found not guilty by reason of insanity, was nonetheless issued a CCW permit by the judge who, when he was a prosecutor, had said the man was too dangerous to turn loose on society.<sup>25</sup>

In addition to criminals getting licenses, applicants with mental health problems may not be kept from receiving CCW licenses in certain states. Police often cannot investigate the mental health histories of applicants because of privacy law restrictions.<sup>26</sup> These problems have been compounded by reciprocity laws which permit persons licensed in one state to carry concealed weapons across state lines, because if the original licensing state makes a mistake in checking a CCW applicant’s background, that potentially dangerous person may be able to carry a gun into many states. As one official put it, “[y]ou have some borderline people who get [CCW permits]. It’s an accident waiting to happen.”<sup>27</sup>

Moreover, even if a “shall issue” state were able to conduct a fail-safe background check, that process would not weed out dangerous individuals with no prior criminal record or other known disqualifying attributes. Numerous people with “clean” records have later committed atrocious acts of violence with firearms, including some of the nation’s worst mass murders.<sup>28</sup> Such persons would qualify for CCW licenses in most states.

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<sup>22</sup> See Spencer S. Hsu, *Va. Gun Permit Checks Lack Data From 21 States*, Washington Post, Oct. 18, 1995, at D1 (“Background checks that are supposed to prevent criminals from getting concealed handgun permits under a new Virginia law don’t uncover crimes committed in twenty-one states . . .”).

<sup>23</sup> Christopher Davey, *Gun Bill Shot Down*, Cincinnati Enquirer, Feb. 16, 1996, at A1 (“the chances that a [CCW] permit could be issued to a person with a criminal record could approach one in five.”). It should be noted that arrestees in general, no matter how dangerous, are not prohibited from being issued CCW licenses. Only those who have been convicted are barred. Nevertheless, this report raises troubling questions whether CCW states’ records are complete.

<sup>24</sup> See *Drifter Named In Murder Warrants Has Weapons Permit*, United Press International, July 28, 1989.

<sup>25</sup> Rex Bowman, *Family Will Thank Brady*, Richmond Times-Dispatch, March 9, 1997, at B1, B10.

<sup>26</sup> Hsu, *supra* note 22 at D5.

<sup>27</sup> Masters, *supra* note 13 (quoting Robert F. Horan, Fairfax VA Commonwealth’s Attorney).

<sup>28</sup> See Ellen Forman, *Workplaces Struggle To Stop The Violence*, Ft. Lauderdale Sun-Sentinel, Feb. 21, 1996, at 1A (“Many of those who commit violent acts do so for the first time in their lives, experts say.”). Gian Luigi Ferri, whose mass killing at the 101 California Street office building in San Francisco, California in July 1993 is the subject of a lawsuit by the Center, would have qualified for a CCW license in most states. Mass murders in other countries, including the killing of seventeen school children and their teacher in Dunblane, Scotland, on March 13, 1996, have also been committed by persons licensed to carry handguns.

Given these huge flaws in the application process, there is growing evidence that CCW licensees pose grave dangers to the population at large and to businesses that allow such persons to carry guns freely on business premises.<sup>29</sup> For example, in Florida -- which is one of the few states that actually tracks data on CCW licensees -- hundreds of dangerous individuals have slipped through the cracks. Two recent studies published by the Violence Policy Center -- Concealed Carry: The Criminal's Companion (Nov. 1995), and Concealing the Risk: Real-World Effects of Lax Concealed Weapons Laws (1996) -- reached startling conclusions after analyzing the data from Florida. The reports detail cases in which CCW licensees have committed crimes both before and after CCW licensure, including: aggravated assault with a deadly weapon, use of a firearm to commit a felony, domestic battery, and other violent offenses.<sup>30</sup>

Even more startlingly, a review completed by Handgun Control, Inc. of several hundred Florida CCW license revocations indicates that numerous persons convicted of homicide or manslaughter, as well as other crimes, have either slipped through the Florida licensing system or been convicted after licensure.<sup>31</sup> In total, according to the Florida Department of State, more than 477 CCW licensees have committed crimes after they obtained their licenses, and at least 85 of these licensees have used a firearm in the crime.<sup>32</sup> Another 304 applicants had committed crimes before they applied, yet were mistakenly issued licenses anyway.<sup>33</sup> Significantly, each of these numbers -- persons who have committed crimes after licensure, crimes after licensure in which a firearm was used, and crimes committed before licensure -- has continued to increase, indicating that this problem has not been solved. Indeed, the number of CCW license revocations in Florida in the last two years is greater than the total number in the law's first seven years, while the number of firearm crimes after licensure has more than quadrupled in that period.<sup>34</sup>

Thus, the inescapable conclusion is that: "criminals apply for concealed carry licenses, a significant number of criminals succeed in obtaining [CCW] licenses, and . . . some [CCW] license holders commit crimes . . ." <sup>35</sup> Indeed, as CCW licenses have become more

<sup>29</sup> As will be seen below, certain types of dangerous persons who are able to obtain CCW licenses could expose their employers to negligent hiring, negligent supervision, or negligent retention liability if they were to commit acts of gun violence at the workplace.

<sup>30</sup> See also Stephen Koff & Bob Port, *Gun Permits Soar Through Loopholes*, St. Petersburg Times, Jan. 17, 1988, at 1-A (reporting on criminals who slipped through the cracks in Florida's CCW statute).

<sup>31</sup> CCW License Holders: "Law-Abiding Citizens?" Handgun Control, Inc. (1997) (attached as Appendix C). For example, a CCW license holder in Deltona, Florida recently killed his estranged wife and then committed suicide. Ludmilla Lelis & Lori Horvitz, *Man Shoots, Kills Estranged Wife and Then Himself in Deltona Home*, Orlando Sentinel, Oct. 2, 1997, at D1. A former judgeship candidate who was licensed to carry also recently pulled a gun on an emergency room doctor after the doctor refused to write him a prescription. Sarah Lundy, *Ex-Judge Candidate Pulls Gun On Doctor*, South Florida Sun Sentinel, Sept. 17, 1997, at 1B.

<sup>32</sup> Florida Department of State, Division of Licensing, CCW Statistical Report (July 31, 1997).

<sup>33</sup> Id.

<sup>34</sup> Compare Fla. Dep't of State, CCW Statistical Reports from November 30, 1994 and July 31, 1997.

<sup>35</sup> Concealed Carry: The Criminal's Companion 35 (Violence Policy Center 1995). See also Bob Port and David Olinger, *Sometimes the Dealer is a Criminal*, St. Petersburg Times, June 28, 1993 (reporting on stories of numerous criminals in Florida who have slipped through the cracks to obtain and maintain federal firearms licenses despite their criminal records). Moreover, if a convicted criminal is able to slip through a state's CCW licensing procedure and obtain a CCW permit, he or she may then be able to evade federal law prohibiting handgun purchases, since no Brady Law background check is conducted on CCW licensees. 18 U.S.C. § 922(s)(1)(C).

commonplace, the published incidents of firearms violence committed by CCW licensees have grown. For example, in Oklahoma recently, a 67-year-old CCW licensee pulled out his concealed .357 Magnum revolver and killed a 73-year-old man at a childcare center. The two had been arguing over which one of them would take their four-year-old grandson home from school.<sup>36</sup> As a report of the incident noted, the case is a classic example of a situation where “tempers got out of control; one man had a gun, and the other man is dead.”<sup>37</sup> Prosecutors have charged the CCW licensee with first-degree manslaughter. In two different incidents in Texas last year, CCW licensees fired their handguns at unarmed assailants and killed them. Both licensees were initially charged with murder, although charges against one of the men were later dropped.<sup>38</sup> A double homicide and suicide by a CCW licensee has also been recorded in Virginia.<sup>39</sup> One Florida drifter who obtained a CCW license despite having a prior record later committed several murders.<sup>40</sup>

Police officers across America have recognized the dangers involved in issuing thousands of new CCW licenses. Here is what some of them have said:

- “This is bad legislation. Common sense tells you that if there are more guns on the street, there will be more violent crimes, not less.” Neil Kurlander, Chief of Police, Maryland Heights, Missouri.
- “None of this makes sense. Supposedly, you won’t be able to get a permit to carry a concealed weapon if you’ve been in a mental institution, but we don’t have any registry telling us who’s been in a mental institution. Actually, the prohibition I like best is this one -- you can be denied a permit for a concealed weapon if you’re ‘publicly known to be habitually in an intoxicated or drugged condition.’ How about if you’re only drugged or intoxicated some of the time?” Bill Karabas, Chief of Police, Brentwood, Missouri.
- “I’m afraid we’re going to have police officers killed because everyone’s going to have a gun.” Louise Graham, Chief of Police, Fulton County, Georgia.

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<sup>36</sup> Michael Smith, *Charges Approved for Concealed Gun Licensee*, Tulsa World, Feb. 12, 1997, at A1.

<sup>37</sup> Id.

<sup>38</sup> One incident occurred when a CCW-licensee, who owned an automotive service shop, shot and killed an unarmed man in a dispute over some tools. See Jerry Urban, *Murder Charge in Man’s Death*, Houston Chronicle, June 1, 1996, at 35A.

In the other case, a CCW licensee shot and killed an unarmed man from inside his vehicle after a minor traffic accident. The incident started when an employee being trained for a messenger service had his side mirror clipped by the CCW licensee, who was driving another vehicle. There was no damage to the messenger’s car, and he intended to drive on, but the CCW licensee slowed down and pulled over. The unarmed messenger then approached the stopped car and the two men began to argue. When the messenger reached in and punched the CCW licensee, he was shot in the chest by the licensee’s .40 caliber handgun. Witnesses said the messenger did not appear to have any hostile intent when he approached the car, but matters escalated and he was killed. Others called the messenger who was killed “a teddy bear kind of guy and very easygoing.” Dallas police initially charged the CCW licensee with murder, claiming he clearly exceeded the legal use of deadly force. A grand jury, however, later failed to indict him. See Mark Potok, *Texas Slaying Tests Bounds of Weapons Law*, USA Today, Feb. 23, 1996; Sam Howe Verhovey, *Traffic Argument in Texas Raises Questions on New Freedom to Carry Guns*, New York Times, Feb. 23, 1996; Robert Ingrassia, *Gun Law at Center of Fatality*, Dallas Morning News, Feb. 22, 1996, at 1A.

<sup>39</sup> *Triple Slayings Appear to be Murder, Suicide*, Richmond Times-Dispatch, Feb. 28, 1996.

<sup>40</sup> See supra note 24.

- “I don’t want the town becoming Dodge City with everybody who wants a gun carrying one.” Stanley Bates, Chief of Police, Easton, Massachusetts.
- “This [CCW] legislation is being pitched to people as a quick fix. In no terms has this proven to be the case. I think it is regressing to the Wild West era.” Clarence Harmon, Chief of Police, retired, St. Louis, Missouri.

As the *New York Times* summarized in an editorial on the subject:

Police departments unanimously condemn [the new CCW laws.] They cite the fact that the new, looser regulations add to the number of weapons circulating in society in virtually untrained hands, that more guns end up being used against their owners than against criminals, and that even police, who are highly trained in the use of weapons, often end up being killed with their own guns.<sup>41</sup>

Based on this evidence, businesses should be aware that some CCW licensees can be quite dangerous. To allow such potentially dangerous people to freely carry guns into stores and workplaces hardly seems prudent. As will be seen below, it may also lead to legal liability if a gun-violence incident ever occurs on business premises.

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Editorial, *The False Allure of Concealed Guns*, New York Times, Oct. 6, 1995.

## **B. Concealed Weapons Licensees Receive Little Or No Training**

### ***Are all CCW licensees well-trained in handgun safety and non-violent conflict resolution?***

No. In addition to the problem with screening CCW applicants, states in general require little or no training in handgun safety to assure safe gun handling, and almost no states require training in non-violent conflict resolution to assure the exercise of proper judgment before drawing or using a firearm.

Training in handgun safety is not required at all in ten of the thirty-one CCW states -- Colorado, Georgia, Idaho, Indiana, Mississippi, New Hampshire, Pennsylvania, South Dakota, Vermont, and Washington -- and most additional states only require completion of a simple safety training course, comprising a few hours of lecturing from an instructor. In states where marksmanship is required, the test of firing accuracy is often so easy that many gun owners could pass it blindfolded.<sup>42</sup>

More importantly, only one state -- Texas -- requires any training in non-violent conflict resolution to help CCW licensees exercise proper judgment when carrying a firearm. As a result, in nearly every state, CCW licensees have been left to draw from popular images -- including the unrealistic “shoot-em-up” scenarios depicted on television and in movies -- to determine when and how to use a firearm. Needless to say, such cursory or non-existent training offers little reassurance that CCW licensees will know how to respond safely when a potentially violent encounter is either threatened or perceived.

In stark contrast to the lack of CCW applicant training, police officers receive hundreds of hours of training in marksmanship and non-violent conflict resolution, including role-playing real-life scenarios, to ensure that their firearms are carried safely and not fired carelessly. Despite this extensive training, a recent FBI study found that 77% of the 708 police officers killed in the line of duty between 1985 and 1994 were unable to fire their weapon in self defense, 17% had their weapons stolen, and 12% were killed with their own gun.<sup>43</sup> Given these numbers, it is clear that when virtually untrained gun-carrying citizens are given open access to business premises, risks are increased, and no one’s security is improved.

Thus, in addition to the fact that some CCW licensees can be quite dangerous, most may have had little or no training in how to handle a gun or the circumstances in which it can properly be used. As will be seen in the next section, states that have passed new CCW laws have almost universally recognized these facts and taken steps to protect their own government offices and employees, yet have offered no protection for businesses.

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<sup>42</sup> See Janet McConaughy, *Weapons Permit Rules Under Fire*, New Orleans Times-Picayune, July 26, 1996 (firearms trainer showed that Louisiana’s CCW target requirements could be met blindfolded).

<sup>43</sup> U.S. Dep’t of Justice, *Uniform Crime Reports: Law Enforcement Officers Killed and Assaulted 1994* at 4.

### **C. States Offer No Guarantees That Concealed Weapons Licensees Are Safe**

#### ***What assurances do states provide for businesses concerned about the presence of gun-carrying citizens in their stores and workplaces?***

Essentially none. Under the new “shall-issue” CCW licensing regime, states have made no guarantees to business people or others as to the safety and restraint of gun-carrying licensees. Governments have sought instead to protect themselves. They have done so in two ways.

First, nearly every state with relaxed CCW licensing has expressly immunized itself from any damages for injuries caused by CCW licensees. Thus, a business has no recourse against a state if, for example, a person issued a CCW license in error, such as a convicted felon or spousal abuser, or trained improperly in the use of deadly force, opens fire on its business premises and injures someone.

Second, governments have foreseen the risks of allowing CCW licensees to carry concealed weapons everywhere, and have, therefore, either severely restricted or banned concealed weapons in certain places. For example, the federal government prohibits the carrying of concealed weapons at all federal facilities. Many states have also prohibited concealed weapons in certain places, including: schools and universities, hospitals, airports, public buildings and parks, state offices, churches, athletic events, law enforcement facilities, prisons and jails, financial institutions, courthouses, polling places, parades, places where alcohol is consumed, child care facilities, funerals, amusement parks, and other locations.

Needless to say, neither of these measures, designed to protect state interests, afford businesses with any degree of protection under the new concealed-carry regime. As will be seen below, however, businesses can protect themselves by adopting a policy to make their business premises gun-free. Such gun-free zones are permitted by law in every CCW state.

## **D. Guns Increase The Danger Of Violence In Workplaces And Stores**

### ***Will the presence of guns increase violence in the workplace and in other business settings?***

Almost certainly. So far, we have seen that the new “shall issue” CCW laws, in many states, have led to a thousand-fold increase in the number of people carrying guns into their workplaces and the places they shop. We have also seen that CCW licensees may be completely untrained, or at best poorly-trained, in handgun safety and non-violent conflict resolution, and hundreds of them may be unstable and/or lawbreaking citizens. Further, states have immunized themselves from the dangers posed by CCW licensees, yet have not protected private businesses from those risks. Given these dangers, will the presence of hundreds or thousands of gun-toting CCW licensees make workplaces and stores less violent, or potentially more violent places?

To understand the risks posed by allowing guns into businesses, consider first how grave the problem of violence in workplaces and stores has been without widespread CCW licensing. As most business people are now well aware, violence in American workplaces and stores has reached an epidemic level, and has been growing at an unprecedented pace, at a tremendous cost to businesses. Extensive literature in the field has documented the serious problem of workplace violence.<sup>44</sup> For example, according to a study released last year by the National Institute for Occupational Safety and Health, murders and physical assaults in the workplace have climbed to an all-time high, reaching 1,071 workplace homicides and 160,000 assaults in 1994.<sup>45</sup> Each week in the United States, an average of twenty workers are murdered, and 18,000 more are assaulted.<sup>46</sup> The use of firearms in such workplace murders has steadily increased, reaching 84% in 1991.<sup>47</sup> Murder is the number one cause of death in workplaces in sixteen states.<sup>48</sup> One in seven of the victims is killed by a co-worker or personal associate.<sup>49</sup> A 1993 study by the Northwestern National Life Insurance Company indicated that one-in-four workers were either

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<sup>44</sup> Hundreds of articles and studies have documented the serious problems of workplace violence. See, e.g., Terry S. Boone, *Violence in the Workplace and the New Right to Carry Gun Law -- What Employers Need to Know*, 37 S. Tex. L. Rev. 873 (June 1996); Dean J. Schaner, *Have Gun, Will Carry: Concealed Handgun Laws, Workplace Violence, and Employer Liability*, *Employee Relations Law Journal*, June 1, 1996; Karen Botham, *Violence is on the Increase in the Workplace*, *Jacksonville Business Journal*, May 31, 1996; Denise Edgington, *Settling the Score*, *Business Record*, April 22, 1996; James A. Morrissey, *Workplace Violence Rising*, *Textile World*, Feb. 1, 1996; Michael Ozurovich, *Workplace Violence: A Civil Remedy for Accountability*, *Sacramento Bee*, June 25, 1995, at G2; Carol J. Casteneda & Kevin Johnson, *Employers on Guard for Violence*, *USA Today*, April 5, 1995, at 3A; Ronald A. Gray & Teri Wood, *Employees at Risk: Companies Obligated to Provide Safe Workplace*, N.Y.L.J., Oct. 31, 1994, at S1; Mary Helen Yarborough, *Securing the American Workplace*, *HR Focus*, Sept. 1, 1994, at 1; Anastasia Toufexis, *Workers Who Fight Firing With Fire*, *Time*, April 25, 1994, at 34; Joan E. Rigdon, *Workplace: Companies See More Workplace Violence*, *Wall St. Journal*, April 12, 1994, at B1; Michael R. Losey, *Managing in an Era of Workplace Violence*, *Managing Office Tech.*, Feb. 1, 1994, at 27; Bob Smith, *Cease Fire!: Preventing Workplace Violence*, *HR Focus*, Feb. 1, 1994, at 1; Helen Frank Bensimon, *Violence in the Workplace*, *Training & Development*, Jan. 1994, at 26.

<sup>45</sup> National Inst. for Occupational Safety and Health, U.S. Dep't of Health and Human Servs., *Violence In The Workplace: Risk Factors and Prevention Strategies 1* (June 1996) (hereinafter “NIOSH Study”); Marilyn Elias, ‘Epidemic of Violence on the Job’ at an All-Time High, *USA Today*, July 8, 1996 (discussing NIOSH Study).

<sup>46</sup> NIOSH Study, *supra* note 45, at 1, 6.

<sup>47</sup> *Id.* at 6.

<sup>48</sup> Littler, Mendelson, Fastiff, Tichy & Mathiason, *Terror and Violence in the Workplace 2* (3d ed. 1996).

<sup>49</sup> *Id.*

attacked, harassed, or threatened over the previous year -- or a total of two million people.<sup>50</sup> This same study concluded that “[c]o-workers and bosses accounted for 86% of all harassment at work, one third of threats, and one fourth of all workplace attacks.”<sup>51</sup> A 1993 survey by the Society for Human Resources Management found that 33% of sampled workplaces had experienced a violent incident in the previous five years, 17% of which involved shootings, and more than a third of which stemmed from personality conflicts among employees and family.<sup>52</sup> A 1994 American Management Association study of 311 businesses indicated that 25% had at least one of their workers attacked or killed on the job since 1990.<sup>53</sup> No company is immune from the risks of violence on its business premises.

The cost to businesses of such violence has been staggering. Impacts have included:

- Loss of life and crippling injuries for employees and supervisors;
- Psychological trauma to those injured by, or witnesses to, an incident;
- Lower employee morale after an incident;
- Higher absenteeism rates;
- Labor-management conflict;
- Increased turnover in personnel;
- Production losses;
- Litigation costs;
- Increased security costs;
- Increased workers’ compensation costs;
- Increased costs, or loss of, insurance; and
- Increased personnel costs.<sup>54</sup>

A study by the National Safe Workplace Institute estimated that in 1992, 11,000 serious incidents of violence struck workplaces at an average cost of \$250,000 per occurrence, another 30,000 medium-severity incidents cost \$25,000 per occurrence, and approximately 70,000 lower-severity incidents cost \$10,000 per occurrence. The study estimated that the total cost to businesses for workplace violence was \$4.2 billion in 1992.<sup>55</sup> A more recent study by the Workplace Violence Research Institute has estimated employers’ costs as almost an order-of-magnitude higher -- \$36 billion.<sup>56</sup> Under either estimate, it is clear that the costs of even a single incident of violence at a workplace or store can be devastating to a business.

<sup>50</sup> Northwestern National Life Ins. Co., *Fear and Violence in the Workplace: A Survey Documenting the Experience of American Workers* 4 (Oct. 1993) (hereinafter “Northwestern National Study”).

<sup>51</sup> *Id.* at 10.

<sup>52</sup> Schaner, *supra* note 44 (discussing survey findings).

<sup>53</sup> Rigdon, *supra* note 44, at B1 (reporting findings).

<sup>54</sup> Gray & Wood, *supra* note 44, at S1; Boone, *supra* note 44 at 874 n.6.

<sup>55</sup> Kinney & Johnson, *Breaking Point, the Workplace Violence Epidemic and What to Do About It*, National Safe Workplace Inst. 27 (Sept. 1993). *See also* Littler, Mendelson, *supra* note 48, at 3 (discussing report); Patrick H. Hicks, *Workplace Violence: Reducing the Risk*, Nevada Lawyer, July 1995, at 14-15 (same).

<sup>56</sup> *See Cost of Violence in the Workplace Skyrockets Past \$36 Billion*, Business Wire, April 18, 1995, at 1; Boone, *supra* note 44, at 874 n.7.

With the growth in workplace violence and assaults in business settings, companies should think twice before allowing hundreds, or perhaps thousands, of CCW licensees to carry concealed handguns onto business property.<sup>57</sup> Consider, for example, the following potential types of violent scenarios that could take place in a business setting if handguns were allowed.

- A disgruntled employee participates in a grievance hearing. During the hearing, the employee becomes enraged and pulls out a concealed handgun, shooting not only his supervisors but other employees who have attended the hearing. The employee then turns the gun on himself and commits suicide.
- An employee becomes infatuated with a fellow employee and makes several unwanted advances that are rebuffed. One day after another advance and rebuff, the harassing employee takes out his concealed handgun and murders the fellow employee.
- A customer comes into your store to shop. While the customer is in the store, an armed robbery occurs at the front counter. The customer, wanting to be a hero, pulls out a concealed handgun and starts shooting toward the robbers but instead hits and kills your employee who is standing behind the counter. The robbers return fire, killing the customer, and then flee the scene.

These are just some of the types of violent encounters that businesses must address in their security plans. In each of these scenarios, the presence of a firearm can easily turn a stressful situation into a deadly one.

Do these scenarios sound far-fetched? Unfortunately, they are not. There have been thousands of real-life incidents in which supervisors and co-workers have been shot by disgruntled employees,<sup>58</sup> domestic quarrels have spilled over into the workplace,<sup>59</sup> and misguided heroes seeking to defend against violence have ended up being killed themselves or injuring others by accident. For example,

- In December 1996, a postal supervisor was shot by a former employee he had just testified against in an arbitration hearing as he arrived at work.<sup>60</sup>

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<sup>57</sup> See Raneta Lawson Mack, *This Gun For Hire: Concealed Weapons Legislation in the Workplace and Beyond*, 30 Creighton L. Rev. 285, 310 (1997) ("Given the current workplace violence statistics, it does not require a great leap of imagination to conclude that allowing employees to bring weapons into the workplace, even lawfully, would increase the potential hazard of workplace violence.").

<sup>58</sup> Since 1985, the number of supervisors killed by subordinates has more than doubled, averaging three-four supervisors each month. *Workplace Avenger: Florida Gunman Fits Profile*, St. Louis Post-Dispatch, Feb. 11, 1996, at 6B (citing U.S. Department of Justice statistics).

<sup>59</sup> In 1995, according to a study by the American Medical Association, disputes that started at home carried over into 60,000 instances of workplace violence. Doug Levy, *USA Almost Flunks Violence Report Card*, USA Today, June 12, 1996, at 1D.

<sup>60</sup> *An Ousted Postal Worker Kills His Supervisor*, New York Times, Dec. 20, 1996, at B1.

- In August 1996, a thirty-year employee of Ford Motor Company brought a gun to work and killed a plant security supervisor before turning the gun on himself. It was the second killing at the plant in two years. The prior incident, in January 1995, involved a domestic dispute that was carried over into the workplace.<sup>61</sup>
- In April 1995, a Buffalo deli owner was killed by armed robbers after he attempted to use a handgun to defend the store.<sup>62</sup>
- In September 1994, a union committeeman killed two of his co-workers and wounded two others at a Ford plant in Michigan in a dispute over politics in his UAW local.<sup>63</sup>
- In 1994, in Memphis, Tennessee, a mother of three was shot and killed by a stray bullet fired by a man defending himself from youths trying to rob him. That same year, a 68-year-old Memphis man used a gun to chase away youths and was shot and killed by police officers after he mistakenly pointed his gun at the officers.<sup>64</sup>
- In 1993, a man gunned down his 22-year-old girlfriend at her Houston office. The victim's survivors successfully sued her employer, recovering \$350,000 in a settlement.<sup>65</sup>
- In October 1991, a woman who was unhappy with her treatment at the Eveready Battery Company in Bennington, Vermont, opened fire with a 9mm pistol, killing the plant manager and wounding two others. In the same month, a recently-fired auto mechanic returned to his Woodlawn, Maryland, workplace with a 9mm handgun, killed two people, and wounded a third.<sup>66</sup>
- In January 1991, a twenty-five-year veteran employee of General Dynamics pulled out a .38 caliber handgun and shot his former supervisor and the union negotiator who was representing him at his reinstatement hearing.<sup>67</sup>
- In 1987, a North Philadelphia ice cream store owner was charged with murder and assault after he shot and killed one teenager and wounded another youth who were unarmed but making noise and threatening him in front of his shop.<sup>68</sup>

<sup>61</sup> *Ford Employee Kills Guard, Self*, Washington Times, Aug. 19, 1996.

<sup>62</sup> Janice L. Habuda and Jane Kwiatkowski, *Deli Owner Fatally Shot During Holdup Try*, Buffalo News, April 21, 1995, at 1.

<sup>63</sup> George Hunter, *How to Protect Employees From Violence in the Workplace*, Detroit News, July 22, 1996.

<sup>64</sup> Toni Lepaska, *Citizens Grabbing, and Using, Guns in Self Defense*, The Commercial Appeal (Memphis), Oct. 23, 1994, at 1B.

<sup>65</sup> Joseph Pereira, *Employers Confront Domestic Abuse*, Wall St. Journal, March 2, 1995, at B1.

<sup>66</sup> Thomas F. O'Boyle, *Workplace: Disgruntled Workers Intent On Revenge Increasingly Harm Colleagues and Bosses*, Wall St. Journal, Sept. 15, 1992, at B1. In June 1991, a former electronics plant employee, Larry Hansel, went on a rampage with a shotgun and rifle, killing two executives. The 41-year-old father of two had a fascination with guns but no history of violence. *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Around Eastern Pennsylvania*, U.P.I. Regional News, June 4, 1987.

These examples of gun violence are just the “tip of the iceberg.”<sup>69</sup> Gun violence can happen on any company’s premises, at any time.

What are the causes of such violence? Workers cite alcohol or drug abuse, layoffs or firings, societal poverty, violence on television or in movies, the pressures of too much work, overly controlling management, and conflicts with co-workers as major causes. Critically, however, 46% of American workers believe the availability of guns is a major cause of workplace violence.<sup>70</sup>

Further, nearly all scholars that have identified a profile of a “typical” workplace killer have stated that an infatuation with firearms is one of the elements of the profile.<sup>71</sup> This suggests that employees who may pose the greatest risk are also the most likely to obtain a CCW license in order to carry a gun to work. Yet, pointedly, a person fitting the typical “workplace-killer profile” would seldom be disqualified in any “shall-issue” CCW state from receiving a CCW license.<sup>72</sup> If a violent incident were to be perpetrated by a CCW licensee who fit this profile, a business’s prior decision to permit gun-carrying on its premises might be construed as condoning such violence. As will be seen below, this could raise potential legal problems.

The answer to these problems is not, however, to simply weed out the bad employees or keep the shady-looking customers out of the store. Many scholars believe it is not “possible to reliably identify who will go on a rampage and kill the boss,”<sup>73</sup> thus suggesting there is no way for a business to distinguish in advance between the gun-toters who pose extraordinary risks, and those who may not. Also, a business may face legal problems if it discriminates against certain employees or customers based on a perception that they are prone to violence.<sup>74</sup> According to

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<sup>69</sup> For numerous additional real-life examples, see Littler, Mendelson, supra note 48, at 4-6.

<sup>70</sup> Northwestern National Study, supra note 50, at 7, 9.

<sup>71</sup> See, e.g., Hunter, supra note 63 (“Obviously, if a person seems to have an unnatural fixation with guns and other weapons, watch out”); Botham, supra note 44; Edgington, supra note 44; Morrissey, supra note 44; Bensimon, supra note 44, at 30; Louis P. DiLorenzo & Darren J. Carroll, *The Growing Menace: Violence In The Workplace*, 67 N.Y. St. B.J. 24, 26 (1995).

<sup>72</sup> Although the elements of the profile may vary, the typical perpetrator of workplace violence is:

- A male Caucasian, 25 to 40 years of age;
- A loner with a history of violence and a fascination with weapons;
- An angry person with few outlets for that anger, but who has requested some type of assistance in the past;
- A socially withdrawn person with a history of interpersonal conflict, family problems and marital strife;
- One who often gives verbal expression to his complaints about and to management, but then stops; and
- One who exhibits paranoia about others, or self-destructive behavior such as drug or alcohol abuse.

DiLorenzo & Carroll, supra note 72, at 26 (emphasis added). See also Bensimon, supra note 44, at 30 (outlining profile).

<sup>73</sup> Bensimon, supra note 44, at 30 (quoting Dr. James Alan Fox, Dean of the College of Criminal Justice at Northeastern University).

<sup>74</sup> See DiLorenzo & Carroll, supra note 72, at 24-27 (discussing potential employer liability for responses to workplace violence); Boone, supra note 44, at 884-88; John D. Thompson, *Psychiatric Disorders, Workplace Violence and the Americans With Disabilities Act*, 19 Hamline L. Rev. 25 (Fall 1995); Janet E. Goldberg, *Employees With Mental and Emotional Problems -- Workplace Security and Implications of State Discrimination Laws, the Americans With Disabilities Act, the Rehabilitation Act, Workers' Compensation, and Related Issues*, 24 Stetson L. Rev. 20 (Fall 1994); Edward Felsenthal, *Potentially Violent Employees Present Bosses With a Catch-22*, Wall St. Journal, April 5, 1995, at B1 (noting that weeding out workers believed to be violent is more complicated than it might seem).

Dr. James Alan Fox, Dean of the College of Criminal Justice at Northeastern University and one of America's leading criminologists:

It's not a matter of identifying problem cases and dealing with them. It's a matter of changing the way things are done in the company. You can't just grease the squeaky wheel. You've got to grease the whole machine.<sup>75</sup>

Accordingly, the only safe and non-discriminatory way to reduce the risks of gun violence in workplaces and in stores open to the public is to make them gun-free. As will be seen below, businesses have the right in every state to ban guns from their premises.

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<sup>75</sup>Bensimon, supra note 44, at 30.

## **E. Permitting Guns On Business Premises Increases Legal Liability Risks**

### ***Are businesses more likely to be held legally liable if they permit guns on their business premises and a gun injury occurs?***

Yes. Companies have a legal obligation in most circumstances to protect their employees and customers from foreseeable acts of violence on company premises. If a company fails to meet this obligation, it may be held liable. Injured parties might sue under theories of negligence, negligent hiring, supervision, or retention, respondeat superior, or failure to maintain a safe workplace. In addition, employers can be sanctioned for a dangerous workplace by the Secretary of Labor under the Occupational Safety and Health Act of 1970 (“OSHA”).

If a gun injury occurs, under each of these theories of recovery, a company that permits guns on its premises will be at a significantly higher risk of liability than a company that chooses to remain gun-free. Indeed, as a leading employment-law specialist has said:

Companies that allow employees to carry concealed weapons are setting themselves up for an enormously expensive judgment if a customer is injured or killed. . . . You’re talking millions and millions of dollars. And think of the consequences, with customers and employees shooting. Can you imagine a firefight? I’d hate to be in the crossfire.<sup>76</sup>

### **◆ The Occupational Safety and Health Act of 1970**

The “general duty clause” of OSHA requires “each employer [to] furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees.”<sup>77</sup> To establish a violation of this clause, the Secretary of Labor must prove:

1. The employer failed to render its workplace free of a hazard;
2. The hazard was “recognized;” and
3. The hazard caused or was likely to cause death or serious physical harm.<sup>78</sup>

Generally, courts have interpreted this clause as requiring employers to eliminate only “feasibly preventable” hazards.<sup>79</sup> However, criminal acts of violence in the workplace have been

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<sup>76</sup> Frank Bass, *Firing Line: Cities and Companies Say ‘No’ to Concealed Handguns*, Wall St. Journal, Dec. 20, 1995, at T4 (quoting employment attorney Garry Mathiason, Littler, Mendelson, Fastiff, Tichy & Mathiason, a national law firm specializing in employment issues) (emphasis added).

<sup>77</sup> 29 U.S.C. § 654(a) (emphasis added).

<sup>78</sup> Id.

<sup>79</sup> Champlin Petroleum Co. v. OSHARC, 593 F.2d 637 (5th Cir. 1979) (“The general duty obligation . . . requires the employer to eliminate only ‘feasible preventable’ hazards.”); National Grain & Feed Ass’n v. OSHA, 858 F.2d 1019 (5th Cir. 1988) (discussing feasibility requirement); Waldon Health Care Center, 16 OSHC 1052 (1993) (outlining test).

recognized by the Occupational Safety and Health Administration Solicitor as one of the hazards employers must guard against.<sup>80</sup> Employers can be cited under the clause, according to OSHA, “if violence is a recognized hazard in their establishments and they do nothing to prevent it.”<sup>81</sup>

As discussed in the previous section, permitting employees and customers to carry guns on business premises is a recognizable hazard that can spark workplace violence, a fact recognized by OSHA.<sup>82</sup> Moreover, companies can “feasibly prevent” this hazard by adopting a gun-free policy. Accordingly, it may be a breach of OSHA’s general duty clause if a company does not ban guns from its premises and an act of gun violence later occurs.

### ◆ **Common Law Duty to Provide Safe Business Premises**

Many states have a statutory or regulatory equivalent to the OSHA general duty clause requiring employers to provide a safe workplace.<sup>83</sup> In states with no statute, state courts have generally established such a duty through the common law of negligence. In addition, business owners have a duty of care to protect the safety of invitees.<sup>84</sup>

The key to a company’s liability in each case is whether an act of gun violence perpetrated against an employee or customer was foreseeable.<sup>85</sup> Since companies have a legal duty to exercise “ordinary care” to prevent foreseeable violence -- even criminal violence -- from occurring on their business premises, failure to take reasonable precautions to protect customers

<sup>80</sup> Cynthia Atwood, Department of Labor, Associate Solicitor for the Occupational Safety and Health Administration, Memorandum, May 1992 (quoted in Schaner, *supra* note 44). See also Jonathan A. Segal, *When Charles Manson Comes to the Workplace*, HR Magazine, June 1994, at 33 (discussing May 1992 memorandum which was distributed to OSHA regional supervisors). In the Fall of 1993, OSHA fined a Chicago psychiatric hospital for failing to protect its employees from violence perpetrated by its patients. 23 OSHA 646 (1993).

<sup>81</sup> Martin Gringer, *Employer Responsibility for Workplace Violence*, N.Y.L.J., July 8, 1996, at 1 (quoting March 14, 1996, OSHA press release announcing *Guidelines for Preventing Workplace Violence for Health Care and Social Service Workers*, 25 O.S.H. Rep. (BNA) 1439 (1996)). In 1993, an apartment complex located in a high-crime area was cited for failing to furnish a workplace free of recognized violence hazards. *Megawest Financial, Inc.*, 1995 OSHARC LEXIS 80.

<sup>82</sup> OSHA’s guidelines recognize that one of the risk factors for increased work-related assaults is “[t]he prevalence of handguns” in the workplace. *Guidelines for Preventing Workplace Violence for Health Care and Social Service Workers*, 25 O.S.H. Rep. (BNA) at 1440.

<sup>83</sup> See, e.g., Texas Labor Code Ann. § 411.103 (Vernon 1995), which provides that:

Every employer shall:  
 (1) provide and maintain employment and a place of employment that is reasonably safe and healthful for employees;  
 (2) install, maintain, and use such methods, processes, devices, and safeguards, including methods of sanitation and hygiene, that are reasonably necessary to protect the life, health, and safety of the employer’s employees; and  
 (3) take all other actions reasonably necessary to make the employment and place of employment safe.

<sup>84</sup> See generally Restatement (Second) of Torts § 344; W. Page Keeton, *Prosser and Keeton on The Law of Torts*, § 61 (1984).

<sup>85</sup> Boone, *supra* note 44, at 880 (“anytime an employer can reasonably foresee injuries to an employee or to individuals to whom the employer extends services, there is a potential for liability for violent acts”); *Taco Bell, Inc. v. Lannon*, 744 P.2d 43 (Colo. 1987) (foreseeability of injury is the primary factor in property owner’s liability); *Galloway v. Bankers Trust Co.*, 420 N.W.2d 437 (Iowa 1988) (same); *Butler v. Acme Markets, Inc.*, 445 A.2d 1141 (N.J. 1982) (same); *Graham v. M & J Corp.*, 424 A.2d 103 (D.C. 1980) (same).

and employees from such violence is a breach of that duty.<sup>86</sup> Business owners have often been held liable for failing to exercise due care to keep premises safe.<sup>87</sup>

Given what has already been discussed -- the current epidemic levels of violence on business premises, the uncertain character of and lack of training for CCW licensees, and the proliferation of CCW licenses in each “shall-issue” state -- if businesses permit the carrying of guns onto business premises, they are asking for legal troubles.<sup>88</sup> Courts would likely consider a business’s decision to allow guns onto its premises to be a significant factor in holding it liable for an act of gun violence committed on its property, because the increased presence of guns increases the likelihood, and thus the foreseeability, that gun violence will occur.<sup>89</sup> Although a company might argue that it could not have foreseen that a CCW licensee would commit gun violence, that argument rings hollow since hundreds of CCW licensees have already committed murder and other serious acts of violence with their firearms.<sup>90</sup>

In addition, the likely seriousness of any gun injury, balanced against the ease of reducing the risk by making a business gun-free, will also support liability against businesses that allow guns. Insurance companies have already foreseen the increased risks of violence posed by having

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<sup>86</sup> Boone, supra note 44, at 881 (“If employer foreseeability can be established, the employer will have a duty to take steps to provide a safe environment and if it fails to do so, may be found negligent”); Taco Bell, 744 P.2d at 46-47 (“[C]ourts that have considered this issue have almost uniformly held that while owners or occupiers of land held open for business purposes are not insurers of their customers’ safety, a duty arises on the part of the owner or occupier to take reasonable measures to protect customers from injuries caused by the criminal acts of unknown third persons when such acts are generally foreseeable”); Restatement (Second) of Torts § 449 (if the likelihood that a third person may commit a violent crime is one of the foreseeable hazards a company negligently fails to protect against, the company will be liable despite the criminal nature of the third party’s actions).

<sup>87</sup> See, e.g., Taco Bell, 744 P.2d at 48 (restaurant patron injured); Early v. N.L.V. Casino Corp., 678 P.2d 683 (Nev. 1984); Stevens v. Jefferson, 436 So.2d 33 (Fla. 1983) (bar patron shot); Foster v. Winston-Salem Joint Venture, 281 S.E.2d 36 (N.C. 1981) (woman assaulted in shopping mall parking lot); Antrum v. Church’s Fried Chicken, Inc., 499 A.2d 807 (Conn. Super. Ct. 1985) (woman assaulted at drive-through window).

<sup>88</sup> In Sprecher v. Adamson Cos., 636 P.2d 1121 (Cal. 1981), the California Supreme Court set out a number of commonly-cited factors to consider in assessing a landowners’ liability, including the likelihood of injury to the plaintiff, the probable seriousness of such injury, the burden of reducing or avoiding the risk, the location of the land, and the possessor’s degree of control over the risk-causing condition. As will be seen below, these factors indicate that business owners who permit guns on their premises will be liable.

<sup>89</sup> See, e.g., DiCosala v. Kay, 450 A.2d 508 (N.J. 1982) (holding Boy Scouts liable for camp counselor’s possession of guns in his camp quarters, when one of the guns was used in an unintentional shooting of a 6-year-old boy). See generally Littler, Mendelson, supra note 48, at 97-105 (discussing cases in which companies have been held liable for the foreseeable violent acts of third parties); Mack, supra note 57, at 312 (“it may logically be inferred that permitting weapons in the workplace increases the foreseeability that violence may occur”).

Proponents of widespread gun-carrying have argued that once a business prohibits guns it increases its legal risks due to the foreseeability that criminals will prey upon customers and employees they know are unarmed. Criminal attacks, however, are generally unforeseeable, see infra note 143 (discussing Lopez case and others), unless there is a history of crime at or near a particular business location. Compare Galloway, 420 N.W.2d at 438-39 with Martinko v. H-N-W Assoc., 393 N.W.2d 320 (Iowa 1986) (new shopping mall with no history of violence was not liable for criminal attack, while older mall with such a history was liable). If there has been a history of crime, however, the solution is not to permit untrained and uncontrollable CCW licensees to draw their firearms and start a firefight on business property, which could lead to more serious legal problems, see supra text accompanying note 77 (quoting leading employment-law expert regarding legal ramifications of permitting guns), it is to improve overall security. See infra Section Two (A) (discussing why a gun-free policy is the only way for businesses to maintain control of their own security).

<sup>90</sup> See supra Section One (A) (discussing acts of violence committed by CCW licensees).

firearms on business premises, and some have threatened to cancel policies unless firearms are prohibited.<sup>91</sup>

◆ **Common Law Liability Based on the Acts of Employees**

Employers may also be liable based on the actions of their employees, either because the employee is considered to be acting on behalf of the employer, or because the employer is directly responsible for hiring, training, supervising, and retaining the employee. Under the first theory of liability, an employer can be held responsible for an employee's conduct that furthers the company's purposes and is within his or her scope of employment. Although acts of gun violence will not often be attributed to employers under this theory, under certain circumstances employers may be held liable.<sup>92</sup>

Company liability is more likely under the direct liability theories of negligent hiring, negligent training, negligent supervision, and negligent retention, since each depend not on the scope of an employee's duties, but on an employer's failure to take due care to prevent foreseeable injuries caused by its employees.<sup>93</sup> These tort theories of recovery are recognized in most states,<sup>94</sup> and there have been dozens of cases in which employers have been held liable based on them.<sup>95</sup>

The general rule is that if an employer is found to have a duty of care to protect third parties who come into contact with its employees, it will be found to have breached that duty if it knew or should have known of the employee's incompetency, dishonesty, or bad character, but nonetheless hired or retained that employee [or failed to take steps to mitigate the danger.]<sup>96</sup>

As we have seen above, incompetency, dishonesty, or bad character do not often disqualify a person from obtaining a license to carry a concealed handgun in a "shall-issue" state.

Accordingly, if an employer has any marginal workers on its payroll, allowing such employees to carry guns to work would clearly exacerbate, not mitigate, any danger posed to

<sup>91</sup> According to a leading gun owners magazine, at least one major underwriter, State Farm Insurance, will terminate or deny insurance to businesses that permit guns on their premises. "State Farm does not write an insurance policy or continue an existing policy if we become aware that a firearm is present. We feel the liability exposure that is presented by the firearm is too great to underwrite." *State Farm Refuses Coverage for Minnesota Gun Owner*, *The New Gun Week*, May 1, 1997, at 9.

<sup>92</sup> If an employer permits its employees to carry firearms to defend themselves or company premises, any unintentional shooting by the employee will likely yield liability against the employer.

<sup>93</sup> See, e.g., *Yunker v. Honeywell, Inc.*, 496 N.W.2d 419 (Minn. Ct. App. 1993) (company liable to family of employee who was shot and killed by co-worker with known violent tendencies).

<sup>94</sup> See *DiCosala*, 450 A.2d at 514-16 (reviewing elements of torts and noting that a majority of states have recognized them).

<sup>95</sup> See generally Littler, Mendelson, *supra* note 48, at 32-39 (discussing case law); Boone, *supra* note 44, at 879-80 (discussing other cases); Schaner, *supra* note 44 (reviewing law); DiLorenzo & Carroll, *supra* note 72, at 27-29 (discussing additional cases); Roy A. Ginsburg, *Employment Law: Courts Around the Country Are Addressing Whether Employers May be Liable for the Negligent Hiring, Supervision and Retention of Employees Who Harm Others*, *National Law Journal*, July 8, 1996 (reviewing the law).

<sup>96</sup> Kevin M. McCarthy, *Dealing With Workplace Violence*, 41 (No. 4) *Practical Lawyer* 27, June 1995.

customers and co-workers, and thereby greatly increase the employer's risk of liability should an injury occur. Indeed,

[i]f an employer knows or has reason to know that its employees have violent tendencies and are carrying guns in the workplace, then there is a substantial risk that the violence is reasonably foreseeable under ordinary negligence principles.<sup>97</sup>

Moreover, “[a]n employer’s reliance on the ‘legality’ of a concealed handgun statute will not immunize it from negligence liability.”<sup>98</sup>

In one notable case -- DiCosala v. Kay<sup>99</sup> -- the Boy Scouts of America were held liable for negligently hiring and retaining a camp counselor who kept loaded handguns in his camp quarters. A 6-year-old boy was unintentionally shot in the neck when another counselor, playing with the boy in the gun-owner’s quarters, picked up one of his guns and, thinking it unloaded, fired it at the boy. The court held that the counselor’s mere possession of guns, which was known by the Boy Scouts, posed a danger to members of the public and a foreseeable risk that a gun injury would take place.<sup>100</sup> There was no evidence that the gun-owning counselor was a bad character. The case turned, instead, on the heightened risks entailed in knowingly allowing guns in the Boy Scout camp. The DiCosala court held that the Boy Scouts could be liable for negligently failing to supervise the gun owner because he maintained a dangerous instrumentality -- a loaded gun -- on its premises. “[T]he owner and operator of the camp owed an obligation to see to it that a dangerous instrumentality, such as a firearm, be removed or safeguarded and secured,” since a higher degree of care is required with respect to such dangerous instruments.<sup>101</sup>

The DiCosala case has potentially huge ramifications for companies that allow customers and employees to carry guns onto their property. First, it imposes a duty on companies to see to it that guns be “removed or safeguarded and secured.” Thus, if a company chooses not to make its premise gun-free, it must somehow “safeguard and secure” the guns carried on its property, or risk legal liability if someone is ever injured with one of those guns. Second, it establishes the principle that allowing guns into a business setting poses a foreseeable risk that gun injuries will take place therein. Since companies are under a duty to guard against foreseeable risks, they would be wise not to allow guns in.

Given these legal liability risks, the wise choice is to adopt a gun-free policy. Attempting instead to weed out potentially violent employees will not be as fruitful, and may not be possible. Further, it may even subject employers to additional liability, as employment discrimination laws prevent companies from firing or failing to hire otherwise competent individuals merely because

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<sup>97</sup> Schaner, supra note 44.

<sup>98</sup> Schaner, supra note 44 (concluding that a no-weapons policy is the wisest choice).

<sup>99</sup> 450 A.2d 508 (N.J. 1982).

<sup>100</sup> Id. at 518.

<sup>101</sup> Id. at 519. A recent unanimous Florida Supreme Court decision held that firearm sellers must be held to the “highest degree of care” in transferring a weapon because a firearm “involves such a high degree of risk of serious injury or death.” Kitchen v. K-Mart, 697 So. 2d 1200 (Fla. 1997).

they have a criminal background or history of mental instability.<sup>102</sup> Many states proscribe the use of criminal records in certain hiring decisions,<sup>103</sup> and Title VII of the Civil Rights Act of 1964 prohibits employers from making employment decisions based on arrest records.<sup>104</sup> One commentator has dubbed it a “Catch-22” because employers may be liable for hiring or retaining dangerous individuals, yet are hamstrung in their ability to weed them out.<sup>105</sup> Companies are not hamstrung, however, in their ability to ban guns from their business premises. Given the potential liability risks posed by employees, that is the most prudent course of action.

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<sup>102</sup> See Boone, *supra* note 44, at 884-87 (discussing employer guidelines); DiLorenzo & Carroll, *supra* note 72, at 25-27 (discussing employer liability for responses to workplace violence); McCarthy, *supra* note 96, at 35-40 (outlining what can be done to screen employees); Littler, Mendelson, *supra* note 48, at 49-57 (discussing potential for defamation, wrongful discharge, invasion-of-privacy claims stemming from actions against troubled employees).

<sup>103</sup> See, e.g., N.Y. Corrections Law § 753(1)(a) (McKinney 1994); *Guillermo v. Brennan*, 691 F. Supp. 1151 (N.D. Ill. 1988) (interpreting Wisconsin statute as precluding employer's inquiry into or use of criminal conviction for insulation installer job).

<sup>104</sup> Fair Employment Practices Manual; EEOC Guide to Pre-Employment Inquiries, Lab. Rel. Rep. (BNA) No. 695 at 443:67 (1995); *Green v. Missouri Pacific R.R. Co.*, 523 F.2d 1290 (8th Cir. 1975).

<sup>105</sup> Felsenthal, *supra* note 75, at B1.

## **F. Guns Pose Public- And Employee-Relations Problems**

### ***Is prohibiting concealed weapons the right choice from a public- and employee-relations standpoint? What are the competing considerations?***

If your company decides not to prohibit handguns on its premises and someone is shot, beaten, or intimidated with a gun brought there by a CCW licensee, not only is a potentially costly lawsuit likely, but the violent incident may also balloon into a public-relations disaster. The perception will be that by allowing guns into your business, your company has ignored the resultant potential for increased violence. As a result, your company will likely be perceived as unwilling to protect the security and well-being of customers and employees.

If, on the other hand, your company prohibits handguns and someone is shot, beaten, or intimidated with a gun on company premises, the incident is likely to be perceived as being ultimately outside your control, and therefore unforeseeable. Not only will the potential for legal liability be reduced as a result, but your company will have done its best to protect its customers and employees by limiting the prevalence of guns.<sup>106</sup>

Prohibiting guns in the workplace is also critical to promote customer feelings of safety and employee morale, even if a violent incident never occurs. In one national study of gun-owners and non-gun-owners alike, 71% of those surveyed said they would feel less safe if more people in their community acquired guns.<sup>107</sup> Among non-gun-owners, the numbers were even higher, with 85% indicating that the increased presence of guns in their neighborhood would lessen their safety.<sup>108</sup> Even among gun owners, roughly half did not want more people to acquire guns.<sup>109</sup> Although this study focused on the increased presence of guns in neighborhood homes, it offers a powerful message to employers that are considering whether to allow guns into their stores and workplaces.

Rather than making anyone feel safer, allowing customers and employees to carry concealed handguns on company property will likely breed fear and paranoia among co-workers and between customers and employees, since no one will know whether the other person is armed. Police officers understand the dangers involved when people with unknown intent carry weapons.<sup>110</sup> Such fear and paranoia is antithetical to creating the positive climate in which businesses thrive. For example, many customers may choose not to shop or bring their children into stores once they realize that people are carrying guns there. Employees also may feel strongly about working in a gun-free environment, just like the thousands who have pushed for smoke-free environments.

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<sup>106</sup> See *infra* Section Two (A) for additional discussion of means of securing company premises.

<sup>107</sup> David Hemenway, Sara J. Solnick, and Deborah R. Azrael, *Firearms and Community Feelings of Safety*, 86 J. Crim. L. & Criminology 121, 124 (Fall 1995).

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> "The fact that a law-enforcement officer cannot be aware of the intent of an individual possessing a weapon creates a potentially dangerous situation for both the officer and the citizen." Lonnie McCollum, Superintendent, Kansas Highway Patrol.

Moreover, if a violent incident ever does occur, customer confidence and employee morale could be shattered. Who would want to shop at a store where a shooting has taken place because guns were allowed? No one. At the Convair plant where an employee shot his former supervisor and union representative at his reinstatement hearing, the company needed to provide counseling for many months after the incident. As one expert put it: “For the survivors, the workplace is no longer safe, but has become threatening.”<sup>111</sup>

Prohibiting weapons may trigger a backlash of threats from the National Rifle Association and other advocates of widespread gun-toting. It should be remembered, however, that these are the same groups which recently became incensed when the Virginia legislature passed a common sense bill, in response to several incidents of violence involving teens in Fairfax County, Virginia, to prohibit the carrying of weapons into County youth recreation centers and other community centers.<sup>112</sup> If a company allows such groups to dictate security policy, it will unwisely be surrendering control of company security to people it does not know, and whose risky gun-carrying habits will likely adversely affect company interests.

The smart choice is a gun-free policy. “[E]mployers should not ignore the potential for workplace violence in the hope that ‘it will not happen here.’”<sup>113</sup> By taking control over the presence of guns, a business remains in much greater control of its fate if violence ever does arise.

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<sup>111</sup> Bensimon, supra note 44, at 32 (quoting S. Anthony Baron, author of *Violence in the Workplace: A Prevention and Management Guide for Business*).

<sup>112</sup> Eric Lipton, *NRA, Fairfax Warring Over Anti-Gun Bill*, Washington Post, March 20, 1997, at A1.

<sup>113</sup> DiLorenzo & Carroll, supra note 72, at 30.

## **G. Summary Of Problems And Risks**

As we have seen so far, the new “shall-issue” laws permitting just about anyone to carry a concealed weapon have dramatically changed the climate for businesses in America. Instead of a few hundred citizens in each state being licensed to carry a handgun, there may be a hundred thousand or more licensed to carry weapons. Unless businesses take control and institute a gun-free policy, they can expect their stores and workplaces to be filled with gun-carrying citizens.

Is it safer to allow everyone to carry a gun? Hardly. Numerous types of dangerous people must be licensed in most states, incomplete background checks allow some criminals to obtain CCW licenses, and no state requires enough training of CCW applicants to ensure proper handling and restraint in the use of a handgun. When such dangerous and untrained persons are allowed to carry guns freely into stores and workplaces, the potential for violence will inevitably increase, thereby subjecting businesses to much higher risks.

For businesses open to the public, the potential dangers and risks of allowing concealed weapons include the following:

- An increased risk of injury to customers;
- A public fear that firearms are being carried in stores, especially in places open to children;
- Diminished safety for employees; and
- Potentially huge legal, financial, and public-relations costs should gun violence ever occur.

For employers faced with the prospect of an armed workforce, the dangers are even greater, and include the additional risks of:

- Decreased workplace safety;
- Greater potential for employee-on-employee violence, and more lethal results when such violence occurs;
- Increased tension between supervisors and employees;
- A climate of fear and paranoia between co-workers and between customers and employees; and
- Public- and employee-relations problems posed by an armed workforce.

Businesses can avoid these dangers and risks. As will be seen in the remaining sections, businesses can dramatically limit their risks simply by adopting a gun-free policy.

## **SECTION TWO: A GUN-FREE APPROACH CAN ENHANCE SAFETY AND REDUCE BUSINESSES' LEGAL LIABILITY RISKS**

### **A. A Gun-Free Policy Is The Only Way For Businesses To Maintain Control Of Security For Customers And Employees**

If your business is located in one of the new “shall-issue” states, you can be certain that if you have no policy regarding firearms, both customers and employees will carry concealed weapons onto your business premises. Depending on the size of your business and the volume of customer traffic you receive, the number of people carrying concealed weapons could number in the hundreds or thousands. And, because the law requires the weapons to be concealed, you will have no way of knowing who is carrying a firearm or how many firearms are present at any given time. The only way you will know is when something goes wrong.

Many businesses do not see the need to plan for difficulties when everything is going well. If the customers are happy, the employees are getting along, and the business is running smoothly, they do not feel that there is need for concern. However, to ensure that this state of events remains the norm, businesses should take steps to plan for every eventuality. For example, businesses routinely adopt policies and train their employees on sexual harassment. Businesses also install security systems, better lighting and locks, and hire security guards to protect themselves, their employees, and their customers. Planning is required to make -- or keep -- a workplace or store safe.

Prior to the enactment of the new CCW laws, so few people were permitted to carry concealed handguns, and the screening process was so much tighter, that most businesses did not focus on the issue of concealed weapons. Existing security plans, whether they involved company security personnel, good lighting, safeguarding of cash, and training on workplace harassment and violence, were capable of handling the occasional presence of a concealed weapon.

Under the new, more relaxed CCW licensing laws, however, businesses cannot afford not to have a policy directed at concealed weapons. No reasonable business person would want potentially hundreds or thousands of persons he or she does not know, and who may have little or no training in firearm safety or conflict resolution, to carry loaded handguns into their business. What if a violent incident is threatened? Could you imagine having either customers or employees drawing their loaded handguns and firing away? Of course not. Similarly, no reasonable business person would want their employees to be armed on the job, even under “normal” circumstances. During employee-evaluation time, or when a person has to be fired, the

stresses would be astronomical. “Are you going to want to give a poor performance review to an armed employee? It’s just insanity.”<sup>114</sup>

All of these questions point to one simple issue: maintaining control over your business premises. By training employees on sexual harassment and workplace violence, companies attempt to prevent such incidents from occurring. By hiring security guards, installing lighting and locks, and other measures, companies seek to protect employees and customers from random acts of violence. By taking these measures, companies attempt to control the potential violence that can erupt on business premises, to minimize the damage if it does erupt, and to protect themselves against liability for any resulting injuries. Adopting a policy on concealed firearms must be part of this plan. After all, “[i]t doesn’t make sense to spend \$700,000 on . . . security and then allow people to bring guns into the building.”<sup>115</sup>

Human resource professionals agree that one of the main reasons violence hits so many businesses is a lack of preparedness.<sup>116</sup> As one legal commentator summarized:

In 1986, virtually no employer was prepared to deal with sexual harassment. Now, every reasonable employer is. In 1996, few employers are prepared to deal with violence. Most know it is a problem but -- like harassment 10 years ago -- they are afraid to deal with the enormity of the issue. In the year 2006, virtually every responsible employer will have violence prevention programs in place. The question is who gets hurt, sued, and so forth, in the interim.<sup>117</sup>

Human resource and law enforcement professionals also agree that a gun-free policy should be an essential part of every company security plan.

- “In addition to a ‘zero tolerance’ anti-violence policy, employers should adopt a strict, no weapons policy. In light of an employer’s OSHA and common law duties to provide a safe workplace, the benefits of the no-weapons policy outweigh any burdens and disadvantages.” Dean J. Schaner, employment law partner, Haynes & Boone, L.L.P., Houston, Texas.<sup>118</sup>
- “Prohibitions on the possession of weapons in the workplace are another example of the principle that, whenever possible, employers should focus on objective behaviors and not subjective assessments. Employers should have a rule prohibiting possession

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<sup>114</sup> Bass, *supra* note 77, at T4 (quoting attorney Garry Mathiason).

<sup>115</sup> See Amos Jones, *Many Kentucky Retailers to Ban Concealed Guns*, Lexington Herald-Leader, June 17, 1996, at C1 (quoting County Judge Cyndi Krier, Bexar, Texas).

<sup>116</sup> Northwestern National Study, *supra* note 50, at 12 (indicating that employers with effective security programs reported lower levels of workplace violence and worker burnout); Rigdon, *supra* note 44, at B1 (quoting American Management Association director Eric Greenberg: “The fact that fewer than half of firms have any kind of procedures in place to deal with incidents [of workplace violence] shows a lack of preparedness. Too many are sitting around waiting for something to happen.”); Elias, *supra* note 45, at 2D (quoting workplace violence psychologist Mark Braverman: “We don’t have the research to prove it, but we know when companies report violence problems, they usually don’t have prevention programs.”).

<sup>117</sup> Jonathan A. Segal, *When Norman Bates and Baby Jane Act Out at Work*, HR Magazine, Feb. 1, 1996.

<sup>118</sup> Schaner, *supra* note 44.

of weapons, firearms or explosives on company premises, and employees who violate that rule should be terminated even if they are unlikely to use that weapon.” Jonathan A. Segal, HR Magazine.<sup>119</sup>

- “Establish a policy applicable to everyone employed by the company or on company property, including the company parking lot, prohibiting the possession of weapons which have not been authorized by your organization.” International Association of Chiefs of Police.<sup>120</sup>

One argument made by proponents of carrying concealed weapons is that some people feel they need to have a gun to defend themselves against potential criminal threats. Thus, if a CCW licensee feels threatened, he or she will draw, and perhaps use, their firearm. In two separate incidents in Texas, CCW licensees fired their handguns at unarmed assailants and killed them. One of the CCW licensees is currently under indictment for murder.<sup>121</sup>

Does this argument for self-protection carry any weight on your business premises? If customers or employees feel they need a gun to be safe in your store or workplace, either they are seriously paranoid or your company has a serious security problem. If the former is true, do you want a paranoid person carrying a gun in your store or on your business premises? If the latter is true, is the solution to your security problem to let your customers and employees arm themselves so they can draw their weapons and start shooting when a perceived security threat arises? Of course that is not the best solution. Police officers across America have made this point very effectively.

- “Many police officers have been injured and killed with their own guns. Given that reality, what chance does John Q. Citizen have?” Beth McGee, National Association of Police Organizations.
- “[In my thirty-one years on the force, I have] never heard of a crime being stopped by a civilian who had a concealed weapon.” James R. Otto, Police Captain, Richmond, Virginia.
- “In my years of experience as a police officer, I cannot recall one single instance where an innocent citizen armed with a firearm in a public place successfully protected himself or herself from a criminal.” Dan Minter, Detective, Overland Park, Kansas.

Another argument often advanced against putting up signs prohibiting concealed weapons is that it serves as a kind of advertisement for criminals to come in and rob the store. This argument is also misguided. The appropriate response to the potential for criminal attacks is to

<sup>119</sup> Segal, *supra* note 117.

<sup>120</sup> International Association of Chiefs of Police (“IACP”), *Combating Workplace Violence: Guidelines for Employers and Law Enforcement* 6 (1996) (report prepared by the Private Sector Liaison Committee).

<sup>121</sup> See *supra* note 38 and accompanying text (discussing Texas incidents).

improve security, not to allow virtually untrained and uncontrollable citizens to carry guns onto company property and start a shootout whenever a violent threat is perceived. Not only will such an outcome have potentially disastrous legal consequences, it also makes no sense from a security standpoint.

Police leaders across America have made it clear that allowing more and more citizens to carry concealed weapons does not increase anyone's security. Here is what some of them have said:

- “Imagine sitting at a restaurant or sporting event where the slightest argument could escalate into a gunfight. How many times, in the heat of an argument, will a decision to shoot become the first choice instead of the last resort? We should not let ourselves be fooled by twisted statistics or the rhetoric of fear and anger. Common sense must carry the day.” Pat Sullivan, Sheriff, Arapahoe County, Colorado.
- “I think it would be a mistake to pass the [carrying concealed weapons] bill. There is so much conflict in an urban environment already. You see it driving to and from work. Some of these minor acts could precipitate into violence if a person has a gun.” David Kunkle, Chief of Police, Arlington, Texas.
- “We as a group (Kentucky Association of Chiefs of Police) believe in our citizens rights to own guns. But we cannot endorse the concept that allowing Kentuckians to secretly carry weapons throughout the Commonwealth will somehow enhance their personal safety, decrease the likelihood of victimization or injury, nor decrease crime.” Doug Hamilton, Chief of Police, Louisville, Kentucky.
- “Carrying concealed weapons legislation is not the solution, and in our opinion, is contrary to the health, safety and welfare of Colorado citizens.” Dan Montgomery, Chief, Colorado Association of Chiefs of Police.

The best solution is to keep your business premises as close to the way it was before CCW laws were passed -- gun-free. With a gun-free policy, you know that the only people carrying guns are your security guards and the police. This is probably the way it has been in previous years at your business. For maximum safety and security, this is the way it should always be.

## **B. Prohibiting Guns Will Reduce Legal Liability Risks**

As we discussed in our prior section on legal issues, if businesses permit people to carry guns onto company premises they are asking for legal troubles.<sup>122</sup> Companies have a legal duty to provide a safe environment for customers and employees. If they do not exercise due care to protect customers and employees from acts of foreseeable violence, they could be liable. Companies also must exercise due care to prevent foreseeable injuries caused by employees which they know or have reason to know present a potential threat to others. As we saw in the DiCosala v. Kay case discussed above,<sup>123</sup> even the Boy Scouts of America have been held liable for letting employees carry guns to work.

Fortunately, there is an appropriate response to the legal risks associated with increased gun carrying on business premises -- keep guns out. In the opinion of one legal analyst:

Carrying a concealed weapon may not be a crime or a tort, but it is a dangerous activity. An employer will minimize its potential negligence liability by enforcing a strict no-weapons policy -- [because] it is far more foreseeable that an employee will be injured in a workplace full of guns and an environment reminiscent of the Old West, than one in which weapons are prohibited.<sup>124</sup>

Despite the new state laws, businesses are in no way prevented from adopting policies to prohibit the carrying of concealed weapons on their business property. By posting a simple notice at entrances, and by adopting a policy prohibiting employees from carrying weapons to work, companies can retake control of their premises and effectively limit the risks and dangers of allowing uncontrolled carrying of weapons on business property.

Many businesses, a sample of which are listed below, have already adopted this approach. These simple acts can help a business return to the security climate that existed before the new "shall-issue" CCW laws and thousands of new CCW licensees entered the picture. By taking control over the existence of weapons on its business premises, a company can reinforce security plans it already has in place.

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<sup>122</sup> See supra Section One (E).

<sup>123</sup> See supra notes 99-101 and accompanying text (discussing ramifications of DiCosala v. Kay, 450 A.2d 508 (N.J. 1982)).

<sup>124</sup> Schaner, supra note 44. See also Mack, supra note 57, at 313 ("A 'no weapons' policy on business premises creates an atmosphere of safety for invitees and avoids the liability that could result from the accidental or intentional discharge of a weapon.").

### **C. Many Businesses Have Already Chosen To Become Gun-Free**

Given the risks associated with concealed weapons, hundreds of businesses in “shall-issue” CCW states have reportedly already adopted gun-free policies for customers or employees, including the following sampling of major companies:

- The Alamo, Texas
- Albertson’s, Inc., Texas
- Alliant Health Systems, Kentucky
- American Airlines, Texas
- Atlantic Richfield Co., Texas
- Compaq Computers, Texas
- Dayton Hudson Corp., Texas
- Dell Computer Corp., Texas
- Electronic Data Systems, Texas
- Exxon Corp., Texas
- Fayette Mall, Kentucky
- Foodbrands America, Oklahoma
- Ford Motor Company, Kentucky
- General Motors, nationwide
- Holiday Inn, national chain
- Hooter’s Restaurants, national chain
- IBM, Texas
- Intermountain Health Care, Utah
- Jacobs Group Malls, Kentucky
- Kroger Co., Texas
- Lexington Mall, Kentucky
- MCI
- Motorola, Inc., Texas
- National Football League
- Six Flags Over Texas, Texas
- State Farm Insurance, nationwide
- SuperAmerica convenience stores, Kentucky
- Texas Instruments, Texas
- USAA Insurance, Texas
- United Parcel Service, Texas
- United States Postal Service<sup>125</sup>

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<sup>125</sup> See, e.g., Bass, *supra* note 77, at T1 (listing policies of the 20 largest employers in Texas); Andrea Gerlin, *Concealed-Gun Laws Give Businesses the Jitters*, Wall St. Journal, March 5, 1996, at B1 (listing companies banning guns); Bill Hendricks, *Welcome Mat Isn’t Rolled Out for Those With Weapons*, San Antonio Express-News, Dec. 31, 1995 (listing additional companies); Jones, *supra* note 115, at C1 (listing Kentucky companies); Jon Saraceno, *NFL Players Union Takes Anti-Gun Stance*, USA Today, June 26, 1996, at 1C; Kirsten Haukebo, *Is Banning Concealed Weapons Wise? Risky? Futile?*, Louisville Courier-Journal, Oct. 1, 1996, at 1A; L.M. Sixel, *Workplace Arms Ban: Employers Want Guns Kept Away When Law Takes Effect*, Houston Chronicle, Sept. 28, 1995; *Commuter Business Bans Weapons From Its Vans*, Richmond Times-Dispatch, March 20, 1996 (60-van commuter (footnote continued))

These companies have taken action for the reasons stated in this Guide -- concealed guns pose unacceptable risks for public businesses. In the words of various spokespeople:

- The new CCW law “scared the hell out of us. . . . We see so much odd behavior in the absence of weapons in these times. We just want our people safe.” John Chapman, Director of Human Resources, Foodbrands America, Inc.<sup>126</sup>
- “The very idea of concealed weapons is enough to convince many employers that they truly have to take action.” Attorney Don Willett, Haynes & Boone, Austin, Texas.<sup>127</sup>
- “Employers worry about being held liable if there is a shooting incident. It’s because of the issue of violence in the workplace. The potential liability of an employer that permitted an employee to carry a weapon on the premise[s] . . . my God, can you imagine what could happen?” Attorney Ben Foster, Foster Heller & Kilgore, Texas.<sup>128</sup>
- “None of our individual retailers are interested in taking away the individual rights of our customers. They’re just interested in protecting their customers and employees.” Gary Bryant, Kentucky Retail Federation.<sup>129</sup>
- “We’re accountable for public safety, so we have to issue certain rules and regulations. [Banning guns is] the same principle under which we restricted smoking at the mall.” William Fullington, Jacobs Group, owner of forty regional malls nationwide.<sup>130</sup>

Each of these companies have assessed the risks and made the wise choice to ban guns.<sup>131</sup>

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business in N. Va. requires its 700 riders to be gun-free); Facts on File World News Digest, Vol. 285, August 24, 1995 (discussing Post Office ban).

<sup>126</sup> Gerlin, supra note 125, at B1.

<sup>127</sup> Id.

<sup>128</sup> See Hendricks, supra note 125.

<sup>129</sup> See Jones, supra note 115, at C1.

<sup>130</sup> Id.

<sup>131</sup> See also Jean McCann, *Is a Pistol-Packing Pharmacist the Way to Avoid a Robbery?*, 135 (No. 8) Drug Topics 84 (1991) (quoting major chain pharmacists on why they do not allow guns in their stores).

## **SECTION THREE:**

# **IN EVERY STATE, BUSINESSES HAVE THE RIGHT TO KEEP THEIR PREMISES GUN-FREE**

### **A. Businesses Have The Right To Control Their Premises And Employees**

The right to exclude someone from business property, if not done in violation of civil rights laws not applicable here, is fundamental.<sup>132</sup> This right clearly allows property owners and their managers to exclude someone carrying a gun.<sup>133</sup> Thus, as a basic tenet of property law, businesses have the right to ban guns from their premises.

In addition, in each of the thirty-one states with “shall issue” CCW laws, state criminal trespass laws permit businesses to prohibit CCW licensees from carrying weapons onto business property. For example, in Colorado, the criminal trespass law makes it unlawful for someone to enter or remain in or upon premises when he is not privileged to do so by the owner. Other states’ laws are nearly identical. The only question is how to notify members of the public that handguns are not permitted. In essentially every state, all that is required is the posting of a simple notice at business entrances. In Appendix A, we have provided a detailed legal analysis of each CCW state’s criminal trespass laws and the notice required to ban handguns from business premises.

With respect to employees carrying weapons, employers have the additional right to control this in the same way that they can dictate basic work rules and regulations for their employees.<sup>134</sup> This includes an unequivocal right to prohibit employees from carrying concealed weapons on employer property, or while traveling for the business.

<sup>132</sup> See, e.g., Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 435-36 (1982) (“The power to exclude has traditionally been considered one of the most treasured strands in an owner’s bundle of property rights.”); Kaiser Aetna v. United States, 444 U.S. 164, 179-80 & n.11 (1979) (“the ‘right to exclude’ [is] so universally held to be a fundamental element of the property right, [that it] falls within [the] category of interests that the Government cannot take without compensation”); Bresnik v. Beulah Park Ltd. Partnership, 617 N.E.2d 1096, 1097 (Ohio 1993) (owner of private business has common-law right to exclude others from business premises); Restatement of Property § 7 (1936) (possessory interest in land exists when person has such control over it as to be able to exclude other members of society in general from the land).

<sup>133</sup> It has repeatedly been held that there is no federal constitutional right to possess firearms. E.g., Hickman v. Block, 81 F.3d 98 (9th Cir.), cert. denied, 117 S. Ct. 276 (1996); Lewis v. United States, 445 U.S. 55 (1980); United States v. Miller, 307 U.S. 174 (1939). Moreover, even if there were, it would not apply to private businesses. Thus, there is no constitutional obstacle to a gun-free policy.

<sup>134</sup> Boone, supra note 44, at 891 (“With respect to employees and applicants for employment, employers are entirely within their rights to condition employment on not carrying weapons onto employer property or at employer-sponsored events. Such a prohibition is no different from other terms or conditions of employment, like a no solicitation policy or a policy relating to the attire to be worn by employees. An anti-weapons policy operates like any other term of employment, which employees or applicants may either accept, by continuing to work after the policy is announced, or reject, by choosing not to work for that employer.”); Misco, Inc. v. United Paperworkers Int’l Union, 768 F.2d 739, 742-43 (5th Cir. 1985) (“In adopting plant rules, an employer is not narrowly limited to denouncing acts already made criminal by the law but may, at a minimum, adopt reasonable prophylactic measures going beyond the statutes. As examples, we think it scarcely open to doubt that rules forbidding the introduction of . . . firearms (loaded or not) [onto plant premises] would be valid . . . .”), overruled on other grounds, 484 U.S. 29 (1987); Mannikko v. Harrah’s Reno, Inc., 630 F. Supp. 191, 197 (D. Nev. 1986) (employer could set whatever reasonable standards it wished for employees); Quarles v. North Mississippi Retardation Center, 455 F. Supp. 52, 57 (N.D. Miss. 1978) (“Employers have the right to establish reasonable policies to govern the conduct of employees . . . .”); Gentleman v. Werner, 361 F. Supp. 278, 281 (W.D. Pa. 1973) (employer can  
(footnote continued)

None of these rights held by businesses has been in any way affected by any “shall-issue” state’s CCW law, since no CCW law has expressly repealed older state laws granting private property owners and businesses the right to exclude someone from business property, or to control basic conditions of employment.<sup>135</sup> Moreover, since there is no inconsistency between a private business’s right to keep its premises gun-free, and a CCW licensee’s ability to carry a concealed weapon in places where it is not prohibited, the former right has not been impliedly repealed by any state’s relaxation of the conditions under which CCW licenses are issued.<sup>136</sup> The new CCW laws do not create any new rights or privileges for CCW license holders. They “merely decriminalize[] the possession of a handgun in certain situations . . . .”<sup>137</sup>

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pick time, place, and manner of employment); Randall’s Food Markets, Inc. v. Johnson, 891 S.W.2d 640, 645-46 (Texas 1995) (employer can dictate terms of employment).

<sup>135</sup> See Appendix A (discussing each state’s laws).

<sup>136</sup> The United States Supreme Court has, on numerous occasions, held that “repeals by implication are not favored.” Morton v. Mancari, 417 U.S. 535 (1974) (quoting Posadas v. National City Bank, 296 U.S. 497 (1936)). See also Radzanower v. Touch Ross & Co., 426 U.S. 148 (1976) (citing additional cases). “In the absence of some affirmative showing of an intention to repeal, the only permissible justification for a repeal by implication is when the earlier and later statutes are irreconcilable.” Morton, 417 U.S. at 550. State law on this point is identical. E.g., State v. Guzek, 906 P.2d 272 (Ore. 1995); Mills v. Commissioner of Ins., 736 P.2d 102 (Mont. 1987); Misterek v. Washington Mineral Prods., Inc., 531 P.2d 805 (Wash. 1975).

In each CCW state, the new “shall issue” laws have merely relaxed the conditions under which CCW licenses are issued; they have not implicated more fundamental private property rights. Since there is no conflict between “shall issue” laws and private property rights, the prior rights of businesses to keep premises gun-free are intact. State Attorneys General that have considered this issue have agreed with this analysis. See Alaska Op. Att’y Gen. Op. 663-95-0323 (July 2, 1995); Texas Op. Att’y Gen. DM-363 (Aug. 30, 1995).

The only “shall issue” state where a controversy has arisen on this point is Utah, in which advocates of loose CCW laws unsuccessfully challenged a gun-free policy adopted by the Mormon Church to prohibit guns in its churches. See Herrie and Semerad, supra note 12 (discussing controversy over Utah law); Tony Semerad, *Guns Inappropriate in Church, LDS Say LDS Church Wants No Guns in Pews*, Salt-Lake Tribune, June 4, 1996 at A1 (discussing Mormon Church ban). The reason for the controversy is Utah’s unique CCW law, which states that a CCW license “is valid throughout the [S]tate, without restriction, for two years.” Utah Code Ann. § 53-5-704(1) (emphasis added). While several other “shall issue” states issue CCW licenses valid “throughout the state,” which refers to their validity in every county in that state, only Utah uses the “without restriction” language. This language, although confusing, does not repeal private property rights of businesses. It is meant, instead, to refer to the Utah’s legislature’s decision to not restrict CCW licensees from certain public facilities, such as government buildings, schools, and courthouses. Thus, the phrase “without restriction” refers to the fact that there are no pre-set place restrictions on CCW licensees in Utah, as there are in nearly every other “shall issue” CCW state, rather than a decision to supersede fundamental private property rights.

<sup>137</sup> Boone, supra note 44, at 890.

Because the new [CCW] law[s] do[] not grant additional rights or privileges, there is no legal basis for a concealed handgun licensee to challenge a landowner, business owner, or employer's right to declare its property a "gun-free zone."<sup>138</sup>

Several major employers, including the National Football League and Bank of America, have already adopted such policies. (See previous chapter for a longer list of companies.) Such businesses have recognized that allowing employees to arm themselves at work not only poses increased dangers for workplace violence, but may be a public-relations disaster if something were to ever go wrong.

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<sup>138</sup> Id. at 891 ("Further, an employer's policy restricting weapons is consistent with the undeniable right of an owner of privately-held and -controlled property to exclude and admit persons as he or she wishes so long as the owner doesn't violate someone's fundamental or constitutional rights. [As noted in footnote 133 above, citizens have no federal constitutional right to bear firearms.] Because the right to carry a concealed handgun is created by statute, a property owner's restriction of that right does not violate a fundamental or constitutional guarantee. Thus, employers have a right to establish and enforce a strict policy prohibiting all employees and invitees from bringing weapons, concealed or otherwise, onto the employer's premises.").

## **B. Certain States Have Reinforced Businesses' Rights To Keep Guns Out**

In addition to the long-standing rights of property owners and employers to exclude those carrying concealed weapons, in eleven of the thirty-one states with new CCW laws, legislatures have enacted provisions to make it clear that businesses may prohibit CCW licensees from carrying guns on business premises. The eleven states are:

- Alaska,<sup>139</sup>
- Arkansas,
- Kentucky,
- Louisiana,
- Mississippi,
- North Carolina,
- Oklahoma,
- Tennessee,
- Texas,<sup>140</sup>
- Virginia, and
- West Virginia.

In each of these states, a simple notice posted on the premises is generally all that is required to prohibit concealed weapons. Each state's law and the notice required is explained in detail in Appendix A.

Even if part or all of your business is not in one of these states, that does not mean your right to prohibit concealed weapons on your business premises is somehow limited. As discussed above, basic property law, criminal trespass statutes, and an employer's right to control the terms and conditions of employment are a more-than-sufficient foundation in every state to empower businesses to control their business premises by making them gun-free.

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<sup>139</sup> Alaska's provision expressly allows businesses to exclude weapons from business or organization meetings. Alaska Stat. § 18-65-755. See Appendix A.

<sup>140</sup> Texas explicitly grants employers the right to prohibit employees from carrying weapons. Texas Rev. Civ. Stat. Ann. art. 4413(29ee) § 32. See Appendix A.

## **SECTION FOUR: ADOPTING AND ENFORCING A GUN-FREE POLICY**

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### **A. Formulating A Gun-Free Policy**

The advantages of prohibiting both customers and employees from carrying weapons on your business premises are many. A comprehensive gun-free policy:

- Offers the greatest protection to customers and employees;
- Is the most consistent, and thus lessens the risks of legal liability should a violent incident occur; and
- Projects a public image of safety and security for your business.

At a minimum, however, businesses should choose to keep employees from carrying weapons. The potential for an increase in workplace violence and intimidation, and therefore legal liability, for employers if workers are armed is simply too great to ignore. (See previous chapters on workplace violence and legal liability.)

Guns can be excluded from business premises by the posting of simple notices at the various entrances to property. Our comprehensive Appendix A lists the requirements for notice in all thirty-one “shall-issue” CCW states.

To prevent employees from carrying guns, your company personnel policy should also be amended, and the amendment should be distributed to all employees. If your company does not have a general workplace violence plan, it would be wise to establish one and incorporate a gun-free policy within it.<sup>141</sup>

Be sure to include the following in any company gun-free policy:

- Draft the policy broadly to prohibit concealed and other weapons, whether carried on a customer’s or employee’s person, brought into the company parking lot, or hidden in a vehicle brought on the company’s premises. The policy should expressly state that despite the state’s “shall-issue” CCW law, the company is allowed to prohibit concealed weapons on its property.

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<sup>141</sup> Much has been written about helping companies set up plans to limit violence in the workplace. See, e.g., Littler, Mendelson, supra note 48; DiLorenzo & Carroll, supra note 72; McCarthy, supra note 96; Hicks, supra note 55; IACP, supra note 120.

- Identify and comply with the gun-free notice requirements for your state. See Appendix A.
- Include a “definitions” section which spells out the meaning of the terms used in the policy, such as “customer or invitee,” “employee,” “weapon,” “possession” and “company property.”
- Employers should review the gun-free policy with their employees and require a signed, written acknowledgment indicating that each employee has reviewed and understood the policy.
- The policy should state that any customer who violates the policy is subject to removal from the premises or arrest for criminal trespass, and any employee who violates the policy is subject to disciplinary action, up to and including termination from employment.

For example, the following language could be used in the employee manual:

### **Sample No Weapons Policy**

*It is the policy of [company name] that all firearms or dangerous weapons of any type, concealed or unconcealed, are prohibited on the company’s business premises, including parking areas, regardless of whether the person is licensed to carry the weapon or not. This policy applies to all persons entering company premises, with the exception of authorized security personnel and law enforcement officers. Further, company employees, including contract and temporary employees, are prohibited from carrying firearms or dangerous weapons of any type outside the company’s business premises while acting within the course of their employment, regardless of whether the person is licensed to carry the weapon.*

*Failure to abide by the terms of this policy may result in discipline up to and including termination. Further, carrying a weapon onto [company name] premises, including parking areas, in violation of this policy will be considered an act of criminal trespass, will be grounds for immediate removal from the premises, and may result in prosecution.*

*If you have a question about this policy, or become aware of anyone acting in violation of this policy, please call the human resources and/or security departments immediately.*

## **B. Enforcing A Gun-Free Policy**

One concern that businesses which consider a gun-free policy have is that such a policy may be unenforceable because the guns carried by CCW licensees must be concealed. This is a false concern. Companies adopting a gun-free policy need not search customers or employees, or set up metal detectors at company entrances, for the policy to be effective in reducing the risk of gun violence on company property.<sup>142</sup> A simple notice that persons carrying concealed weapons must leave their weapons outside will prevent law-abiding citizens from carrying firearms onto business property. Anyone who violates the gun-free policy may risk criminal penalties. In addition, employees who violate a gun-free policy can be disciplined or fired. These are ample enough incentives to ensure widespread compliance with a gun-free policy.

Companies should also not be concerned that by adopting a gun-free policy they are legally guaranteeing the safety of all customers and employees should a criminal bring a gun onto company property and shoot someone. Unless a specific store location has previously been hit by crime, such criminal attacks are generally unforeseeable, and thus companies are not likely to be held liable for failing to prevent them.<sup>143</sup> More importantly, the appropriate response to the potential for criminal attacks is to beef up company security, not to allow customers and employees to arm themselves independently and engage in an uncontrolled shootout on company property. As discussed above, such an incident could have disastrous legal consequences for companies that are not prepared.<sup>144</sup>

To enforce a gun-free policy, if anyone appears suspicious or poses a danger to customers or employees, as with any similar situation, company security and/or the police should be summoned.

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<sup>142</sup> If a company wants to take a stronger position, it may want to include a provision in its personnel manual authorizing it to conduct searches of employees at work. If it adopts such a policy, to avoid invasion-of-privacy claims, an employer should also require employees to sign consent forms authorizing searches of lockers, desks, and other areas on company property. These provisions are not required, however, for an effective gun-free policy.

<sup>143</sup> If there is no history of crime against a specific store, or in that store's neighborhood, courts have generally exonerated companies from liability. *See, e.g., Valdes v. Wal-Mart Stores, Inc.*, 967 F. Supp. 225 (S.D. Tex. 1997) (finding that Wal-Mart did not owe duty to protect customer against unforeseeable, surprise attacks in its parking lot); *Lopez v. McDonald's*, 193 Cal. App. 3d 495 (1987) (dismissing lawsuit against McDonald's where mass murderer entered San Ysidro, California, fast food restaurant heavily armed and began firing, killing 21 patrons and injuring 11 others); *Martinko v. H-N-W Assoc.*, 393 N.W.2d 320 (Iowa 1986) (dismissing suit against new shopping mall where woman was murdered in the parking lot). Where specific store locations have previously been hit by crime, however, additional criminal attacks may be foreseeable, thus requiring further precautions. *See supra* notes 87, 89 (citing cases); Philip M. Gerson, *An Ounce of Prevention: Proving Shopping Center Liability for Third-Party Crime*, Trial 52 (Aug. 1997) (discussing case law).

<sup>144</sup> *See* Bass, *supra* note 44, at T4 (quoting Garry Mathiason, a nationally known employment law attorney, on the potential for an "enormously expensive judgment" if a company permits persons to carry concealed weapons on its property and a customer is injured or killed).

## **CONCLUSION**

The new carrying-concealed laws, and the attendant dramatic increase in the number of people carrying concealed firearms, have placed businesses across America at a crossroads. By doing nothing, businesses with outlets, offices, or manufacturing facilities in the thirty-one “shall-issue” CCW states can expect hundreds, if not thousands, of customers and employees toting guns onto their premises. The result is likely to be a much higher risk of gun violence on company property, and a corresponding increased risk of legal liability for companies that take no action.

On the other hand, there is a fairly simple solution to the problems posed by the new CCW laws -- make your business gun-free. By posting notices at company entrances and adopting personnel policies banning gun possession by employees, companies can go a long way toward lessening the risk of gun violence on company property, and dramatically reducing their risks of legal liability should a violent episode occur. A gun-free policy is the only way for a business to maintain control of security for customers and employees. Moreover, businesses have an ironclad right to adopt such a policy in every state.

Do you want the pervasive attitude on your business premises to be one of fear and paranoia, or trust and security? A gun-free policy is an essential part of ensuring that your business is safe and secure for all persons who enter.

# **APPENDIX A**

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## **STATE-BY-STATE ANALYSIS OF BUSINESSES’ RIGHT TO KEEP THEIR PREMISES GUN-FREE**

This Appendix analyzes the laws of the thirty-one “shall issue” CCW states. It explains why businesses have a legal right in every state to exclude persons carrying handguns from their premises.

Businesses have several grounds for keeping their premises gun-free, including at least two grounds that apply in all fifty states. First, as a matter of general property law, owners and possessors of private property have the right to exclude persons carrying a gun. This issue is discussed in Section Three above. Second, as a matter of general employment and contract law, employers have the right to set basic work rules and regulations banning gun-carrying by their employees, which is also discussed in Section Three. This includes the right to prohibit employees from carrying concealed weapons on employer property, or while traveling during work. These rights have not been limited by state “shall issue” CCW laws.

In addition to these universal grounds for business exclusion, in all thirty-one “shall issue” CCW states, businesses may prohibit CCW licensees from carrying concealed weapons onto business premises based on each state’s criminal trespass laws. Moreover, eleven states permit businesses to prohibit CCW licensees from carrying guns on business premises under their CCW laws. The eleven states are:

1. Alaska,<sup>1</sup>
2. Arkansas,
3. Kentucky,
4. Louisiana,
5. Mississippi,
6. North Carolina,
7. Oklahoma,
8. Tennessee,
9. Texas,<sup>2</sup>
10. Virginia, and
11. West Virginia.

In all thirty-one states, a simple sign posted at property entrances is generally all that is required. If a particular type of sign is required, it is discussed below under each state’s section. We have provided a sample sign in Appendix C that can be used in most states.

Thus, in each of the thirty-one states analyzed herein, businesses stand on solid legal ground if they adopt a policy to keep their premises gun-free.

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<sup>1</sup> Alaska expressly allows exclusion at business or organization meetings.

<sup>2</sup> Texas explicitly grants employers the right to prohibit employees from carrying weapons.

## ALASKA

### ◆ **May guns be excluded from business premises?**

Yes. Basic property law, the right of businesses to set basic work rules, state trespass laws, and an express statutory right to exclude persons from carrying guns onto company property, all permit Alaska businesses to remain gun-free. See Section Three above and discussion below.

### ◆ **What type of sign is required to notify customers and employees that guns are not allowed on company property?**

A conspicuous notice placed at property entrances is required. The notice must (1) be printed in English, (2) be at least 144 square inches in size, (3) contain the name and address under whose authority the property is posted and the name and address of the person authorized to grant permission to enter the property, and (4) be placed at each way of access onto the property. Alaska Stat. § 11-46-350(c). Alaska's Attorney General has suggested the following sign:

NO CONCEALED HANDGUNS  
EVEN IF YOU HAVE A PERMIT

Violators will be arrested and prosecuted.  
This warning does not apply to peace officers  
or authorized security personnel.

John Doe, Manager, P.O. Box 123  
Anchorage, Alaska 99501

Op. Att'y Gen. 663-95-0323, 1995 WL 837338 (July 12, 1995). For businesses open to the general public, a personal request to leave (administered in person, by handbill, or over a loudspeaker) is required if the gun-carrier is to be prosecuted for criminal trespass. However, the placard above should be sufficient to deter most CCW licensees. Id.

Written notices should also be given personally to each employee, and a signed acknowledgment form should be obtained in return. (See Section Four above.)

### ◆ **State trespass laws permit businesses to exclude persons carrying concealed weapons.**

Alaska allows businesses the right to exclude a person from their property for any reason. It is a Class B misdemeanor to "enter or remain unlawfully" in or upon land, buildings, or propelled vehicles. "Enter or remain unlawfully" means: (1) for premises not open to the public, without privilege; or (2) for premises open to the public, remaining after being lawfully directed to leave. Alaska Stat. § 11-46-330 (1994). See Johnson v. State, 739 P.2d 781 (Alaska Ct. App. 1987) (trespass conviction where person recklessly disregarded lawful order not to remain).

A conspicuous placard placed at entrances is sufficient to make it unlawful for those carrying concealed weapons to enter posted property. For property open to the general public, however, the Attorney General has suggested that more personal notice, such as a handbill, loudspeaker announcement, or personal request to leave, be provided. Op. Att’y Gen. 663-95-0323, 1995 WL 837338 (July 12, 1995).

◆ **Alaska has passed an additional statutory provision expressly permitting businesses to keep guns off company property.**

Businesses and employers have an additional limited statutory right under the CCW law to exclude anyone carrying a concealed handgun, as follows:

A permittee may not carry a concealed handgun into a meeting of a business, charitable, or other organization or entity where notice that carrying a concealed handgun is prohibited has been given by the posting of conspicuous notice.

Alaska Stat. § 18-65-755. “Conspicuous notice” is provided if the notice satisfies the four criteria listed above. Id.

◆ **The Alaska Attorney General has issued an opinion related to this issue.**

Alaska’s Attorney General has opined that the state’s criminal trespass laws can be used to arrest and prosecute a CCW licensee who carries a concealed handgun onto private business premises in violation of a business’s gun-free notices. The business owner must provide notice that concealed handguns are prohibited, and, for businesses open to the general public, a personal direction to leave. Op. Att’y Gen. 663-95-0323, 1995 WL 837338 (July 12, 1995).

## ARIZONA

### ◆ **May guns be excluded from business premises?**

Yes. Basic property law, the right of businesses to set basic work rules, and state trespass laws, all permit Arizona businesses to remain gun-free. See Section Three above and discussion below.

### ◆ **What type of sign is required to notify customers and employees that guns are not allowed on company property?**

Signs stating that carrying concealed weapons is prohibited, even if a person has a CCW license, should be posted at property entrances in a manner reasonably likely to come to the attention of the public. The signs should state that violators are subject to removal from the premises and prosecution for trespass, and list by whose authority the notice is issued. See Appendix B.

Written notices should also be given personally to each employee, and a signed acknowledgment form should be obtained in return. (See Section Four above.)

### ◆ **State trespass laws permit businesses to exclude persons carrying concealed weapons.**

Under the common law, property owners in Arizona have long been able to exclude others from their property for any reason. Champie v. Castle Hot Springs Co., 233 P. 1107 (Ariz. 1925) (“One of the most cherished principles of our common law, to use the old phrase, is that ‘a man’s house is his castle, from which he may exclude any and all persons at will . . . .’”); State ex rel. Purcell v. Superior Court, 535 P.2d 1299 (Ariz. 1975) (at common law, any unauthorized physical presence on another’s property was a trespass).

In addition, a person who “knowingly enter[s] or remain[s] unlawfully on any real property after . . . reasonable notice prohibiting entry” is guilty of criminal trespass in the third degree. Ariz. Rev. Stat. Ann. § 13-1502. To “enter or remain unlawfully” is to enter or remain on premises when the person is “not licensed, authorized or otherwise privileged except . . . when the premises are open to the public and the person does not enter any unauthorized areas of the premises.” § 13-1501(1). By posting written notices that handguns are not permitted at the entrances to a business’s premises, a property owner would make the entire premises an “unauthorized area” for persons carrying concealed weapons, thereby invoking the criminal trespass statute.

## ARKANSAS

### ◆ **May guns be excluded from business premises?**

Yes. Basic property law, the right of businesses to set basic work rules, state trespass laws, and a statutory right to exclude persons from carrying guns onto company property, all permit Arkansas businesses to remain gun-free. See Section Three above and discussion below.

### ◆ **What type of sign is required to notify customers and employees that guns are not allowed on company property?**

Signs stating that “the carrying of a handgun is prohibited” even if a person has a CCW license, and readable at a distance of not less than ten feet, should be placed at property entrances. Ark. Code Ann. § 5-73-306(b)(1). The signs should state that violators are subject to removal from the premises and prosecution for trespass, and list by whose authority the notice is issued.

Written notices should also be given personally to each employee, and a signed acknowledgment form should be obtained in return. (See Section Four above.)

### ◆ **State trespass laws permit businesses to exclude persons carrying concealed weapons.**

In Arkansas, “[a] person commits criminal trespass if he purposely enters or remains unlawfully in or upon a vehicle or the premises of another person.” Ark. Code. Ann. § 5-39-203. Unlawful entry would include entry in violation of posted notices that CCW licensees carrying concealed handguns are not permitted. See *Brown v. State*, 671 S.W.2d 228 (Ark. Ct. App. 1984) (criminal trespass is complete upon making the unlawful entry; no further intent is needed).

Arkansas also expressly allows businesses to exclude customers and thereby keep their business premises gun-free. § 4-70-101. See *Culhane v. State*, 668 S.W.2d 24 (Ark. 1984) (permitting business to exclude competitor’s employees).

### ◆ **Arkansas has passed an additional statutory provision expressly permitting businesses to keep guns off company property.**

Businesses also have a specific statutory right to exclude anyone carrying a handgun.

[T]he carrying of a concealed handgun may be disallowed in any place in the discretion of the person or entity exercising control over the physical location of such place by the placing of a written notice clearly readable at a distance of not less than ten feet (10’) that “the carrying of a handgun is prohibited.”

Ark. Code Ann. § 5-73-306(b)(1).

## COLORADO

### ◆ **May guns be excluded from business premises?**

Yes. Basic property law, the right of businesses to set basic work rules, and state trespass laws, all permit Colorado businesses to remain gun-free. See Section Three above and discussion below.

### ◆ **What type of sign is required to notify customers and employees that guns are not allowed on company property?**

Signs stating that carrying concealed weapons is prohibited, even if a person has a CCW license, should be posted at property entrances in a manner reasonably likely to come to the attention of the public. The signs should state that violators are subject to removal from the premises and prosecution for trespass, and list by whose authority the notice is issued. See Appendix B.

Written notices should also be given personally to each employee, and a signed acknowledgment form should be obtained in return. (See Section Four above.)

### ◆ **State trespass laws permit businesses to exclude persons carrying concealed weapons.**

Colorado grants property owners the right to exclude persons carrying concealed weapons from their property. At common law, a “trespass” is an entry upon the real property of another without the invitation or permission of the person lawfully entitled to possession of the realty. People v. Emmert, 597 P.2d 1025 (Colo. 1979) (“whoever intrudes upon . . . land without the permission of the owner . . . commits a trespass”); Magliocco v. Olson, 762 P.2d 681 (Colo. Ct. App. 1987) (“Trespass is an entry upon the real estate of another without the invitation or permission of the person lawfully entitled to possession of the real estate”).

Under the Colorado trespass statute, “a person commits the crime of third degree criminal trespass if such person unlawfully enters or remains in or upon premises of another.” Colo. Rev. Stat. § 18-4-504 (1990). A person “unlawfully enters or remains in or upon premises” when he is not licensed, invited, or otherwise privileged to do so. Bollier v. People, 635 P.2d 543 (Colo. 1981). Therefore, a CCW licensee would need express permission to carry a concealed weapon onto private property. Entry in violation of posted notices that concealed weapons are not permitted would constitute unlawful entry, and trigger the criminal trespass statute.

## CONNECTICUT

### ◆ **May guns be excluded from business premises?**

Yes. Basic property law, the right of businesses to set basic work rules, and state trespass laws, all permit Connecticut businesses to remain gun-free. See Section Three above and discussion below.

### ◆ **What type of sign is required to notify customers and employees that guns are not allowed on company property?**

Signs stating that carrying concealed weapons is prohibited, even if a person has a CCW license, should be posted at property entrances in a manner reasonably likely to come to the attention of the public. The signs should state that violators are subject to removal from the premises and prosecution for trespass, and list by whose authority the notice is issued. See Appendix B.

Written notices should also be given personally to each employee, and a signed acknowledgment form should be obtained in return. (See Section Four above.)

### ◆ **State trespass laws permit businesses to exclude persons carrying concealed weapons.**

In Connecticut, the owner or one in lawful possession of property “has the right to determine whom to invite, the scope of the invitation and the circumstances under which the invitation may be revoked.” State v. Steinmann, 569 A.2d 557 (Conn. App. Ct.), cert. denied, 573 A.2d 319 (Conn. 1990) (upholding church’s exclusion of defendant).

The Connecticut criminal trespass statute also makes clear that businesses have the right to keep their business premises gun-free. It specifies four degrees of trespass. “A person is guilty of simple trespass when, knowing that he is not licensed or privileged to do so, he enters any premises without intent to harm any property.” Conn. Gen. Stat. Ann. § 53a-110(a). Criminal trespass in the third degree occurs when a person, knowing he is not licensed or privileged to do so, enters or remains in premises “which are posted in a manner prescribed by law . . . .” § 53a-109. Unlawful entry would include entry in violation of posted notices that CCW licensees carrying concealed weapons are not permitted.

A person may seek to defend against a prosecution under the criminal trespass statutes if “the premises, at the time of the entry or remaining, were open to the public and the actor complied with all lawful conditions imposed on access to or remaining in the premises.” § 53a-110. However, entry in violation of a posted handgun prohibition would constitute noncompliance with a lawful condition set by the owner, and therefore not excuse the violation.

## **FLORIDA**

### **◆ May guns be excluded from business premises?**

Yes. Basic property law, the right of businesses to set basic work rules, and state trespass laws, all permit Florida businesses to remain gun-free. See Section Three above and discussion below.

### **◆ What type of sign is required to notify customers and employees that guns are not allowed on company property?**

Signs stating that carrying concealed weapons is prohibited, even if a person has a CCW license, should be posted at property entrances in a manner reasonably likely to come to the attention of the public. The signs should state that violators are subject to removal from the premises and prosecution for trespass, and list by whose authority the notice is issued. See Appendix B.

Written notices should also be given personally to each employee, and a signed acknowledgment form should be obtained in return. (See Section Four above.)

### **◆ State trespass laws permit businesses to exclude persons carrying concealed weapons.**

In Florida, the rights of property have been characterized as “sacred.” Corn v. State, 332 So.2d 4 (Fla. 1976) (permitting businesses to enact reasonable, nondiscriminatory restrictions pertaining to use of business to be placed on invitees). Businesses open to the public may thus condition their invitation to customers upon compliance with reasonable restrictions, such as a prohibition on the carrying of concealed weapons on business premises. Id.

In addition, Florida’s criminal trespass statute specifically makes it a third degree felony to commit trespass on property while armed with a firearm. Fla. Stat. §§ 810.08(2)(c); 810.09(2)(c). A person who “without being authorized, licensed, or invited, willfully enters or remains in any structure or conveyance . . . commits the offense of trespass . . .” § 810.08(1). Unauthorized entry would include entry in violation of posted notices that CCW licensees carrying concealed handguns are not permitted. See Hamilton v. Williams, 200 So. 80 (Fla. 1941) (valid hunting license “in no way justified the holder in committing a trespass upon lands made a crime by statute”). Trespass on property other than structures or conveyances occurs if a person enters or remains in violation of a posted notice or an actual communication. § 810.09(1).

## GEORGIA

### ◆ **May guns be excluded from business premises?**

Yes. Basic property law, the right of businesses to set basic work rules, and state trespass laws, all permit Georgia businesses to remain gun-free. See Section Three above and discussion below.

### ◆ **What type of sign is required to notify customers and employees that guns are not allowed on company property?**

Signs stating that carrying concealed weapons is prohibited, even if a person has a CCW license, should be posted at property entrances in a manner reasonably likely to come to the attention of the public. The signs should state that violators are subject to removal from the premises and prosecution for trespass, and list by whose authority the notice is issued. See Appendix B.

Written notices should also be given personally to each employee, and a signed acknowledgment form should be obtained in return. (See Section Four above.)

### ◆ **State trespass laws permit businesses to exclude persons carrying concealed weapons.**

Georgia grants business owners the right to exclude customers and thereby keep their business premises gun-free. See Stockwell v. State, 400 S.E.2d 709 (Ga. Ct. App. 1990) (business owner allowed to exclude defendant from private dental office). A person is guilty of trespass if they “knowingly and without authority . . . enter[] [or remain] upon the land or premises of another . . . after receiving, prior to such entry, notice from the owner . . . that such entry is forbidden.” Ga. Code Ann. § 16-7-21. Entry in violation of posted notices that CCW licensees carrying concealed handguns are not permitted is sufficient to trigger the statute. Moreover, the statute does not require any specific method of notification. Rayburn v. State, 300 S.E.2d 499 (Ga. 1983); Wingfield v. State, 383 S.E.2d 180 (Ga. Ct. App. 1989); Williamson v. State, 215 S.E.2d 518 (Ga. Ct. App. 1975).

## IDAHO

### ◆ **May guns be excluded from business premises?**

Yes. Basic property law, the right of businesses to set basic work rules, and state trespass laws, all permit Idaho businesses to remain gun-free. See Section Three above and discussion below.

### ◆ **What type of sign is required to notify customers and employees that guns are not allowed on company property?**

Signs should be posted at all property entrances, stating: “No Trespassing With Concealed Handguns, Even If You Have A License.” Such signs should be a minimum of 100 square inches in size and painted in fluorescent orange. See Idaho Code § 18-7008(9). The signs should also state that violators are subject to removal from the premises and prosecution for trespass, and list by whose authority the notice is issued.

Written notices should also be given personally to each employee, and a signed acknowledgment form should be obtained in return. (See Section Four above.)

### ◆ **State trespass laws permit businesses to exclude persons carrying concealed weapons.**

Idaho businesses can remain gun-free by posting signs. The Idaho criminal trespass statute defines a trespasser as someone who enters property posted with “No Trespassing” signs without permission of the owner or the owner’s agent. Idaho Code § 18-7008(9). Every person who willfully commits a trespass is guilty of a misdemeanor. Id. To be guilty, the trespasser need not have any intent to violate the law, to injure someone, or to acquire any advantage. State v. Missamore, 803 P.2d 528 (Idaho 1990). Moreover, the criminal trespass statute does not require the owner to have a reason to exclude. Id. Therefore, a business that adopts a gun-free policy has the right to enforce that policy. See State v. Bowman, 866 P.2d 193 (Idaho Ct. App. 1993) (violation of theater’s “no food from outside” policy sufficient for trespass prosecution).

## INDIANA

### ◆ **May guns be excluded from business premises?**

Yes. Basic property law, the right of businesses to set basic work rules, and state trespass laws, all permit Indiana businesses to remain gun-free. See Section Three above and discussion below.

### ◆ **What type of sign is required to notify customers and employees that guns are not allowed on company property?**

Signs stating that carrying concealed weapons is prohibited, even if a person has a CCW license, should be posted at property entrances in a manner reasonably likely to come to the attention of the public. The signs should state that violators are subject to removal from the premises and prosecution for trespass, and list by whose authority the notice is issued. See Appendix B.

Written notices should also be given personally to each employee, and a signed acknowledgment form should be obtained in return. (See Section Four above.)

### ◆ **State trespass laws permit businesses to exclude persons carrying concealed weapons.**

In Indiana, a person who does not have a contractual interest in property commits criminal trespass if they knowingly or intentionally “enter[] the real property of another person after having been denied entry by that person or their agent.” Ind. Code Ann. § 35-43-2-2. A person can be denied entry two ways: (1) by personal communication, oral or written; or (2) by “posting or exhibiting a notice at the main entrance in a manner that is either prescribed by law or likely to come to the attention of the public.” § 35-43-2-2(b). See *Evans v. State*, 493 N.E.2d 806 (Ind. Ct. App. 1986) (entering the real property of another without consent is trespass if the premises are posted); *Manning v. State*, 33 N.E. 253 (Ind. 1893) (criminal trespass occurs if person enters after having been denied the right).

## KENTUCKY

### ◆ **May guns be excluded from business premises?**

Yes. Basic property law, the right of businesses to set basic work rules, state trespass laws, and a statutory right to exclude persons from carrying guns onto company property, all permit Kentucky businesses to remain gun-free. See Section Three above and discussion below.

### ◆ **What type of sign is required to notify customers and employees that guns are not allowed on company property?**

Signs stating that carrying concealed weapons is prohibited, even if a person has a CCW license, should be posted at property entrances in a manner reasonably likely to come to the attention of the public. The signs should state that violators are subject to removal from the premises and prosecution for trespass, and list by whose authority the notice is issued. See Appendix B.

Written notices should also be given personally to each employee, and a signed acknowledgment form should be obtained in return. (See Section Four above.)

### ◆ **State trespass laws permit businesses to exclude persons carrying concealed weapons.**

In Kentucky, criminal trespass occurs when a person knowingly enters or remains unlawfully in or upon premises. Ky. Rev. Stat. Ann. § 511-080. A person “enters or remains unlawfully” when he or she is not privileged or licensed to do so. § 511-090. If the premises are open to the public, a person cannot be prosecuted for criminal trespass unless he or she defies a lawful order not to enter personally communicated to him or her by the owner or other authorized person. Id. However, posted signs are sufficient to keep CCW licensees from carrying concealed weapons on company property under the CCW law. See below.

### ◆ **Kentucky has passed an additional statutory provision expressly permitting businesses to keep guns off company property.**

Kentucky's CCW law permits businesses to keep their premises gun-free by posting signs.

The owner . . . or manager of a private business enterprise . . . may prohibit persons holding concealed deadly weapon licenses from carrying concealed deadly weapons on the premises . . . . If the building or the premises are open to the public, the employer or business enterprise shall post signs on or about the premises if carrying concealed weapons is prohibited.

Ky. Rev. Stat. Ann. § 237-110(13).

## LOUISIANA

### ◆ **May guns be excluded from business premises?**

Yes. Basic property law, the right of businesses to set basic work rules, state trespass laws, and an express statutory right to exclude persons from carrying guns onto company property, all permit Louisiana businesses to remain gun-free. See Section Three above and discussion below.

### ◆ **What type of sign is required to notify customers and employees that guns are not allowed on company property?**

Readily visible signs consisting of letters at least three-and-a-half inches high, and stating that “No Trespassing” with concealed weapons is permitted, even if a person has a CCW license, should be placed at each normal place of entrance and exit. La. Rev. Stat. Ann. § 14:63(E)(2). The notice should add that violators are subject to removal from the premises and prosecution for trespass, and list by whose authority the notice is issued.

Written notices should also be given personally to each employee, and a signed acknowledgment form should be obtained in return. (See Section Four above.)

### ◆ **State trespass laws permit businesses to exclude persons carrying concealed weapons.**

In Louisiana, business owners can keep their premises gun-free by posting signs. Criminal trespass occurs if a person without authorization intentionally enters another’s property if he or she knows or should know that his or her entry is unauthorized. La. Rev. Stat. Ann. § 14:63. If conspicuous signs have been posted, a CCW licensee is put on notice that entry with a concealed weapon was unauthorized. See State v. Davis, 540 So.2d 600 (La. Ct. App. 1989) (trespass statute does not require oral or written notice for violation; posted signs are sufficient).

### ◆ **Louisiana has passed an additional statutory provision expressly permitting businesses to keep guns off company property.**

In addition to Louisiana’s trespass laws, businesses have a statutory right to exclude anyone carrying a handgun under the CCW statute, which expressly recognizes “the right of a property owner, lessee, or other lawful custodian to prohibit or restrict access to those persons possessing a concealed handgun pursuant to a permit.” La. Rev. Stat. Ann. § 40:1379-3(O).

## MAINE

### ◆ **May guns be excluded from business premises?**

Yes. Basic property law, the right of businesses to set basic work rules, and state trespass laws all permit Maine businesses to remain gun-free. See Section Three above and discussion below.

### ◆ **What type of sign is required to notify customers and employees that guns are not allowed on company property?**

Signs stating that “No Trespassing” is allowed without permission of the landowner by those carrying concealed weapons, even if that person has a CCW license, should be placed at property entrances in a manner “likely to come to the attention” of persons entering the property. Me. Rev. Stat. Ann. tit. 17-A, § 402(4). The notice should state that violators are subject to removal from the premises and prosecution for trespass, and list by whose authority the notice is issued.

Written notices should also be given personally to each employee, and a signed acknowledgment form should be obtained in return. (See Section Four above.)

### ◆ **State trespass laws permit businesses to exclude persons carrying concealed weapons.**

Businesses in Maine may exclude guns from their business premises under the criminal trespass statute. Criminal trespass occurs if a person, knowing that he or she is not licensed or privileged to do so, enters any place from which he or she may be lawfully excluded and that is posted in a manner prescribed by law. Me. Rev. Stat. Ann. tit. 17-A, § 402. State v. Tullo, 366 A.2d 843 (Me. 1976). Property is “posted” if it is marked with signs indicating that access for a particular purpose is prohibited. § 402(4). Even a person invited onto land is guilty of trespass if they remain once they know they are not privileged to be there. State v. Gordon, 437 A.2d 855 (Me. 1981) (fact that defendant was invited onto the premises had no bearing on the charge that he knew he was not licensed or privileged to remain there).

## **MISSISSIPPI**

### **◆ May guns be excluded from business premises?**

Yes. Basic property law, the right of businesses to set basic work rules, state trespass laws, and an express statutory right to exclude persons from carrying guns onto company property, all permit Mississippi businesses to remain gun-free. See Section Three above and discussion below.

### **◆ What type of sign is required to notify customers and employees that guns are not allowed on company property?**

Signs stating that the “carrying of a pistol or revolver is prohibited,” and clearly readable at a distance of not less than ten feet (10’), should be placed at property entrances. Miss. Code Ann. § 45-9-101(13). The signs should state that violators are subject to removal from the premises and prosecution for trespass, and list by whose authority the notice is issued.

Written notices should also be given personally to each employee, and a signed acknowledgment form should be obtained in return. (See Section Four above.)

### **◆ State trespass laws permit businesses to exclude persons carrying concealed weapons.**

In Mississippi, it is unlawful for a person to go into or upon or remain in or upon any building or premises of another after having been forbidden to do so. Miss. Code Ann. § 97-17-97. Posted signs are sufficient to notify CCW licensees that carrying concealed handguns are not permitted on company property. Id.

### **◆ Mississippi has passed an additional statutory provision expressly permitting businesses to keep guns off company property.**

Mississippi businesses also have a statutory right under the state’s CCW law to exclude anyone carrying a handgun, as follows:

In addition to the places enumerated in this subsection, the carrying of a concealed pistol or revolver may be disallowed in any place in the discretion of the person or entity exercising control over the physical location of such place by the placing of written notice clearly readable at a distance of not less than ten (10) feet that the “carrying of a pistol or revolver is prohibited.”

Miss. Code Ann. § 45-9-101(13).

## MONTANA

### ◆ **May guns be excluded from business premises?**

Yes. Basic property law, the right of businesses to set basic work rules, and state trespass laws, all permit Montana businesses to remain gun-free. See Section Three above and discussion below.

### ◆ **What type of sign is required to notify customers and employees that guns are not allowed on company property?**

A readable sign at least 50 square inches in size and utilizing fluorescent orange paint should be placed at property entrances stating that carrying concealed weapons is prohibited, even if a person has a CCW license. Mont. Code Ann. § 45-6-201. The notice should state that violators are subject to removal from the premises and prosecution for trespass, and list by whose authority the notice is issued.

Written notices should also be given personally to each employee, and a signed acknowledgment form should be obtained in return. (See Section Four above.)

### ◆ **State trespass laws permit businesses to exclude persons carrying concealed weapons.**

Montana businesses may exclude concealed weapons by posting their property. A person “commits the offense of criminal trespass if the person knowingly . . . enters or remains unlawfully . . . in or upon the premises of another.” Mont. Code Ann § 45-6-203. “Enter or remain unlawfully” means entry when not licensed, invited or otherwise privileged to do so. § 45-6-201. A person is privileged to enter land when the owner or other authorized person has failed to post notice denying entry. Id. See City of Helena v. Lewis, 860 P.2d 698 (Mont. 1993) (showing that defendants knowingly remained on the premises after being excluded is sufficient for criminal trespass).

## **NEVADA**

### **◆ May guns be excluded from business premises?**

Yes. Basic property law, the right of businesses to set basic work rules, and state trespass laws, all permit Nevada businesses to remain gun-free. See Section Three above and discussion below.

### **◆ What type of sign is required to notify customers and employees that guns are not allowed on company property?**

A readable sign at least 50 square inches in size and utilizing fluorescent orange paint should be placed at property entrances stating that carrying concealed weapons is prohibited, even if a person has a CCW license. The notice should state that violators are subject to removal from the premises and prosecution for trespass, and list by whose authority the notice is issued.

Written notices should also be given personally to each employee, and a signed acknowledgment form should be obtained in return. (See Section Four above.)

### **◆ State trespass laws permit businesses to exclude persons carrying concealed weapons.**

Nevada businesses may exclude concealed weapons by posting their property. A person who “willfully goes or remains upon any land or in any building after having been warned by the owner or occupant thereof not to trespass is guilty of a misdemeanor.” Nev. Rev. Stat. Ann. § 207-200(1). A sufficient warning is provided by posting signs “upon or near the boundary” of not less than 50 square inches in size utilizing fluorescent orange paint. § 207-200(2). The signs permit entry to only those members of the general public who are not carrying concealed weapons. See Scott v. Justice’s Court, 435 P.2d 747 (Nev. 1968) (once general invitation onto land was revoked, defendant became criminal trespasser).

## **NEW HAMPSHIRE**

### **◆ May guns be excluded from business premises?**

Yes. Basic property law, the right of businesses to set basic work rules, and state trespass laws, all permit New Hampshire businesses to remain gun-free. See Section Three above and discussion below.

### **◆ What type of sign is required to notify customers and employees that guns are not allowed on company property?**

Signs stating that carrying concealed weapons is prohibited, even if a person has a CCW license, should be posted at property entrances in a manner reasonably likely to come to the attention of the public. The signs should state that violators are subject to removal from the premises and prosecution for trespass, and list by whose authority the notice is issued. See Appendix B.

Written notices should also be given personally to each employee, and a signed acknowledgment form should be obtained in return. (See Section Four above.)

### **◆ State trespass laws permit businesses to exclude persons carrying concealed weapons.**

New Hampshire allows businesses to exclude concealed weapons from their business premises. A person who knowingly enters in any place where he or she is not licensed or privileged to be is guilty of criminal trespass. N.H. Rev. Stat. Ann. § 635:2(I). Entry in violation of posted notices that CCW licensees carrying concealed handguns are not permitted would constitute an unlawful entry, so long as the notices are in a conspicuous place at each public entrance. State v. Wentworth, 395 A.2d 858 (N.H. 1978).

## **NORTH CAROLINA**

### **◆ May guns be excluded from business premises?**

Yes. Basic property law, the right of businesses to set basic work rules, state trespass laws, and an express statutory right to exclude persons from carrying guns onto company property, all permit North Carolina businesses to remain gun-free. See Section Three above and discussion below.

### **◆ What type of sign is required to notify customers and employees that guns are not allowed on company property?**

Signs stating that carrying concealed weapons is prohibited, even if a person has a CCW license, should be posted at property entrances in a manner reasonably likely to come to the attention of the public. N.C. Gen. Stat. § 14-159.13. The signs should state that violators are subject to removal from the premises and prosecution for trespass, and list by whose authority the notice is issued. See Appendix B.

Written notices should also be given personally to each employee, and a signed acknowledgment form should be obtained in return. (See Section Four above.)

### **◆ State trespass laws permit businesses to exclude persons carrying concealed weapons.**

North Carolina businesses may exclude concealed weapons. It is second degree trespass for a person, without authorization, to enter or remain on premises: (1) after he has been notified not to enter or remain there by the owner or by another authorized person, or (2) that are posted, in a manner reasonably likely to come to the attention of intruders, with notice not to enter the premises. N.C. Gen. Stat. § 14-159.13.

### **◆ North Carolina has passed an additional statutory provision expressly permitting businesses to keep guns off company property.**

North Carolina businesses may also exclude handguns from their premises under the CCW law, as follows:

A [CCW] permit does not authorize a person to carry a concealed handgun in . . . any other premises where notice that carrying a concealed handgun is prohibited 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(c).

## **NORTH DAKOTA**

### **◆ May guns be excluded from business premises?**

Yes. Basic property law, the right of businesses to set basic work rules, and state trespass laws, all permit North Dakota businesses to remain gun-free. See Section Three above and discussion below.

### **◆ What type of sign is required to notify customers and employees that guns are not allowed on company property?**

Signs stating that carrying concealed weapons is prohibited, even if a person has a CCW license, should be posted at property entrances in a manner reasonably likely to come to the attention of the public. The signs should state that violators are subject to removal from the premises and prosecution for trespass, and list by whose authority the notice is issued. N.D. Cent. Code § 12.1-22-03. See Appendix B.

Written notices should also be given personally to each employee, and a signed acknowledgment form should be obtained in return. (See Section Four above.)

### **◆ State trespass laws permit businesses to exclude persons carrying concealed weapons.**

In North Dakota, “[a] person is guilty of a class B misdemeanor if, knowing that that person is not licensed or privileged to do so, that person enters or remains in any place as to which notice against trespass is given . . . by posting in a manner reasonably likely to come to the attention of intruders. The name of the person posting the premises must appear on each sign in legible characters.” N.D. Cent. Code § 12.1-22-03. Under the statute, “licensed” means a consensual entry, while “privileged” means the freedom or authority to act and to use the property. State v. Purdy, 491 N.W.2d 402 (N.D. 1992); State v. Ronne, 458 N.W.2d 294 (N.D. 1990). Neither of these exceptions would allow CCW licensees carrying concealed weapons to enter businesses premises from which they are barred by the posting of a conspicuous notice.

### **◆ The North Dakota Attorney General has issued an opinion related to this issue.**

In August, 1988, the North Dakota Attorney General opined that although North Dakota authorizes a person to possess a loaded handgun, either in plain view or concealed, its laws do not state where the handgun or other weapons may be possessed or carried. 1988 Op. Att’y Gen. N.D. 86. Thus, as long as a business acts within its property rights, it may prohibit handguns, concealed or otherwise, from its premises.

## OKLAHOMA

### ◆ **May guns be excluded from business premises?**

Yes. Basic property law, the right of businesses to set basic work rules, state trespass laws, and an express statutory right to exclude persons from carrying guns onto company property, all permit Oklahoma businesses to remain gun-free. See Section Three above and discussion below.

### ◆ **What type of sign is required to notify customers and employees that guns are not allowed on company property?**

Signs should be conspicuously placed at all places where entry to company property is normally expected stating that “No Trespassing” is allowed by those carrying concealed weapons, even if a person has a CCW license. Okla. Stat. tit. 21, § 1835(A). The signs should state that violators are subject to removal from the premises and prosecution for trespassing, and list by whose authority the notice is issued.

Written notices should also be given personally to each employee, and a signed acknowledgment form should be obtained in return. (See Section Four above.)

### ◆ **State trespass laws permit businesses to exclude persons carrying concealed weapons.**

Oklahoma recognizes a business’s right to exclude persons carrying concealed weapons through its criminal trespass statutes. A person who enters the land of another without permission after the property has been posted is guilty of a trespass. Okla. Stat. tit. 21, § 1835; Guindon v. State, 627 P.2d 449 (Okla. Crim. App. 1981) (the unwarranted intrusion into a nuclear power plant loading dock area constituted illegal trespass).

### ◆ **Oklahoma has passed an additional statutory provision expressly permitting businesses to keep guns off company property.**

Oklahoma businesses also have an express right under the CCW law to exclude any person carrying a concealed handgun, as follows:

Nothing contained in any provision of the Oklahoma Self-Defense Act shall be construed to limit, restrict or prohibit in any manner the existing rights of any person, property owner, tenant, employer or other entity to control the possession of weapons on any property owned or controlled by the person or entity.

Okla. Stat. tit. 21, § 1290.22.

## OREGON

### ◆ **May guns be excluded from business premises?**

Yes. Basic property law, the right of businesses to set basic work rules, and state trespass laws all permit Oregon businesses to remain gun-free. See Section Three above and discussion below.

### ◆ **What type of sign is required to notify customers and employees that guns are not allowed on company property?**

Signs stating that carrying concealed weapons is prohibited, even if a person has a CCW license, should be posted at property entrances in a manner reasonably likely to come to the attention of the public. The signs should state that violators are subject to removal from the premises and prosecution for trespass, and list by whose authority the notice is issued. See Appendix B.

Written notices should also be given personally to each employee, and a signed acknowledgment form should be obtained in return. (See Section Four above.)

### ◆ **State trespass laws permit businesses to exclude persons carrying concealed weapons.**

Oregon allows businesses to exclude persons carrying concealed weapons under the criminal trespass statute. A person commits criminal trespass if he or she enters or remains unlawfully in or upon a premises while in possession of a firearm. Or. Rev. Stat. § 164.265. A person “enters or remains unlawfully” when the person enters premises open to the public even though they are not otherwise licensed or privileged to do so. § 164.205(3). A gun-free policy would negate any license or privilege to enter business premises. See *State v. Ocean*, 546 P.2d 150 (Or. Ct. App. 1976) (statute bars those who do not have a license to enter as a member of the general public even when the premises are otherwise open to the public).

## **PENNSYLVANIA**

### **◆ May guns be excluded from business premises?**

Yes. Basic property law, the right of businesses to set basic work rules, and state trespass laws, all permit Pennsylvania businesses to remain gun-free. See Section Three above and discussion below.

### **◆ What type of sign is required to notify customers and employees that guns are not allowed on company property?**

Signs stating that carrying concealed weapons is prohibited, even if a person has a CCW license, should be posted at property entrances in a manner reasonably likely to come to the attention of the public. The signs should state that violators are subject to removal from the premises and prosecution for trespass, and list by whose authority the notice is issued. See Appendix B.

Written notices should also be given personally to each employee, and a signed acknowledgment form should be obtained in return. (See Section Four above.)

### **◆ State trespass laws permit businesses to exclude persons carrying concealed weapons.**

Pennsylvania allows businesses to exclude persons carrying handguns from their business premises. A person trespasses if, “knowing that he is not licensed or privileged to do so, he enters or remains in any place as to which notice against trespassers is given by . . . posting in a manner prescribed by law or likely to come to the attention of intruders.” 18 Pa. Cons. Stat. Ann. § 3503(b)(1); Commonwealth v. Walker, 559 A.2d 579 (Pa. Super. Ct. 1989) (“The crime of criminal trespass involves either entering or remaining in a place, while knowing that one is not licensed or privileged to do so”).

It is a defense to prosecution that, at the time of entry, the premises were open to the public. However, this defense is only available where the actor complied with all lawful conditions imposed on access to the premises. § 3503(c)(2). Entry in violation of posted notices that CCW licensees carrying concealed handguns are not permitted would not constitute “compliance” under the statute.

## **SOUTH CAROLINA**

### **◆ May guns be excluded from business premises?**

Yes. Basic property law, the right of businesses to set basic work rules, state trespass laws, and a statutory right to exclude persons from carrying guns on company property, all permit South Carolina businesses to remain gun-free. See Section Three above and discussion below.

### **◆ What type of sign is required to notify customers and employees that guns are not allowed on company property?**

A sign stating “No Concealable Weapons Allowed” should be placed at property entrances. S.C. Code Ann. § 23-31-217(2). The sign should also state that violators are subject to removal from the premises and prosecution for trespass, and list by whose authority the notice is issued.

Written notices should also be given personally to each employee, and a signed acknowledgment form should be obtained in return. (See Section Four above.)

### **◆ State trespass laws permit businesses to exclude persons carrying concealed weapons.**

South Carolina businesses may exclude persons carrying handguns from their business premises under the trespass laws. A person commits trespass if he, “without legal cause or good excuse,” enters a place of business after having been warned not to do so. S.C. Code Ann. § 16-11-620. This law protects the rights of private property owners and allows them to lawfully forbid any or all persons from entering or remaining on private premises. State v. Hanapole, 178 S.E.2d 247 (S.C. 1970).

### **◆ South Carolina has passed an additional statutory provision expressly permitting businesses to keep guns off company property.**

South Carolina businesses are given the express right under the CCW law to exclude any person carrying a concealed handgun, as follows:

The posting by the employer, owner, or person in legal possession or control of a sign stating “No Concealable Weapons Allowed” shall constitute notice to a person holding a permit issued pursuant to [the CCW statute] that the employer, owner, or person in legal possession or control requests that concealable weapons not be brought upon the premises or into the work place.

S.C. Code Ann. § 23-31-217. Entrance in violation of a posted notice prohibiting concealed weapons is a criminal offense. Id.

## **SOUTH DAKOTA**

### **◆ May guns be excluded from business premises?**

Yes. Basic property law, the right of businesses to set basic work rules, and state trespass laws, all permit South Dakota businesses to remain gun-free. See Section Three above and discussion below.

### **◆ What type of sign is required to notify customers and employees that guns are not allowed on company property?**

Signs stating that carrying concealed weapons is prohibited, even if a person has a CCW license, should be posted at property entrances in a manner reasonably likely to come to the attention of the public. The signs should state that violators are subject to removal from the premises and prosecution for trespass, and list by whose authority the notice is issued. See Appendix B.

Written notices should also be given personally to each employee, and a signed acknowledgment form should be obtained in return. (See Section Four above.)

### **◆ State trespass laws permit businesses to exclude persons carrying concealed weapons.**

South Dakota allows businesses to exclude persons carrying handguns from their business premises. A person trespasses if, “knowing that he is not privileged to do so, enters or remains in any place where notice against trespass is given by . . . posting in a manner reasonably likely to come to the attention of intruders.” S.D. Codified Laws Ann. § 22-35-5.

It is a defense to prosecution that, at the time of entry, the premises were open to the public and the actor complied with all lawful conditions imposed on access to the premises. § 22-35-7. However, entry in violation of posted notices that CCW licensees carrying concealed handguns are not permitted would not constitute “compliance” under the statute.

## TENNESSEE

### ◆ **May guns be excluded from business premises?**

Yes. Basic property law, the right of businesses to set basic work rules, state trespass laws, and a statutory right to exclude persons from carrying guns onto company property, all permit Tennessee businesses to remain gun-free. See Section Three above and discussion below.

### ◆ **What type of sign is required to notify customers and employees that guns are not allowed on company property?**

Signs stating that carrying concealed weapons is prohibited, even if a person has a CCW license, should be posted at property entrances in a manner reasonably likely to come to the attention of the public. The signs should state that violators are subject to removal from the premises and prosecution for trespass, and list by whose authority the notice is issued. See Appendix B.

Written notices should also be given personally to each employee, and a signed acknowledgment form should be obtained in return. (See Section Four above.)

### ◆ **State trespass laws permit businesses to exclude persons carrying concealed weapons.**

Tennessee allows businesses to exclude persons carrying handguns from their business premises. It is a criminal offense for a person who, “knowing he does not have the owner’s effective consent to do so, enters or remains on property, or a portion thereof. Knowledge that the person did not have the owner’s effective consent may be inferred where notice against entering or remaining is given by . . . [p]osting reasonably likely to come to the attention of intruders.” Tenn. Code Ann. § 39-14-405.

It is a defense to prosecution under this section that: “(1) The property was open to the public when the person entered and remained; (2) [t]he person’s conduct did not substantially interfere with the owner’s use of the property; and (3) [t]he person immediately left the premises upon request.” Id. However, given the threat posed by concealed weapons, carrying such weapons onto posted premises would be likely to “substantially interfere[] with the owner’s use of the property,” thus barring this defense.

### ◆ **Tennessee has passed an additional statutory provision expressly permitting businesses to keep guns off company property.**

Tennessee businesses also have the right under the CCW law to exclude any person carrying a concealed handgun. All that is required is posted notice. For employees, written notice is sufficient. Tenn. Code. Ann. § 39-17-1315(g).

## **TEXAS**

### **◆ May guns be excluded from business premises?**

Yes. Basic property law, the right of businesses to set basic work rules, state trespass laws, and an express statutory right to exclude persons from carrying guns onto company property, all permit Texas businesses to remain gun-free. See Section Three above and discussion below.

### **◆ What type of sign is required to notify customers and employees that guns are not allowed on company property?**

Signs stating that carrying concealed weapons is prohibited, even if a person has a CCW license, should be posted at property entrances in a manner reasonably likely to come to the attention of the public. The signs should state that violators are subject to removal from the premises and prosecution for trespass, and list by whose authority the notice is issued. See Appendix B.

Written notices should also be given personally to each employee, and a signed acknowledgment form should be obtained in return. (See Section Four above.)

### **◆ State trespass laws permit businesses to exclude persons carrying concealed weapons.**

The Texas criminal trespass statute gives businesses the right to keep CCW licensees from carrying concealed weapons onto their business property. A person trespasses if “he enters or remains on property or in a building of another without effective consent and he . . . had notice that the entry was forbidden.” Texas Penal Code Ann. § 30.05. Notice can be provided by “a sign or signs posted on the property or at the entrance to the building, reasonably likely to come to the attention of intruders, indicating that entry is forbidden.” Id.

### **◆ Texas has passed an additional statutory provision expressly permitting businesses to keep guns off company property.**

The Texas CCW law also gives employers the right to keep employees from carrying concealed weapons onto company premises.

Rights Of Employers. [The CCW statute] does not prevent or otherwise limit the right of a public or private employer to prohibit persons who are licensed under this article from carrying a concealed handgun on the premises of the business.

Texas Rev. Civ. Stat. Ann. art. 4413(29ee) § 32. As noted below, the Texas Attorney General has opined that this provision applies only to the employer-employee relationship, and not to businesses seeking to prohibit customers from carrying concealed weapons. However, customers

carrying concealed weapons can be barred under the criminal trespass statutes, the Attorney General added.

◆ **The Texas Attorney General has issued an opinion related to this issue.**

On August 30, 1995, the Texas Attorney General issued a thorough analysis of the right of businesses to exclude persons carrying concealed weapons from their business premises. Op. Att'y Gen. DM-363 (1995). The opinion concludes that the CCW statute:

does not preclude private property owners from excluding license holders carrying concealed handguns from their premises under the criminal trespass statute, Penal Code, section 30.05. A [CCW] license holder who enters or remains on property or in a building of another carrying a concealed handgun without effective consent to carry and who has had notice that concealed handguns are prohibited commits a criminal offense.

Id.

## UTAH

### ◆ **May guns be excluded from business premises?**

Yes. Basic property law, the right of businesses to set basic work rules, and state trespass laws, all permit Utah businesses to remain gun-free. See Section Three above and discussion below. Although Utah’s law is unique in that CCW licenses are valid “without restriction” in the state, this language was not intended to supersede fundamental private property rights of businesses, but refers instead to the Utah legislature’s decision to not restrict CCW licensees from certain pre-set public facilities, such as government buildings, schools, and courthouses. See Section Three (A) above.

### ◆ **What type of sign is required to notify customers and employees that guns are not allowed on company property?**

Signs stating that carrying concealed weapons is prohibited, even if a person has a CCW license, should be posted at property entrances in a manner reasonably likely to come to the attention of the public. The signs should state that violators are subject to removal from the premises and prosecution for trespass, and list by whose authority the notice is issued. See Appendix B.

Written notices should also be given personally to each employee, and a signed acknowledgment form should be obtained in return. (See Section Four above.)

### ◆ **State trespass laws permit businesses to exclude persons carrying concealed weapons.**

Utah allows businesses to exclude persons carrying handguns from their business premises. “A person is guilty of criminal trespass if . . . knowing his entry or presence is unlawful, he enters or remains on property as to which notice against entering is given by: . . . (iii) posting of signs reasonably likely to come to the attention of intruders.” Utah Code Ann. § 76-6-206. Unlawful entry would include entry in violation of posted notices that CCW licensees carrying concealed handguns are not permitted.

It is a defense to prosecution under this statute that the property was open to the public when the actor entered, and the actor’s conduct did not substantially interfere with the owner’s use of the property. § 76-6-206(4). “Open to the public” has been interpreted to mean premises which, based on the lack of any notice prohibiting entry, would cause a reasonable person to believe no permission to enter or remain is required. Steele v. Breinholt, 747 P.2d 433 (Utah 1987) (question of fact existed as to whether a privately owned and operated skilled nursing home facility was “open” to plaintiff). A posted notice prohibiting CCW licensees carrying concealed handguns, if placed where it could be adequately seen, would deny permission for those individuals carrying guns to enter.

## VERMONT

### ◆ **May guns be excluded from business premises?**

Yes. Basic property law, the right of businesses to set basic work rules, and state trespass laws, all permit Vermont businesses to remain gun-free. See Section Three above and discussion below.

### ◆ **What type of sign is required to notify customers and employees that guns are not allowed on company property?**

Signs stating that carrying concealed weapons is prohibited, even if a person has a CCW license, should be posted at property entrances in a manner reasonably likely to come to the attention of the public. The signs should state that violators are subject to removal from the premises and prosecution for trespass, and list by whose authority the notice is issued. See Appendix B.

Written notices should also be given personally to each employee, and a signed acknowledgment form should be obtained in return. (See Section Four above.)

### ◆ **State trespass laws permit businesses to exclude persons carrying concealed weapons.**

Vermont allows businesses to exclude persons carrying handguns from their business premises. A person commits unlawful trespass when, “without any legal authority or the consent of the person in lawful possession, he enters or remains on any land or in any place as to which notice against trespass is given by . . . [s]igns or placards so designed and situated as to give reasonable notice.” Vt. Stat. Ann. tit. 13, § 3705. Unlawful entry would include entry in violation of posted notices that CCW licensees carrying concealed handguns are not permitted, even where the premises are open to the public. See In re K.B., 586 A.2d 552 (Vt. 1990) (defendant who entered service station open to public was divested of authority to enter by owner's request that defendant leave).

## VIRGINIA

### ◆ **May guns be excluded from business premises?**

Yes. Basic property law, the right of businesses to set basic work rules, state trespass laws, and a statutory right to exclude persons from carrying guns onto company property, all permit Virginia businesses to remain gun-free. See Section Three above and discussion below.

### ◆ **What type of sign is required to notify customers and employees that guns are not allowed on company property?**

Signs stating that carrying concealed weapons is prohibited, even if a person has a CCW license, should be posted at entrances in a manner reasonably likely to come to the attention of the public. The signs should state that violators are subject to removal from the premises and prosecution for trespass, and list by whose authority the notice is issued. See Appendix B.

Written notices should also be given personally to each employee, and a signed acknowledgment form should be obtained in return. (See Section Four above.)

### ◆ **State trespass laws permit businesses to exclude persons carrying concealed weapons.**

Virginia businesses may exclude concealed weapons. It is trespass for “any person without authority of law [to] go[] upon . . . the lands, buildings or premises of another, or any portion or area thereof . . . after having been forbidden to do so by a sign or signs posted by such persons . . . at a place or places where it or they may be reasonably seen . . . .” Va. Code Ann. § 18.2-119; Hubbard v. Commonwealth, 152 S.E.2d 250 (Va. 1967) (entering property where signs forbidding such entry were posted violated this section).

### ◆ **Virginia has passed an additional statutory provision expressly permitting businesses to keep guns off company property.**

Virginia’s CCW law also provides a statutory right to keep guns out. “The granting of a concealed handgun permit shall not thereby authorize the possession of any handgun or other weapon on property or in places where such possession is otherwise prohibited by law or is prohibited by the owner of private property.” Va. Code Ann. § 18.2-308(O).

### ◆ **The Virginia Attorney General has issued an opinion related to this issue.**

The Virginia Attorney General has stated: “The granting of a concealed handgun permit merely . . . allows the holder to carry the handgun in an area not otherwise prohibited.” 1995 Va. A.G. Lexis 71 (1995).

## WASHINGTON

### ◆ **May guns be excluded from business premises?**

Yes. Basic property law, the right of businesses to set basic work rules, and state trespass laws, all permit Washington businesses to remain gun-free. See Section Three above and discussion below.

### ◆ **What type of sign is required to notify customers and employees that guns are not allowed on company property?**

Signs stating the place is a GUN-FREE ZONE, even if the a person has a CCW license, should be placed at property entrances in a manner reasonably likely to come to the attention of the public. Cf. Wash. Code Ann. § 9A.41.280 (posted sign stating “GUN-FREE ZONE” is sufficient warning to exclude handguns from school grounds). The notice should state that violators are subject to removal from the premises, and list by whose authority the notice is issued. See Appendix B.

Written notices should also be given personally to each employee, and a signed acknowledgment form should be obtained in return. (See Section Four above.)

### ◆ **State trespass laws permit businesses to exclude persons carrying concealed weapons.**

Washington permits businesses to exclude persons carrying concealed weapons from their premises by posting signs. A person commits criminal trespass in Washington when he knowingly enters or remains unlawfully on another's property. Wash. Rev. Code Ann. §§ 9A.52.070, 9A.52.080. See *State v. Brittain*, 689 P.2d 1095 (Wash. Ct. App. 1984). A person “enters or remains unlawfully” when he is not licensed, invited, or otherwise privileged to remain. § 9A.52.010. See *United Food & Commercial Workers Union Local 367 v. Canned Foods, Inc.*, 900 P.2d 569 (Wash. Ct. App. 1995) (“state trespass law allows the possessor of private property to eject persons present thereon without permission”).

It is a defense to prosecution under the criminal trespass statutes if “the premises were at the time open to the public and the actor complied with all lawful conditions imposed on access to or remaining in the premises.” § 9A.52.090. However, this defense does not apply where entry is expressly restricted by a posted sign. *State v. Thomson*, 861 P.2d 492 (Wash. Ct. App. 1993).

### ◆ **The Washington Attorney General has issued an opinion related to this issue.**

A concealed weapons permit does not give rise to an unqualified right to be in possession of such a weapon at any time or any place within the state. Op. Wash. Att’y Gen. No. 14 (1983).

## **WEST VIRGINIA**

### **◆ May guns be excluded from business premises?**

Yes. Basic property law, the right of businesses to set basic work rules, state trespass laws, and an express statutory right to exclude persons from carrying guns onto company property, all permit West Virginia businesses to remain gun-free. See Section Three above and discussion below.

### **◆ What type of sign is required to notify customers and employees that guns are not allowed on company property?**

Signs stating that carrying concealed weapons is prohibited, even if a person has a CCW license, should be posted at property entrances in a manner reasonably likely to come to the attention of the public. The signs should state that violators are subject to removal from the premises and prosecution for trespass, and list by whose authority the notice is issued. See Appendix B.

Written notices should also be given personally to each employee, and a signed acknowledgment form should be obtained in return. (See Section Four above.)

### **◆ State trespass laws permit businesses to exclude persons carrying concealed weapons.**

West Virginia's trespass statute permits businesses to exclude concealed weapons from their premises. A person commits criminal trespass when he or she "knowingly enters in, upon or under a structure or conveyance without being authorized, licensed or invited . . . . W. Va. Code § 61-3B-2. Entry may be forbidden by posting signs. § 61-3B-3. See Reynolds v. Pardee & Curtin Lumber Co., 310 S.E.2d 870 (W.Va. 1983) (it is irrelevant to status as trespasser whether party had constructive or actual notice of another's property rights; notice is all that is required).

### **◆ West Virginia has passed an additional statutory provision expressly permitting businesses to keep guns off company property.**

The West Virginia CCW law also provides a broad right to businesses to exclude persons carrying weapons. "Notwithstanding the provisions of this article, any owner, lessee or other person charged with the care, custody and control of real property may prohibit the carrying openly or concealing of any firearm on any property under his or her domain" W. Va. Code § 61-7-14. Violation of this prohibition is a misdemeanor. Id.

## WYOMING

### ◆ **May guns be excluded from business premises?**

Yes. Basic property law, the right of businesses to set basic work rules, and state trespass laws, all permit Wyoming businesses to remain gun-free. See Section Three above and discussion below.

### ◆ **What type of sign is required to notify customers and employees that guns are not allowed on company property?**

Signs stating that carrying concealed weapons is prohibited, even if a person has a CCW license, should be posted at property entrances in a manner reasonably likely to come to the attention of the public. The signs should state that violators are subject to removal from the premises and prosecution for trespass, and list by whose authority the notice is issued. See Appendix B.

Written notices should also be given personally to each employee, and a signed acknowledgment form should be obtained in return. (See Section Four above.)

### ◆ **State trespass laws permit businesses to exclude persons carrying concealed weapons.**

Wyoming permits businesses to exclude persons carrying guns from their premises by posting signs. It is a misdemeanor for someone to “enter[] or remain[] on or in the land or premises of another person, knowing he is not authorized to do so, or after being notified to depart or not to trespass.” Wyo. Stat. § 6-3-303(a). Notice can be provided by (1) personally communicating to the trespasser, or (2) posting signs “reasonably likely to come to the attention of intruders.” Id.

These Business Premises Are A

# GUN-FREE ZONE

NO CONCEALED HANDGUNS ALLOWED  
EVEN IF YOU HAVE A LICENSE

Violators are Subject to Removal From  
the Premises and Prosecution for Trespass

This warning does not apply to peace officers  
or authorized security personnel.

John Doe, Manager, P.O. Box XXX  
City, State Zip Code

## CCW LICENSE HOLDERS; “LAW-ABIDING CITIZENS?”

The gun lobby claims that only “law-abiding citizens” apply for, and receive, carrying concealed weapons (CCW) licenses. However, it is a serious mistake to assume that only “good guys” have these licenses, and that the people carrying the weapons are responsible, mature, and abide by the laws. Consider the following deaths caused by people who were *legally* carrying concealed weapons:

- In Tulsa, Oklahoma, Harold Glover shot and killed Cecil Herndon in January 1997, as 250 4-year-olds watched. Police stated that Glover and Herndon showed up at Bunche Early Childhood Development Center and argued about who would take their 4-year-old grandson home from school. Glover was in his car with his wife and grandson when he pulled out his .357 Magnum and shot Herndon, who was standing outside the vehicle, once in the chest.<sup>1</sup> Glover had received his CCW license immediately after Oklahoma’s CCW law went into effect
- In May 1990, Joe Besaraba, a street person known as “Crazy Joe,” gunned down a Hollywood, Florida bus driver who had tossed Besaraba off the bus for drinking beer. Besaraba also killed a passenger and paralyzed a bystander. Although Besaraba had a record that included out-of-state arrests for assaulting a policeman and drunken driving, gave a soup kitchen as an address and helped support himself by volunteering to take experimental drugs, he was granted a CCW license. “Nothing on his record disqualified Besaraba from getting a permit,” explained the director of the Division of Licensing of the Florida Department of State after the shooting.<sup>2</sup> Because Florida’s law prohibits only those who have been *convicted* of a felony from obtaining a CCW license, Besaraba remained licensed throughout his arraignment, pre-trial incarceration and trial, and if he had been released on bail, would have been allowed to *legally* carry a concealed weapon.
- In Houston, Texas Pete Kanakidis shot and killed Alejandro Cruz Arroyo in May 1996, after a dispute over the ownership of some tools with two other men. The investigation indicated that Kanakidis approached Arroyo, who was sitting in his vehicle and not involved in the argument, and fired point blank into Arroyo’s face.<sup>3</sup> Texas’s CCW law went into effect in January, 1996.
- In February, 1996, Robert Asbury of Blacksburg, Virginia died of a self-inflicted gun shot wound after he shot and killed his estranged wife and one of her former co-workers at her home. On his CCW license application, Asbury wrote that he had owned and used guns for fifty years and regularly practiced at a gun range.<sup>4</sup>

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<sup>1</sup> Michael Smith, “Charges Approved for Concealed Gun Licensee; Man Faces Manslaughter Count in School Shooting,” Tulsa World, February 12, 1997, A1.

<sup>2</sup> Ken Herman, “Florida Concealed Weapons Law: It’s A Draw,” The Houston Post, January 22, 1995, A1.

<sup>3</sup> “Man Shot to Death in Flap Over Tools,” Houston Chronicle, May 31, 1996. and Jerry Urban, “Murder Charge in Man’s Death,” Houston Chronicle, June 1, 1996.

<sup>4</sup> Kathy Loan, “Blacksburg Shootings Called Murder-Suicide,” The Roanoke Times, February 27, 1996.

Furthermore, 897 Florida CCW license-holders have had their licenses revoked, and 304 of those revocations were for the commission of crimes by the licensee *before issuance*. Listed below are a few of the actual crimes committed by these licensees since Florida passed its CCW law in October, 1987:

<u>Case Number</u>	<u>Convictions</u>
CW94-675	*convicted of felony indecent assault on a child under 16, procurement of a person under 16 for prostitution, living on the earnings of a prostitute
CW94-475	*convicted of felony indecent liberties with a child
CW94-708	*adjudication withheld on felony false imprisonment and indecent assault on a child under 13
CW93-143	*convicted of felony on 2 counts lewd or lascivious assault upon a child
CW93-126	*convicted of felony carnal abuse of girl, criminal possession of stolen property
CW92-077	*adjudication withheld on aggravated battery on a police officer
CW92-195	*convicted of felony assault and battery on a police officer
CW93-173	*adjudication withheld on felony cocaine trafficking, cocaine possession, resisting officer with violence
CW92-177	*convicted of felony battery on a law enforcement officer
CW92-192	*convicted of felony homicide
CW94-701	*convicted of felony manslaughter
CW94-283	*convicted of felony manslaughter
CW94-524	*convicted of felony manslaughter
CW94-507	*adjudication withheld on felony charge of aggravated assault with a firearm
CW92-057	*convicted of felony shooting with intent to wound
CW94-522	*convicted of felony sex assault, sex battery
CW92-172	*convicted of felony false imprisonment and aggravated assault with a deadly weapon
CW92-038	*adjudication withheld on felony aggravated assault
CW92-084	*adjudication withheld on felony aggravated assault
CW92-245	*adjudication withheld on felony aggravated assault with a weapon
CW93-004	*convicted of felony aggravated battery, aggravated assault, 2 counts of unlawful use of weapon
CW93-155	*adjudication withheld on felony aggravated assault
CW91-002	*convicted of felony aggravated assault
CW92-004	*adjudication withheld on felony aggravated assault
CW93-217	*adjudication withheld on felony aggravated assault with a firearm
CW93-266	*adjudication withheld on felony assault with a deadly weapon
CW94-114	*convicted of felony aggravated assault
CW94-634	*adjudication withheld on felony aggravated assault with a deadly weapon
CW94-118	*adjudication withheld on felony aggravated assault
CW94-009	*adjudication withheld on felony warrant - aggravated assault
CW94-051	*adjudication withheld on felony aggravated assault
CW94-588	*adjudication withheld on felony aggravated assault

CW94-507 \*adjudication withheld on felony aggravated assault  
 CW94-049 \*adjudication withheld on felony assault/aggravated assault with a deadly weapon  
 CW94-431 \*convicted of felony assault with intent to harm  
 CW91-037 \*adjudication withheld on felony aggravated assault, possession of a firearm in commission of a felony  
 CW92-094 \*adjudication withheld on felony assault/battery  
 CW92-082 \*adjudication withheld on felony aggravated assault with a firearm  
 CW93-051 \*on probation: felony aggravated assault, carrying a concealed firearm  
 CW92-204 \*adjudication withheld on felony aggravated assault  
 CW93-060 \*convicted of felony criminal possession of dangerous drugs  
 CW92-124 \*convicted of felony grand larceny  
 CW93-215 \*convicted of felony 4 counts of sale of CDS and possession of CDS  
 CW92-023 \*convicted of felony attempted bribe receiving by a witness  
 CW93-003 \*convicted of felony attempted burglary  
 CW92-109 \*convicted of felony possession dangerous drugs  
 CW93-162 \*convicted of felony resisting arrest, possession of marijuana, possession of cocaine, and possession of LSD.  
 CW91-017 \*convicted of felony obstruction of justice  
 CW91-021 \*convicted of felony trafficking in cocaine  
 CW91-016 \*adjudication withheld on felony tampering with evidence  
 CW91-026 \*adjudication withheld on felony burglary, false imprisonment  
 CW92-009 \*adjudication withheld on felony theft  
 CW92-012 \*convicted of felony burglary, larceny  
 CW92-021 \*convicted of felony first degree grand larceny  
 CW92-028 \*convicted of felony, on probation  
 CW92-029 \*adjudication withheld on 2 counts of a lewd act  
 CW92-033 \*convicted of felony, attempted third degree grand larceny  
 CW92-034 \*convicted of felony, breaking and entering, larceny  
 CW92-094 \*plead no contest to assault/battery  
 CW92-041 \*convicted of felony, fraud checks, grand larceny, fraud confidence game, grand theft CR  
 CW92-042 \*convicted of felony robbery, forgery  
 CW92-052 \*adjudication withheld on felony charge of A & A bribery of public officials  
 CW92-050 \*convicted of felony trafficking in drugs  
 CW92-103 \*adjudication withheld on felony battery and improper exhibition of a dangerous weapon  
 CW92-159 \*convicted of felony attempted criminal possession of a weapon  
 CW92-178 \*convicted of felony burglary  
 CW91-060 \*convicted of felony accepting earnings of a prostitute  
 CW92-186 \*convicted of felony armed trafficking in cocaine, possession of a firearm in the commission of a felony  
 CW93-080 \*convicted of felony possession with intent to distribute cocaine, possession of a firearm during drug trafficking offense  
 CW91-058 \*sentence suspended on felony conspiracy to possess with intent to distribute marijuana

CW92-180 \*convicted of felony larceny of a motor vehicle  
 CW92-197 \*convicted of felony possession of stolen property  
 CW92-249 \*convicted of violent misdemeanor improper exhibition of a dangerous weapon  
 CW93-028 \*convicted of felony burglary - conspiracy  
 CW93-056 \*convicted of felony burglary, larceny  
 CW93-063 \*adjudication withheld on felony cocaine purchase, evidence - destroying -  
 tampering with physical evidence  
 CW93-068 \*convicted of felony theft  
 CW93-271 \*convicted of felony gambling in the 2nd degree  
 CW93-144 \*convicted of felony robbery, larceny  
 CW94-224 \*adjudication withheld on felony false imprisonment  
 CW94-553 \*adjudication withheld on felony burglary, grand theft  
 CW94-554 \*adjudication withheld on felony armed trespassing  
 CW94-117 \*adjudication withheld on felony delivery of a controlled substance; sell,  
 purchase, manufacture, delivery controlled substance; possession of cocaine;  
 possession of cannabis  
 CW94-133 \*adjudication withheld on felony robbery/strongarm  
 CW92-205 \*convicted of felony larceny, trespassing  
 CW92-225 \*adjudication withheld on felony grand theft  
 CW93-079 \*convicted of felony violation of Narcotic Act and Indiana Dangerous Drug Act  
 in Indiana  
 CW94-492 \*convicted of felony criminal possession of a firearm/knife  
 CW94-223 \*convicted of felony 49 counts embezzlement, 98 counts conspiracy  
 CW94-381 \*convicted of felony organized criminal gambling  
 CW94-122 \*convicted of felony sale of a narcotic drug  
 CW94-124 \*convicted of burglary in the 3rd degree  
 CW92-220 \*adjudication withheld on 2 counts dealing in stolen property  
 CW93-025 \*adjudication withheld on 5 counts dealing in stolen property  
 CW92-261 \*committed for abuse of controlled substance  
 CW94-226 \*adjudication withheld on felony marijuana/producing - cultivation  
 CW94-684 \*adjudication withheld on felony cocaine possession  
 CW94-225 \*adjudication withheld on felony cocaine possession  
 CW94-481 \*convicted of felony unlawful entry, larceny  
 CW94-516 \*convicted of felony trafficking in drugs  
 CW94-047 \*adjudication withheld on felony charge possession of dangerous drugs  
 CW94-586 \*convicted of felony burglary in the 3rd degree  
 CW94-331 \*convicted of felony interstate transport of a stolen motor vehicle  
 CW94-284 \*convicted of felony delivery of marijuana  
 CW94-496 \*convicted of felony possession of a controlled substance

Source: Division of Licensing, Florida Department of State  
 7/31/97