

# Changes in Gun Laws Affect the Workplace

[SHRM.org](https://www.shrm.org)

Leah Shepherd

August 18, 2022



laws governing firearms at the workplace have shifted toward a more permissive stance, while the U.S. Supreme Court has recognized a constitutional right to carry firearms outside the home and Congress has passed a new gun safety law. Given all the recent changes, employers may wish to review their policies and consider whether changes or additions are needed. The key is to strike a balance between upholding individuals' gun rights and protecting the safety of all employees and customers.

"As laws restricting gun possession are now more suspect, more of the burden on regulating firearms may fall on employers," said David Gartenberg, an attorney with Littler in Denver. "The immediate question for employers is to revisit and potentially revise their firearms in the workplace policy to ensure the current policy conforms with the employer's goals and obligations to provide a safe workplace."

## Federal Law

Employers have a legal duty to keep employees safe at work. Under the federal [Occupational Safety and Health Act](#) (OSH Act), employers can be held liable for gun-related injuries or fatalities at the workplace. In addition, employers must pay workers' compensation claims for workers injured by gun violence at the workplace.

"Employers are responsible under the OSH Act to furnish a place of employment free from recognized hazards that could cause death or serious physical harm to its employees, and OSHA [the Occupational Safety and Health Administration] has stated that this duty requires employers to protect against the threat of workplace violence," Gartenberg said.

Employers usually can prohibit employees from taking guns into the workplace. The Second Amendment of the U.S. Constitution does not give individuals the right to carry a gun into a private business.

What if the employer doesn't own the building or the parking lot?

"The employer could still prohibit firearms at the workplace even if it does not own the property, although the precise terms might be set by contract, such as a lease between a landlord and a commercial tenant," Gartenberg explained.

In a June 23 [ruling in \*New York State Rifle & Pistol Association v. Bruen\*](#), the Supreme Court recognized a constitutional right for citizens to carry a firearm outside the home for self-defense. The opinion invalidates the previous licensing requirements for concealed carry permits in California, Hawaii, Maryland, Massachusetts, New Jersey, New York and the District of Columbia. However, in a 2008 decision, the U.S. Supreme Court held that gun restrictions in sensitive locations, such as schools and churches, are legal.

"In light of *Bruen*, some employees may misunderstand the status of gun laws," said Robert Boonin, an attorney with Dykema in Ann Arbor, Mich. "*Bruen* has no direct application to the workplace. As a result, employees may need to be reminded of their obligations under existing policies."

## Congressional Action

On June 25, [Congress passed](#) a new [gun safety law](#) that expanded background checks and provided grants for states to implement red flag laws, which allow states to temporarily confiscate firearms from individuals who are deemed threats to themselves or others. A previously enacted federal law prohibited people convicted of domestic abuse from buying or owning guns, but only if the abuser was married to, lived with or had a child with the abuse victim.

The new law bans gun purchases and ownership by anyone convicted of abusing somebody the individual dated. One of the goals was to reduce the risk of violence from domestic abusers who pursue their partners at their workplaces.

## State Laws

Expect to see more action on the state level as state legislatures look to update laws in a post-*Bruen* landscape.

"In response to both *Bruen* and the new federal gun control legislation, many states are re-examining their laws, and it's likely challenges to any refinements and even existing laws will surface," Boonin said. "So while *Bruen* and the new federal law may be fodder for an uptick in litigation, I'm not convinced that these challenges will severely alter the types of limitations or those commonly seen in the workplace."

"To be sure, an increasing number of states provide some degree of immunity for employers for crimes committed by employees who possess firearms in compliance with workplace gun laws," Gartenberg said. "It's possible that a state will pass a law further liberalizing the possession of guns in the workplace."

Different rules may apply to an employer's building and parking lot in some states. Illinois, Indiana, Ohio and Oklahoma are among the states with laws that allow employees to keep a gun in a locked personal vehicle. Kentucky and Tennessee prohibit employers from firing or taking adverse employment actions against employees for keeping a gun in a locked personal vehicle. These rules do not apply to company vehicles.

"Roughly half of states permit employees to bring firearms onto their employer's parking lot, so long as the gun is safely secured and stored in the car, such as in a lockbox," Gartenberg said. "The precise contours of these laws differ from state to state. For example, some apply to the parking lots of employers, while others apply more broadly to property owners, tenants, localities, owners and operators of private establishments."

"If the [parking] lot is open to many tenants or is open to the public, then proscribing car storage may be problematic, unless the property owner sets the rule," Boonin said. "The owners of private lots, even if they aren't owned by the employer, may control the presence of guns on their property, subject to applicable signage and other state laws. Many states also regulate how guns may be stored in vehicles."

Alaska, Illinois, Kansas, Minnesota, Missouri, Oklahoma, South Carolina, Tennessee and Wisconsin require private businesses to post signs if they have gun prohibitions on their premises.

Clear communication with workers on this topic is important. "At the very least, policies and their rationale should be reviewed, and employers should be prepared to explain their rules to their employees when asked," Boonin said.

This article is reprinted with permission from the Society for Human Resource Management ([SHRM.org](https://www.shrm.org)), c 2022. All rights reserved.