

CONCEALED WEAPONS QUESTIONS & ANSWERS

With the signing of Wisconsin Act 35 on July 8, 2011, Wisconsin became the 49th state to allow the carrying of concealed weapons.

Some provisions of Act 35 took effect immediately, but the provisions regarding licenses to carry concealed weapons (CCW) will not take effect until November 1, 2011. In the meantime, the Wisconsin Department of Justice is promulgating rules regarding several of the Act's provisions, including training requirements, fees and reciprocity with other states' CCW laws. Not surprisingly, many businesses and property owners have questions regarding the permissibility and legal effect of CCW in their place of business and on premises they own or control. This column will discuss some of the most common questions raised by employers and property owners regarding the new law.

If I allow concealed carry on my property or by my employees, can I be liable if something happens?

No. The law provides immunity to property owners and employers who do not prohibit the carrying of concealed weapons on their property or by their employees. The double negative seems confusing, but it boils down to a simple decision: allowing CCW makes you immune from liability for the decision and, presumably, its consequences. Prohibiting CCW strips you of that immunity. The law's immunity mandate is broad — a property owner or employer is "immune from any liability arising from its decision" to allow CCW.

Because the CCW provisions of the new law have not taken effect, there are no examples of the application of immunity to particular situations. Some examples in a business setting may include an employer that allows employees to carry concealed firearms into their place of business, with an employee who accidentally discharges a firearm and injures a patron. In that situation, the employer would be "immune from any liability" that may arise from that incident (the employee does not share the same immunity, however). A more dramatic example closer to the heart of the philosophy behind CCW is an employee responding to an imminent threat of death or serious bodily harm by a would-be assailant who shoots in self defense and injures or kills a bystander (whether patron or co-worker). Once again the employer (or property owner) is immune from any liability for its decision to permit the employee to carry a concealed weapon (and the employee is not). Examples of the impact of foregoing statutory immunity are

more complex, likely involving a scenario such as a crime committed on the premises that the victim can prove would have been thwarted had CCW been allowed.

As an employer, can I prohibit my employees from carrying concealed weapons on the job?

Yes and no. Employers can choose to prohibit employees from carrying concealed weapons (or a particular concealed weapon, if the employer chooses to allow some kinds of weapons but not others) in the course of employment (or any particular part of the course of employment if, again, it chooses to allow CCW in less than the full scope of employment). However, an employer may not prohibit an employee, as a condition of employment, from carrying a concealed weapon in the employee's own motor vehicle, even if the employee uses his or her vehicle in the course of employment or if the motor vehicle is on company grounds.

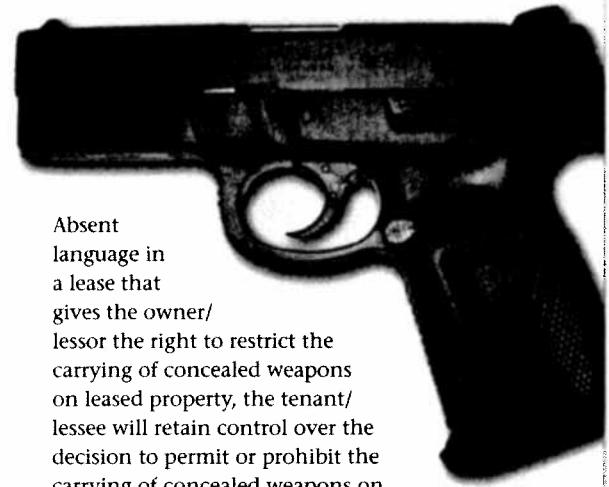
As a property owner, can I prohibit the carrying of concealed weapons on my premises?

Yes. To do so, property owners must post signs meeting specific requirements for notification (and forego the statutory immunity discussed above). The law identifies the nature of the notice businesses must post if they seek to prohibit firearms (and, by extension, other classes of concealed weapons allowed under the CCW law) in their building or on the premises of the business. The sign must:

- ✓ Be at least 5 inches by 7 inches.
- ✓ State that concealed or open firearms are prohibited in the building or on the premises.
- ✓ Specify the area to which the prohibition applies.

Signs must be placed in a prominent place near all of the entrances to the part of the building to which the restriction applies, where any individual entering the building can be reasonably expected to see the sign. Outside buildings, signs must likewise be posted near all probable access points to the grounds or land to which the restriction applies, where any individual entering the grounds or land can be reasonably expected to see the sign.

The right to prohibit concealed weapons on leased property is also a source of questions.



Absent language in a lease that gives the owner/lessor the right to restrict the carrying of concealed weapons on leased property, the tenant/lessee will retain control over the decision to permit or prohibit the carrying of concealed weapons on the portion of the property leased by them. Ultimately, we will see the evolution of leases to include the respective rights of landlords and tenants with regard to the decision to permit CCW.

What is the best decision for me?

Employers and property owners face what may be a difficult decision: should they prohibit employees or patrons from carrying concealed weapons — and lose the immunity provided by statute — or should they allow concealed weapons on the premises and retain immunity? The question calls for individualized considerations that touch on, among other things: (1) the nature of the business; (2) the nature of the employee workforce or clientele involved; and (3) the nature of the surrounding community. Employers and property owners should seek legal advice as they consider whether to prohibit concealed weapons and how that decision may impact future liability. Many agents and agencies have already been contacted by their customers seeking advice on these issues and you should avoid providing legal advice to them.

The IIAW is planning a seminar on this topic. Stay tuned for an in-person, in-depth learning opportunity to assist you and your business with issues related to Wisconsin's new concealed carry law. In the meantime, you may direct questions to me through the IIAW Legal Services Hotline at (877) 236-1669, or

IIAWHotline@gklaw.com.



> Josh Johanningmeier is the IIAW's General Counsel. Call the Legal Services Hotline at (877) 236-1669.