



# DELAWARE

## EMPLOYMENT LAW LETTER

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### **WORKPLACE SAFETY**

## **Weapons in the workplace: policy considerations for Delaware employers**

by Barry M. Willoughby

*Employers frequently ask whether they may restrict employees from bringing weapons, including guns, to the workplace. Given the horrendous acts of violence that occur in workplaces, schools, and other locations, all employers should carefully consider this issue in light of their business operations.*

### ***General rule***

Private employers in Delaware do not face constitutional, statutory, or other restrictions on their ability to adopt a policy that forbids employees and others from bringing weapons, including guns, knives, and other dangerous instruments, onto their premises.

State and federal constitutional restrictions — particularly, the Second Amendment to the U.S. Constitution and Article 1, Section 20, of the Delaware Constitution — apply only to what is called "state action." In other words, the restrictions apply only to public employers.

Public employers undoubtedly have a right to adopt

numerous restrictions when employees and others wish to bring weapons into the workplace. However, great care must be exercised in drafting a policy that imposes the minimal restrictions necessary to meet the employer's business needs. Several considerations are at issue, including the safety of employees and guests in the workplace, the safety of members of the public, and liability if a worker is injured on the job. Policies should balance those considerations against employees' constitutional rights. Policies should generally be tailored to prohibit the possession or use of weapons in the workplace while allowing employees to keep weapons in their personal property, such as in a locked glove compartment or the trunk of a car.

By contrast, private employers face no such restrictions. Delaware does not have a so-called guns-in-trunks law, which specifically permits an employee to have a shotgun or another weapon in his trunk. Guns-in-trunks statutes are more common in states where hunting advocates have been successful in lobbying for legislation allowing employees to keep weapons, including rifles and bows, in their locked trunks during hunting season.

### ***Other considerations***

Delaware recently amended the Delaware Discrimination in Employment Act (DDEA) to provide employment protections for victims of domestic violence, stalking, and sexual offenses. To be protected, individuals must prove that the crimes committed against them meet all of the statutory elements of the offense. However, the amendment may have a significant impact on businesses that employ a member of this protected class. The protections in the DDEA require employers to accommodate known limitations related to an employee's status as a victim of those crimes, and the scope of the duty to accommodate has not yet been defined. It is possible (but unlikely) that an accommodation could include a victim's right to carry items of self-defense, such as pepper spray or another weapon. Until the scope of the provision is fully defined, employers should consult with legal counsel when implementing a weapons policy and applying the policy to employees who may be protected as crime victims under the DDEA.

### ***Bottom line***

Even in the absence of statutory and constitutional restrictions on drafting weapons policies, all employers should be cautious. Because the topic of self-defense is a hot-button issue, businesses that wish to prohibit weapons in the workplace should be clear and specific about what they will permit. In addition, your company's work rules, handbooks, and policies should be consistent.

*The author can be reached at*  
[bwilloughby@ycst.com](mailto:bwilloughby@ycst.com).

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