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EMPLOYERS TAKE HEED: RESPONDING TO THE NEW MISSOURI CONCEALED CARRY ENDORSEMENT LEGISLATION

By: Ruth A. Binger and Jeffrey R. Schmitt

A new Missouri law, effective October 11, 2003, will allow persons who have been issued a concealed carry endorsement to carry concealed firearms on or about his/her person or within a vehicle throughout Missouri. Employers should take heed. In anticipation of this change, employers should consider prohibiting all persons, whether employees or not, from carrying a concealed weapon on company premises or in company vehicles.

Workplace violence is unfortunately part of the employment landscape and should be anticipated and minimized. There are many legal doctrines that create employer liability in this area. Under the common law doctrine of respondeat superior, an employer is vicariously liable for the tortious acts its employees commit within their scope of employment. More specifically, the legal theories of negligent hiring, supervision and retention are premised on the principle that a person carrying on a business through employees is responsible for the harm resulting to employees who are forced to come into contact with other employees who are reasonably foreseeable to cause harm.

Under Section 571.030 of the Missouri Revised Statutes, a person with a valid concealed carry endorsement may carry a firearm on his/her person or in his vehicle and not commit the crime of unlawful use of a weapon. In order to obtain the endorsement, the person must apply to the sheriff of a city or county where the person resides. The person must be at least twenty-three years old, a United States Citizen and either a Missouri resident for six months or a member of the armed forces stationed in Missouri. The Statute attempts to weed out applicants with criminal convictions, dishonorable discharges from the military, etc. but leaves it up to the sheriff to verify the information. Endorsement holders must also pass background checks (fingerprint checks) and prove firearms training. Upon receiving certification of qualification from the sheriff's office, the person must then apply to the Director of Revenue and have his/her driver's license or non-driver's license reissued containing the concealed weapon endorsement. A person's status as a holder and any information submitted on their application is not public information.

The statute does list places where endorsement holders are not allowed to carry concealed weapons. This list includes airports, police stations, schools and universities, day care centers, courts, establishments that primarily serve alcoholic beverages, casinos, amusement parks, places of worship, sports arenas or stadiums seating at least 5,000 people, and hospitals. Governments and private property owners can also join this list if they choose.

If a property owner, business or commercial lessee, wants to "opt out" and prohibit persons holding the endorsement from carrying a concealed weapon on their premises, they must place signs relating this message in one or more conspicuous places. The signs must be 11x14 inches in size with letters of at least one inch. The employer can prohibit both employees and other persons with endorsements from carrying concealed weapons on their company premises. An employer may also prevent employees or others from carrying concealed weapons in the employer's vehicles.

Many states with similar laws, such as Tennessee, are having a difficult time in processing all of the endorsement applications with the required statutory detail. Employers cannot, as seen in other states, rely exclusively on the thoroughness of such checks to screen employees. Employers may want to consider performing their own background checks to avoid claims of negligent hiring or retention.

At the minimum, employers should consider doing two things. First, consider adopting a well-drafted written policy prohibiting weapons in the workplace and then be prepared to implement it and enforce the policy. Such a policy should:

- note that it is based on the employer's duty to provide a safe workplace
- be broad enough to include concealed weapons brought onto the premises by employees and their invitees
- expressly state that the employer is allowed to prohibit concealed weapons by statute
- contain precise definitions of terms such as "employees," "weapons" and "possess"
- incorporate a notice requirement, such as the statutorily-mandated signage
- include a provision authorizing the employer to conduct searches
- require employees to sign consent forms authorizing the employer to search lockers, desks, etc. on company property

Employers should review the policy with their employees and require them to sign an acknowledgment that each employee reviewed the policy. Furthermore, and most importantly, employers should strictly enforce the policy and do so equally among the employees. Although the policy's existence itself may provide protection against legal liability, failure to enforce it may be evidence of an employer's negligence.

Secondly, the employer should consider placing sign(s) meeting the statutory requirements mentioned above at their place of business prohibiting weapons in the workplace.

In light of the new concealed carry law, such steps should help employers protect themselves against legal liability for workplace violence.

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