



ASIS Webinar

Guns in the Workplace: Legal, Policy & Training Issues

Dr. James F. Pastor, Ph.D., J.D.

SecureLaw Ltd.

312-423-6700

LIABILITY LIMITATION

This session is intended to acquaint you with certain legal principles and security methods.

You should consult the legal advisor for your firm or your employer before taking police or security actions based on the materials provided and/or the opinions of law expressed in this unit of instruction.

What is legally permissible varies on the particular circumstances of the situation. This session is only designed to acquaint the attendee on broad legal/security concepts and procedures. It is not intended to act as policy or procedure for you or your institution.

OVERVIEW OF SESSION

- Summary of Supreme Court Gun Decision
- Summary of recent Gun Legislation
- Suggested Policies related to Gun Laws
- Suggested Training related to Gun Laws

The dilemma is...

- In June 25, 2008, an employee in a Kentucky plant argued with his supervisor over cell phone usage and failure to wear eye goggles
- Retrieved his gun from his car
- Shot his supervisor and four co-workers & himself inside the plant.
- While many state laws provide employers with immunity from any resulting injuries, this is little comfort after such violent event.

Challenge to Security Professionals

Balance:

- 2nd Amendment right to handguns
- Self-Defense
- Conceal & Carry Laws
- “Parking Lot” Gun Laws



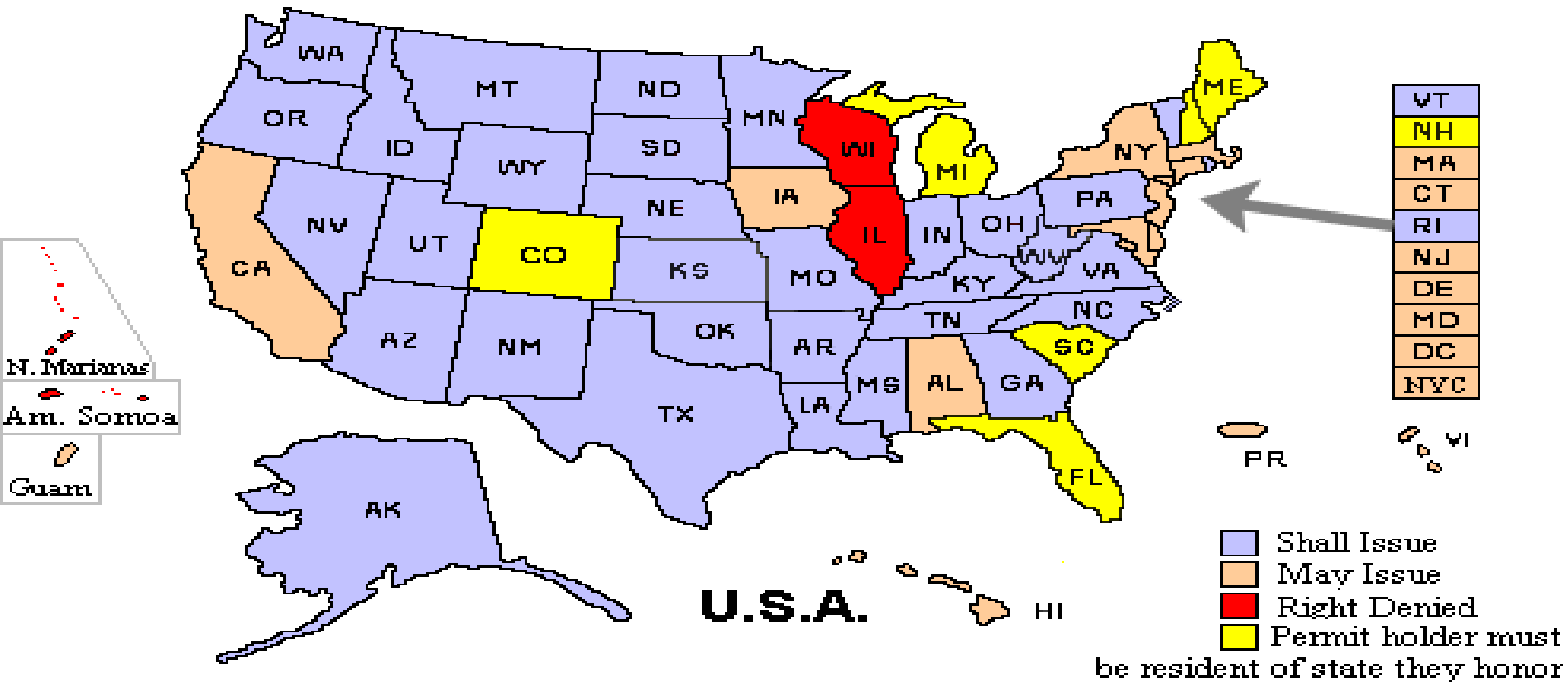
No Silver Bullets!

McDonald v. City of Chicago

- 2nd Amendment is applicable to the states
- Based on Due Process clause of 14th Amendment
- “Self-Defense is a basic right, recognized by many legal systems from ancient times to the present day, and in *D.C. v Heller*, we held that individual self-defense is the **central component** of the 2nd Amendment right.”
- “American people have considered that handgun to be the quintessential self-defense weapon...citizens must be permitted to use [handguns] for the core lawful purpose of self-defense.”

Concealed Carry States

Only Illinois and Wisconsin do not issue concealed carry permits to their residents



Michigan Concealed Carry

- **Owner must first register weapon with local police.**
- **Owner then applies for permit.**
- **Processing fee of \$105.00 along with a \$15.00 fingerprint fee.**
- **Restrictions such as:**
 - 1. No felony conviction**
 - 2. At least 21 years old**
 - 3. U.S. Citizen or alien admitted lawfully into the U.S.**
 - 4. Resident for at least six months.**
 - 5. Valid Michigan driver license or identification card.**
 - 6. Successfully completed a pistol safety-training course**



Pistol Free Zones

- **Schools**
- **Day care centers**
- **Sports stadiums**
- **Entertainment facilities with a seating capacity of 2,500 ^**
- **Taverns or bars where the primary source of income is the sale of alcohol**
- **Churches, synagogues, mosques, temples or other places of worship (Not LA)**
- **Hospitals**
- **Dorms or classrooms of a college or university**



“Parking Lot” Firearm Laws

- Key Element in the Gun Policy Debate
- Balance:
 - ❖ Employers' obligation to protect employees
 - ❖ Individual's right to possess firearms
- Logic: Most People Travel to/from Work
- Personal Affect: No Self-Defense in Commute
- Legal Affect: Violate 2nd Amendment?
- Workplace Challenge: Little “Cooling-off” Period
- Result: Makes Your Job More “Interesting”

Florida: Section 790.251

Employee allowed firearm w/in vehicle in parking lot (not street parking), if:

- 1. Gun License, or**
- 2. Locked in vehicle (duffle bag OK- *Trock v. Florida*)**

Gun Ownership/Possession Prohibitions

- **No Inquiries of firearms in vehicles**
- **No Searching vehicles in parking lot unless L.E. w/P.C.**
- **No Conditioning employment on licensure status**
- **No Agreement w/EE to restrict firearms in vehicle**
- **No Termination/sanction of EE for lawful use of firearm or exercise of 2nd Amendment rights**

Florida: Section 790.251

- **Employer has immunity**
- **No liability for actions or inactions related to compliance with statute.**
- **Enforcement w/A.G. or with Plaintiff**
- **Violation of statute remedies:**
 - 1. Damages**
 - 2. Injunction**
 - 3. Attorney's Fees**
 - 4. Court Costs**

Florida: Exceptions to Gun Statute

- 1. Schools**
- 2. Correctional Facilities**
- 3. Nuclear powered plants**
- 4. Homeland Security properties**
- 5. Explosives/Combustible materials**
- 6. *Company vehicles***
- 7. Otherwise prohibited by Federal laws or contracts**

Florida Retail Federation v. Attorney General of Florida

576 F.Supp.2d 1281

July 28, 2008

Negated two key aspects of Florida Gun Statute

Decision: Invalidated Customer provision to statute

Effect: Customer's have no right to firearm in company parking lot

Decision: Negated assertion that OSHA preempted state statute

Effect: OSHA General duty clause does not allow businesses to ban guns from parking lots.

Louisiana

- A. Person who lawfully possesses a firearm may transport or store such firearm in a locked, privately-owned motor vehicle in any parking lot, parking garage, or other designated parking area (**Firearm OK in Parking Lot**).
- B. No property owner, tenant, public or private employer, or business entity shall be liable in any civil action for damages resulting from or arising out of an occurrence involving a firearm transported or stored pursuant to this Section...(**No Company Liability**)
- C. No property owner, tenant, public or private employer, or business entity shall prohibit any person from transporting or storing a firearm pursuant to Subsection A of this Section. However, nothing in this Section shall prohibit an employer or business entity from adopting policies specifying that firearms stored in **locked**, privately-owned motor vehicles on property controlled by an employer or business entity be **hidden from plain view** or within a **locked case or container within the vehicle** (**Locked Vehicle & Case, No Plain View**).

Louisiana Act 684

- Employers may prohibit firearms in secured parking lots, BUT:
 1. Must offer a facility for the temporary storage of unloaded firearms, or
 2. Alternative parking area reasonably close to the main parking area where employees can keep firearms locked in their vehicles.

Georgia: Title 16-11-135

Prohibits conditioning employment on agreement w/Employee to prohibit carrying firearm in vehicle w/in parking lot, if:

- 1. Locked w/in vehicle**
- 2. EE has firearm license.**

Search Policies

- **ER shall not have policy that “has the effect” of allowing searches of vehicles in parking lots.**
- **Exceptions to search provision:**
 - 1. Searches by L.E. w/P.C.**
 - 2. *Company vehicles***
 - 3. Reasonable belief of imminent threat**
 - 4. EE consents to search, but only if based on P.C. that company property contained w/in vehicle**

Georgia: Title 16-11-135

Employer- no liability unless:

- 1. Employer commits criminal act w/firearm**
- 2. Employer knew person would commit criminal act w/firearm on the property**

Georgia: Exceptions to Gun Statute

- 1. Secured parking lot w/restricted public access and applicable to all vehicles plus uniformly/frequently applied**
- 2. Penal Institutions**
- 3. Electric generation facilities**
- 4. D.O.D. contractor w/in military base or w/in mile of airport**
- 5. EE restriction due to completed or pending discipline**
- 6. Otherwise prohibited by state or federal law**
- 7. Parking lots contiguous to gas, water or L.E. facilities deemed homeland security risk**
- 8. Areas used for temporary parking**

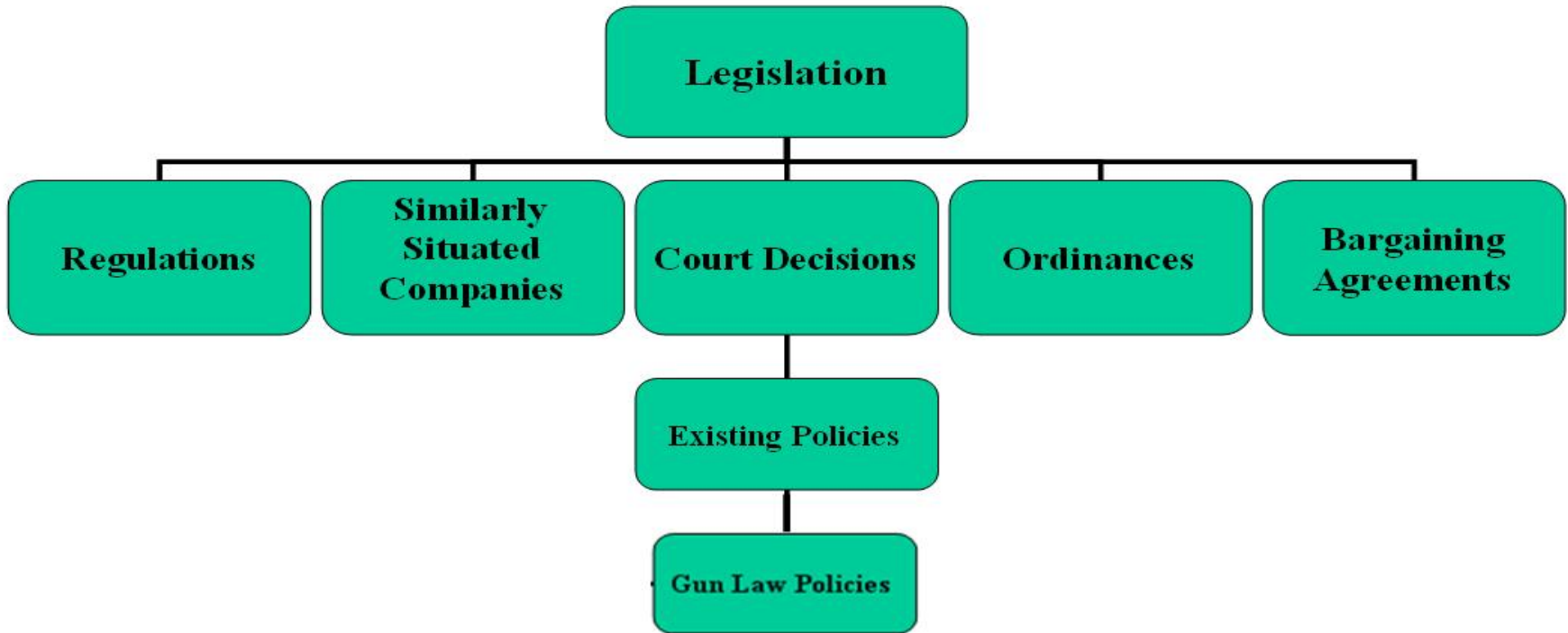
Overall Common Themes

- **License + “Locked” in Vehicle**
- **Employee/Vendors/Consultants—Not Customers**
- **Restricts Inquiries/Searches/Employment Actions/Informal Agreements**
- **Allows “Pistol Free Zones”**
- **Employer NOT liable for Violent Acts**
- **Statutes NOT construed to require additional security measures by Employer**

Specific Exceptions

STATE	SECURE PARKING AREA	COMPANY VEHICLE	LIABILITY WAIVER
Florida		X	X
Georgia	X	X	X
Louisiana	X	X	X
Mississippi	X	X	X
Kentucky		X	
Alaska	X	X	X
Minnesota			
Oklahoma			X

Policy Considerations



Employment Policy Provisions

- **No firearm license questions in application**
- **Do NOT conduct firearm licensure checks in background investigations**
- **Background CAN inquire about propensity to commit violence or violent crimes**
- **Affirmatively state that employment is not conditioned on licensure status**
- **Make no agreements w/EE (or prospective EE's) related to firearm restrictions w/in parking lots**
- **Do not discipline any EE based on lawful use of firearm or exercise of 2nd Amend**

Security Policy Provisions

- **Signage: Prohibit firearms & other weapons inside physical facility/ structures with notices on:**
 - access points**
 - bulletin boards**
 - handbooks/applications**
 - internet/intranet sites/portals**
- **Restrict ability of EE's to access their vehicle (lunch or breaks?)**
- **Closely monitor parking lots w/CCTV/access controls/officers.**

Security Policy Provisions

Continued

- **Craft specific search policies w/in workplace**
- **Address vehicle search policies w/in parking lot**
- **Consider implementing “restrictive parking lot” (w/appropriate signage & methodology)**
- **Consider “exclusion zones” w/in parking lot (w/appropriate signage)**
- **Consider firearm restrictions for disciplined EE’s**
- **Consider armed security officers**

Training Suggestions

- **Train security officers on search & seizure policies**
- **Develop joint training protocols w/L.E. for emergencies**
- **Train security officers to recognize and respond to imminent threats**
- **Train EE's to be cognizant of indicators of workplace violence**
- **Train supervisors to closely monitor EE's when evidence of workplace violence indicators appear**
- **Train supervisors to immediately and appropriately respond to EE's with such indicators**

QUESTIONS



Dr. James F. Pastor, Ph.D., J.D.

312-423-6700

[E-mail: Jpastor@securelaw.info](mailto:Jpastor@securelaw.info)

www.securelaw.info