

Utah State Bar
Labor and Employment Section

PISTOL POLICIES GUNS IN THE WORKPLACE

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GENERAL UTAH GUN LAWS

Utah Constitution, Article I, Section 6

“The individual right of the people to keep and bear arms for security and defense of self, family, others, property, or the state, as well as for other lawful purposes shall not be infringed; but nothing herein shall prevent the legislature from defining the lawful use of arms.”

GENERAL UTAH GUN LAWS

Open Carry State

- Anyone (non-felons – and other exceptions) can openly carry a gun as long as there is not a bullet in the chamber – NEVER concealed, and NEVER loaded.
- Restricted areas:
 - Any secure area where guns are prohibited and notice of the prohibition is posted.
 - Secure area of an airport.
 - Courthouse, mental health facility, etc.

GENERAL UTAH GUN LAWS

Concealed Carry

- Utah's CCW permit is accepted/recognized in more states than any other permit.
 - 35 States
- Permit allows individual to carry a loaded and concealed firearm on his/her person.
 - Restrictions apply

GUNS IN THE WORKPLACE

Public Employers

University of Utah v. Shurtleff

144 P.3d 1109 (2006)

University policy restricts employees and students from having guns on campus.

GUNS IN THE WORKPLACE

Public Employers

- *University of Utah v. Shurtleff*
- Utah Code § 53-5a-102
 - Prohibits state and local entities from enacting or enforcing any ordinance, regulation, rule, or policy that in “any way inhibits or restricts the possession or use of firearms on either public or private property.”

GUNS IN THE WORKPLACE

Public Employers

University argued that § 53-5a-102 didn't apply because the University possessed institutional autonomy under Article X, Section 4 of Utah Constitution and therefore was exempt.

GUNS IN THE WORKPLACE

Public Employers

Court HELD: University is subject to Utah law prohibiting it from enacting or enforcing any policy restricting the possession or use of firearms.

GUNS IN THE WORKPLACE

Private Employers

- *Hansen v. America Online*, 96 P.3d 950 (2004), Supreme Court of Utah
 - AOL's company policy prohibited employees from *carrying* or *possessing* a firearm of any type in the parking lot or in the building.
 - Notice of the prohibition was posted in the lobby.
 - Three employees met in the parking lot while off duty and transferred guns into one car and headed off to the gun range for target practice.

GUNS IN THE WORKPLACE

Private Employers

Anything wrong with AOL
employees meeting in work
parking lot to go to the gun range?

GUNS IN THE WORKPLACE

Private Employers

- ◎ All three employees were terminated.
- ◎ Wrongful termination?
- ◎ Public policy violation?

GUNS IN THE WORKPLACE

Private Employers

Utah courts recognize four categories of wrongful termination in violation of public policy

1. Refusing to commit an illegal or wrongful act;
2. Performing a public obligation – jury duty;
3. **Exercising a legal right or privilege;**
4. Reporting to a public authority criminal activity of the employer

GUNS IN THE WORKPLACE

Private Employers

Exercising a legal right or privilege

COURT BALANCES:

the interests of the employer to regulate the workplace environment to promote productivity, security, and similar lawful business objectives

VS.

the interest of the employees to maximize access to their statutory and constitutional rights within the workplace.

GUNS IN THE WORKPLACE

Private Employers

What about Article I, Section 6 of the Utah Constitution?

What about the employees' right to bear arms?

Private Property vs. Right to Bear Arms

GUNS IN THE WORKPLACE

Private Employers

RESULT:

**An employee does not have the right to carry a
firearm on an employer's premises in
violation of company policy**

GUNS IN THE WORKPLACE

Private Employers

Following this decision the Utah legislature enacted:

“Protection of Activities in Private Vehicles Act”

Utah Code 34-45-101

GUNS IN THE WORKPLACE

Private Employers

“Protection of Activities in Private Vehicles Act”

An employer may not enforce a policy that prohibits an employee from keeping a gun in his/her car if:

- a.) the employee is legally permitted to possess the firearm;
- b.) the firearm is secured/locked in the car; and
- c.) the firearm is not left in plain view.

GUNS IN THE WORKPLACE

Private Employers

“Protection of Activities in Private Vehicles Act”

The employer may, however, prohibit firearms in the parking lot if:

The employer provides, or there is otherwise available, one of the following in a location reasonably proximate to the employer’s parking lot:

- 1.) alternative parking with no additional cost to the employee;
OR
- 2.) a secured and monitored storage location where the individual may securely store a firearm before proceeding with the vehicle into the secured parking area.

GUNS IN THE WORKPLACE

Private Employers

“Protection of Activities in Private Vehicles Act”

Parking lot owner not liable in civil action

GUNS IN THE WORKPLACE

Private Employers

“Protection of Activities in Private Vehicles Act”

Employer may be liable to an employee who is injured as a result of any policy or rule prohibited by this statute.

- ◎ Punitive damages

GUNS IN THE WORKPLACE

Private Employers

Ramsey Winch v. Henry, 555 F3d 1099 (10th Circuit)

Group of employers sought injunction.

Oklahoma law holding employers criminally liable for prohibiting employees from storing firearms in locked vehicles on company property.

GUNS IN THE WORKPLACE

Private Employers

Ramsey Winch v. Henry, 555 F3d 1099 (10th Circuit)

Employers alleged violation of Occupational Health and Safety Act (OSHA) of 1970

- ◎ Employers required to comply with OSHA regulations.
 - General duty of employers to “furnish 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.” 29 USC 654(a)(1)

GUNS IN THE WORKPLACE

Private Employers

Ramsey Winch v. Henry, 555 F3d 1099 (10th Circuit)

Court HELD:

This duty is not meant to interfere with states' exercise of police powers to protect their citizens, and thus OSHA general duty clause does not require employer to maintain gun-free work zones. In other words, a firearm is not a recognized hazard.

LIABILITY FOR EMPLOYERS

- ◎ Common law duty to use reasonable care to prevent foreseeable injuries.

- ◎ Utah Code 24A-2-105

Workers' Compensation Act is the exclusive remedy against the employer: the right to recover compensation... for injuries sustained by an employee, whether resulting in death or not, is the exclusive remedy against the employer. Utah Code 24A-2-105

- ◎ Utah Code 53-5a-103

A private owner, who knowingly allows a person who has a permit to carry a concealed firearm to bring the firearm onto the owner's property, is not civilly or criminally liable for any damages or harm resulting from the discharge of the firearm by the permit holder while on the owner's property.

HYPOTHETICALS

Edward the employee worked 10 years for Employer, most recently as a supervisor over 10 people. Edward was licensed to carry a gun in the State of Utah with a concealed weapon permit. On Monday morning, Edward and his coworker Sally were chatting about guns, of course. The subject transitioned into the State's laws regarding concealed weapons, and Edward reached his hand in his back pocket, pulled out his wallet showed Sally his permit.

Unbeknownst to Edward or Sally, coworker Freddy was eavesdropping on the conversation and promptly reported the situation to Human Resources.

Edward was subsequently terminated.

Lawful termination?

What other facts do you want to know?

HYPOTHETICALS

- 1) Public or private employer?
- 2) Policy?
- 3) Employer's reasoning?
 - 1) Justified response?
- 4) Past discipline?
- 5) Other facts?
- 6) Causes of action?

HYPOTHETICALS

Ned the Nurse worked for Hospital for 15 years. Ned was a concealed weapon permit holder and carried his gun with him everywhere he went.

Ned was terminated after being reported to Human Resources for brandishing his gun in the locker room. Ned and coworker Ted were joking around about Ned's gun and Ned pretended as if he was pulling out his gun and shooting Ted. Ned did not actually pull out the gun and did not point it at Ted.

During the HR investigation it was determined that at one point Ned had actually dropped his gun on the floor while changing in the locker room.

Ned was terminated.

Lawful termination?

What other facts do you want to know?

HYPOTHETICALS

- 1) Public or private employer?
- 2) Policy?
- 3) Employer's reasoning?
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