According to the Bureau of Labor Statistics, between 1997 and 2010, there were a total of 8,666 occupational homicides, of which 1,512 involved a work associate killing a coworker or former coworker \((n = 894)\), or a customer or client \((n = 618)\), followed by relatives \((n = 311)\), and lastly other personal acquaintances \((n = 323)\). With respect to gun use, of the 8,666 homicides, 6,850 were shot, including 639 who were shot by a work associate, 389 shot by a customer/client, 250 shot by a relative, and 266 shot by a personal acquaintance. Hence, a vast majority of all homicides involved gun use.¹

In recent years a move has been fostered by gun supporters to statutorily allow the possession of firearms, and in particular handguns, in both public and private parking lots. In October of 2013 the Wall Street Journal noted, relying on information from the Law Center to Prevent Gun Violence, that twenty-two states had implemented such parking lot statutes. States where these *bring your gun to work* laws have yet to be passed are likely to see proposals to enact similar statutes during upcoming legislative sessions. The gun supporters point to both the Second Amendment and to increased personal safety of those, primarily employees, who wish to have a firearm present for personal protection when traveling to and from the employer’s business site. Some employers have expressed concern that having firearms easily accessible by employees detracts from premises safety in that it increases the probability of an anger fueled, or spontaneous shooting incident. Specifically, those employers implead violation of the concept of the right of owners’ of property to dictate the conduct of others when upon

their premises. Both gun supporters and gun control advocates put forth personal safety as a rationale, as well as legal standing. This paper considers case law dealing with the respective positions, the current statutory enactments, and concerns and strategies for human resource manager and employers.

I. BACKGROUND

A. The Second Amendment

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.2

Recently the Supreme Court, in Heller v. District of Columbia,3 has recognized that the Second Amendment does guarantee the right to bear arms for individuals;4 there is no required connection to military service.5 The Court explained that the right covers any use of arms reasonably necessary for self-defense, including, but not limited to handguns, as long as they are not “dangerous and unusual weapons.” The Court held that the Second Amendment confers on individuals the right to keep and bear arms; state statutes banning handgun possession in the home violate the Second Amendment. It has been anticipated that the Heller decision will “impact the proliferation” of take your gun work laws.6

Heller began in 1976 with a citizen’s objection to a gun control law in the District of Columbia. The law “banned the possession of handguns and required that all firearms kept in the home be trigger-locked or disassembled.”7 The Court found the D.C. gun control law to be in direct violation of the Second Amendment.8 “To that end, the Heller court ultimately established that statutes which prohibit an operable firearm in the home for self-defense violate an individual’s right to bear arms.”9

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2 U.S. CONST. amend. II.
4 Id. at 635.
5 Id. at 627.
8 Heller, 554 U.S. at 570.
9 Logan A. Forsey, State Legislatures Stand Up for Second Amendment Gun Rights While the U.S. Supreme Court Refuses to Order a Cease Fire on the Issue, 37 SETON HALL LEGIS. J. 411, 414 (2013).
However, this Second Amendment right is not without limit. Justice Scalia, writing for the majority, specified that the Second Amendment does not confer a “right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.”\textsuperscript{10} The majority opinion is not intended to cast doubt on state and federal laws that limit gun rights. Felons and the mentally are still prohibited from possessing firearms;\textsuperscript{11} firearms are still prohibited in certain locations such as schools and government buildings;\textsuperscript{12} restrictions on the sale of firearms continue to exist.\textsuperscript{13} One legal scholar opines that the \textit{Heller} court “suggested that prohibitions on concealed carry might be constitutional.”\textsuperscript{14} He acknowledges that it is debatable whether \textit{Heller} said that only open carry handguns will fall under the Second Amendment, or only authorized governments “to choose between open and concealed carry, prohibiting either mode as long as the other mode remains available and effective.”\textsuperscript{15}

Two years following \textit{Heller}, in \textit{McDonald v. City of Chicago},\textsuperscript{16} the Court again interpreted the Second Amendment to hold that it applies to state governments as well as federal.\textsuperscript{17} Chicago had passed a law that banned handgun possession by most private citizens, leaving them to the mercy of criminals.\textsuperscript{18} The plaintiffs were Chicago residents who wanted to keep handguns in their homes for self-defense but were prohibited from doing so by Chicago’s firearms laws. A city ordinance provided that “[n]o person shall . . . possess . . . any firearm unless such person is the holder of a valid registration certificate for such firearm.”\textsuperscript{19} The Code then prohibited registration of most handguns, effectively banning handgun possession by almost all private citizens who resided in the City.\textsuperscript{20} Upholding the ban as constitutional, the Seventh Circuit noted that the \textit{Heller} decision had never specifically indicated if it applied to states as well as the federal government.\textsuperscript{21} Reversing the decision of the Seventh Circuit, the majority of the Supreme Court held that the Second Amendment’s right to keep and bear arms is fully applicable to the states by virtue of the Fourteenth

\begin{thebibliography}{9}
\bibitem{10} \textit{Heller}, 554 U.S. at 626.
\bibitem{11} Id. at 626-27.
\bibitem{12} Id.
\bibitem{13} Id.
\bibitem{15} Id. at 367-68.
\bibitem{16} 561 U.S. 742, 130 S. Ct. 3020 (2010).
\bibitem{17} 130 S.Ct. 3020, 3026 (2010).
\bibitem{18} Id. at 3021.
\bibitem{20} Id. at § 8–20–050(c).
\bibitem{21} NRA, Inc. v. Chicago, 567 F.3d 856-58 (7th Cir. 2009).
\end{thebibliography}
Amendment.\textsuperscript{22} “It is far too late to exhume what Justice Brennan, writing for the Court 46 years ago, derided as ‘the notion that the Fourteenth Amendment applies to the States only a watered-down, subjective version of the individual guarantees of the Bill of Rights.’”\textsuperscript{23} The Court concluded, “We therefore hold that the Due Process Clause of the Fourteenth Amendment incorporates the Second Amendment right recognized in \textit{Heller}.\textsuperscript{24}

At this time the Supreme Court has only dealt with the rights of individuals to have arms inside the home. In both \textit{Heller} and \textit{McDonald}, the Court declined to expressly determine whether the holdings limited the Second Amendment protection to guns in the home for self-defense, or if the right could be extended to public places.\textsuperscript{25} Lower courts are continuing to struggle with the issue of how far to extend the right to bear arms because the Supreme Court has refused to establish a standard. For example, the Fourth Circuit, in \textit{U.S. v. Masciandaro},\textsuperscript{26} expressed concern on whether individuals have the right to carry arms for self-defense into public areas. The court cautioned:

\begin{quote}
There exists a clearly-defined fundamental right to possess firearms for self-defense within the home. But a considerable degree of uncertainty remains as to the scope of that right beyond the home and the standards for determining whether and how the right can be burdened by governmental regulation.\textsuperscript{27}
\end{quote}

\textbf{B. The Occupational Safety and Health Act}\textsuperscript{28}

In 2002 an Oklahoma employer terminated several employees for possessing guns in their vehicles parked on the employer’s property.\textsuperscript{29} In response the Oklahoma legislature amended the Oklahoma Self-Defense Act to ban employers from establishing any policy or rule that has the effect of prohibiting employees from transporting and storing firearms in a locked vehicle that is parked in employers’ lots.\textsuperscript{30} Numerous other states, including Florida, allow persons with concealed handgun permits to store firearms in their vehicles while at work and additionally prohibits employers from

\textsuperscript{22} McDonald v. City of Chicago, 130 S. Ct. 3020, 3050 (2010).
\textsuperscript{23} Id.
\textsuperscript{24} Id.
\textsuperscript{25} Forsey, supra note 9, at 412.
\textsuperscript{26} 638 F.3d 485 (4th Cir. 2011).
\textsuperscript{27} Id. at 467.
\textsuperscript{29} Mathiason & Milano, supra note 6, at 63.
\textsuperscript{30} OKLA. STAT. tit. 21 §1290.22 (2013).
discriminating against employees, customers, or invitees who assert their rights under the law.\textsuperscript{31}

In response to this type of legislation, an Oklahoma federal district court ruled that banning employer no-gun policies were preempted by OSHA.\textsuperscript{32} The district court determined that state laws that ban employers from prohibiting firearms on their property are preempted by OSHA’s general duty clause that requires employers to protect workers from “recognized hazards that are causing or are likely to cause death or serious physical Harm.”\textsuperscript{33} However, in the next year a Florida district court analyzed essentially the same argument and upheld the state law.\textsuperscript{34}

In the year following the Florida decision the Tenth Circuit Court overturned the Oklahoma district court and agreed with the Florida court.\textsuperscript{35} In reversing the lower court, the Seventh Circuit explained:

Because the absence of any specific OSHA standard on workplace violence is undisputed, the district court correctly recognized that the only possible area of OSH Act preemption was under the general duty clause and the OSH Act’s overarching purpose. Thus, in finding preemption, the district court held that gun-related workplace violence was a “recognized hazard” under the general duty clause, and, therefore, an employer that allows firearms in the company parking lot may violate the OSH Act. We disagree. OSHA has not indicated in any way that employers should prohibit firearms from company parking lots. OSHA’s website, guidelines, and citation history do not speak at all to any such prohibition. In fact, OSHA declined a request to promulgate a standard banning firearms from the workplace.... In declining this request, OSHA stressed reliance on its voluntary guidelines and deference “to other federal, state, and local law-enforcement agencies to regulate workplace homicides.” OSHA is aware of the controversy surrounding firearms in the workplace and has consciously decided not to adopt a standard. Thus we are not presented with a situation where the general duty clause applies because OSHA has been unable to promulgate a standard for an “unanticipated hazard.”\textsuperscript{36}

\textsuperscript{31} FLA. STAT. §790.251 (2008).
\textsuperscript{34} Fla. Retail Ass’n. v. Attorney Gen of Fla., 576 F.Supp.2d 1281 (N.D. Fla. 2008).
\textsuperscript{35} Ramsey Winch, Inc. v Henry, 555 F.3d 1199, 1209-11 (10th Cir. 2009).
\textsuperscript{36} Id. at 1205-06 (quoting Teal v. E.I. DuPont de Nemours and Co., 728 F.2d 799, 804 (6th Cir. 1984)).
Obviously, not all parties in the controversy were supportive of the Tenth Circuit’s decision; it will have a profound effect on the property rights of Oklahoma employers.\(^{37}\) One of the most essential rights included with property is the right to exclude certain people from entering or remaining without permission. Challengers to the Oklahoma statute have based their arguments on three principles: first, there is a violation of the Takings Clause, second, there is a violation of substantive due process rights, and third, there is a violation of the Supremacy Clause because of preemption by OSHA.\(^{38}\) The Takings Clause prohibits appropriation of property rights without just compensation. Substantive due process requires strict judicial scrutiny when fundamental rights, such as property, are taken. The government must show a compelling state interest before compromising fundamental rights. Last, when a state law conflicts with a federal law, the federal law is supreme and preempts the state law. Workplace safety is an area that has been preempted by OSHA.

**C. Employment at Will**

In states that specifically allow employees to bring weapons to their workplace parking lots, the courts have been required to address the issue of whether the right to bear arms trumps the employment-at-will doctrine. If, as authorized under state statute, employees bring guns in their trunks, can the employer fire them, or would the employees’ activity fall under the public policy exception?

The employment-at-will doctrine generally stands strong when balanced against employees’ right of self-defense. Both in Pennsylvania and in West Virginia, employees were fired when they exercised their rights of self-defense while at work. In Pennsylvania an employee was discharged following a fistfight at work.\(^{39}\) The court determined that the employer was in the best position to allocate blame in workplace altercations.\(^{40}\) In West Virginia Seven-Eleven stores had a company policy against employees interfering with a store robbery; in violation of that policy an employee disarmed a woman who was attempting to rob the store.\(^{41}\) Although the state supreme court recognized a state public policy favoring a right of self-

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38 *Id.* at 82-83.
40 *Id.* at 342-43.
defense, it placed more importance on the employer’s legitimate business interests in keeping order in the store.

In a case that occurred before the two Supreme Court decisions the Utah Supreme Court declined to extend the right to bear arms to the workplace. Expressing its preference for maintaining the employment-at-will doctrine, the court determined that the state constitution was not on point; it did protect a right to bear arms, but the legislative history of the Utah statutes did not specifically support protection for private employees.

The right to bear arms trumped employment-at-will in Kentucky when a man won his wrongful discharge suit against the University of Kentucky. Mitchell, an at-will employee who held a gun permit, had his employment terminated when he, in violation of university rules, kept his weapon in a car on university property. The court, although not relying on the Second Amendment, or other constitutional issues, found that the right to bear arms is a public policy in Kentucky. Another unique factor in the case was that the court also extended the policy to apply to private, as well as public, employers.

In 2008, Minnesota enjoined enforcement of its relatively explicit prohibition to banning firearms from parking lots with regard to church property. Specifically, the Edina court found that the statute violated the church’s “freedom-of-conscience rights.” Included in the court’s reasoning was that the signage and personal notice requirements of the statute significantly burdened the sincerely held religious and non-violence beliefs of the churches. The injunctive relief was determined to not offend the establishment clause, by granting greater preference to religion, since there was no indication that the initially granting district court was “motivated by a desire to advance . . . religious beliefs,” and that there was no impermissible advantage given to religious practice since possessors of private property were also excepted from application of the statute.

42 Id. at 718-22.
43 Id. at 723-24.
46 Id. at 934-54.
48 Id. at 903.
49 Id. at 898.
50 Id. at 901.
52 Id. at 213.
53 Id. at 206.
54 Id. at 211.
II. REVIEW OF STATE STATUTES

A. Quick Reference Table

Table 1, on the three pages that follow, provides a brief visual summary of the twenty-four states that have adopted statutes substantially addressing the issue of firearms in employers’ parking lots.\(^{55}\) The table omits those states that may have a statute which tangentially touches on possession of a firearm in a parking lot but is particularly limited, or that specifically allow employers to regulate firearms on their property. It should be noted that a number of state statutes include provisions that except from coverage, and therefore allow employers to disallow firearm possession, in areas such as those governed by federal law, penal institutions, areas where combustible materials are stored, oil and gas refineries, electrical generating plants, public and private schools, and churches. The table does not seek to address these specific exceptions. Following the table is an expanded textual summary which provides more depth of explanation and statutory citation.

\(^{55}\) Similar tables are available on-line and may be periodically updated. The authors found the following to be useful: Cozen O’Connor, *Guns in the Workplace- State Summary*, COZEN O’CONNOR http://www.cozen.com/cozendocs/Outgoing/alerts/2013/Guns_in_Workplace_Chart.pdf (last visited March 14, 2014); *Does your state have laws that interfere with an employer’s right to ban employees from bringing weapons on the premises?*, EHS SUPPORT http://www.ehs-support.com/wp-content/uploads/State-laws-on-bringing-weapons-on-employer-premises.pdf (last visited March 14, 2014).
Table 1: Summary of States Having Statutes Substantially Dealing With Firearms in Parking Lots

●=included; ○=partially included

| State     | Date<sup>1</sup> | Employee possess<sup>2</sup> | Others possess<sup>3</sup> | Carry license req. | Conceal req. | Alt. park/store<sup>4</sup> | No crim. penal<sup>5</sup> | Pub<sup>6</sup> | Pvt.<sup>7</sup> | Express may not penalize<sup>8</sup> | Not liable for effect<sup>9</sup> | Liable for violation<sup>10</sup> |
|------------|------------------|-----------------------------|---------------------------|--------------------|--------------|-----------------------------|----------------------|--------------|-------------------------------|-------------------------------|---------------------------------|
| Alabama    | 2013             | ●                           | ○                         | ●                  | ●             | ●                           | ●                    | ●            | ●                             | ●                             | ●                               |
| Alaska     | 2005             | ●                           | ●                         | ●                  | ●             | ●                           | ●                    | ●            | ●                             | ●                             | ●                               |
| Arizona    | 2009             | ●                           | ●                         | ●                  | ●             | ●                           | ●                    | ●            | ●                             | ●                             | ●                               |
| Colorado<sup>11</sup> | 2003          | ●                           | ●                         | ●                  | ●             | ●                           | ●                    | ●            | ●                             | ●                             | ●                               |
| Florida    | 2008             | ●                           | ●                         | ●                  | ●             | ●                           | ●                    | ●            | ●                             | ●                             | ●                               |
| Georgia<sup>12</sup> | 2008         | ●                           | ●                         | ●                  | ●             | ●                           | ●                    | ●            | ●                             | ●                             | ●                               |
| Illinois   | 2013             | ●                           | ●                         | ●                  | ●             | ●                           | ●                    | ●            | ●                             | ●                             | ●                               |

<sup>1</sup> The date utilized is that of the act which incorporated the express parking lot provisions.
<sup>2</sup> The employee may possess a firearm on the employer’s parking lot.
<sup>3</sup> Others visitors to the employer’s parking lot may possess a firearm: e.g. customers, clients, and invitees.
<sup>4</sup> The statute provides for either possession in a secure parking lot, secure storage, or possession in a designated alternate parking or storage area.
<sup>5</sup> The statute provides that possession of a firearm in a parking lot is not a violation of state law.
<sup>6</sup> The statutory allowance of employee possession of firearms in parking lots governs some or all public employers.
<sup>7</sup> The statutory allowance of employee possession of firearms in parking lots governs some or all private employers.
<sup>8</sup> The restriction on employer action may be due to express provision, or interpreted by the authors due to prohibition to establishing a contrary rule.
<sup>9</sup> The employer is given full or partial immunity for injuries occurring due to the employer’s compliance with the statute.
<sup>10</sup> Liability is imposed on the employer for violation of the statute permitting firearms on the employer’s premises.
<sup>11</sup> Colorado’s statute relates only to possession in the parking lots, but not in the buildings of a public school.
<sup>12</sup> Georgia law includes language that appears to preserve the right of owners of property to exclude firearms from their premises in spite of the enabling statute.
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13 Insofar as churches, the statutes prohibition to firearm restriction was found unconstitutional in Edina Community Lutheran Church v. Minnesota, 745 N.W.2d 194 (Minn. Ct. App. 2008).
14 Educational property only.
15 Excludes public and private schools, and institutions of higher education.
16 The statute allowing possession of a firearm applies only to public or private colleges, universities, or institutions of higher learning. See Ohio Rev. Code Ann. § 293.126(B)(5) (West 2014). The statute was substantially modified in 2012 by Ohio HB 495 and therein incorporated parking lot provisions.
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Alabama (2013): Adopted in 2013, Act 2013-283 provides that although public and private employers may restrict employees from carrying firearms on the employer’s property, those employees who possess a valid concealed weapon permit may have a firearm in their properly parked vehicle if the firearm is kept from ordinary observation and, if the employee is not present, locked in a compartment, container, or interior of the vehicle. The employer is prohibited from taking adverse action against an employee who is in compliance with the statute. An employer wrongfully taking an adverse employment action against an employee properly possessing a firearm is subject to damages resulting from the adverse action. Employers are immune from actions by others resulting from the presence of a firearm by an employee. Firearms possessed in accordance with the statute do not, of themselves, constitute a failure to provide a safe workplace.

Alaska (2005): Alaska utilizes a broader allowance than just application to employers by restricting the “state, municipalities, or a person” from prohibiting possession of a firearm, by “law, ordinance, policy or rule,” in a motor vehicle, or storing the firearm in a locked motor vehicle if the possessor is otherwise legally allowed to possess the firearm and the motor vehicle is legally parked. The allowance of possession is limited if within a posted “secured restricted access area” or within three hundred feet thereof, of a parking lot owned or controlled by the employer. The property owner is immune from liability for damage resulting from the possession or storage of the firearm. Concealment is not an included element in the Alaska statute.

Arizona (2009): Arizona restricts a “property owner, tenant, public or private employer” from establishing, maintaining, or enforcing a “policy or rule” which prohibits lawful transportation or storage of concealed firearm in a person’s locked motor vehicle, or within a locked compartment therein. Firearm restriction is allowed if pursuant to federal or state law, in a motor vehicle owned or leased by a public or private employer, or is on the property of a public or private employer who provides a parking lot or garage which is secured by a physical barrier, limits access by guard or security measure, and who provides temporary and secure firearm storage. Additionally, an owner,

58 Id. at (b)(1)-(3).
59 Id. at (b)(3)(c).
60 Id. at (g).
62 Id. at (b) (2014).
63 Id. at (d).
64 ALASKA STAT. § 18.65.800 (2014).
tenant, employer, or business entity may restrict possession of a firearm to only those vehicles parked within employer or owner specified parking lots, provided the parking is free and reasonably proximate.\(^\text{66}\)

**Arkansas**: No statute.

**California**: No statute.

**Colorado** (2003): Colorado does not provide expansive permission to possess a firearm on employer property, but does allow an individual having a concealed carry permit to possess a handgun on the property of a public school if they are in a vehicle or the handgun is in a locked compartment within the vehicle, but the allowance does not extend to possession inside public school buildings.\(^\text{67}\)

**Connecticut**: No statute.

**Delaware**: No statute.

**Florida** (2008): Florida prohibits both public and private employers from restricting customers, invitees, and employees from having legally possessed firearms locked within, or to, a motor vehicle when legally parked in a parking lot. No search or inquiry is allowed unless conducted by on-duty law enforcement pursuant to constitutional protections. Employment may not be conditioned on the having a license for possession of a firearm or agreement by the employee not to possess a firearm within their private vehicle while in a parking lot. No employee or customer may terminate or otherwise discriminate against an employee or customer for possessing a firearm so long as the firearm is not exhibited on company property except for lawful defense.\(^\text{68}\) Employers are insulated from damages resulting from compliance with the statute.\(^\text{69}\) Exceptions from coverage of the law include school property, correctional institutions, nuclear power plants, premises substantially involved in national defense, property involving combustible materials, vehicles owned or leased by the employer, and those properties which exclude firearms under federal law.\(^\text{70}\) In the event of violation by an employer, the Florida Attorney General is authorized to bring suit for injunctive relief or civil damages.

**Georgia** (2008): Employers, both public and private, are restricted from searching private vehicles, and cannot condition employment of prospective employees by prohibiting from entering or parking a locked vehicle with a concealed firearm if the employee has a Georgia weapons carry license.\(^\text{71}\) The restrictions on the employer are not applicable if the employer provides

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\(^{66}\) Id. at (C).

\(^{67}\) COLO. REV. STAT. § 18-12-214(3)(a) (2014).

\(^{68}\) FLA. STAT. § 790.251(4) (2014).

\(^{69}\) Id. at (5).

\(^{70}\) Id. at (7).

\(^{71}\) GA. CODE ANN. § 16-11-135(a)-(b) (2014).
a secure, restricted parking area for employees, and if searches are to be conducted the rules for such searches are uniformly applied.\textsuperscript{72} Georgia has exceptions similar to other states for specific sensitive areas such as correctional institutions, electric generation, defense facilities, and federal law. In a somewhat novel provision, Georgia allows employers to restrict employees from having a firearm in their vehicle if the employee is subject to a completed or pending disciplinary review, but the section does not identify a successful employee review as reinstating the employee allowance.\textsuperscript{73} Additionally, and appearing to be in conflict with the above statements, Georgia appears to create a blanket exception to an employee’s right to possess a firearm in their vehicle by providing that owners, and those in control of property through lease or contract including employers, are not restricted as to their rights as a private property owner irrespective of the statutory section.\textsuperscript{74}

\textit{Hawaii}: No statute.

\textit{Idaho}: Idaho does not have a specific allowance for employees to possess firearms in their vehicle, but does provide protection to employers by denying any action for civil damages against an employer for the employer’s specific allowance, or failure to prohibit, lawful storage of firearms in an employee’s personal vehicle.\textsuperscript{75}

\textit{Illinois} (2013): Illinois passed, over a gubernatorial veto, their Firearm Concealed Carry Act.\textsuperscript{76} Although the act contains an extensive list of areas in which firearms are disallowed, the law provides that for most of the excluded areas a permit holder may carry and store a concealed firearm and ammunition in their vehicle in a parking lot.\textsuperscript{77} Areas that remain prohibited are nuclear facilities, weapons development areas, and those areas prohibited by federal law.\textsuperscript{78} The statute does not prescribe prohibitions to employers engaging disciplinary action as some other states. It will remain to be seen whether interpretations of its “shall be permitted” language will encompass both civil and criminal violations, or criminal only.

\textit{Indiana} (2010): Indiana prohibits a person from adopting or enforcing any ordinance, resolution, policy or rule which would prohibit, or have the effect of prohibiting an employee of that person from possessing a firearm in a locked trunk, glove compartment of a locked vehicle, or stored out of sight in the employee’s locked vehicle.\textsuperscript{79} The prohibition extends to inquiry as well

\textsuperscript{72} Id. at (d)(1).
\textsuperscript{73} Id. at (d)(5).
\textsuperscript{74} Id. at (k).
\textsuperscript{75} IDAHO CODE ANN. § 5-341 (West 2014).
\textsuperscript{76} Illinois 2013 Public Act 098-0063 (codified at 430 ILL. COMP. STAT. ANN. 66/1-999) (2014).
\textsuperscript{77} 430 ILL. COMP. STAT. ANN. 66/65(b) (2014).
\textsuperscript{78} Id. at (a)(22)-(23).
\textsuperscript{79} IND. CODE § 34-28-7-2(a) (2014).
as conditioning employment on an employee lawful possession of firearms or ammunition.  

As with other states, numerous exceptions to the employee’s right are included such as schools, penal facilities, postsecondary institutions, a person’s residence, and federally controlled property among others. Employees alleging violation of their right under the statute have a cause of action for actual damages and costs. Both public and private employers are insulated from liability for compliance with the employee rights established by the statutes.

Iowa: No statute.

Kansas (2010): Kansas allows public and private employers to regulate the possession of firearms on their premises, if properly posted, but cannot prohibit possession of a handgun in a private means of conveyance even though parked on the employer’s premises. The provision limiting the employer’s right, however, initially states that the prohibition on employer regulation cannot be included in personnel policies, thereby making the employer restriction’s applicability to non-employees less than clear.

Kentucky (2006): Kentucky’s statute prevents any person, not limited to employers, who may own, lease or occupy real property, from prohibiting legally possession of a firearm or ammunition if the firearm is within a vehicle on the property. Exceptions to the employee’s right, and anyone else encompassed by the statute, include federal property where prohibited, detention facilities, and where otherwise prohibited by Kentucky law. Employers acting in violation of an employee’s rights will be subject to injunctive relief and civil damages.

Louisiana (2008): Not confining its protections to employees only, Louisiana, provides that anyone lawfully possessing a firearm may do so in a locked privately owned motor vehicle in any parking lot, garage or designated parking area. Any property owner, tenant, public or private employer may, however, provide that any firearms stored in locked private vehicles must be concealed or kept within a locked case or container within the vehicle. As a further exception to the employee right, if on the property of a public or private employer with parking access in restricted by gate,
security station, or other means of restricting public access, storage in a vehicle may be limited if the employer provides temporary storage facilities for the firearm, or if the employer provides reasonable alternative parking areas.\(^91\)

**Maine** (2011): An employer, including the State, may not prohibit the possession of a firearm by an employee who has a valid concealed carry permit, if the firearm is not visible within the employee’s locked vehicle. A general immunity provision is included for civil damages resulting from the employee’s storage or possession of a firearm under the statute.\(^92\)

**Maryland:** No statute.

**Massachusetts:** No statute.

**Michigan:** While Michigan has no statute expressly dealing with employer’s firearm restrictions as applied to parking lots, the state does provide that an employer may not prohibit an employee licensed to carry a concealed pistol from carrying a concealed pistol except when the employee is in the course of their employment.\(^93\) Although not directly applicable, *course of employment* has been held in Michigan, albeit under worker’s compensation cases, to include employer parking lots.\(^94\) Michigan also prohibits carrying a concealed pistol in numerous common exceptions such as schools, day care centers, sports arenas, taverns, and churches,\(^95\) but specifically removes parking lots from the definition of premises at such locations.\(^96\)

**Minnesota** (2003): Minnesota prohibits the owner or operator of a private establishment, but not a private residence, from prohibiting the lawful possession of firearms in a parking facility or parking area.\(^97\) Employers, public and private, may adopt policies for the carry of firearms during the course of employment, but an employer or postsecondary institution may not prohibit lawful carry or possession of firearms in parking facilities or areas.\(^98\) Note, however, that in 2008 the statute was held unconstitutional in respect to churches and an injunction issue to prevent the statute’s enforcement on church properties.\(^99\)

**Mississippi** (2006): A public or private employer may not prohibit, or establish a policy or rule that has the effect of prohibiting, the transporting or

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\(^91\) *Id.* at (D)(3).
\(^92\) ME. REV. STAT. ANN. tit. 26 § 600 (West 2014).
\(^93\) MICH. COMP. LAWS ANN. § 28.425n (West 2014).
\(^95\) MICH. COMP. LAWS ANN. § 28.425o(1)(a)-(h) (West 2014).
\(^96\) *Id.* at (4).
\(^97\) MINN. STAT. § 624.714(17)(c)-(d) (2014).
\(^98\) MINN. STAT. § 624.714(18)(a) and (c).
storing a firearm in a locked vehicle in a parking lot or area. However, an employee may be restricted from transporting or storing a firearm in their vehicle in employer provided parking areas which have restricted access. Employers are not liable for civil actions arising out of the transportation or storage of firearms in accordance with the statute.

Missouri (2003): Generally, employees may not be criminally punished for lawfully carrying firearms in their vehicle so long as the firearm is not removed or brandished while on the employer’s premises. Owners, business or commercial lessees, a manager of a private enterprise, or any other organization, entity or person” may prohibit concealed carry licensees from carrying on their premises, and employers may prohibit employees from carrying while on their property. Notably the statute explicitly refers to possession in a vehicle not being a criminal offense, thereby leaving the possibility that an employee could face disciplinary action or dismissal for violation of an employer directive, or properly posted signs.

Montana: No statute.

Nebraska (2006): Employers may prohibit concealed permit holders from possession on their property, but any permit holder will not be in violation of the carry statute if in public parking area and the handgun is locked in the glove box, trunk, or other secure compartment. The statute only describes non-culpability under the concealed firearms laws, however, and does not have an express prohibition to employers disciplining employees for violation of a policy.

Nevada (1995): Although Nevada does not have a blanket allowance for employees to possess firearms in employer parking lots, it does exempt from criminal violation an employee who is carrying a handgun, is a permittee, and whose place of employment is in a public building (excluding public schools and those of the Nevada System of Higher Education).

New Hampshire: No statute.
New Jersey: No statute.
New Mexico: No statute.
New York: No statute.

North Carolina (2013): North Carolina has a specific exception from criminal violation for employees who reside on the campus of educational property and lawfully have a handgun in their residence, or in the case of

100 MISS. CODE ANN. § 45-9-55(1) (West 2014).
101 Id. at (2).
102 Id. at (5).
103 MO. REV. STAT. § 571.107(15) (West 2014).
104 Id.
106 Id. at (3).
higher education property the employee may also have a handgun locked in a closed container in their vehicle.\textsuperscript{108} In 2013, however, North Carolina expanded their allowance by exempting anyone having an approved North Carolina concealed handgun permit, or who is exempt, from the prohibition of handguns on state property if the handgun is in a closed container in a locked vehicle.\textsuperscript{109} Note that other excluded premises are still specified, that no general allowance applicable to private property is included, and there is no specific prohibition which would extend to employee discipline.

\textit{North Dakota (2011):} Public or private employers, but not public and non-public schools and institutions of higher education, are restricted from prohibiting a lawfully owned firearm if in a locked private vehicle, or locked thereto, and if the vehicle is lawfully in the parking area. Employers are also prohibited from: verbal or written inquiry about, and search for weapons in vehicles; conditioning employment on the employee not possessing a firearm in their vehicle; prohibiting a customer, employee, or invitee from entry into a parking lot because of possession of a firearm within the vehicle; or, terminate the employment or otherwise discriminate due to keeping or bearing arms if the firearm is not exhibited on employer property except for lawful defense.\textsuperscript{110} Employers are relieved of liability resulting from compliance with the law, but are subject to civil damages for losses suffered for violation.\textsuperscript{111} General exemptions from the law, and therefore the allowance of firearms, also include correctional facilities, those dealing in combustible or explosive materials, national defense, and where there are federal prohibitions.\textsuperscript{112}

\textit{Ohio:} Ohio does not have statutory limitations on private employers, but rather expressly recognizes a private employer’s right, except a private college or university, to prohibit firearms on their premises, including parking lots.\textsuperscript{113} Owners and those in control of private land may post notices prohibiting firearms on the property, but violation of the posted prohibitions by entry into a parking lot or parking facility will not serve as a basis for criminal trespass, but only for civil trespass.\textsuperscript{114} Presumably for a private employer such violation could also serve as the basis for disciplinary action. Ohio does provide that a concealed handgun licensee is not prohibited by Ohio’s law from possessing a handgun on the premises of a public or private

\textsuperscript{108} N.C. GEN. STAT. ANN. § 14-269.2(k) (West 2014).
\textsuperscript{109} N.C. GEN. STAT. ANN. § 14-269(a2) (West 2014).
\textsuperscript{110} N.D. STAT. ANN. § 62.1-02(1)(a)-(e) (West 2014).
\textsuperscript{111} Id. at (3) and (5).
\textsuperscript{112} Id. at (6).
\textsuperscript{113} OHIO REV. CODE ANN. § 2923.126(C)(1) (West 2014).
\textsuperscript{114} Id. at (3)(a).
college, university, or institution of higher education if the locked in a motor vehicle.\textsuperscript{115}

\textit{Oklahoma} (2004): Although Oklahoma has long had provisions dealing with the lawful carry of firearms under its self-defense act, in 2004 it prohibited “any person, property owner, tenant, employer, place of worship, or business entity” from establishing a policy or rule which would prevent transporting or storing firearms in a locked vehicle on property set aside for vehicles.\textsuperscript{116} The allowance, however, generally does not extend to “school property”\textsuperscript{117} except to the extent the possessor has a valid handgun license and the handgun is in the vehicle only to transport a student to and from school, and does not remain unattended on school property.\textsuperscript{118} Unusual in the Oklahoma statute is the inclusion of “place of worship” in its list of permitted parking lots. Also unusual is Oklahoma’s criminal penalty for a private employer who asks about an employee’s ownership or possession of firearms.\textsuperscript{119}

\textit{Oregon}: No statute.

\textit{Pennsylvania}: No statute.

\textit{Rhode Island}: No statute.

\textit{South Carolina}: South Carolina does not limit employers, but rather expressly allows public and private employers to prohibit concealed carry permittees from carrying concealed weapons on the premises or workplace.\textsuperscript{120}

\textit{South Dakota}: No statute.

\textit{Tennessee} (2013): A handgun carry permit holder in Tennessee is not subject to state penalties for transportation or storage of a firearm or ammunition in their privately owned motor vehicle while the vehicle is in any allowable public or private parking area and the firearm and ammunition is kept from ordinary view, and if the permittee is outside of the vehicle, the firearm is locked in the trunk, glove box, or interior of the vehicle.\textsuperscript{121} The Tennessee statute has been interpreted by the Tennessee Attorney General only to restrict possible state imposed penalties and not to regulate the employer-employee relationship, and therefore not to prohibit employer policies which would discipline an at-will employee.\textsuperscript{122}

\textit{Texas} (2011): A public or private employer may not prohibit a concealed carry licensee, or one who otherwise lawfully possesses a firearm,

\begin{itemize}
\item \textsuperscript{115} \textit{Id. at (B)(5)}.
\item \textsuperscript{116} \textit{OKLA. STAT. tit. 21 § 1290.22(B) (West 2014)}.
\item \textsuperscript{117} \textit{OKLA. STAT. tit. 21 § 1280.1(B)(1) (West 2014)}.
\item \textsuperscript{118} \textit{OKLA. STAT. tit. 21 § 1280.1(C)(1) (West 2014)}.
\item \textsuperscript{119} \textit{OKLA. STAT. tit. 21 § 1289.27(A) (West 2014)}.
\item \textsuperscript{120} \textit{S.C. CODE ANN. § 23-31-220 (2014)}.
\item \textsuperscript{121} \textit{TENN. CODE ANN. § 39-17-1313(a) (West 2014)}.
\item \textsuperscript{122} \textit{Op. Tenn. Att’y Gen. 13-41 (2013)}.
\end{itemize}
from transporting or storing the firearm or ammunition in a locked privately owned motor vehicle in a parking area provided by the employer for the use of employees.\textsuperscript{123} The right to possess in parking area does not apply to school districts, open-enrollment charter schools, private schools, when there are federal law prohibitions, as well as others.\textsuperscript{124} Public and private universities and institutions of higher education are restricted from prohibiting concealed carry licensees from possessing firearms or ammunition in a locked, privately owned automobile on a street or driveway, or parking area of the campus.\textsuperscript{125} With regard to carrying a handgun, Texas law generally requires that the handgun be concealed from ordinary observation. Unlike several other states, Texas does not provide any enforcement mechanism through the state, and does not include an express allowance of damages. Presumably an action for injunctive relief would be available, or that of a declaratory judgment.\textsuperscript{126}

\textit{Utah (2009)}: In its labor code, Utah prohibits “a person” from establishing or maintaining a policy or rule which would have the effect of prohibiting lawfully possessed firearms which are concealed and locked in a motor vehicle on property designated for parking.\textsuperscript{127} However, a person may establish a rule which limits the possession of firearms in vehicles if there is otherwise available and reasonably proximate to the parking area: 1) an alternative parking area without additional cost for those who wish to store or transport firearms; or, 2) secure monitored storage where the firearm may be secured before entering the parking area.\textsuperscript{128} Persons operating parking areas subject to the Utah law are insulated from damages due to the presence of firearms in the vehicles,\textsuperscript{129} but are subject or suit for injunctive relief and damages, both actual and punitive, due to a rule unlawfully prohibiting possession of the firearm.\textsuperscript{130} Additionally among specific exceptions to the statute, and therefore allowing employers to regulate the possession of firearms, are schools, government entities, religious organizations, owner-occupied single family residences, and those areas governed by federal law.\textsuperscript{131}

\textit{Vermont}: No statute.

\textit{Virginia}: No statute.

\textit{Washington}: No statute.

\textit{West Virginia}: No statute.

\textsuperscript{123} \textsc{Tex. Lab. Code Ann.} § 52.061 (West 2014).

\textsuperscript{124} \textsc{Tex. Lab. Code Ann.} § 52.062 (West 2014).

\textsuperscript{125} \textsc{Tex. Gov. Code Ann.} § 411.2032 (West 2014).


\textsuperscript{127} \textsc{Utah Code Ann.} § 34-45-103(1) (West 2014).

\textsuperscript{128} \textit{Id.} at (2).

\textsuperscript{129} \textsc{Utah Code Ann.} § 34-45-104 (West 2014).

\textsuperscript{130} \textsc{Utah Code Ann.} § 34-45-105 (West 2014).

\textsuperscript{131} \textsc{Utah Code Ann.} § 34-45-107 (West 2014).
Wisconsin (2011): Wisconsin does not have a general scheme constraining employers from prohibiting firearms in parked vehicles. Wisconsin does remove from criminal culpability lawfully having a firearm in a vehicle driven or parked in a parking facility where the property is: a non-single-family residence common area, land occupied by the state or local government, on the grounds of a public or private university or college, or grounds connected to a special event.\(^{132}\)

Wyoming: No statute.

B. Risk of Fatalities

The business community has expressed substantial concern about the allowance of firearms in employer parking lots. Of the arguments made, the one with the most dramatic social implication is the additional risk created by readily available access to a deadly weapon. Specifically, employers are concerned about angry outbursts that result in shootings, and very specifically the angry employee who goes to their automobile and returns to engage in a spontaneous act of mayhem.

Many big employers, including FedEx Corp., Volkswagen AG, Caterpillar Inc. and Bridgestone Corp., have fought the laws, arguing that their right to maintain a safe workplace — and set the rules on their property — should trump the right to carry a gun. “Much like a private homeowner is able to tell his guests whether they can bring a gun into his yard, FedEx should have the right to decide what it will and will not allow on its private property,” Mark Hogan, vice president of U.S. security for FedEx Express told Tennessee lawmakers last year. . . . In his testimony before Tennessee lawmakers, FedEx’s Mr. Hogan said that workplace weapons bans provide “an opportunity for the employee to cool off before they take an irrational action in response to something that happens at work.”\(^{133}\)

Unfortunately, employers are most likely correct that such an eventuality will occur. The pro-gun, and therefore pro-statute, organizations’ position, commonly attributed to the National Rifle Association (NRA), is that employees face a risk of violent assault when traveling between work


and home or other non-work venues which is greater than the risk while at the work premises.\textsuperscript{134}

It seems logical that in analyzing the impact of the statutes, one should first try to gauge the risk of occurrence with and without an authorizing statute. To that end the Bureau of Labor Statistics (BLS) datasets are extraordinarily useful and typically used in similar evaluations.\textsuperscript{135} The BLS maintains segregated data on workplace violence, including a substantial categorization system including causation, location, type of work, and demographics. Most useful to the topic of this paper is the information based on the source and cause of injury.

The object is to narrow the cause of injury in an attempt to isolate, to the extent possible, where the real risk lies with regard to the parking lot issue. As mentioned above, employers logically seem to place disgruntled employees as the primary risk factor with regard to firearms in parking lots. Other groups can, to a degree, be tracked\textsuperscript{136} but the question is: does their inclusion provide any material guidance? For example robbers are typically singled out in the literature as a category to be excluded from the injury data, with the obvious reasoning that one who is intent on robbery will not likely be concerned with an employer or property owner’s rule or policy that excludes firearms from parking lots. But the same reasoning applies to customers and clients: to what degree will they have knowledge or concern about a firearm restrictive policy? Certainly posting notices can fulfill the knowledge element, and can be found in several state statutes.\textsuperscript{137} Even with knowledge by the customer, however, the probability of discovery may perceived to be so low that customers are typically willing to violate the policy. Circumvention by customers may also be exacerbated by the common consequence being at most a misdemeanor. With that working assumption, the following table tracks the workplace fatalities data for workplace homicides due to shootings nationally, and as to several of the states that have passed legislation since 2008 that give a right to employees to possess firearms in employers’ parking lots.\textsuperscript{138} The table provides aggregate national

\textsuperscript{134} Id.
\textsuperscript{135} See, the Bureau of Labor Statistics website at http://www.bls.gov/data/. The site has both prepared tables as well as an interactive tool to create custom tables.
\textsuperscript{136} The Bureau of Labor Statistics data commonly identifies workplace fatalities in the categories of self-inflicted, by co-worker or former co-worker, and robbery, and in 2011 began tracking by relative or domestic partner, and by customer.
\textsuperscript{137} See, e.g., \textit{TEX. PENAL CODE ANN.} § 30.06 (West 2014); \textit{OHIO REV. CODE ANN.} § 2923.126(C)(3)(a) (West 2014); \textit{MO. REV. STAT.} § 571.107(15) (West 2014). Note that the Texas statute would generally not apply to employees in employer parking lots, see \textit{Tex. Lab. Code} § 52.061, whereas the Ohio and Missouri statutes decriminalizes employee possession, but leaves questions of employee discipline or civil action open.
\textsuperscript{138} Note that although not developed in this paper, the workplace includes premises away from the primary employer facility. Occupations such as taxi drivers, police and security personnel,
and state information for all categories of intentional fatal shooting by others (which would exclude suicide), and separately sets out the number of deaths resulting from co-worker shootings and for robbery. The time range selected is from 2003-2012 in order address times both before and after individual state legislation passage.139

Table 2: Workplace Violence — Intentional Shooting by Other Persons
Co-worker includes work associates. Shaded areas represent the effective years of statutory employer restrictions.

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>003</th>
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and delivery services are included in the overall workplace injuries information, even though the injury may have occurred other than the employer’s premises.

139 The data was derived from the multi-screen data search function available on the BLS website, using the workplace injuries subset. The data is here limited to workplace fatalities resulting from intentional shootings by perpetrator characteristic as a primary or secondary source, dependent on the way the source appears to have been recorded. The reader will also note that the totals for the various states will not be the sum of the types of perpetrator, presumably due to the lack of data by the BLS or the characteristic of the perpetrator being outside of the reported types. States were chosen with statutory dates of 2008 or before, and which had reasonably explicit employer prohibitions within their statutes.

140 Although not separated in the table, for years 2011 and 2012 the fatal injuries attributed to an assailant, suspect, or inmate” were 227 and 223 respectively.
Table 2, noticeably based on sparse data and a short time span, does not provide a definitive answer to the risk associated with handguns in parking lots, and does not reflect any significant indication of increased risk due to adoption of the guns in parking lot laws. Based on the inception dates of statutes allowing employees to store firearms in their vehicles, there was generally no dramatic increase in shooting fatalities by co-workers after adoption of the statutes. At least one exception to that observation is the 2008 incident at the Atlantis Plastics plant in Henderson Kentucky, which appears to be represented in the table 2 data, when a disgruntled employee fatally shot five co-workers and injured a sixth.141 News reports included statements that the shooter, Wesley Higdon, had told his girlfriend two hours before the shooting that he was going to kill his boss.142 Higdon, afterward, upon having an argument with a co-worker, was escorted from the building whereupon he retrieved a handgun, killed his supervisor, and returned to the building and killed the co-workers.

Undoubtedly the data for those states that suffer acts of expanded workplace violence, such as the Kentucky incident, the 2009 Fort Hood incident in Texas (thirteen dead), and the Washington D.C. Navy Yard shootings in 2013 (twelve dead) will be reflected in data for those years. We can say definitively, based on the Kentucky statute’s effective date, 2006) that the employer in Kentucky was prohibited from restricting employees from bringing firearms into its parking lot. Conversely, in both Fort Hood

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and the Navy Yard shootings there were substantial restrictions against possession of firearms on the premises.

C. Exposure Away from Work

The pro-gun segment of the controversy uses, aside from constitutional arguments, the position that employees are at more risk of violent assault when traveling to and from work than the additional risk while at work. Although there is expected disagreement on the approximate number of times firearms are used for defensive purposes, estimates vary widely, ranging from approximately 100,000 to 2.45 million defensive uses per year.143 Perhaps most troubling to the anti-firearm position, although not specifically identifying the subject parking lot laws, is a Center for Disease Control (CDC) report prepared at the direction of President Obama in January of 2013. The CDC report, although not drawing any absolute conclusions, did observe:

Almost all national survey estimates indicate that defensive gun uses by victims are at least as common as offensive uses by criminals. . . . A different issue is whether defensive uses of guns, however numerous or rare they may be, are effective in preventing injury to the gun wielding crime victim. Studies that directly assessed the effect of actual defensive uses of guns (i.e., incidents in which a gun was “used” by the crime victim in the sense of attacking or threatening an offender) have found consistently lower injury rates among gun-using crime victims compared with victims who used other self-protective strategies.144

The same CDC report, however, recognized that the net effect of access to a gun, such as home possession, suicide, and homicide could override the benefits of defensive use.145

The risk of violent assault can be reasonably illustrated by looking to the Bureau of Justice Statistics (BJS) and its published periodic Crime

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145 Id. at 26.
Victimization data. In its report for 2008 the BJS reported that, nationwide, there were 4,581,260 crimes of violence committed. Of those crimes, 3.9%, or approximately 178,669, were characterized as being on the way to or from work, and of those crimes characterized as violent and on the way to or from work, 4,010 were due to rape/sexual assault, 59,484 due to robbery, and 26,906 due to aggravated assault. This is not to say that the violent crimes were perpetrated with a firearm, but only that they fall into the classification of violent crime. The issue that remains for legislators from a social perspective is therefore whether or not the probability of additional defensive use of firearms away from the employer’s premises, or the presence of a defensive firearm, will offset any increase in the number of workplace shootings which might not otherwise have occurred.

III. MANAGEMENT CONCERNS

A. Managerial Issues

It is undoubtedly true that no one wants violence at the workplace. Yet we know that violence is occasionally going to happen. Studies have suggested that having guns in the workplace increase the potential for homicide in the workplace by a factor of five. However the statistics about workplace shootings continue to be debated by both pro and anti-gun groups. And both have some merit. In 2004 more than half of the 795 workplace assaults were gun related. These incidences certainly occurred on workplace premises, but only 8 percent were committed by a current or former employee, with more than half of all gun related incidences committed by robbers. The latest report from the Bureau of Labor Statistics (BLS) shows that in 2012 there were 375 workers killed by guns, with robbers accounting for 33 percent of those workplace homicides. Current or former employees accounted for 13 percent of the homicides with two incidents in which at least 5 people were killed.

Anti-gun groups will undoubtedly point to the 375 homicides that occurred in the workplace in 2012 as evidence that employees should not be allowed to have guns in the employee parking lot. In all probability they

148 Jessica Marquez, Employers fire back at law making it a felony to ban guns on company premises, WORKFORCE MGMT. 85.2 (Jan 30, 2006): 34-36.
would use this argument to restrict all gun ownership. However, the pro-gun
groups would use the statistics about robbery homicides and mass workplace
shootings as argument that an armed population would deter such behavior.

Yet, the purpose of this article is not to debate gun ownership and the
right to carry, but to offer insight into the implications for businesses. Examples are offered where a business might not only allow employees to
bring guns to the parking lot, but might provide guns or encourage
employees to take your gun to work. Security is obviously one of those
instances. Others might include quick service convenience stores (the local
stop-and-rob), pawn shops, small jewelry stores, pay day loan companies,
branch banks, and any business that is perceived as an easy target for
robbery. A closer look at the BLS statistics for 2012 reveals that of the 375
workplace homicides, the retail trade accounted for 262, with 65 percent of
those in the food and beverage retail trade.\textsuperscript{150}

However, even those businesses in the food and beverage retail trade,
and are more likely to be robbed, may have anti-gun policies in place and
instruct employees to cooperate if robbed. It is believed that this tactic will
lessen the likelihood for violence and perhaps save lives. Additionally, more
companies are using behavioral controls to help prevent robberies and their
associated violence. These controls include protective cages for cashiers,
video security monitoring, security “panic” buttons, adequate staffing (no
one individual shops), and others.\textsuperscript{151} Concerns about workplace violence in
other types of businesses such as in the manufacturing or the service
industry, where large numbers of individuals may work together, are
substantially different from the small retail shop in a high crime area.

In instances where a business has hundreds or even thousands of
employees at a single location, the likelihood of an armed employee shooting
someone and the associated liability is a frightening possibility to
contemplate. Therefore policies of no guns at the workplace would seem to
be a rational response. And these policies would tend to include all
workplace property, including employee parking lots. Now that states are
passing laws permitting guns in parking lots those policies and perhaps
procedures may need to change.

B. Policies and Procedures

Perhaps the first place to begin would be a generalized policy on
violence in the workplace. There are examples for workplace violence

\textsuperscript{150} National Census of Fatal Occupational Injuries in 2012 (Preliminary Results), BLS News
Release Thursday August 22, 2013 Retrieved from:
\textsuperscript{151} S. Smith, \textit{Workplace Violence}, PROFESSIONAL SAFETY 47.11 (Nov 2002) 34-43.
policies available through various associations, commercial law services, and professional groups. The following example developed by the Critical Incident Response Group of the Federal Bureau of Investigation is typical of the types of issues a company might wish to consider when developing a workplace violence policy:

This organization does not tolerate workplace violence. We define workplace violence as actions or words that endanger or harm another employee or result in other employees having a reasonable belief that they are in danger. Such actions include:

- Verbal or physical harassment
- Verbal or physical threats
- Assaults or other violence
- Any other behavior that causes others to feel unsafe (e.g. bullying, sexual harassment)

Company policy requires an immediate response to all reports of violence. All threatening incidents will be investigated and documented by the employee relations department. If appropriate, the company may provide counseling services or referrals for employees.

The following disciplinary actions may also be taken:

- Oral reprimand
- Written reprimand
- Suspension
- Termination

It’s the responsibility of all employees to report all threatening behavior to management immediately. The goal of this policy is to promote the safety and well-being of all people in our workplace.

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152 Examples might include such policies as from Practical Law (Standard Document, Anti-retaliation Policy (http://us.practicallaw.com/8-503-5830) ) or from the Society for Human Resource Management (Workplace Violence: Weapon-Free Workplace Policy or Workplace Violence Policy (http://www.shrm.org/TemplatesTools/Samples/Policies/Pages/MorePage.aspx?gid=g_edb8f549_eb98_4c6d_a3e8_6790951bfcfe&t=%3b13%3b&u=%2fTemplatesTools%2fSamples%2fPolicies&h=&r=%2fTemplatesTools%2fSamples%2fPolicies%2fPages%2fsafetyTOC.aspx&so=Text&ao=0)).

In an article on workplace violence Smith provides a list of the types of items a violence policy might contain.\textsuperscript{154} The suggested policy does indeed have many of those listed items including a statement of purpose, a statement of commitment, a non-inconclusive list of proscribed behaviors and consequences for non-compliance, and responsibilities of both employees and employers. The one main item missing is a statement on weapons.

While this example does not specifically address weapons or the right of employees to have guns in their automobiles in the parking lot, it does express the companies’ views towards violence in the workplace. Addressing the specific policies about guns in parking lots will need to be state specific as discussed in the previous sections. Even if a state has not passed a law allowing guns to be kept in locked cars, a workplace violence policy remains advisable. However, an addendum to the policy would perhaps be a zero tolerance policy, disallowing guns anywhere on company property with immediate termination for violation of the policy. It is also possible that you would have no gun policy or a policy restricting guns to locked vehicles in the parking lot.

Once a policy has been developed, procedures for enforcing that policy and maintaining a safe workplace would need to be implemented. Several authors have discussed the procedures that might be implemented at the workplace to lessen the potential for violence and include aspects of human resource management as well as safety and security.\textsuperscript{155} Among those procedures generally discussed include:

a. The use of a committee structure to remain updated on all aspects of workplace violence and to develop policies and procedures as the law changes.\textsuperscript{156} Committees allow for consideration and discussion of multiple perspectives. It is important that management show concern for workplace safety, and for employees to be able to have some input into the decision making process. For instance management may want to ban all guns, but employees may want to feel safer with a gun when traveling back and forth to work or want to go hunting after leaving work.

\textsuperscript{154}Smith, \textit{supra} note 167, at 39-40.


\textsuperscript{156}Chavan et al., \textit{supra} note 171, at 29.
b. Provide a safe workplace for employees including restriction on guns at the workplace. If guns are to be allowed in locked vehicles in the parking lot, the company needs to make sure that no guns enter the workplace. However this may conflict with ever changing rules and regulations. A recent ruling by the Tennessee Occupational Safety and Health Administration (TOSHA) may be an example. An employee filed an administrative complaint when the employer (an owner of a bar) allowed gun carry permit holders to carry handguns into the bar as long as they did not consume alcohol (as noted in the law). The TOSHA ruled that this practice did not constitute a “reasonable foreseeable” risk of injury or death to employees. Tennessee law did allowed business to prohibit the possession of guns on their property with a posted notice. However, this business chose to allow guns to be carried on the property.

c. The use of background checks as part of the pre-employment process while complying with EEOC rules. Many companies currently use background checks as a standard part of the hiring procedure. Of those that do checks, over 85% do criminal background checks followed by past employment checks (85%) and drug screening (60%). However, automatically rejecting a candidate with a criminal background may not be an option as EEOC guidelines continue to be updated and expanded by the commission.

d. Creating or enhancing employee assistance programs. A study conducted by the Families and Work Institute in 2012 showed a dramatic rise in Employee Assistance Programs (form 46% of all companies in 2005 to 74% in 2012) to help employees deal with problems and pressures, and a similar increase in wellness programs (form 47% in 2005 to 63% in 2012).

158 Anonymous, Tennessee OSHA Says Guns in Bars Pose No Unreasonable Risk to Employees, 87.11 HR FOCUS 10 (Nov 2010).
162 Chavan et al., supra note 171, at 29.
e. Implementing security measures such as hardened entry and exit points and increase employee training on possible pre-violence behaviors and emergency procedures. Work with security professionals on physical security and hold training seminars for managers, supervisors and employees. If violent behavior does occur trained employees may help medicate the consequences such behavior.

f. Have a clear channel for employees to communicate possible violent behaviors. No one wants to “squeal” on a fellow employee but erratic behavior may be a precursor to violence or at least an indicator of a troubled employee.

g. Avoid disability discrimination. Just because an individual has undergone psychiatric evaluation, counseling or has some other mental difficulty does not mean they can be automatically eliminated from a consideration for employment.

h. Develop a safe termination process. Terminations occur for many reasons such a downsizing and poor job performance. Whatever the reason for terminating an employee, it will be a stressful situation for both the employee and the one doing the firing.

While these are standard measures any organization might already have in place, it may be necessary to reinforce and update as the laws change state by state. Larger organizations may additionally need to have both national as well as localized policies and procedures. As mentioned earlier, nobody wants violence in the workplace. An organization will need to work closely with both legal and security experts to help ensure that changing laws are currently being met and a safe workplace is being provided.

IV. CONCLUSION: THE TAKE-AWAY

Currently there is no significant case law that gives guidance on the constitutionality of employer restrictive parking lot statutes. Although, as noted above, Oklahoma has considered several issues, as has Minnesota with regard to religious organizations, the statutes are relatively new and have not had appreciable resistance aside from business complaints. The lack of case law, perhaps should not be surprising. The cost of litigation would likely be

165 Morris, supra note 173, at 6.
166 Chavan et al., supra note 171, at 29.
167 Morris, supra note 173.
high, and in the hierarchy of things on which to expend funds disputing these statutes may have a lower business priority. For those states that simply remove the criminal sanction, the employer would have a poor chance in attempting to require the state to include possession of a firearm in a parking lot as a criminal offense. For those states which have a solid prohibition upon employers, or the more broad *persons*, the employer will have to convince the courts that a constitutional privilege, likely due process linked to property rights or the at-will doctrine of employment, are not subject to this type of governmental regulation. Given the degree to which the tendrils of government have already been approved, such as zoning regulations up to and including aesthetic concerns (type of structure such as adobe, and regulations prohibiting removal of trees within certain categories), whistleblower statutes, civil rights and the plethora of other employment law regulations, and particularly if it the statutes are deemed to be a clear mandate of public policy, it seems unlikely that such parking lot laws would be stricken. And assuming they were found offensive, would it be appropriate to enjoin the law, or declare it a taking, and if so to what extent would an employer’s property rights be hampered? From the opposite standpoint, if the statute merely prohibits an employer from instituting parking lot regulations but does not provide for civil damages, the risk to an employer for violation may only be the cost of litigation if a suit is brought for injunctive relief, assuming no clear violation of public policy.

And from a pragmatic point of view, would the financial incentive for an employer be better with or without a limiting statute? In instances where the statutes exempt employers from liability resulting from firearms in parking lots, the employer enjoys a freedom from liability in the event of a shooting incident. In the absence of such immunity the possibility remains that an employer will be subject to damages for failure to provide a safe workplace or negligence claims for failure to adequately police its workforce. Whether the productivity and human cost of any increased risk of a shooting would offset any benefits immunity would bring would be, at best, a difficult ethical dilemma.

While legislatures wrestle with the advisability of these laws, the employers’ best solution is to implement prophylactic managerial measures, as discussed above, to address the treatment of employees. Recognition and intervention which defuse volatile interactions, with regard to all stakeholders, will yield the most favorable results.