

FORCED ENTRY

The National Rifle Association's Campaign To Force Businesses To Accept Guns At Work



Legal Action Project

Brady Center to Prevent Gun Violence

ACKNOWLEDGEMENTS

Founded in 1983, the Brady Center to Prevent Gun Violence is a national non-profit organization working to reduce the tragic toll of gun violence in America through education, research, and legal advocacy. The programs of the Center complement the legislative initiatives of its sister organization, the Brady Campaign to Prevent Gun Violence, and the grassroots chapters of its Million Mom March.

This report was written by Brian J. Siebel, senior attorney for the Center's Legal Action Project. Kristen Comer and Richard Siegel assisted in preparing the report. We would also like to thank The Focal Point, L.L.C., of Oakland, California, for the cover artwork.

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EXECUTIVE SUMMARY

In 1997, the Brady Center to Prevent Gun Violence published a comprehensive guide: *Guns & Business Don't Mix: A Guide to Keeping Your Business Gun-Free*.¹ In that guide, we wrote that despite the fact more than thirty states had passed “shall-issue” carrying concealed weapons laws that permitted just about anyone to apply for and receive a license to carry a concealed firearm, businesses could still “choose to remain gun-free.” We explained the many reasons to adopt such a policy: a) dangerous people receive concealed carry licenses; b) licensees receive little or no training; c) states offer no guarantees that licensees are safe; d) guns increase the danger of workplace violence; e) permitting guns increases legal liability risks; and f) guns pose public- and employee-relations problems. Thousands of businesses in the United States have understood these risks and have sought to protect the safety of employees and customers by adopting policies to keep guns out of the workplace and off company property.

Unfortunately, the gun-free choice is now under a serious new attack by the National Rifle Association. The NRA has launched a nationwide campaign to pass legislation modeled after a law passed in Oklahoma in 2005. The Oklahoma law **requires** all businesses and property owners, including homeowners, to accept guns onto their property, as long as the guns are in a locked motor vehicle. Of course, the NRA and the Oklahoma legislature ignored the fact that dozens of workplace shootings have been committed with guns brought to work and kept in vehicles. Instead, they turned businesspeople and homeowners—whose only intent in barring guns on their property is to protect the safety of people thereon—into criminals. Anyone who violates this law by prohibiting firearms on their property is subject to imprisonment, fines, or both. A company may also be sued by gun owners who want to bring guns onto company property and forced to pay their attorneys' fees and court costs. Imagine that. ***In the NRA's world, you should go to prison and be sued for telling someone that he or she may not bring guns onto your property!***

The only way to combat this insanity is for American businesses and property owners to speak up and prevent Oklahoma-style laws—we are calling them “***forced-entry laws***” throughout this report because they force property owners to accept guns on their property whether they want to or not—from being passed elsewhere. The NRA intends to aggressively pursue its campaign in state legislatures across the nation this year and into the future. The NRA succeeded first in Oklahoma, but it was able to get a similar law passed in Minnesota that was subsequently struck down by the courts on a technicality,² and it will certainly get such laws passed in many other states if there is not a strong, organized opposition. Accordingly, we urge you to take prompt and aggressive action to protect your rights.

This report is intended to blow the whistle on the NRA's campaign, which will have the effect of weakening America's centuries-old tradition of private property³ and supplanting it with a culture that forces guns across that boundary and into every aspect of society. Frankly, that didn't even exist in the Wild West.⁴

The Introduction to this report exposes the NRA's step-by-step strategy to force businesses to accept guns on their property and eventually into their workplaces. Section One explains how the NRA's campaign to pass forced-entry laws in state after state would trample fundamental rights that protect businesses and wrest control of the workplace from employers. Section Two discusses the major risks that are created when guns are brought to work. Section Three points out that companies can reduce these risks by adopting gun-free policies. The report's Conclusion stresses that because of the NRA's campaign, it is no longer enough for companies to adopt gun-free policies. Businesses must also become active in fighting for their rights in every state legislature where the NRA will take its campaign.

ty of that fact could lead to considerable damages if a gun injury were to occur. A gun incident can also balloon into a public—and employee-relations disaster.¹¹

The NRA's shall-issue CCW laws have forced businesses to make a choice: Either adopt a gun-free policy, prohibiting anyone from carrying guns onto company property, or do nothing, and risk losing control over the safety of business premises. Most businesses have chosen the gun-free path, as this has been the only way to ensure a safe workplace and keep control over company property and security.

The NRA's Second Step: Forcing Guns Onto Your Property

The NRA has not been satisfied, however, with achieving step one—passing shall-issue CCW laws—in a majority of states. It has now chosen to become even more aggressive in making guns ubiquitous in American society.¹² In May 2005, the NRA pushed a law through the Oklahoma legislature that tramples on centuries-old rights of private property owners as well as the rights of businesses to control their workplaces.¹³

*The Oklahoma forced-entry law makes it a crime for **anyone**—“person, property owner, tenant, employer, or business entity”—to bar **any** person, except a convicted felon, from bringing a gun onto **any** property in Oklahoma that is “set aside for **any** motor vehicle.”¹⁴*

In addition to making violators subject to criminal penalties, the NRA-backed forced-entry statute provides individuals with a right of action to sue persons, property owners, tenants, employers or businesses to force them to accept guns into any place set aside for motor vehicles and collect court costs and attorneys fees if they prevail.¹⁵

The breadth of the Oklahoma forced-entry legislation is staggering. The owner of **any** place “set aside” for a motor vehicle—which is defined to include not only cars, trucks, minivans, and sport utility vehicles, but also motorcycles and motor scooters¹⁶—**must** accept guns onto their private property. This would include the parking lots, driveways, and garages for:

- All businesses and personal homes,
- Day-care centers,
- Churches and synagogues,
- Amusement parks,
- Schools and libraries,
- Hospitals,
- Airports,
- Nuclear facilities and chemical plants,
- Courts and prisons, and
- Anywhere that allows off-road vehicles.

Moreover, there is no limitation on **who** property owners must allow to bring a gun onto their property, except that the person cannot be a **convicted** felon.¹⁷ The Oklahoma law is not restricted to persons who have obtained a CCW license or received training in firearms safety. Nor is there any limitation on the **type** or **number** of guns that can be brought onto some-

one's private property, including AK-47s, UZIs, Tec-9s, or other assault weapons, or .50 caliber sniper rifles powerful enough to bring down an airplane.¹⁸ Essentially anyone will be free once the law takes effect in November 2005 to drive onto private property in Oklahoma with a trunk or a van full of guns. History has recorded scores of mass shootings at American workplaces that have taken place after a distraught or deranged worker has retrieved guns from his vehicle.¹⁹ No employer wants to facilitate such potential carnage by permitting guns to be brought into company parking lots.

The impact of the Oklahoma forced-entry legislation is equally staggering. *If the NRA can force guns across two critical thresholds that have been fundamental to American culture and law for centuries—the right of property owners to control their private property and the right of businesses to set the terms and conditions of the workplace—there will be nothing preventing the NRA from forcing guns into every crevasse of American life.* Once the NRA succeeds in forcing guns onto driveways, parking lots, and garages with laws modeled after Oklahoma's forced-entry statute, the next step will likely

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INTRODUCTION

FORCING GUNS ONTO YOUR PROPERTY

The National Rifle Association has launched a step-by-step campaign to force guns into every nook and cranny of American society. *The next step in the NRA's campaign is to force you to accept guns on your private property and into your business.*

The NRA's First Step: Expanding the Number of People Carrying Concealed Weapons

Over the last decade, the NRA has lobbied aggressively to try to change the laws of all 50 states to require those states to permit the carrying of concealed weapons by nearly everyone except convicted felons.⁵ These "shall-issue" carrying concealed weapons ("CCW") laws require state authorities to issue CCW licenses to virtually anyone who applies, regardless of whether the applicant can demonstrate a need to carry a gun. As a result, millions of Americans are now licensed to carry concealed handguns with them wherever they go.

Shall-issue CCW laws have changed the security regime that businesses operated under for decades. Under prior CCW laws, businesses could expect, with rare exceptions, that only police officers and their own security force would carry weapons on company property. Under the new CCW laws, businesses that have not adopted a policy prohibiting the carrying of concealed weapons on company property can expect to be inundated with people carrying guns.

This change in CCW laws has had serious security implications for companies concerned about the welfare of their customers and employees. Have businesses been able to trust that the wave of new CCW licensees are law-abiding, non-violent, well-trained citizens? Unfortunately, the answer is no. Many dangerous CCW applicants have slipped through faulty state background checks, while others have been marginal applicants who nonetheless *must* be issued a CCW

license because they do not fit within a narrow, pre-set list of excluded persons. In addition, state training in handgun safety is cursory at best, with no real training in non-violent conflict resolution to help CCW licensees exercise proper judgment when carrying a firearm. As our Brady Center manual entitled "*Gun & Business Don't Mix: A Guide to Keeping Your Business Gun-Free*" explained, hundreds of CCW licensees have committed crimes both before and after CCW licensure.⁶ Numerous examples are provided in Appendix A to this report.

As a result of the NRA's shall-issue laws, companies that have not taken affirmative steps to keep guns out of the workplace and off company property have faced an increased risk of workplace violence. Indeed, a study published in May 2005 in the American Journal of Public Health concluded:

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Moreover, the level of gun violence at work remains high. Almost 500 firearm homicides were committed in the workplace in 2003, with almost 90% of these occurring in the private sector.⁸ In addition, another three private sector employees are wounded each week by shootings at the workplace.⁹

Shall-issue CCW laws also have increased legal liability risks for businesses that permit guns to be carried on their premises.¹⁰ Companies have an obligation in most cases to protect employees and customers from foreseeable acts of violence on company property. Given the uncertain character of and lack of training for CCW licensees, coupled with the pervasive problems of workplace violence, increasing the number of guns on company property increases the chances for gun violence. The foreseeability

be to seek to expand those laws to force employers to allow any worker to carry guns throughout the workplace, no matter how sensitive the job nor how unstable the worker.

The NRA has taken that same type of foot-in-the-door approach with respect to shall-issue CCW laws, repeatedly going back to state legislatures to weaken training requirements and permit carrying of concealed guns into any location, such as bars, churches, courts or other sensitive places where CCW licensees were initially not permitted to carry guns in some states.²⁰ The NRA has also launched a campaign to pass what we have called “shoot-first” laws because they vastly expand the range of situations in which someone carrying a gun is permitted to shoot another person.²¹ Unless the NRA’s legislative campaigns are stopped, there is no telling how far the organization will go in its zeal to inject guns into the American workplace.

Plus, it is not just into workplaces that the NRA is seeking to force guns. Property owners of any kind in Oklahoma are barred from excluding guns from vehicles brought onto their private property. It is difficult to imagine something more invasive than turning homeowners into criminals if they choose to try to keep guns off their property.

The NRA’s Scorched-Earth Tactics: Economic Boycotts

The NRA has announced a nationwide state-by-state campaign to pass forced-entry laws modeled after the Oklahoma statute. As part of that campaign, the NRA has deliberately tried to intimidate and punish—through the use of economic boycotts and blacklisting—any company that opposes its efforts.²² The NRA’s campaign has been announced with great fanfare by NRA Executive Vice President Wayne LaPierre on its website, through press

releases, and in a full spread in the August 2005 issue of the NRA’s flagship magazine, *America’s 1st Freedom*.²³ Indeed, Mr. LaPierre has openly threatened any company that dares to oppose its campaign, stating at an Oklahoma rally: “[W]e will spare no effort or expense to work against you.”²⁴

The initial target of the NRA’s boycott has been ConocoPhillips, refiners and sellers of Union 76 gasoline, and other major employers in Oklahoma who brought a lawsuit in federal court to block the Oklahoma forced-entry law.²⁵ As part of its boycott, the NRA has announced plans to purchase billboards in ten to fifteen states blasting ConocoPhillips,²⁶ and used the cover of its October 2005 *America’s 1st Freedom* magazine to ask: “Would you buy gas from this company?”²⁷ The intimidation tactics appear to have worked, as several companies that originally joined ConocoPhillips in challenging the Oklahoma law in court have withdrawn from the case.²⁸

Of course, the NRA’s extremist campaign has come under fire,²⁹ but this has not deterred them from continuing their scorched-earth tactics. The NRA’s campaign thus forces businesses to make a choice. Companies can either stand on the sidelines and let the NRA run over them in state legislatures, passing laws that require guns to be allowed at work and invade businesses’ private property rights, or they can lobby aggressively to prevent forced-entry laws from being passed in the first place.

If you do not want the NRA running your company and telling you what you can and cannot do on your property, we urge you to take action now.

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SECTION ONE

TRAMPLING FUNDAMENTAL RIGHTS AND THE DUTY TO PROVIDE A SAFE WORKPLACE

The NRA's campaign to force businesses to accept guns onto their private property would trample fundamental rights and legal principles that have been part of American culture and law for centuries. If allowed to succeed, the NRA's campaign will also place businesses in the untenable position of having a duty to provide a safe workplace, but the inability to keep guns—the most deadly instrument of workplace violence—out.

A. Private Property Rights

The right to exclude someone from your property is fundamental as it is “the traditional test of ownership.”³⁰ This right clearly allows property owners and tenants to exclude someone carrying a gun onto any part of their property in a motor vehicle. Neither the Second Amendment to the United States Constitution,³¹ nor any state constitution,³² conflicts with this fundamental right in any way.

Oklahoma's forced-entry statute, however, directly conflicts with this fundamental right. It states:

“no person, property owner, tenant, employer, or business entity shall maintain, establish, or enforce any policy or rule that has the effect of prohibiting any person, except a convicted felon, from transporting and storing firearms in a locked motor vehicle... on any property set aside for any motor vehicle.”³³

There are no exceptions or exclusions provided for in the statute.

If a property owner attempts to defy the forced-entry statute and bar a truck full of guns from entering its premises, it would be exposed to criminal penalties, potentially subjecting the property owner to jail time, a fine, or both.³⁴ Property owners are also subject to civil liability if they attempt to bar guns, and must pay court costs and the attorneys' fees of gun owners who have sued

them to bring guns onto the property owner's premises.³⁵

Needless to say, if Oklahoma's forced-entry law is allowed to stand or is passed elsewhere, it would upend centuries of private property law and weaken the property rights of all American businesses.

Several companies, including ConocoPhillips, filed suit in Oklahoma to block the forced-entry statute.³⁶ The companies have argued that the statute is unconstitutional because it tramples their private property and due process rights

in violation of the Fifth and Fourteenth Amendments of the United States Constitution.³⁷ In addition, they contend that the forced-entry law conflicts with the overarching federal duty established by the Occupational Safety and Health Act's General Duty Clause, which requires employers to provide a workplace free from hazards. Thus, they argue Oklahoma's law should be struck down under the Supremacy Clause of the United States Constitution.³⁸ The Society of Human Resource Management, HR Policy Association, Securitas Security Services USA, Inc., ASIS International, and other organizations affected by the Oklahoma

law have filed friend-of-the-court briefs in support of ConocoPhillips. The court granted plaintiffs' motion to temporarily block enforcement of the law pending a final decision on the merits, but has not yet reached that final decision.³⁹

Unfortunately, the NRA has brought an economic boycott against these companies for defending their constitutional rights.⁴⁰ Unbelievably, at the same time the NRA is attempting to punish companies like ConocoPhillips for seeking to protect their private property rights, it has launched a fundraising “Campaign to Restore Private Property Rights” in correspondence to its

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membership that decries a recent United States Supreme Court decision that permits government to “take” private property for public use.⁴¹ The NRA’s concern is that local gun shops will be threatened by such government takings. Of course, these are the same local gun shops the NRA lobbied Congress to protect from lawsuits even if the gun stores commit gross negligence that supplies criminals with guns.⁴²

B. Right to Control the Terms and Conditions of the Workplace

In addition to having property rights, employers also have the right to set basic work rules and regulations for their employees.⁴³ This includes an unequivocal right to prohibit employees from bringing guns to work, whether those guns are stored in a vehicle in the company parking lot or carried during the course of employment, on company property or off-site.

In Utah, American Online, Inc. asserted this right by firing two employees that defied company policy by bringing guns onto a company parking lot. The fired employees filed a lawsuit against AOL for wrongful termination. The Utah Supreme Court decided the case in favor of the employer, holding that nothing in the legislative history of the Utah statute showed an intent by the legislature to override the traditional right of employers to control the terms and conditions of employment and to terminate employees at will.⁴⁴

Oklahoma’s forced-entry statute directly conflicts with these legal rights as well, providing an express civil right of action against employers that adopt policies or rules to bar guns from their premises if that ban extends to places “set aside” for vehicles.⁴⁵ The statute even provides that gun owners that prevail in their lawsuits can collect attorneys fees and costs against any company that establishes a gun-free policy.

C. Federal Obligation to Provide a Safe Workplace

The Occupational Health and Safety Act of 1970 includes a “general duty clause” that requires “each employer [to] furnish to each of his employees... a place of employment which [is] free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees.”⁴⁶

Generally, courts have interpreted this clause as requiring employers to eliminate “feasibly preventable” haz-

ards.⁴⁷ Criminal acts of violence in the workplace have been recognized by the Occupational Safety and Health Administration Solicitor as one of the hazards employers must guard against.⁴⁸ Employers can be cited under the clause, according to OSHA, “if violence is a recognized hazard in their establishments and they do nothing to prevent it.”⁴⁹

Permitting employees access to guns on business premises is a recognizable hazard that can spark workplace violence, a fact recognized by OSHA.⁵⁰ Moreover, companies can “feasibly prevent” this hazard by adopting a gun-free policy. Accordingly, it is likely a breach of OSHA’s general duty clause if a company does not ban guns from its premises, including its parking areas, because guns can be easily retrieved from such areas by disgruntled employees. This federal standard of duty applies to all private employers in America.

The Oklahoma forced-entry statute, once again, directly conflicts with the duty of employers to provide a safe workplace by forcing them to accept guns on their business premises. As will be seen below, guns stored in motor vehicles in company parking lots have been frequently used in workplace homicides and assaults.⁵¹ Companies cannot both comply with their federal duties and comply with Oklahoma’s law.

The forced-entry statute thus puts employers in the untenable position of having a duty to provide a safe workplace but being unable to adopt gun-free policies that further that goal.

The companies that filed suit to block the forced-entry statute have argued strenuously that their federal duties under OSHA must take precedence over Oklahoma’s statute because of the Supremacy Clause of the United States Constitution.⁵² They cited the 1996 OSHA guideline, which held that “employers may be cited for violating the General Duty Clause if there is a recognized hazard of workplace violence in their establishments and they do nothing to prevent or abate it.”⁵³

Seeking to meet their federal obligation to provide a safe workplace has unfortunately resulted in an NRA boycott and blacklisting of these companies. If the NRA is successful in getting Oklahoma’s forced-entry law passed elsewhere, it will only expose more American businesses to the scorched-earth tactics of the NRA.

SECTION TWO

INCREASING RISKS: WORKPLACE VIOLENCE AND LEGAL LIABILITY

For businesses, the potential dangers and risks of allowing guns on the premises, even if those guns are stored in locked vehicles in parking lots, include the following:

- Diminished safety for employees and the workplace;
- Greater potential for employee-on-employee violence, and more lethal results when such violence occurs;
- Increased tension between supervisors and employees;
- Potentially huge legal, financial, and public-relations costs should gun violence ever occur.

Businesses can reduce these dangers and risks by adopting gun-free policies. However, that could all go by the wayside if the NRA is successful in getting more state legislatures to pass forced-entry laws that require businesses to accept guns on their property.

A. Guns Increase the Risk of Violence in Workplaces

As most business people are now well aware, violence in American workplaces and stores remains at alarming levels. This violence imposes a tremendous cost upon businesses.

Extensive literature in the field has documented the serious problem of workplace violence.⁵⁴ The Bureau of Labor Statistics estimates that each week in the United States, more than 12 workers are murdered⁵⁵ and nearly 350 are injured in assaults that force them to miss days of work.⁵⁶ Firearms are used in 77% of these workplace homicides,⁵⁷ as opposed to 67% of all homicides nationwide.⁵⁸ Almost 90% of firearm homicides in the workplace take place in the private sector.⁵⁹ In 2003, murder was also the third-leading cause of occupational fatalities, after traffic accidents and falls.⁶⁰ It is the leading cause of injury death for women in the workplace.⁶¹

Many of these workplace homicides stem from robberies, but a very significant percentage stem from violence initiated by employees.⁶² Moreover, a 2005 survey of major employers found that 82% said that the number

of violent incidents at their workplaces had increased over the last two years, and almost 60% said that disgruntled employees had threatened to assault or kill senior managers within the past year.⁶³ No company is immune from the risks of violence on its business premises.

The cost to businesses of such violence has been staggering. Impacts have included:

- Loss of life and crippling injuries for employees and supervisors;
- Psychological trauma to those injured by, or witnesses to, an incident;
- Lower employee morale after an incident;
- Higher absenteeism rates;
- Labor-management conflict;
- Increased turnover in personnel;
- Production losses;
- Litigation costs;
- Increased security costs;
- Increased workers' compensation costs;
- Increased costs, or loss of, insurance; and
- Increased personnel costs.⁶⁴

Costs linked to workplace violence have skyrocketed in recent years: from \$4.2 billion in 1992,⁶⁵ to \$36 billion in 1995,⁶⁶ to an estimated \$121 billion in 2002. Per-incident costs for a workplace homicide generally range between \$250,000 and \$1 million, but for cases of serious injury or death involving the negligence of an employer, recent jury awards have averaged \$3 million per incident. Indeed, Garry Mathiason, a senior partner at the national law firm Littler Mendelson who has represented employers in 40 cases involving workplace homicides, has noted that if a worker injures or kills a customer, vendor, or other member of the public, it could be open season on the company coffers.⁶⁹ Under any of these estimates, it is clear that the costs of even a single incident of violence at a workplace or store can be devastating to a business.

There have been thousands of real-life incidents in which supervisors and co-workers have been shot by disgruntled employees,⁷⁰ domestic quarrels have spilled over into the workplace,⁷¹ or other incidents of gun violence have taken places on business premises. The following examples of mass shootings at businesses across the United States have made headlines. In most of these cases, the shooter either brought his gun(s) onto company property in a motor vehicle, or he or she could have done so.

Los Angeles, California • February 25, 2005.

A Los Angeles city worker kills his boss and another employee with an AK-47 after being reprimanded for showing up late to work.⁷²

Pascagoula, Mississippi • February 21, 2005.

An angry employee at Northrup Grumman shipyard opens fire with a Smith & Wesson 9 mm handgun, shooting two supervisors.⁷³

Kansas City, Kansas • July 2, 2004.

A 21-year-old described as a “disgruntled worker” brings two handguns to ConAgra Foods Inc.’s plant, killing five people and wounding two others before killing himself. The killer had no criminal record.⁷⁴

Chicago, Illinois • August 27, 2003.

A fired worker shoots and kills six of his co-workers with a .38 caliber semi-automatic pistol.⁷⁵

Andover, Ohio • August 19, 2003.

An angry employee shoots and kills a co-worker then wounds two others before killing himself. The shooter was armed with four handguns and had spent much of his spare time shooting at targets behind his home.⁷⁶

San Antonio, Texas • July 23, 2003.

A man walks into a real estate office where he worked and opens fire. He fatally shoots two co-workers before killing himself during a chase with police.⁷⁷

Meridian, Mississippi • July 9, 2003.

A factory worker at a Lockheed Martin assembly plant retrieves guns from his vehicle and goes on a rampage with a shotgun and semiautomatic rifle, killing five and injuring nine before taking his own life.⁷⁸ Afterward, investigators recover three additional guns from the killer’s truck, which was parked 50 feet from the factory.⁷⁹

Jefferson City, Missouri • July 1, 2003.

An industrial radiator factory worker opens fire with a .40 caliber semi-automatic pistol, killing three and wounding five others. The killer leaves the plant in his truck and then commits suicide after a gun battle with police.⁸⁰

New York, New York • September 16, 2002.

An insurance executive calls two employees into his office, shoots both of them and then shoots himself. All three die. Police find two semiautomatic handguns—a .9mm and a .45 caliber—as well as another gun in his office.⁸¹

Goshen, Indiana • December 6, 2001.

An employee of Nu-Wood Decorative Millwork plant returns to the plant and opens fire with a shotgun and semi-automatic weapon killing two, including himself. Six others are injured.⁸²

Palm Beach Gardens • Florida. July 23, 2001.

Construction worker Keith Adams walks out to his truck, pulls out an AK-47 machine gun and shoots and kills two co-workers. Police recover more than 80 live rounds from the shooters truck.⁸³

Melrose Park, Illinois • February 5, 2001.

Factory worker William Baker arrives at the Navistar International factory with an AK-47, a .38 caliber revolver, a pump shotgun and a hunting rifle. He kills four fellow workers and himself.⁸⁴

Wakefield, Massachusetts • December 26, 2000.

Employee Michael McDermott brandishes a .12 gauge shotgun and a semiautomatic rifle and opens fire at the Edgewater Technology firm, killing seven.⁸⁵

Irving, Texas • March 20, 2000.

Robert Wayne Harris shoots and kills five and wounds another at Mi-T-Fine carwash.⁸⁶

Tampa, Florida • December 31, 1999.

Hotel worker Silvio Izquierdo-Levy opens fire outside of the Radisson hotel where he was employed killing five and wounding three.⁸⁷

Seattle, Washington • November 4, 1999.

Kevin Cruz, a shipyard worker, shoots four employees at Northlake shipyard, killing two and wounding the two others.⁸⁸

Honolulu, Hawaii • November 2, 1999.

A disturbed Xerox repairman walks into Xerox offices and begins shooting a 9 mm handgun killing seven people. The shooter had seventeen weapons registered in his name.⁸⁹

Pelham, Alabama • August 8, 1999.

A disgruntled worker shoots and kills two co-workers at a heating and air conditioning firm and then goes to another location and kills his former supervisor at another company.⁹⁰

Newington, Connecticut • March 6, 1998.

An accountant angry over a dispute with his employer, the Connecticut Lottery, shows up at work and opens fire with a semi-automatic handgun killing four people before shooting himself.⁹¹

Aikens County, Georgia • September 15, 1997.

A shooter pulls up in his car, tells the security guard “I’ve got work to do,” and opens fire, injuring the security guard. He continues into the plant and kills four people and injures two others.⁹²

Santa Fe Springs, California • June 5, 1997.

Daniel S. Marsden has an argument with co-workers, walks out to his car in the parking lot at Omni Plastics and returns with a 9mm semi-automatic pistol. He fatally shoots two co-workers, wounds four others, and then kills himself two hours later.⁹³

These examples of workplace gun violence are just the “tip of the iceberg.”⁹⁴ Gun violence can happen on *any* company’s premises, at *any* time. Appendix B to this report lists a breakdown of 2003 workplace shootings by employees or former employees who brought guns to the workplace.⁹⁵

What are the causes of such violence? Workers cite alcohol or drug abuse, layoffs or firings, societal poverty, violence on television or in movies, the pressures of too much work, overly controlling management, and conflicts with co-workers as major causes. *In one study, 46% of American workers believed the availability of guns was a major cause of workplace violence.*⁹⁶

Further, nearly all scholars who have identified a profile of a “typical” workplace killer have stated that an *infatuation with firearms* is one of the elements of the profile.⁹⁷ This suggests that employees who may pose the

greatest risk are also the most likely to carry a gun to work. Yet, pointedly, a person fitting the typical “workplace-killer profile” would seldom be disqualified in any shall-issue CCW state from receiving a CCW license, and they would never be barred under a forced-entry law from bringing guns in a vehicle onto company property where they would be readily available to cause mayhem.⁹⁸ If a violent incident were to be perpetrated by a person who fit this profile, a business’s prior decision to permit gun-carrying on its premises might be construed as condoning such violence. As will be seen below, this could raise potential legal problems.

The answer to these problems is not, however, to simply weed out the bad employees. Many scholars believe it is not “possible to reliably identify who will go on a rampage and kill the boss,”⁹⁹ thus suggesting there is no way for a business to distinguish in advance between the gun-toters who pose extraordinary risks, and those who may not. Also, a business may face legal problems if it discriminates against certain employees or customers based on a perception that they are prone to violence. According to Dr. James Alan Fox, Dean of the College of Criminal Justice at Northeastern University and one of America’s leading criminologists:

“It’s not a matter of identifying problem cases and dealing with them. It’s a matter of changing the way things are done in the company. You can’t just grease the squeaky wheel. You’ve got to grease the whole machine.”¹⁰¹

Accordingly, the only safe and non-discriminatory way to reduce the risks of gun violence in workplaces is to make them gun-free.

B. Permitting Guns Increases Legal Liability Risks

Companies have a legal obligation in most circumstances to protect their employees and customers from foreseeable acts of violence on company premises. If a company fails to meet this obligation, it may be held liable. Injured parties might sue under theories of negligence, negligent hiring, supervision, or retention, respondeat superior, or failure to maintain a safe workplace.¹⁰² In addition, employers can be sanctioned for a dangerous workplace by the Secretary of Labor under the Occupational Safety and Health Act of 1970 (“OSHA”). If a gun injury occurs, under each of these theories of recovery, a company that permits guns on its premises

will be at a significantly higher risk of liability than a company that chooses to remain gun-free.

The Occupational Safety and Health Act of 1970

The “general duty clause” of OSHA requires each employer to provide employees a place of employment “free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees.”¹⁰³ To establish a violation of this clause, the Secretary of Labor must prove:

- The employer failed to render its workplace free of a hazard;
- The hazard was “recognized,” and
- The hazard caused or was likely to cause death or serious physical harm.¹⁰⁴

Courts have interpreted this clause as requiring employers to eliminate “feasibly preventable” hazards.¹⁰⁵ The OSHA Solicitor has recognized violence in the workplace as one of the hazards employers must guard against. According to OSHA, employers can be cited under the clause “if violence is a recognized hazard in their establishments and they do nothing to prevent it.”¹⁰⁷

As discussed above, permitting employees access to guns on business premises is a recognizable hazard that can spark workplace violence, a fact recognized by OSHA.¹⁰⁸ Moreover, companies can “feasibly prevent” this hazard by adopting a gun-free policy that covers all company property. Accordingly, it may be a breach of OSHA’s general duty clause if a company does **not** ban guns from its premises and an act of gun violence later occurs.

Common Law Duty to Provide Safe Business Premises

Many states have a statutory or regulatory equivalent to the OSHA general duty clause requiring employers to provide a safe workplace.¹⁰⁹ In states with no statute, state courts have generally established such a duty through the common law of negligence.¹¹⁰ In addition, business owners have a duty of care to protect the safety of invitees.¹¹¹

The key to a company’s liability in each case is whether an act of gun violence perpetrated against an employee or customer was **foreseeable**.¹¹² Since companies have a legal duty to exercise “ordinary care” to prevent foreseeable violence—even criminal violence—from occurring on their business premises, failure to take reasonable precautions to protect employees from such violence is a breach of that duty.¹¹³ Business owners have often been held liable for failing to exercise due care to keep premises safe.¹¹⁴

Given what has already been discussed, if businesses permit the carrying of guns onto business premises, they are asking for legal troubles.¹¹⁵ Courts would likely consider a business’s decision to allow guns onto its premises to be a significant factor in holding it liable for an act of gun violence committed on its property, because the increased presence of guns increases the likelihood, and thus the foreseeability, that gun violence will occur.¹¹⁶

In addition, the likely seriousness of any gun injury, balanced against the ease of reducing the risk by making a business gun-free, will also support liability against businesses that

allow guns. Insurance companies have already foreseen the increased risks of violence posed by having firearms on business premises, and some have threatened to cancel policies unless firearms are prohibited.¹¹⁷

Common Law Liability Based on the Acts of Employees

Employers may also be liable based on the actions of their employees, either because the employee is considered to be acting on behalf of the employer, or because the employer is directly responsible for hiring, training, supervising, and retaining the employee. Under the first theory of liability, an employer can be held responsible for an employee’s conduct that furthers the company’s purposes and is within his or her scope of employment. Although acts of gun violence will not often be attributed to employers under this theory, under certain circumstances employers may be held liable.¹¹⁸

Companies have a legal obligation in most circumstances to protect their employees and customers from foreseeable acts of violence on company premises. If a company fails to meet this obligation, it may be held liable.

Company liability is more likely under the direct liability theories of negligent hiring, negligent training, negligent supervision, and negligent retention, since each depend not on the scope of an employee's duties, but on an employer's failure to take due care to prevent foreseeable injuries caused by its employees.¹¹⁹ These tort theories of recovery are recognized in most states,¹²⁰ and there have been dozens of cases in which employers have been held liable based on them.¹²¹

“The general rule is that if an employer is found to have a duty of care to protect third parties who come into contact with its employees, it will be found to have breached that duty if it knew or should have known of the employee's incompetency, dishonesty, or bad character, but nonetheless hired or retained that employee [or failed to take steps to mitigate the danger].”¹²²

As we have seen above, incompetency, dishonesty, or bad character do not often disqualify a person from obtaining a license to carry a concealed handgun in a shall-issue CCW state, and they do not prevent such a person from bringing a vanload of guns onto company property in any state that passes a forced-entry law.

Accordingly, if an employer has any marginal workers on its payroll, allowing such employees to carry guns to work would clearly exacerbate, not mitigate, any danger posed to co-workers or managers, and thereby greatly increase the employer's risk of liability should an injury occur. Indeed,

“[i]f an employer knows or has reason to know that its employees have violent tendencies and are carrying guns in the workplace, then there is a substantial risk that the violence is reasonably foreseeable under ordinary negligence principles.”¹²³

In one notable case — *DiCosala v. Kay*¹²⁴ — the Boy Scouts of America were held liable for negligently hiring and retaining a camp counselor who kept loaded handguns in his camp quarters. A 6-year-old boy was unintentionally shot in the neck when another counselor, playing with the boy in the gun-owner's quarters, picked up one of his guns and, thinking it unloaded, fired it at the boy. The court held that the counselor's mere possession of guns, which was known by the Boy Scouts, posed a

danger to members of the public and a foreseeable risk that a gun injury would take place.¹²⁵ There was no evidence that the gun-owning counselor was a bad character. The case turned, instead, on the heightened risks entailed in knowingly allowing guns in the Boy Scout camp. The *DiCosala* court held that the Boy Scouts could be liable for negligently failing to supervise the gun owner because he maintained a dangerous instrumentality — a loaded gun — on its premises. “[T]he owner and operator of the camp owed an obligation to see to it that a dangerous instrumentality, such as a firearm, be removed or safeguarded and secured,” since a higher degree of care is required with respect to such dangerous instruments.¹²⁶

The *DiCosala* case has potentially huge ramifications for companies that allow employees to carry guns onto their property. First, it imposes a duty on companies to see to it that guns be “removed or safeguarded and secured.” Thus, if a company chooses not to make its premises gun-free, it must somehow “safeguard and secure” the guns carried on its property, or risk legal liability if someone is ever injured with one of those guns. Allowing guns to be brought onto company property in a locked vehicle, as Oklahoma's forced-entry law requires, will not likely meet this standard, as the potential workplace shooter will

most often have the key to that vehicle. Second, it supports the principle that having guns readily accessible on business premises poses a foreseeable risk that gun injuries will take place therein. Although the Boy Scout camp counselor kept his handguns in his camp quarters rather than in a company parking lot, the vast numbers of shooting incidents involving employees who have brought guns to work in their vehicles suggests this difference does not make the increased potential for violence from guns in parking lots unforeseeable. Since companies are under a duty to guard against foreseeable risks, they would be wise not to allow guns anywhere on company property.

Given these legal liability risks, the wise choice is to adopt a gun-free policy. Attempting instead to weed out potentially violent employees will not be as fruitful, and

Since companies are under a duty to guard against foreseeable risks, they would be wise not to allow guns anywhere on company property.

may not be possible. Further, it may even subject employers to additional liability, as employment discrimination laws prevent companies from firing or failing to hire otherwise competent individuals merely because they have a criminal background or history of mental instability.¹²⁷ Many states proscribe the use of criminal records in certain hiring decisions,¹²⁸ and Title VII of the Civil Rights Act of 1964 prohibits employers from making employment decisions based on arrest records.¹²⁹ One commentator has dubbed it a “Catch-22” because employers may be liable for hiring or retaining dangerous individuals, yet are hamstrung in their ability to weed them out.¹³⁰ Outside Oklahoma, however, companies have not been hamstrung in their ability to ban guns from their business premises. Given the potential liability risks posed by employees, that is the most prudent course of action.

Oklahoma Immunity Provision Does Not Protect Businesses

In obvious recognition of the legal risks facing businesses that permit guns to be brought onto company property, the Oklahoma legislature revised its original 2004 version of its forced-entry law in 2005 to add a limited immunity clause against lawsuits “for occurrences[, i.e., shootings,] which result from the storing of firearms in a locked motor vehicle.”¹³¹

Inclusion of this clause does not change the forced-entry nature of the underlying legislation, however, which still requires businesses to surrender time-honored private property rights and the right to control the terms and conditions of the workplace.

This limited immunity clause does not really protect businesses, moreover, and appears to be intended solely to make the forced-entry law more politically palatable. First, it expressly “shall not apply to claims pursuant to the Workers’ Compensation Act.”¹³² Such claims can have a significant financial cost for businesses.¹³³ Second, it does not protect employers from being cited for breach of the federal OSHA general duty clause, as states cannot immunize employers from violations of federal workplace safety standards. Third, it is not clear whether the Oklahoma immunity provision would protect employers

from being sued for a workplace violence incident that “results from” the negligent hiring, training, or retention of an employee, even if that employee used a gun to cause harm and that gun was retrieved from the worker’s vehicle in the company parking lot. In such a case, an injured co-worker, supervisor, or customer could argue that his or her cause of action was based on the foreseeable risk posed by the unstable employee rather than the separate foreseeable risk posed by having a gun closely accessible. Thus, the narrowness of the immunity language may not protect businesses at all. Certainly, no business would want to become the test case for deciding the scope of this protection.

Moreover, as the next section explains, there are massive costs for businesses victimized by workplace shootings that have nothing to do with civil lawsuits. Lost productivity, declines in workplace morale, the need for long-term counseling, and even potential loss of customers, are all significant costs that Oklahoma’s forced-entry law does not even attempt to address.

C. Guns Pose Public and Employee Relations Problems

Prohibiting guns in the workplace is also critical to promote employee morale, even if a violent incident never occurs. In one national study of gun-owners and non-gun-owners alike, 71% of those surveyed said they would feel less safe if more people in their community acquired guns.¹³⁴ Among non-gun-owners, the numbers were even higher, with 85% indicating that the increased presence of guns in their neighborhood would lessen their safety.¹³⁵ Even among gun owners, roughly half did not want more people to acquire guns.¹³⁶ Although this study focused on the increased presence of guns in neighborhood homes, it offers a powerful message to employers that are considering whether to allow guns into their workplaces.

Rather than making anyone feel safer, allowing employees to bring firearms onto company property will likely breed fear and paranoia among co-workers and between workers and management, since no one will know whether the other person can simply retrieve an

Prohibiting guns in the workplace is also critical to promote employee morale, even if a violent incident never occurs.

arsenal of weapons from his vehicle if a dispute arises.¹³⁷ Such fear and paranoia is antithetical to creating the positive climate in which businesses thrive. Employees also may feel strongly about working in a gun-free environment, just like the thousands who have pushed for smoke-free environments.

Moreover, if a violent incident ever does occur, employee morale could be shattered. Who would want to work at a business where a shooting has taken place because guns were allowed? No one. In the aftermath of workplace shootings, companies have often needed to provide counseling for many months. As one expert put it: “For the survivors, the workplace is no longer safe, but has become threatening.”¹³⁸

Another risk posed by allowing employees to bring guns to work in their vehicles is that it makes the com-

pany parking lot a likely target of gun thieves, who may break into cars randomly in hopes of finding valuable guns to steal. Employees who chose not to bring guns to work might be just as likely to have their vehicles broken into as those who did bring guns. In addition, the whole community might suffer increased gun violence if criminals are able to acquire guns this way.

Allowing employees to bring guns to work in their vehicles... makes the company parking lot a likely target of gun thieves.

As has been seen in Oklahoma, businesses that try to prohibit weapons face the prospect of threats, blacklisting, and economic boycotts from the NRA.¹³⁹ The NRA maintains an extensive blacklist that includes hundreds of celebrities by name.¹⁴⁰ Apparently, the organization will stop at nothing to achieve its aims.

Companies cannot afford to surrender, however, if they want to have any hope of maintaining control over their workplaces and their property.

SECTION THREE

PROTECT YOUR PROPERTY AND YOUR LEGAL RIGHTS

The smart choice is a gun-free policy. “[E]mployers should not ignore the potential for workplace violence in the hope that ‘it will not happen here.’”¹⁴¹ By taking control over the presence of guns, a business remains in much greater control of its fate if violence ever does arise.

No reasonable businessperson would want their employees to be armed on the job, or to have access to an arsenal of weapons in the company parking lot, even under “normal” circumstances. During employee-evaluation time, or when a person has to be fired, the stresses would be astronomical. “Are you going to want to give a poor performance review to an armed employee? It’s just insanity.”¹⁴²

All of these questions point to one simple issue: maintaining control over your business premises. By training employees on sexual harassment and workplace violence, companies attempt to prevent such incidents from occurring. By hiring security guards, installing lighting and locks, and other measures, companies seek to protect employees and customers from random acts of violence. By taking these measures, companies attempt to control the potential violence that can erupt on business premises, to minimize the damage if it does erupt, and to protect themselves against liability for any resulting injuries. Adopting a policy on firearms must be part of this plan.

Human resource and law enforcement professionals agree that a gun-free policy should be an essential part of every company security plan.

Human resource and law enforcement professionals agree that a gun-free policy should be an essential part of every company security plan.

- “Establish a policy applicable to everyone employed by the company or on company property, including the company parking lot, prohibiting the possession of weapons which have not been authorized by your organization.” International Association of Chiefs of Police.¹⁴³

- “In addition to a ‘zero tolerance’ anti-violence policy, employers should adopt a strict, no weapons policy. In light of an employer’s OSHA and common law duties to provide a safe workplace, the benefits of the no-weapons policy outweigh any burdens and disadvantages.” Dean J. Schaner, employment law partner, Haynes & Boone, L.L.P., Houston, Texas.¹⁴⁴

common law duties to provide a safe workplace, the benefits of the no-weapons policy outweigh any burdens and disadvantages.” Dean J. Schaner, employment law partner, Haynes & Boone, L.L.P., Houston, Texas.¹⁴⁴

- “Prohibitions on the possession of weapons in the workplace are another example of the principle that, whenever possible, employers should focus on objective behaviors and not subjective assessments. Employers should have a rule prohibiting possession of weapons, firearms or explosives on company premises, and employees who violate that rule should be terminated even if they are unlikely to use that weapon.”

Jonathan A. Segal, HR Magazine.¹⁴⁵

With a gun-free policy, you know that the only people carrying guns are your security guards and the police. This is probably the way it has been in previous years at your business. For maximum safety and security, this is the way it should always be.

In Appendix C, we have provided guidelines for adopting and enforcing a gun-free policy.¹⁴⁶

CONCLUSION

YOU CAN FIGHT THE NRA'S CAMPAIGN

It is not too late to take action to protect your company's property rights and the right to control your workplace. Unfortunately, those legal rights are now under attack by the NRA and its allies in various state legislatures. In addition to the forced-entry law first passed by the Oklahoma legislature in 2004,¹⁴⁷ the NRA succeeded in convincing the Minnesota state legislature that same year to pass a new shall issue CCW law that included a forced-entry provision prohibiting businesses from barring guns in company parking lots.¹⁴⁸ The Minnesota law was challenged in court and struck down on a technicality.¹⁴⁹ The Oklahoma forced-entry law has been challenged and its enforcement stayed, but it has not yet been struck down as unconstitutional.¹⁵⁰ However, court challenges will not keep the NRA from lobbying aggressively to pass forced-entry laws in other state legislatures in 2005 and 2006 as soon as legislative sessions open.¹⁵¹

Employers that provide the economic backbone of communities should not have their legal rights trampled by an extremist organization like the NRA.

If the business community bands together in opposition to these laws, it is very possible they can be stopped. Employers that provide the economic backbone of communities should not have their legal rights trampled by an extremist organization like the NRA.

We urge you to raise this issue immediately with state legislators in every state in which your business is located.

Please visit our website at www.bradycenter.org if you would like to download and distribute copies of this report, and for ongoing updates regarding the NRA's campaign and our attempts to defeat it.

If we can be of assistance, please contact us at:

Legal Action Project
Brady Center to Prevent Gun Violence
1225 Eye Street, Suite 1100
Washington, DC 20005
202.289.7319

APPENDIX A

CCW LICENSE HOLDERS: “LAW-ABIDING CITIZENS?”

• Overview

The gun lobby claims that only “law-abiding citizens” apply for and receive carrying-concealed weapons (CCW) licenses and that more people carrying hidden guns will make our society safer. However, it is a fallacy that only “good guys” have these licenses, and that the people carrying the weapons are always responsible, mature, and abide by the laws. Due to lax CCW laws in many states, abusive husbands, mentally unstable individuals, people with a grudge, and people who are simply careless or uneducated about firearms safety can and do get CCW permits, posing a potential danger to their families and communities.

The following incidents, obtained from newspaper reports, involve people who were **legally** licensed to carry concealed weapons. It is important to note that these represent **only a fraction** of the total number of incidents involving CCW licensees that happen every week. Often, a suspect’s status as a CCW licensee is not reported by law enforcement or the media, nor is that information easily available to the public. If a disproportionate number of incidents seem to occur in Florida, it is in part due to the fact that Florida has relatively open CCW records so a shooter’s status as a CCW licensee can be determined. Not surprisingly, the gun lobby fights to keep CCW records closed.

• The Incident File

- On Jan. 24, 2002, a derringer in Ronald T. Cox’s coat accidentally discharged at an Indianapolis restaurant when he placed the coat on the back of a chair, wounding another patron.¹
- On December 28, 2001, Barry Brunstein of Tampa, FL, was caught with a loaded 9-mm.

Beretta in his briefcase at Memphis International Airport during a random security stop. Brunstein said “It was the handiest place to put it. I never gave the gun a second thought.”²

- On November 25, 2001, James Craig Wilson became frustrated and angry when he had trouble untangling the Christmas lights he planned to hang at his suburban Vancouver, WA, home. After going inside to calm down, Wilson went outside and fired his .45-caliber pistol into the ground multiple times. “I thought discharging my gun would help me discharge my anger,” Wilson said.³
- On November 14, 2001, a gun carried by Cesar Solis accidentally went off in a Chester County, PA, tavern, injuring three people including him.⁴
- On July 6, 2001, an unnamed man fatally shot 17-year-old Jacob W. Walton during a road rage altercation in Spokane, WA.⁵
- On July 5, 2001, a man was pulled a .38-caliber handgun on two associates in Troy, MI after the men had gotten into an argument over debris in a lot he going to lease to them.⁶
- In April 2001, 44-year-old substitute teacher, Cynthia Seymour, was caught with a loaded .38-caliber revolver at Tampa Bay Technical High School in Florida.⁷
- On February 15, 2001, Renee Rudenick brought her loaded .38-caliber revolver on school grounds in King County, WA. The incident was brought to the attention of school officials after Rudenick told a principal that she had misplaced her purse and thought her gun might be in it.⁸

1 “Safer handling of derringers urged,” *Indianapolis Star*, February 15, 2002 and “Man whose handgun went off charged with drug possession,” *Indianapolis Star*, January 30, 2002.

2 “Man ‘forgot’ loaded gun in briefcase,” Associated Press, December 30, 2001.

3 “Man jailed for firing gun in frustration with Christmas lights,” Associated Press as reported in the *Post-Intelligencer*, November 28, 2001.

4 “Man held in tavern shooting,” *Philadelphia Inquirer*, November 14, 2001.

5 “Road rage shooter had gun permit,” Associated Press report appearing in the *Post-Intelligencer*, July 10, 2001

6 “Police save suspect from heart failure,” *Detroit News*, July 6, 2001.

7 “Teacher brings gun to school,” *St. Petersburg Times*, April 21, 2001.

8 “Teacher said to have carried pistol into school by mistake,” *Eastside Journal*, March 13, 2001.

- On November 25, 2000, Richard Nelson, went to see 102 Dalmatians with a Glock 17 9-mm pistol in his jacket pocket. After the movie Nelson was putting on his jacket when the gun discharged accidentally, shooting himself in the abdomen in a Hoover, AL.⁹
- During the summer of 2000, an Austin, TX, taxi driver shot and killed two unarmed men who had been his passengers. The taxi driver was apparently angry over something one of the passengers had said and challenged him to a fight.¹⁰
- On July 1, 2000, a man with a concealed weapon and a bystander were injured when the gun fired after falling from the man's pocket at a concession stand at a Kentucky movie theater.¹¹
- On June 11, 2000, Jamie Cokes, 26, of Pittsburgh, PA, shot and killed 30-year-old Leon Blair. According to the victim's brother, Cokes "was always talking about shooting people."¹²
- On March 2000, Deena Estaban of Woodbridge, VA, brought a loaded gun and left it unattended in the elementary school classroom where she was a teacher.¹³
- On February 14, 2000, two men died over a repossessed car in Miami, FL. Roberto Ortega and Kendria Vann got into a gunfight when Ortega, a licensed repossessor, tried to tow Vann's car away.¹⁴
- On January 27, 2000, Louis Mockewich of Philadelphia, PA, shot and killed a neighbor who was shoveling snow behind his row house after an arguing over where the victim was placing the snow.¹⁵
- On December 14, 1999, Adam Sousa of Naples, FL, pulled a .357 from a holster before leaving the dog track after he had been asked to leave after an argument at a poker table and shot two men.¹⁶
- In early December of 1999, William Manies of Fountain City, TN, returned to his former office and found the woman who fired him a month before. He executed her while she sat in her chair, talking on the telephone.¹⁷
- On November 17, 1999, David Tanski of Tualatin, OR, rammed his car into another car that had taken a parking space he felt entitled to. When a second driver approached Tanski pulled out a gun.¹⁸
- On November 8, 1999, Shirley Henson, of Alabaster, AL, ended a battle for position in heavy rush-hour traffic by shooting the woman with whom she had played cat-and-mouse on I-65.¹⁹
- In September of 1999, Greg King of Milwaukee, OR, brought a semiautomatic handgun in a backpack to the elementary school where he worked.²⁰
- James H. Miller of Bald Knob, AR, shot Charles Starks and Starks' father, Charles Starks Sr., in their chests during a confrontation in a parking lot of a convenience store Nov. 25, 1998.²¹
- In early July 1999, Scott Stone, Jr., of Tarboro, NC, flew halfway across the country to murder his ex-wife as she jogged along a trail near her house. He then turned the gun on himself.²²

9 "Man shot in theater wasn't holding pistol," *The Birmingham Press*, November 28, 2000.

10 "Packing Heat," *ABC News 20/20 Downtown*, July 16, 2001.

11 "Concealed gun falls, fires; two are injured," *The Courier-Journal*, July 1, 2000.

12 "Man Held in Killing Claims Self-Defense," *Tribune-Review*, July 7, 2000.

13 "Teacher Unaware of Gun in Her Backpack," *Washington Post*, March 9, 2000.

14 "Two men killed over repossessed car," *Miami Herald*, February 15, 2000.

15 "Deadly clash in the snow," *Philadelphia Daily News*, January 27, 2000.

16 "Collier man accused of shooting 2 workers at Bonita dog track jailed on \$250,000 bond," *Naples Daily News*, December 16, 1999.

17 "Victim tried to help alleged killer," *Knoxville News-Sentinel*, December 8, 1999.

18 "Gun pulled in dispute over Northwest parking space," *Oregonian*, November 19, 1999.

19 "Woman Charged in Ala. Road Rage Shooting Death," *Washington Post*, November 16, 1999 and "Road rage shooter reports for prison," *Birmingham News*, January 8, 2001.

20 "Janitor fired for bringing gun to school sues district," *Oregonian*, December 16, 1999.

21 "Fatal shootings involving concealed handguns," *Arkansas Democrat-Gazette*, February 8, 2001.

22 "North Carolina shooter planned slaying of former wife and himself, police say," *Fort Worth Star-Telegram*, July 7, 1999.

- Raymond Cruz of Indiana shot a toilet to pieces in a restaurant because “it didn’t flush fast enough.”²³
- On February 25, 1999, “Junior” Wallace, shot and killed Robert Qualls, 65, after an argument in a local café over new sewer service for the town of Black Oak, AR.²⁴
- Robert Herndon gunned down Dr. Bradley Silverman outside his Florida office. Herndon was described by neighbors as “a man who easily lost his temper and who threatened them with his gun.”²⁵
- Carlton Evans, of Seattle, WA killed his wife and two-year-old daughter with his 9mm semi-automatic pistol. Evans fled, and later killed himself when police tried to arrest him.²⁶
- On September 3, 1998, two Connecticut State Troopers were questioning Edward Premo at his home on suspicion that he had vandalized a neighbor’s car when he became hostile and whipped a 9mm semi-automatic pistol from his waistband and shot both at close range. As the officers fired back, Premo ran into his house, returning seconds later with a high-powered rifle. Two more Troopers responded to the call and were fired upon by the suspect. Three troopers sustained multiple gunshot wounds.²⁷
- On July 19, 1998, Thomas P. Kelly, 28, of Groveland, Florida argued with Dale Woods then went to his vehicle, grabbed a handgun and shot Woods twice before fleeing the scene.²⁸
- In July 1998, Toby Mack and Kenneth April began to fight after arguing in front of a convenience store. Mack then pulled a gun on April, who responded by pulling his own concealed handgun. April’s friend, Mike Willey came out of the market and pulled his gun whereupon all three men exchanged several shots. Mack was killed and April was wounded in the stomach.²⁹
- Steven Dobric gunned down his wife outside a Cuban restaurant in Palm Beach, FL, before turning the gun on himself.³⁰
- Billy Ray Beagle, of Florida was killed in a shootout with police on March 25, 1998, after locking himself in a police station bathroom with his gun while being questioned about the slaying of two hunters.³¹
- In December 1997, John L. Paasch was “goofing off” and pretending to shoot his gun. As he was putting it back into its holster, the gun went off and hit the bar in Tygart, OR.³²
- In September 1997 Daniel Blackman of Florida pulled his gun on an emergency room doctor at St. Mary’s Medical Center after the doctor refused to write him a prescription.³³
- Also in September 1997, five men got into an argument outside of Big Willy’s Saloon in Baldwin, PA. According to reports, words were exchanged, and guns were pulled. Shots were fired, and five people were injured, two critically.³⁴
- In July 1997, Joseph Corcoran of Indiana shot his brother and three others in the living room of their home. Corcoran shot the four after overhearing them talking about him.³⁵

23 “St. Patrick’s Day reveler blows away slow-flushing toilet,” *Indianapolis Star-News*, March 20, 1999.

24 “Black Oak man is killed following argument at cafe,” *Jonesboro Sun*, February 25, 1999.

25 “Police Link Grudge to Doctor’s Slaying; Handyman with Disability Arrested in Surgeon’s Death,” *Sun-Sentinel*, January 16, 1999.

26 “Mother ‘Played by the Rules’ and She and Daughter Died,” Associated Press, December 21, 1998.

27 “Suspect No Stranger to Guns, Explosives,” *Hartford Courant*, September 4, 1998 and “State Police Commissioner investigating trooper shooting 2 years ago,” *The News-Times*, August 20, 2000.

28 “1 Shot, 1 Arrested After Fight Erupts into Gunfire,” *Orlando Sentinel*, July 20, 1998.

29 “Market Confrontation Ends In Fatal Shooting,” *Arizona Republic*, July 11, 1998.

30 “Ambush, then Murder-Suicide; Husband had made Death Threats after She requested a Divorce,” *Sun-Sentinel*, June 4, 1998.

31 “Murder Suspect Slain After Standoff,” Associate Press wire report, March 25, 1998.

32 “Police: Man was ‘goofing off’ when he fired gun in bar,” *Oregonian*, December 12, 1997.

33 “Ex-Judge Candidate Pulls Gun On Doctor,” *Sun-Sentinel*, September 17, 1997.

34 “Pistols Aplenty: State’s Requirements for Handgun Licensing Are Easy to Meet,” *Pittsburgh Post-Gazette*, September 10, 1997.

35 “Corcoran was Denied a Machine Gun Permit,” *Fort Wayne Journal Gazette*, July 31, 1997.

- In Tulsa, OK, Harold Glover shot and killed Cecil Herndon in January 1997, as 250 4-year-old children at Bunche Early Childhood Development Center watched. The two argued about who would take their 4-year-old grandson home from school. Glover was in his car with his wife and grandson when he pulled out his .357 Magnum and shot Herndon.³⁶
- In Indianapolis on November 11, 1997, two women enjoying a meal were accidentally shot when Thomas Neuman's gun fell out of his pocket as he bent over to help retrieve a broken necklace.³⁷
- A postal clerk calmly shot his former wife and her friend in a Miami Beach post office, before turning the gun on himself.³⁸
- In March 1996 Clarence Wilbon of Little Rock fatally shot Gary Allen Smith once in the chest with a .44-caliber revolver.³⁹
- In Houston, TX, Pete Kanakidis shot and killed Alejandro Cruz Arroyo in May 1996, after a dispute over the ownership of some tools with two other men.⁴⁰
- In February 1996, Robert Asbury of Blacksburg, VA, died of a self-inflicted gunshot wound after he shot and killed his estranged wife and one of her former co-workers at her home.⁴¹

36 "Charges Approved for Concealed Gun Licensee; Man Faces Manslaughter Count in School Shooting," *Tulsa World*, February 12, 1997.

37 "Accidental gunshot hurts 2 at restaurant," *Indianapolis Star-News*, November 11, 1997.

38 "Postal Clerk Shoots 2, Kills Self," *Sun-Sentinel*, September 3, 1997.

39 "Fatal shootings involving concealed handguns," *Arkansas Democrat-Gazette*, February 8, 2001.

40 "Man Shot to Death in Flap Over Tools," *Houston Chronicle*, May 31, 1996 and "Murder Charge in Man's Death," *Houston Chronicle*, June 1, 1996.

41 "Blacksburg Shootings Called Murder-Suicide," *The Roanoke Times*, February 27, 1996.

APPENDIX B

| BREAKDOWN OF 2003 WORKPLACE SHOOTINGS | | | | | |
|---------------------------------------|------------------------|-------|-----------|-----------|---|
| DATE | PLACE | STATE | KILLED | WOUNDED | EMPLOYMENT OFFICE |
| 2/21/03 | Queens, NY | NY | 0 | 1 | Jamaica Service Program for Older Adults |
| 2/25/03 | Huntsville, AL | AL | 4 | 1 | Labor Ready Inc. |
| 5/9/03 | Cleveland, OH | OH | 1 | 1 | Case Western Reserve University |
| 6/2/03 | Atlanta, GA | GA | 1 | 0 | In Touch Wireless |
| 6/23/03 | Pittsburgh, PA | PA | 1 | 0 | United States Postal Carrier |
| 7/2/03 | Holts Summit, MO | MO | 3 | 5 | Modine Manufacturing Co. |
| 7/8/03 | Meridian, MS | MS | 7 | 8 | Lockheed Martin Factory |
| 7/9/03 | San Angelo, TX | TX | 2 | 0 | Verizon Wireless |
| 7/17/03 | Charleston, WV | WV | 0 | 1 | Kanawha County School Board |
| 7/23/03 | San Antonio, TX | TX | 3 | 1 | Century 21 Real Estate Office |
| 7/23/03 | New York, NY | NY | 1 | 1 | NY Council Chambers |
| 7/25/03 | Huntsville, AL | AL | 1 | 1 | Marriott Hotel |
| 7/28/03 | Boynton Beach, FL | FL | 3 | 2 | Golf Leaf Nursery |
| 8/8/03 | Wilmington, DE | DE | 2 | 1 | MBNA America |
| 8/19/03 | Andover, OH | OH | 2 | 2 | Andover Industries |
| 8/27/03 | Chicago, IL | IL | 7 | 0 | Windy City Core Supply |
| 8/29/03 | Nashville, TN | TN | 2 | 0 | Electric Picture Company |
| 9/1/03 | Texarkana, TX | TX | 3 | 0 | Outback Steakhouse Office |
| 9/10/03 | Gulfport, MS | MS | 1 | 0 | Newman Lumber Company |
| 9/13/03 | Redwood City, NJ | NJ | 1 | 0 | Yellow Cab Car |
| 9/15/03 | Louisville, KY | KY | 0 | 1 | Kidwell's Auto Beautification |
| 9/19/03 | Los Angeles, CA | CA | 0 | 1 | Kaiser Permanente Medical Center |
| 9/29/03 | Minneapolis, MN | MN | 0 | 2 | Hennepin County Government Center |
| 10/4/03 | Clarksdale, MS | MS | 2 | 1 | V's Grocery |
| 10/5/03 | Atlanta, GA | GA | 3 | 0 | Turner Monumental AME Church |
| 10/7/03 | Alcoa, TN | TN | 1 | 0 | Slide Lock and Tools |
| 10/8/03 | St. Paul, MN | MN | 1 | 0 | J & J Distributing |
| 10/28/03 | Memphis, TN | TN | 1 | 0 | Aiki Kai Martial Arts School |
| 10/28/03 | Boca Raton, FL | FL | 1 | 0 | Corner Deli |
| 10/31/03 | Forsyth, GA | GA | 1 | 0 | Paramont Grading |
| 10/31/03 | Shreveport, LA | LA | 0 | 1 | L & M Grocery |
| 11/4/03 | Fort Pierce, FL | FL | 1 | 0 | End Time Tabernacle Church |
| 11/6/03 | West Chester, OH | OH | 2 | 3 | Watkins Motor Lines West Chester Office |
| 11/6/03 | Spartanburg, SC | SC | 4 | 0 | Superbike Motorsports |
| 11/7/03 | Cincinnati, OH | OH | 0 | 1 | C & D Drive-Thru |
| 11/7/03 | Barberton, OH | OH | 0 | 2 | Sydmor's Jewelry Co. |
| 11/10/03 | Riviera Beach, FL | FL | 1 | 2 | Keller Trust |
| 11/13/03 | Houston, TX | TX | 0 | 2 | Westwood Technology Center |
| 11/19/03 | Baton Rouge, LA | LA | 0 | 1 | Microtel Inn and Suites |
| 11/26/03 | Miami, FL | FL | 1 | 1 | El Peruanito Cafeteria |
| 11/26/03 | Cranston, RI | RI | 0 | 1 | Eastland Food Products |
| 12/9/03 | Visalia, CA | CA | 2 | 0 | Print Xcel |
| 12/12/03 | Bensalem, PA | PA | 1 | 0 | Street Road Firestone Tire |
| 12/15/03 | Worcester, MA | MA | 0 | 2 | Lowe's Home Improvement |
| 12/29/03 | North Philadelphia, PA | PA | 2 | 0 | Liberty Management Service Contract Department of Corrections |
| TOTAL | | | 69 | 46 | |

Source: Nine to Five: Guns in the American Workplace, 1994-2003

APPENDIX C

A SAMPLE GUN-FREE POLICY

The advantages of prohibiting employees from bringing firearms onto your business property or carrying them during work are many. A comprehensive gun-free policy:

- Offers the greatest protection to customers and employees;
- Is the most consistent, and thus lessens the risks of legal liability should a violent incident occur; and
- Projects a public image of safety and security for your business.

The potential for an increase in workplace violence and intimidation, and therefore legal liability, for employers if workers are armed is simply too great to ignore.

Guns can be excluded from business premises by the posting of simple notices at the various entrances to property. In *Guns & Business Don't Mix: A Guide to Keeping Your Business Gun-Free*, we list the requirements for notice in most shall-issue CCW states.

Your company personnel policy should also include a provision prohibiting employees from bringing guns onto any property owned by the company, including parking lots, and from carrying guns at any time during which an employee is doing work for the company. This policy should be distributed to all employees, and a signature acknowledging that the policy was received and understood should be obtained from each employee. If your company does not have a general workplace violence plan, it would be wise to establish one and incorporate a gun-free policy within it.

Be sure to include the following in any company gun-free policy:

- Draft the policy broadly to prohibit concealed and other weapons, whether carried on an employee's person, brought into the company parking lot, or hidden in a vehicle brought on the company's premises. Where relevant, the policy should expressly state that despite the state's shall-issue CCW law, the company is allowed to prohibit concealed weapons on its property.

- Identify and comply with the gun-free notice requirements for your state. See *Guns & Business Don't Mix*.
- Include a "definitions" section which spells out the meaning of the terms used in the policy, such as "employee," "weapon," "possession" and "company property."
- Employers should review the gun-free policy with their employees and require a signed, written acknowledgment indicating that each employee has reviewed and understood the policy.
- The policy should state that any employee who violates the policy is subject to disciplinary action, up to and including termination from employment.

For example, the following language could be used in the employee manual:

Sample No Weapons Policy

It is the policy of [company name] that all firearms or dangerous weapons of any type, concealed or unconcealed, are prohibited on the company's business premises, including parking areas, regardless of whether the person is licensed to carry the weapon or not. This policy applies to all persons entering company premises, with the exception of authorized security personnel and law enforcement officers. Further, company employees, including contract and temporary employees, are prohibited from carrying firearms or dangerous weapons of any type outside the company's business premises while acting within the course of their employment, regardless of whether the person is licensed to carry the weapon.

Failure to abide by the terms of this policy may result in discipline up to and including termination. Further, carrying a weapon onto [company name] premises, including parking areas, in violation of this policy will be considered an act of criminal trespass, will be grounds for immediate removal from the premises, and may result in prosecution.

If you have a question about this policy, or become aware of anyone acting in violation of this policy, please call the human resources and/or security departments immediately.

ENDNOTES

- ¹ Guns & Business Don't Mix, Brady Center to Prevent Gun Violence (1997), available at www.bradycenter.org/xshare/pdf/reports/gunsnbusiness.pdf.
- ² See *Unity Church of St. Paul v. State of Minnesota*, 694 N.W.2d 585 (2005) (affirming lower court decision severing and striking down Minnesota law that prohibited private businesses, including churches, from banning guns from parking lots, on grounds that the law violated the single-subject requirement of the Minnesota constitution).
- ³ See generally William B. Scott, *In Pursuit of Happiness: American Conceptions of Property from the Seventeenth to the Twentieth Century* (1977).
- ⁴ Contrary to myth, guns were actually banned in many notorious outposts of the Wild West, including Dodge City. See, e.g., Bill Draper, *Guns Still an Issue in Modern-Day Dodge City*, Lawrence Journal-World, March 7, 2004, available at http://www2.ljworld.com/news/2004/mar/07/guns_still_an/. (“In the days when Wyatt Earp was making his name as a lawman in Dodge City, he banned guns north of the railroad tracks that ran through the frontier town, where most families lived.”).
- ⁵ The NRA has succeeded in getting shall-issue carrying concealed weapons (“CCW”) laws passed in 36 states. Only Alabama, California, Delaware, Hawaii, Illinois, Iowa, Kansas, Maryland, Massachusetts, Nebraska, New Jersey, New York, Rhode Island and Wisconsin still prohibit the carrying of concealed handguns or grant law enforcement discretion to deny CCW applicants a license to those who cannot demonstrate a need to carry a gun.
- ⁶ See *Guns & Business Don't Mix*, *supra*, note 1, at Appendix C (listing dozens of criminal offenses committed by CCW licensees in just one state: Florida). See also William Rempel and Richard Serrano, *Texas Concealed Handgun Law*, Los Angeles Times, Oct. 3, 2000, at 1 (finding that more than four hundred criminals – including rapists and armed robbers – had been issued CCW permits in Texas, with thousands more arrested for criminal behavior or found to be mentally unstable).
- ⁷ Dana Loomis, Stephen W. Marshall, and Myduc L. Ta, *Employer Policies Toward Guns and the Risk of Homicide in the Workplace*, 95 Am. J. of Pub. Health 830 (2005).
- ⁸ Bureau of Labor Statistics, 2003 Census of Fatal Occupational Injuries: Industry by Transportation Incidents and Homicides, U.S. Department of Labor (2003) available at <http://stats.bls.gov/iif/oshwc/cfoi/cftb0188.pdf>.
- ⁹ Bureau of Labor Statistics, Number of Nonfatal Occupational Injuries and Illnesses Involving Days Away From Work By Event or Exposure Leading to Injury or Illness and Selected Natures of Injury or Illness, U.S. Department of Labor (2002) available at <http://stats.bls.gov/iif/oshwc/osh/case/ostb1298.pdf>.
- ¹⁰ No shall-issue CCW law has even attempted to provide legal immunity to businesses that experience a shooting incident after permitting guns to be carried on company property. Moreover, even though Oklahoma's “forced-entry” law included an immunity section, as will be seen below in Section Two (B), it is wholly inadequate to protect businesses if a shooting is committed with a gun stored in a vehicle on company property.
- ¹¹ See *Guns & Business Don't Mix*, *supra* note 1, at Section One.
- ¹² The prevalence of guns in American society is a prime reason why America has a much higher rate of violent gun crime than other industrialized societies. See David Hemenway, *Private Guns, Public Health* 45-46 (The University of Michigan Press 2004) (finding the murder rate in the United States “five times higher than the average rate for other developed nations,” and ranking the United States first among developed nations in homicide rates); Franklin E. Zimring and Gordon Hawkins, *Crime Is Not the Problem: Lethal Violence in America* 106-23 (Oxford University Press 1997) (discussing how the prevalence of firearms in the

United States increases the lethality of violence in this country as opposed to other industrialized nations).

¹³ The NRA pushed through the first version of this law in 2004 (Okla. Stat. tit. 21 §§ 1289.7a & 1290.22 (2004)), but then went back to amend the law in 2005 (2005 Okla. Sess. Laws H.B. 1243 (to be codified at Okla. Stat. tit. 21 § 1289.7a)) after the law was challenged by various Oklahoma corporations. See *Williams Companies, Inc. v. Henry*, No. 04-CV-820 H (J), 2004 U.S. Dist. LEXIS, 2004 WL 3200338 (N.D. Okla. Dec. 20, 2004).

¹⁴ The law states, in full:

“ A. No person, property owner, tenant, employer, or business entity shall maintain, establish, or enforce any policy that has the effect of prohibiting any person, except a convicted felon, from transporting and storing firearms in a locked motor vehicle, or from transporting and storing firearms locked in or locked to a motor vehicle on any property set aside for any motor vehicle.

“ B. No person, property owner, tenant, employer, or business entity shall be liable in any civil action for occurrences which result from the storing of firearms in a locked motor vehicle on any property set aside for any motor vehicle, unless the person, property owner, tenant, employer, or owner of the business entity commits a criminal act involving the use of the firearms. The provisions of this subsection shall not apply to claims pursuant to the Workers’ Compensation Act.

“ C. An individual may bring a civil action to enforce this section. If a plaintiff prevails in a civil action related to the personnel manual against a person, property owner, tenant, employer or business for a violation of this section, the court shall award actual damages, enjoin further violations of this section, and award court costs and attorney fees to the prevailing plaintiff.

“ D. As used in this section, ‘motor vehicle’ means any automobile, truck, minivan, sports utility vehicle, motorcycle, motor scooter, and any other vehicle required to be registered under the Oklahoma Vehicle License and Registration Act.” (H.B. 1243, *supra* note 13).

A decision by the Court of Criminal Appeals of Oklahoma has held this is a criminal statute that subjects violators to imprisonment in the county jail or a fine, or both. *Whirlpool Corp. v. Henry*, 110 P.3d 83, 85 (Okla. Crim. App. 2005).

¹⁵ H.B. 1243, *supra* note 13 (to be codified at Okla. Stat. tit. 21 § 1289.7a(C)). The NRA’s decision to support expanding the rights of citizens to sue American businesses is completely hypocritical, as its other major legislative priority over the last several years has been to push a bill in Congress that grants broad legal immunity from lawsuits by persons directly injured due to the negligence of gun dealers or gun manufacturers. A version of that legislation – S.397 – passed the U.S. Senate on July 29, 2005, and the U.S. House on October 20, 2005. The President signed the bill into law on October 26, 2005.

¹⁶ H.B. 1243, *supra* note 13 (to be codified at Okla. Stat. tit. 21 § 1289.7a(B)).

¹⁷ There are a host of other dangerous types of people who cannot be excluded from bringing guns onto private property under the Oklahoma law. A partial list would include: violent misdemeanants, persons charged with a violent felony, persons suffering from mental illness, and persons on the terrorist watch list.

¹⁸ See e.g. Long-Range Fifty Caliber Sniper Weapons, Minority Staff Report, Comm. on Gov’t Reform, U.S. House of Representatives, May 3, 1999; CBS News, *Big Rifle A Terrorist Tool*, Jan. 9, 2005.

¹⁹ See e.g. Clay Harden, *Motive Unknown in Deadly Attack*, The Clarion-Ledger, July 9, 2003, at 1A (investigators found multiple weapons in the shooters truck after killing five and injuring nine at a Lockheed-Martin plant in Meridian, Mississippi). See also *infra* Section Two (A) (describing numerous mass workplace shooting incidents).

²⁰ The NRA’s step-by-step strategy with respect to shall-issue CCW laws leaves little doubt that the NRA has much more in mind than just forcing guns into parking lots. First the NRA backed shall-issue CCW laws in a single state: Florida. Next it expanded its target list of states until it reached 30 or more. As it achieved success in many states, the NRA then went back into states that passed shall-issue CCW laws and sought to expand those laws. For example, many states had pro-

hibited CCW licensees from carrying guns into bars, schools, courts, amusement parks, and other places where guns were not appropriate. The NRA has systematically tried to weaken these restrictions in subsequent legislative sessions. For example, in 2000, under pressure from the NRA, the Kentucky Legislature overturned a state law that prohibited CCW licensees, with the exception of permit-holding pastors, from carrying concealed weapons into a church. See Rick McDounough and Michael Quinlan, *2000 Kentucky General Assembly; House Votes to Require That Confiscated Guns Be Sold*, *The Courier-Journal*, Mar. 30, 2000 at 06B. In 2003, Texas passed an NRA-backed law requiring local governments to allow CCW licensees to carry firearms into government offices and buildings, including libraries and police stations. See Matt Schwartz and Cindy Horswell, *Recently Passed Bill Ends Gun Ban at City Facilities*, *Houston Chronicle*, June 5, 2003, at A1.

Many states also set up gun safety training requirements for CCW licensees. The NRA has sought to weaken these training requirements. In 2004, at the NRA's urging, the Utah Legislature considered repealing the state's training requirements. See Amy Joi Bryson, *Firearms Training Debated*, *Deseret Morning News*, May 20, 2004.

The NRA has also fought to prevent states from keeping records on violent behavior exhibited by CCW licensees to conceal the negative repercussions caused by shall-issue CCW laws. See, e.g., Ohio Rev. Code Ann. § 2923.129(B)(1) (providing that a sheriff's records relative to the issuance, renewal, suspension or revocation of a license to carry a concealed handgun are confidential and not public records).

²¹ See *Florida Invites Mayhem*, *Hartford Courant*, Oct. 10, 2005 ("Such broad language is an open invitation to armed, trigger-happy residents to take the law into their own hands."); Tim Harper, *Snowbirds Get Gun Law Alert*, *Toronto Star*, Oct. 10, 2005 (stating the law is founded upon the principle that "no one should have to run from a confrontation – [but] should be able to shoot instead" and "extend[s] [the] right to use firearms" for personal protection in public); Jason Thompson, *Floridians Shoot First, Ask Questions Later*, *Northern Life*, Oct. 13, 2005 (finding that the law could result in "vigilante violence" by encouraging

citizens "to use firearms to settle disputes."); David Person, *At Least Aim Before Shooting*, *Huntsville Times*, Oct. 7, 2005 (finding that the law is expansive and encourages vigilante justice that allows individuals to shoot and kill without the threat of civil or criminal prosecution). See also Abby Goodnough, *Tourists to Florida Get a Warning as Greeting*, *New York Times*, Oct. 4, 2005; Jim Shea, *Make Your Day*, *Hartford Courant*, Oct. 12, 2005; Beth Kassab, *The Brady Campaign is Giving Tourists Leaflets that Warn Them to Take Precautions Here*, *Orlando Sentinel*, Oct. 20, 2005.

²² The NRA has a long and sordid history of blacklisting anyone that refuses to march to their extreme agenda. See www.nrablacklist.com.

²³ Wayne LaPierre, *Standing Guard*, *America's 1st Freedom*, Aug. 2005, at 11 ("In the coming months, we will be carrying this fight to other states to assure that the protections guaranteed to Oklahoma gun owners... will apply everywhere."). See also Ralph Blumenthal, *N.R.A. Fights Energy Giant Over Stance On a Lawsuit*, *The New York Times*, August 3, 2005 at A13.

²⁴ *Industry Challenges State Law to Keep Guns Off Company Property*, *Inside OSHA*, August 22, 2005.

²⁵ See *Williams Companies, Inc.*, *supra* note 13.

²⁶ See Kris Axtman and Mark Clayton, *Guns In the Trunk: Worker Right or Workplace Danger?*, *Christian Science Monitor*, Aug. 12, 2005, at 1.

²⁷ Blaine Smith, *Freedom Rings In*, *America's First Freedom*, Oct. 2005 (suggesting that the concerns of ConocoPhillips regarding workplace safety – e.g. firearms in the proximity of hazardous materials – are "ridiculous" and that the NRA would boycott Conoco because such concerns should not "trump" an employee's right to keep a handgun, shotgun or any gun in their vehicle while at work).

²⁸ *Williams Cos. Inc., Whirlpool, and the Oklahoma Chamber of Commerce have all pulled out of the lawsuit*. See *Williams Cos. Inc. Back Out of Challenge to Oklahoma Gun Law*, *Muskogee Daily Phoenix and Times Democrat*, Aug. 11, 2005.

²⁹ There have been numerous editorials written slamming the NRA's campaign as going too far. See, e.g., *The NRA Should Hold Its Fire*, *Business Week*, Aug.

15, 2005, at 102 (“employers... must also have the freedom to set rules to ensure their workers’ safety while on their premises”); *The NRA at Work*, The St. Petersburg Times, Oct. 7, 2005 (quoting the chief executive of Associated Industries of Florida as stating “Common sense and experience tell us weapons do not belong in the work environment; also finding “a 10-year nationwide survey counted 164 workplace shootings, mostly by disgruntled employees or customers.”); *NRA Dead Wrong in Oklahoma*, Atlanta Journal-Constitution, Aug. 5, 2005, at 18A (“if the NRA really had the interests of Americans at heart instead of its own narrow self-interest, the organization would applaud business efforts to improve work-environment safety”); *Off Target: NRA Goes Too Far With Boycott*, Dallas Morning News, Aug. 5, 2005, at 24A (“we’re looking at the common-sense logic of trying to reduce on-the-job shootings, killings that no law-abiding NRA member would condone”); *Guns/Parking-lot Bans Are Reasonable*, Minneapolis Star-Tribune, Aug. 5, 2005, at 18A (“In ConocoPhillips’ case, the concern is simply for employee safety.... Silly us, we thought the NRA was big on personal rights.”); *Bring a Gun to Work? What’s the NRA Thinking?*, South Florida Sun-Sentinel, Oct. 9, 2005 (quoting a North Carolina study that found “policies allowing guns in the workplace might increase workers’ risk of of homicide” and stating that “public interest rests with employers’ ability to set sensible safety rules.”); Dan K. Thomasson, *Gun Lobby Moves Onto Private Property*, Scripps-Howard, Aug. 8, 2005 (“statistics show that too often when guns are close by, routine arguments and disagreements deteriorate into deadly altercations.”). Even conservative papers, such as one in Harlingen, Texas, that support gun owners have come down on the side of property rights. See *Competing Rights*, Valley Morning Star, Aug. 23, 2005 (“it’s the company’s property, so it gets to set the rules”).

³⁰ *Dairy Queen of Oklahoma, Inc. v. Commissioner of Internal Revenue*, 250 F.2d 503, 506 (10th Cir. 1957). See also *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 435-36 (1982) (“The power to exclude has traditionally been considered one of the most treasured strands in an owner’s bundle of property rights.”); *Kaiser Aetna v. United States*, 444 U.S. 164, 179-80 & n.11 (1979) (“the ‘right to exclude’ [is]

so universally held to be a fundamental element of the property right, [that it] falls within [the] category of interests that the Government cannot take without compensation”); *Bresnik v. Beulah Park Ltd. Partnership*, 617 N.E.2d 1096, 1097 (Ohio 1993) (owner of private business has common-law right to exclude others from business premises); Restatement of Property § 7 (1936) (possessory interest in land exists when person has such control over it as to be able to exclude other members of society in general from the land); David L. Callies and J. David Breemer, *The Right to Exclude Others from Private Property: A Fundamental Constitutional Right*, 3 Wash. U. J.L. & Pol’y 39, 40-41 (2000) (“The United States Supreme Court has clearly and unequivocally stated that the right to exclude is a fundamental element of [the] constitutionally-protected right to private property”); Laurence H. Tribe, *American Constitutional Law*, at 604-05 n.33 (2d ed. 1988) (“[U]ncompensated physical invasions by third parties acting under the express authorization of government are just as unconstitutional as are takings in which the government itself is the trespasser”).

³¹ The Second Amendment states: “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” U.S. Constitution, amend. II. It has repeatedly been held by the United States Supreme Court and by federal appellate courts that there is no federal constitutional right of individuals to possess firearms. See *United States v. Miller*, 307 U.S. 174 (1939) (holding that the “obvious purpose” of the right to keep and bear arms in the Second Amendment was to “assure the continuation and render possible the effectiveness” of state militias, and that the guarantee of that right “must be interpreted and applied with that end in view.”); *Lewis v. United States*, 445 U.S. 55 (1980) (holding that restricting gun possession by convicted felons did not “trench upon any constitutionally protected liberties”). See also *United States v. Parker*, 362 F.3d 1279, 1282 (10th Cir. 2004) (“[T]he Second Amendment does not guarantee an individual the right to keep and transport a firearm where there is no evidence that possession of that firearm was related to the preservation or efficiency of a well-regulated militia.”), cert. denied, 125 S. Ct. 88 (2004); *United States v. Lippman*, 369 F.3d 1039, 1044 (8th Cir. 2004); *United*

States v. Price, 328 F.3d 958, 961 (7th Cir. 2003); *Silveira v. Lockyer*, 312 F.3d 1052, 1066 (9th Cir. 2003), reh'g en banc denied, 328 F.3d 567 (9th Cir. 2003); *Olympic Arms v. Buckles*, 301 F.3d 384, 388-389 (6th Cir. 2002); *Fraternal Order of Police v. United States*, 173 F.3d 898, 906 (D.C. Cir. 1999) (applying militia-based Miller test); *United States v. Wright*, 117 F.3d 1265, 1273 (11th Cir. 1997); *United States v. Rybar*, 103 F.3d 273, 286 (3d Cir. 1996); *Love v. Peppersack*, 47 F.3d 120, 124 (4th Cir. 1995); *Hickman v. Block*, 81 F.3d 98, 101 (9th Cir. 1996); *Thomas v. City Council of Portland*, 730 F.2d 41, 42 (1st Cir. 1984); *United States v. Toner*, 728 F.2d 115, 128 (2d Cir. 1984). Moreover, even if there were such a right, it would not apply to private businesses. Cf. *Lloyd Corp., Ltd. v. Tanner*, 407 U.S. 551 (1972) (holding that owners of a private shopping center could prohibit individuals from distributing handbills at the shopping center because First and Fourteenth Amendments limitations on state action do not extend to private property owners). Thus, there is no federal constitutional obstacle to a gun-free policy.

³² Right-to-bear-arms provisions in state constitutions also do not trump the rights of property owners to exclude guns from their premises. For example, the Utah Supreme Court, in a case involving the firing of employees that violated company policy by bringing guns onto company property in their motor vehicles, held that absent a clear showing that the legislature intended to override traditional private property rights, the right to keep and bear arms under the Utah Constitution does not take preeminence over such property rights. *Hansen v. America Online, Inc.*, 96 P.3d 950, 955 (Utah 2004).

³³ H.B. 1243, *supra* note 13 (to be codified at Okla. Stat. tit. 21 § 1289.7a(A)).

³⁴ *Whirlpool Corp.*, *supra* note 14 at 85.

³⁵ H.B. 1243, *supra* note 13 (to be codified at Okla. Stat. tit. 21 § 1289.7a(C)).

³⁶ See *Williams Companies, Inc. v. Henry*, No. 04-CV-820-TCK-PJC (N.D. Okla. Aug. 8, 2005) (stipulation of dismissal of plaintiff). Some of the original company plaintiffs withdrew from this suit, however, after the NRA announced a boycott of ConocoPhillips.

³⁷ See *Whirlpool Corp.*, *supra* note 14 (motion for temporary restraining order and/or preliminary injunctive relief and brief in support).

³⁸ See *id.* (supplemental authority in further support of motion for preliminary injunctive relief).

³⁹ In granting a temporary restraining order, the court ruled that the corporations opposing the Oklahoma law “ha[ve] shown ... a substantial likelihood of prevailing on the merits.” *Whirlpool Corp. v. Henry*, No. 04-CV-820H(J) (N.D. Okla. Nov. 3, 2004) (order granting temporary restraining order).

⁴⁰ See Blumenthal, *supra*, note 23.

⁴¹ See NRA Institute for Legislative Action Fundraising Letter (Sept. 30, 2005) (on file with the Brady Center).

⁴² It is also profoundly hypocritical for the NRA to back criminal and civil penalties for all businesses that bar guns as a measure designed to protect the safety of employees and customers, yet back a bill in Congress – S.397 – designed to **protect gun companies** that make and sell a deadly product from legal liability even when their gross negligence has directly armed a criminal.

⁴³ See Terry S. Boone, *Violence in the Workplace and the New Right to Carry Law – What Employers Need to Know*, 37 S. Tex. L. Rev. 873, 891 (1996) (“With respect to employees and applicants for employment, employers are entirely within their rights to condition employment on not carrying weapons onto employer property or at employer-sponsored events. Such a prohibition is no different from other terms or conditions of employment, like a no solicitation policy or a policy relating to the attire to be worn by employees. An anti-weapons policy operates like any other term of employment, which employees or applicants may either accept, by continuing to work after the policy is announced, or reject, by choosing not to work for that employer.”); *Dunn v. Nordstrom, Inc.*, No. IP 98-1599 C-M/S, 2000 U.S. Dist. LEXIS 20513 at *18, 2000 WL 33309373 at *6 (S.D. Ind. June 27, 2000) (terminating employee for violating company prohibition against bringing firearms onto premises is legitimate and justifiable reason for termination), *aff’d in part and rev’d in part on other grounds*, 260 F.3d 778 (7th Cir. 2001); *Misco, Inc. v. United Paperworkers Int’l Union*,

- 768 F.2d 739, 742-43 (5th Cir. 1985) (“In adopting plant rules, an employer is not narrowly limited to denouncing acts already made criminal by the law but may, at a minimum, adopt reasonable prophylactic measures going beyond the statutes. As examples, we think it scarcely open to doubt that rules forbidding the introduction of . . . firearms (loaded or not) [onto plant premises] would be valid . . .”), *rev’d on other grounds*, 484 U.S. 29 (1987); *Mannikko v. Harrah’s Reno, Inc.*, 630 F. Supp. 191, 197 (D. Nev. 1986) (employer could set whatever reasonable standards it wished for employees); *Quarles v. North Mississippi Retardation Center*, 455 F. Supp. 52, 57 (N.D. Miss. 1978) (“Employers have the right to establish reasonable policies to govern the conduct of employees . . .”); *Gentleman v. Werner*, 361 F. Supp. 278, 281 (W.D. Pa. 1973) (employer can pick time, place, and manner of employment); *Randall’s Food Markets, Inc. v. Johnson*, 891 S.W.2d 640, 645-46 (Texas 1995) (employer can dictate terms of employment).
- ⁴⁴ *Hansen*, *supra* note 32 at 955-56.
- ⁴⁵ H.B. 1243, *supra* note 13 (to be codified at Okla. Stat. tit. 21 § 1289.7a(C)).
- ⁴⁶ 29 U.S.C. § 654(a).
- ⁴⁷ *Champlin Petroleum Co. v. OSHARC*, 593 F.2d 637 (5th Cir. 1979) (“The general duty obligation . . . requires the employer to eliminate only ‘feasibly preventable’ hazards.”). See also *National Grain & Feed Ass’n v. OSHA*, 858 F.2d 1019 (5th Cir. 1988) (discussing feasibility requirement); *Waldon Health Care Center*, 16 OSHC (BNA) 1052 (1993) (outlining test).
- ⁴⁸ Cynthia Atwood, Department of Labor, Associate Solicitor for the Occupational Safety and Health Administration, Memorandum, May 1992 (quoted in Dean J. Schaner, *Have Gun Will Carry: Concealed Handgun Laws, Workplace Violence, and Employer Liability*, Emp. Rel. L.J. (1996)). See also Jonathan A. Segal, *When Charles Manson Comes to the Workplace*, HR Magazine, June 1994, at 33 (discussing May 1992 memorandum which was distributed to OSHA regional supervisors). In the Fall of 1993, OSHA fined a Chicago psychiatric hospital for failing to protect its employees from violence perpetrated by its patients. *Psychiatric Hospital in Chicago Cited by OSHA for Workplace Violations*, 23 O.S.H. Rep. (BNA) 646 (1993).
- ⁴⁹ Martin Gringer, *Employer Responsibility for Workplace Violence*, N.Y.L.J., July 8, 1996 at 1 (quoting *Guidelines for Preventing Workplace Violence for Health Care and Social Service Workers*, 25 O.S.H. Rep. (BNA) 1439 (1996)). In 1993, an apartment complex located in a high-crime area was cited for failing to furnish a workplace free of recognized violence hazards. *Megawest Financial, Inc.*, 1995 OSHARC LEXIS 80.
- ⁵⁰ OSHA’s guidelines recognize that one of the risk factors for increased work-related assaults is “[t]he prevalence of handguns” in the workplace. *Guidelines for Preventing Workplace Violence for Health Care and Social Service Workers*, *supra* note 49 at 1440.
- ⁵¹ See *infra* Section Two.
- ⁵² U.S. Const. art. VI, cl. 2.
- ⁵³ *Whirlpool Corp.*, *supra* note 14 (Brief of the Oklahoma State Chamber of Commerce as Amicus Curiae in support of plaintiff’s complaint and motion for a temporary order and/or preliminary injunction) (quoting *Guidelines for Preventing Workplace Violence for Health Care and Social Service Workers*, *supra* note 49).
- ⁵⁴ Hundreds of articles and studies have documented the serious problems of workplace violence. See, e.g., Loomis, Marshall & Ta, *supra* note 7; Kristi R. Anderson, Mary P. Tyler & E. Lynn Jenkins, *Preventing Workplace Violence*, 34 J. of Employee Assistance 48 (2004); Critical Incident Response Group, *Workplace Violence: Issues in Response*, National Center for the Analysis of Violent Crime, FBI Academy (Mar. 1, 2004), available at <http://www.fbi.gov/publications/violence.pdf>; Jane Lipscomb et al, *Preventing Injuries & Abuse: Perspectives on Legal Strategies to Prevent Workplace Violence*, 30 J.L. Med. & Ethics 166 (2002); Dana Loomis et al, *Homicide on the Job: Workplace and Community Determinants*, 154 Am. J. of Epidemiology 410 (2001); Detis T. Duhart, *Violence in the Workplace, 1993-99*, Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice, available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/vw99.pdf>; Injury Prevention Research Center, *Workplace Violence: A Report to the Nation*, University of Iowa (Feb. 2001), available at <http://www.publichealth.uiowa.edu/IPRC/NATION.P>

- DF; Boone, *supra* note 43; Schaner, *supra* note 48; Karen Botham, *Violence is on the Increase in the Workplace*, Jacksonville Business Journal, May 31, 1996; Denise Edgington, *Settling the Score*, Business Record, Apr. 22, 1996; James A. Morrissey, *Workplace Violence Rising*, Textile World, Feb. 1, 1996; Michael Ozurovich, *Workplace Violence: A Civil Remedy for Accountability*, Sacramento Bee, June 25, 1995, at G2; Carol J. Casteneda & Kevin Johnson, *Employers on Guard for Violence*, USA Today, Apr. 5, 1995, at 3A; Ronald A. Gray & Teri Wood, *Employees at Risk: Companies Obligated to Provide Safe Workplace*, N.Y.L.J., Oct. 31, 1994, at S1; Mary Helen Yarborough, *Securing the American Workplace*, HR Focus, Sep. 1, 1994, at 1; Anastasia Toufexis, *Workers Who Fight Firing With Fire*, Time, Apr. 25, 1994, at 34; Joan E. Rigdon, *Workplace: Companies See More Workplace Violence*, Wall St. Journal, Apr. 12, 1994, at B1; Michael R. Losey, *Managing in an Era of Workplace Violence*, Managing Office Tech., Feb. 1, 1994, at 27; Bob Smith, *Cease Fire!: Preventing Workplace Violence*, HR Focus, Feb. 1, 1994, at 1; Helen Frank Bensimon, *Violence in the Workplace*, Training & Development, Jan. 1994, at 26.
- ⁵⁵ 2003 Census of Fatal Occupational Injuries: Industry by Transportation Incidents and Homicides, *supra* note 8.
- ⁵⁶ Number of nonfatal injuries and illnesses involving days away from work by event or by event or exposure leading to injury or illness and selected natures of injury or illness 2002, *supra* note 9.
- ⁵⁷ 2003 Census of Fatal Occupational Injuries: Industry by Transportation Incidents and Homicides, *supra* note 8.
- ⁵⁸ National Center for Injury Prevention and Control, WISQARS Injury Mortality Reports, 1999-2002, Centers for Disease Control, available at http://webapp.cdc.gov/sasweb/ncipc/mortrate10_sy.html.
- ⁵⁹ 2003 Census of Fatal Occupational Injuries: Industry by Transportation Incidents and Homicides, 2003, *supra* note 8.
- ⁶⁰ Bureau of Labor Statistics, 2003 Census of Fatal Occupational Injuries: Fatal Occupational Injuries by Event or Exposure and Age, All United States (2003) available at <http://www.bls.gov/iif/oshwc/cfoi/cftb0194.pdf>.
- ⁶¹ Women's Safety and Health Issues at Work, National Institute for Safety and Health, available at <http://www.cdc.gov/niosh/topics/women>.
- ⁶² Between 1997 and 2001, an average of 61 fatal attacks occurred each year by a co-worker or former worker against a fellow worker or supervisor. See Stephanie Armour, *Stopping a Killer – Death in the Workplace*, USA Today, July 16, 2004, at 1a.
- ⁶³ See John Strahinich, *Memo to Bosses: Be Afraid*, Boston Herald, May 6, 2005, at 31.
- ⁶⁴ Gray & Wood, *supra* note 54 at S1; Boone, *supra* note 43 at 874 n.6.
- ⁶⁵ Kinney & Johnson, *Breaking Point, the Workplace Violence Epidemic and What to Do About It*, National Safe Workplace Inst. 27 (Sept. 1993). See also Littler, Mendelson, P.C., *The National Employer 2005-2006* 3 (Feb. 1, 2005) (discussing report); Patrick H. Hicks, *Workplace Violence: Reducing the Risk*, Nevada Lawyer, July 1995, at 14-15 (same).
- ⁶⁶ See *Cost of Violence in the Workplace Skyrockets Past \$36 Billion*, Business Wire, Apr. 18, 1995, at 1; Boone, *supra* note 43, at 874 n.7.
- ⁶⁷ Kathy Gurchiek, *Workplace Violence on the Upswing*, HR Magazine, July 1, 2005.
- ⁶⁸ Shiela Anne Feeney, *The High Cost of Employee Violence*, Workforce Management, Aug. 2003, at 23.
- ⁶⁹ Id.
- ⁷⁰ See, e.g., *Workplace Avenger: Florida Gunman Fits Profile*, St. Louis Post-Dispatch, Feb. 11, 1996, at 6B (citing U.S. Department of Justice statistics).
- ⁷¹ In 1995, according to a study by the American Medical Association, disputes that started at home carried over into 60,000 instances of workplace violence. Doug Levy, *USA Almost Flunks Violence Report Card*, USA Today, June 12, 1996, at 1D.
- ⁷² Natasha Lee, *Two Are Shot To Death at Maintenance Yard; L.A. City Employee Allegedly Killed His Boss, Coworker After Being Reprimanded*, Los Angeles Times, Feb. 25, 2005, at B1.
- ⁷³ Wlox.com, *Police: Witnesses Say Lett Was Shooting To Kill*, Mar. 2, 2005.

- ⁷⁴ Associated Press, *Six Dead in Kansas Workplace Shooting: Authorities Still Don't Know Gunman's Motive*, MSNBC, July 3, 2004.
- ⁷⁵ Frank Main, *Enraged Ex-Employee Was Fired 6 Months Ago 'A Bomb Waiting to Explode' Slays 6 Before Cops Kill Him*, Chicago Sun Times, Aug. 28, 2003.
- ⁷⁶ Dennis R. Roddy, *Two Dead, Two Wounded As Ohio Worker Opens Fire*, Pittsburgh Post-Gazette, Aug. 20, 2003, at A-1.
- ⁷⁷ Maro Robbins & Mary Moreno, *Co-worker Turns Killer: Office Nightmare – Top Seller At North Side Real Estate Firm Kills Two and Wounds One*, San Antonio Express-News, July 24, 2003, at 1A.
- ⁷⁸ CBS News, *Six Dead in Mississippi Massacre*, July 9, 2003.
- ⁷⁹ See *Motive Unknown in Deadly Attack*, *supra* note 19.
- ⁸⁰ Bill Bell Jr. & Virginia Young, *Police See Job Stress As Possible Motive in Factory Killings: Worker Who Killed Three Was on Probation*, St. Louis Post-Dispatch, July 3, 2003, at A1.
- ⁸¹ *Insurance Executive Kills Co-Workers*, *Self*, The Augusta Chronicle, Sept. 17, 2002, at A02.
- ⁸² Tom Vanden Brook, *Two Die After Employee Opens Fire At Factory*, USA Today, Dec. 7, 2001, at 3A.
- ⁸³ Bill Douthat, *Laborer Blames Two Killings on Job Harassment*, Palm Beach Post, Aug. 22, 2001, at 3B.
- ⁸⁴ Scott Fornek, Robert C. Herguth & Art Golab, *Five Die in Shooting at Navistar Plant, Gunman Wounds Four in Rampage With AK-47 and Revolver at Melrose Park Site*, Chicago Sun-Times, Feb. 5, 2001, at 1.
- ⁸⁵ Carey Goldberg, *Seven Die in Rampage at Company, Co-Worker of Victims Arrested*, New York Times, Dec. 27, 2000, at A1.
- ⁸⁶ Tim Wyatt, *Car Wash Shootings Suspect Stands Trial Starting Monday*, The Dallas Morning News, Sep. 25, 2000, at 1A.
- ⁸⁷ *Five Dead After Hotel Worker's Gun Rampage*, The Scotsman, Dec. 31, 1999, at 7.
- ⁸⁸ Tracy Johnson, *Life in Prison for Shipyard Killer: Weary Families – Victims and Cruz's – Relieved Ordeal is Over*, Seattle Post-Intelligencer, Mar. 9, 2002, at A1.
- ⁸⁹ Staff, *Tragedy in Paradise*, The Honolulu Advertiser, Nov. 3, 1999, at 8A.
- ⁹⁰ *Three Killed by Gunman on Rampage*, Birmingham Evening Mail, Aug. 6, 1999.
- ⁹¹ Blaine Harden, *Worker Kills Four At Conn. Lottery; Accountant Shoots Executives*, *Self*, The Washington Post, Mar. 7, 1998, at A01.
- ⁹² Greg Rickabaugh, *Workers Recall Day of Terror At Phelon. Co.*, The Augusta Chronicle, Jan. 28, 2001, at A01.
- ⁹³ Matea Gold & Peter Y. Hong, *Worker Kills Two Colleagues, Wounds Four More*, The Los Angeles Times, June 6, 1997, at A1.
- ⁹⁴ For numerous additional real-life examples, see *Guns & Business Don't Mix*, *supra* note 1; *Armour*, *supra* note 62; Eugene Rugala, *Workplace Violence, Issues in Response*, U.S. Department of Justice, FBI 11 (2002).
- ⁹⁵ Chart is reprinted from *Nine to Five: Guns in the American Workplace, 1994-2003*, Handgun-Free America 11 (May 2004).
- ⁹⁶ Northwestern National Life Ins. Co., *Fear and Violence in the Workplace: A Survey Documenting the Experience of American Workers* 7, 9 (Oct. 1993).
- ⁹⁷ See, e.g., George Hunter, *How to Protect Employees From Violence in the Workplace*, Detroit News, July 22, 1996. (“Obviously, if a person seems to have an unnatural fixation with guns and other weapons, watch out”); Botham, *supra* note 54; Edgington, *supra* note 54; Morrissey, *supra* note 54; Bensimon, *supra* note 54, at 30; Louis P. DiLorenzo & Darren J. Carroll, *The Growing Menace: Violence In The Workplace*, 67 N.Y. St. B.J. 24, 26 (1995).
- ⁹⁸ Although the elements of the profile may vary, the typical perpetrator of workplace violence is:
- A male Caucasian, 25 to 40 years of age;
 - A loner with a history of violence and a *fascination with weapons*;
 - An angry person with few outlets for that anger, but who has requested some type of assistance in the past;

- A socially withdrawn person with a history of interpersonal conflict, family problems and marital strife;
- One who often gives verbal expression to his complaints about and to management, but then stops; and
- One who exhibits paranoia about others, or self-destructive behavior such as drug or alcohol abuse.

DiLorenzo & Carroll, *supra* note 97, at 26 (emphasis added). See also Bensimon, *supra* note 54, at 30 (outlining profile).

⁹⁹ Bensimon, *supra* note 54, at 30 (quoting Dr. James Alan Fox, Dean of the College of Criminal Justice at Northeastern University).

¹⁰⁰ See DiLorenzo & Carroll, *supra* note 97, at 24-27 (discussing potential employer liability for responses to workplace violence); Boone, *supra* note 43, at 884-88; John D. Thompson, *Psychiatric Disorders, Workplace Violence and the Americans With Disabilities Act*, 19 Hamline L. Rev. 25 (Fall 1995); Janet E. Goldberg, *Employees With Mental and Emotional Problems—Workplace Security and Implications of State Discrimination Laws, the Americans With Disabilities Act, the Rehabilitation Act, Workers’ Compensation, and Related Issues*, 24 Stetson L. Rev. 20 (Fall 1994); Edward Felsenthal, *Potentially Violent Employees Present Bosses With a Catch-22*, Wall Street Journal, Apr. 5, 1995, at B1 (noting that weeding out workers believed to be violent is more complicated than it might seem).

¹⁰¹ Bensimon, *supra* note 54, at 30.

¹⁰² See Littler, Mendelson, *supra* note 65 at § 29.2.2.

¹⁰³ 29 U.S.C. § 654(a).

¹⁰⁴ *Id.*

¹⁰⁵ See Champlin, National Grain, & Waldon *supra* note 47.

¹⁰⁶ See Attwod & Segal *supra* note 48.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ See, e.g., Texas Labor Code Ann. § 411.103 (Vernon 1995), which provides that:

Every employer shall:

- (1) provide and maintain employment and a place of employment that is reasonably safe and healthful for employees;
- (2) install, maintain, and use such methods, processes, devices, and safeguards, including methods of sanitation and hygiene, that are reasonably necessary to protect the life, health, and safety of the employer’s employees; and
- (3) take all other actions reasonably necessary to make the employment and place of employment safe.

See also e.g., Ga. Code Ann. § 34-2-10 (2005) (Employer’s duty as to safety); Cal. Lab. Code § 6400 (West 2005) (Safe and healthful employment and place of employment).

¹¹⁰ See, e.g., *Knutson v. Sioux Tools, Inc.*, 990 F. Supp. 1114 (N.D. Iowa 1998); *Daniels v. Thistledown Racing Club, Inc.*, 659 N.E.2d 346, 348 (Ohio Ct. App. 1995).

¹¹¹ See generally Restatement (Second) of Torts § 344; W. Page Keeton, Prosser and Keeton on The Law of Torts § 61 (1984).

¹¹² Boone, *supra* note 43, at 880 (“anytime an employer can reasonably foresee injuries to an employee or to individuals to whom the employer extends services, there is a potential for liability for violent acts”); *Taco Bell, Inc. v. Lannon*, 744 P.2d 43 (Colo. 1987) (foreseeability of injury is the primary factor in property owner’s liability); *Galloway v. Bankers Trust Co.*, 420 N.W.2d 437 (Iowa 1988) (same); *Butler v. Acme Markets, Inc.*, 445 A.2d 1141 (N.J. 1982) (same); *Graham v. M & J Corp.*, 424 A.2d 103 (D.C. 1980) (same).

¹¹³ Boone, *supra* note 43, at 881 (“If employer foreseeability can be established, the employer will have a duty to take steps to provide a safe environment and if it fails to do so, may be found negligent”); *Taco Bell*, 744 P.2d at 46-47 (“[C]ourts that have considered this issue have almost uniformly held that while owners or occupiers of land held open for business purposes are not insurers of their customers’ safety, a duty arises on the part of the owner or occupier to take reasonable measures to protect customers from injuries caused by

the criminal acts of unknown third persons when such acts are generally foreseeable”); Restatement (Second) of Torts § 449 (if the likelihood that a third person may commit a violent crime is one of the foreseeable hazards a company negligently fails to protect against, the company will be liable despite the criminal nature of the third party’s actions).

¹¹⁴ See, e.g., *Taco Bell*, 744 P.2d at 48 (restaurant patron injured); *Early v. N.L.V. Casino Corp.*, 678 P.2d 683 (Nev. 1984); *Stevens v. Jefferson*, 436 So.2d 33 (Fla. 1983) (bar patron shot); *Foster v. Winston-Salem Joint Venture*, 281 S.E.2d 36 (N.C. 1981) (woman assaulted in shopping mall parking lot); *Antrum v. Church’s Fried Chicken, Inc.*, 499 A.2d 807 (Conn. Super. Ct. 1985) (woman assaulted at drive-through window).

¹¹⁵ In *Sprecher v. Adamson Cos.*, 636 P.2d 1121 (Cal. 1981), the California Supreme Court set out a number of commonly-cited factors to consider in assessing a landowners’ liability, including the likelihood of injury to the plaintiff, the probable seriousness of such injury, the burden of reducing or avoiding the risk, the location of the land, and the possessor’s degree of control over the risk-causing condition. As will be seen below, these factors indicate that business owners who permit guns on their premises could be liable.

¹¹⁶ See, e.g., *DiCosala v. Kay*, 450 A.2d 508 (N.J. 1982) (holding Boy Scouts liable for camp counselor’s possession of guns in his camp quarters, when one of the guns was used in an unintentional shooting of a 6-year-old boy). See generally Littler, Mendelson, *supra* note 65, at 97-105 (discussing cases in which companies have been held liable for the foreseeable violent acts of third parties); Raneta Lawson Mack, *This Gun For Hire: Concealed Weapons Legislation in the Workplace and Beyond*, 30 Creighton L. Rev. 285, 312 (1997) (“it may logically be inferred that permitting weapons in the workplace increases the foreseeability that violence may occur”).

Proponents of widespread gun-carrying have argued that once a business prohibits guns it increases its legal risks due to the foreseeability that criminals will prey upon customers and employees they know are unarmed. Criminal attacks, however, are generally unforeseeable unless there is a history of crime at or near a particular business location. Compare Galloway, 420 N.W.2d at 438-39 with *Martinko v. H-N-W*

Assoc., 393 N.W.2d 320 (Iowa 1986) (new shopping mall with no history of violence was not liable for criminal attack, while older mall with such a history was liable). If there has been a history of crime, however, the solution is not to permit untrained and uncontrollable CCW licensees or others to draw their firearms and start a firefight on business property, which could lead to more serious legal problems, see Frank Bass, *Firing Line: Cities and Companies Say ‘No’ to Concealed Handguns*, Wall Street Journal, Dec. 20, 1995, at T4 (quoting employment attorney Garry Mathiason of Littler, Mendelson, Fastiff, Tichy & Mathiason, a national law firm specializing in employment issues). See *Guns & Business Don’t Mix*, *supra* note 1, at Section Two (A).

¹¹⁷ According to a leading gun owners magazine, at least one major underwriter, State Farm Insurance, will terminate or deny insurance to businesses that permit guns on their premises. “State Farm does not write an insurance policy or continue an existing policy if we become aware that a firearm is present. We feel the liability exposure that is presented by the firearm is too great to underwrite.” *State Farm Refuses Coverage for Minnesota Gun Owner*, The New Gun Week, May 1, 1997, at 9.

¹¹⁸ If an employer permits its employees to carry firearms to defend themselves or company premises, any unintentional shooting by the employee will likely yield liability against the employer.

¹¹⁹ See, e.g., *Yunker v. Honeywell, Inc.*, 496 N.W.2d 419 (Minn. Ct. App. 1993) (company liable to family of employee who was shot and killed by co-worker with known violent tendencies).

¹²⁰ See *DiCosala*, 450 A.2d at 514-16 (reviewing elements of torts and noting that a majority of states have recognized them).

¹²¹ See generally Littler, Mendelson, *supra* note 65, at § 29.2.1 (discussing case law); Boone, *supra* note 43, at 879-80 (discussing other cases); Schaner, *supra* note 48 (reviewing law); DiLorenzo & Carroll, *supra* note 97, at 27-29 (discussing additional cases); Roy A. Ginsburg, *Employment Law: Courts Around the Country Are Addressing Whether Employers May be Liable for the Negligent Hiring, Supervision and Retention*

- of *Employees Who Harm Others*, National Law Journal, July 8, 1996 (reviewing the law).
- ¹²² Kevin M. McCarthy, *Dealing With Workplace Violence*, 41 (4) Practical Lawyer 27, June 1995.
- ¹²³ Schaner, *supra* note 48.
- ¹²⁴ 450 A.2d 508 (N.J. 1982).
- ¹²⁵ *Id.* at 518.
- ¹²⁶ *Id.* at 519. The Florida Supreme Court has held unanimously that firearm sellers must be held to the “highest degree of care” in transferring a weapon because a firearm “involves such a high degree of risk of serious injury or death.” *Kitchen v. K-Mart*, 697 So. 2d 1200 (Fla. 1997).
- ¹²⁷ See Boone, *supra* note 43, at 884-87 (discussing employer guidelines); DiLorenzo & Carroll, *supra* note 97, at 25-27 (discussing employer liability for responses to workplace violence); McCarthy, *supra* note 122, at 35-40 (outlining what can be done to screen employees); Littler, Mendelson, *supra* note 65, at 49-57 (discussing potential for defamation, wrongful discharge, invasion-of-privacy claims stemming from actions against troubled employees).
- ¹²⁸ See, e.g., N.Y. Corrections Law § 753(1)(a) (McKinney 1994); *Guillermo v. Brennan*, 691 F. Supp. 1151 (N.D. Ill. 1988) (interpreting Wisconsin statute as precluding employer’s inquiry into or use of criminal conviction for insulation installer job).
- ¹²⁹ Fair Employment Practices Manual; EEOC Guide to Pre-Employment Inquiries, Lab. Rel. Rep. (BNA) No. 695 at 443:67 (1995); *Green v. Missouri Pacific R.R. Co.*, 523 F.2d 1290 (8th Cir. 1975).
- ¹³⁰ Felsenthal, *supra* note 100, at B1.
- ¹³¹ 2005 Okla. Sess. Laws H.B. 1243 at para. B (to be codified at Okla. Stat. tit. 21 § 1289.7a).
- ¹³² *Id.*
- ¹³³ Nathan Vardi, *Workers’ Con: Companies are Cheating on Workers’ Compensation, Costing Billions in Added Premiums and Leaving Their Employees at Risk*, Forbes, Feb. 28, 2005, at 34 (premium rates for workers compensation insurance “have risen 44% in the last three years . . . pushing total corporate costs to \$80 billion dollars annually.”)
- ¹³⁴ David Hemenway, Sara J. Solnick, and Deborah R. Azrael, *Firearms and Community Feelings of Safety*, 86 J. Crim. L. & Criminology 121, 124 (Fall 1995).
- ¹³⁵ *Id.*
- ¹³⁶ *Id.*
- ¹³⁷ This risk is not mere speculation. In September 1997, five men got into an argument inside Big Willy’s Saloon in Baldwin, Pennsylvania. According to reports, the argument led the men to rush to their vehicles in the parking lot to get their guns. All five individuals had valid Pennsylvania concealed-weapons permits. Shots were fired, and five people were injured, two critically. See *Pistols Aplenty: State’s Requirements for Handgun Licensing Are Easy to Meet*, Pittsburgh Post-Gazette, Sept. 10, 1997. See also *supra* notes 72-95 (discussing workplace shootings).
- ¹³⁸ Bensimon, *supra* note 54 at 32 (quoting S. Anthony Baron, author of *Violence in the Workplace: A Prevention and Management Guide for Business*). See also Stephanie Armour, *Life After Workplace Violence*, USA Today, July 15, 2004, at 3b (“Workplace killings typically take just minutes, but workers and their companies have been left profoundly traumatized.”); Rugala, *supra* note 94 at 58 (“The effects of [workplace] violence do not disappear after the violent act is over, and the harm is not only to the person directly attacked.”).
- ¹³⁹ See *supra*, Introduction.
- ¹⁴⁰ See www2.stophenra.com.
- ¹⁴¹ DiLorenzo & Carroll, *supra* note 97, at 30.
- ¹⁴² Bass, *supra* note 116, at T4 (quoting attorney Garry Mathiason).
- ¹⁴³ International Association of Chiefs of Police (“IACP”), *Combating Workplace Violence: Guidelines for Employers and Law Enforcement* 6 (1996) (report prepared by the Private Sector Liaison Committee).
- ¹⁴⁴ Schaner, *supra* note 48.
- ¹⁴⁵ Segal, *supra* note 48.
- ¹⁴⁶ See also Sarah J. Smith, *Workplace Violence: 10 Tips for a Proactive Prevention Program*, Professional Safety (November 2002) at 34.
- ¹⁴⁷ See *supra* note 13.

¹⁴⁸ Min. Stat. § 624.714, subd. 18(c) (2004), *voided by, Unity Church of St. Paul v. State of Minnesota*, 694 N.W.2d 585 (2005).

¹⁴⁹ *See supra* note 2.

¹⁵⁰ *See supra* note 24.

¹⁵¹ The NRA has stated it will seek these laws in all 50 states, but some of the first states where this will likely come up include: Florida, Indiana, Missouri, Mississippi, Wisconsin, Pennsylvania, Delaware, Kentucky and Tennessee.



Brady Center to Prevent Gun Violence

1225 Eye Street, NW Suite 1100

Washington, DC 20005

www.bradycenter.org