

# Aspiring Heroes Need Not Apply

## Labor & Employment Law Update

on June 12, 2014

Two armed would-be robbers burst into your workplace demanding money/ drugs/computers/merchandise. One of your employees pulls a gun from his pocket, fires at the thugs, and they run away. Do you give the employee a bonus ..... or do you terminate him? The sixth circuit recently said it's ok for employers to enforce policies that prohibit possession of weapons in the workplace and require non-escalation in violent situations.

In *Hoven v. Walgreens* (Case No. 13-1011) a Michigan pharmacist obtained his concealed carry permit and began bringing his handgun to work after an armed robbery occurred at his store. Four years later, when two masked individuals entered the store during an overnight shift and threatened him with a gun, Hoven fired his weapon at the man several times, causing both perpetrators to flee. After investigating the incident, the company fired Hoven for violating their non-escalation policy.

Hoven filed suit claiming that he was fired in violation of public policy, citing the constitutions of the United States and Michigan, Michigan criminal jury instructions, the Michigan Self-Defense Act, and Michigan concealed carry laws. Neither the district nor the circuit court found sufficient evidence that a "well-established legislative enactment" had been violated and therefore the public policy argument failed. To the contrary, the sixth circuit pointed out that most of the laws cited by Hoven explicitly or implicitly permitted Walgreens to limit the presence and use of weapons in the workplace. For example, only the government is prohibited from interfering with an individual's Second Amendment rights. As a private employer, Walgreens had no such restrictions. The Michigan Self-Defense law was found to define "self-defense" and create a rebuttable presumption for defendants in civil and criminal matters. It does not confer a "general right to self-defense." Similarly, the Michigan concealed carry law permits the carrying of concealed weapons under certain conditions and circumstances, but also expressly authorizes an employer to prohibit concealed weapons in the workplace.

This is not the only time potential workplace heroes have found that the law does not encourage their efforts to meet force with force. Earlier this year, Wells Fargo fired a Florida bank manager for bringing her handgun into the bank when her coworkers reported seeing a gun in her purse. In 2011, Wal-Mart terminated four employees for violating company policy requiring employees to "disengage"

and “withdraw” after the employees physically engaged and disarmed an armed shoplifter.

Although these employee actions resulted in no injuries and the criminals were thwarted, employers know that such confrontations don’t always have positive outcomes. The potential harm to gun-wielding employees, their co-workers, and bystanders has led many employers to implement policies banning even legally-carried weapons in the workplace and requiring employees to withdraw or stand down in violent situations.

What employers should know:

All 50 states now have concealed carry laws and each state allows property owners some leeway to prohibit concealed weapons on their premises. At the same time, almost half the states have “Bring Your Gun to Work” provisions which expressly permit employees to have handguns in their vehicles on company property. Before terminating employees for possession of weapons or aggressive responses to potentially dangerous situations, be sure that you have a well-drafted and legally sound Violence Prevention Policy. Make sure that employees know and understand the policy and are trained on what they should do in response to violent situations as well as on what they shouldn’t do.

Concealed carry laws vary from state to state. Know your state’s rules with regard to the following:

- Who can make the decision to prohibit weapons on the premises? Property owners? Business-owners? Tenants?
- Can employees carry weapons in their personal vehicles in parking areas of your establishment and, if so, what restrictions apply?
- Do employers have the right to prohibit weapons in Company-owned or leased vehicles?
- Does your business (or the building where it’s located) fall under an absolute prohibition against concealed weapons?

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