

COMMENTARY

Alec Baldwin Shooting Puts Workplace Safety in the Spotlight

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The tragic shooting involving Alec Baldwin that took place recently on the “Rust” movie set again places a spotlight on workplace safety, not only on film sets, but generally in the workplace, as well as the devastating consequences of failure to make workplace safety a priority. In 2020, the United States reported a total of 2.7 million workplace injuries and illnesses. In 2019, the last year for which statistics are available, 5,333 workers died as a result of a work-related injury. According to the Occupational Safety and Health Administration (OSHA), 222 people have died in work-related incidents this year alone.

So how should businesses respond to concerns regarding workplace safety? Generally, concerns regarding workplace safety can and should be addressed in a workplace safety plan. Development of a workplace safety plan begins with a commitment by management to address potential safety threats to the work environment as well as a worksite analysis to assess the potential hazards present in the workplace. The nature of the potential threats present in the workplace will vary depending upon the industry and location of the worksite. Once a workplace safety plan is developed, it is important that employees are provided training on all aspects of the plan. Also important is continual revision and modification over time to keep that plan relevant to actual workplace conditions. OSHA’s website contains tips to get started and a process to follow to develop the workplace safety plan that is right for the needs of the employer’s worksite.

One workplace concern that is an unpleasant reality employers must grapple with is the

potential of gun violence in the workplace. In 2016, shootings accounted for 394 or 79% of all workplace homicides in the United States. A comprehensive workplace safety plan should also address how to identify employees at risk of perpetrating workplace violence and how to utilize threat assessment practices when faced with incidents at work.

'Guns at Work Law'

Employers in Florida must also be aware of the impact of Florida's law on guns in the workplace. Passed in 2008, Florida Statute 790.251, known as the "Preservation and Protection of the Right to Keep and Bear Arms in Motor Vehicles Act" or Florida's "Guns at Work Law," was passed by the Florida Legislature in order to "codify the long-standing legislative policy of the state that individual citizens have a constitutional right to keep and bear arms." In the legislature's view, this right includes "a citizen's lawful possession, transportation, and secure keeping of firearms and ammunition within his or her motor vehicle."

To that end, the act imposes several restrictions on most public employers and private businesses. First, employers may not discriminate on the basis that an employee owns a legally licensed firearm. Nor can employers prohibit employees from keeping a legal firearm locked inside their vehicle parked in the employer's parking lot. However, the Act does not apply when an employee drives a vehicle owned or leased by the company. In those circumstances, the employer does not have to allow the employee to keep a gun inside. Similarly, a business cannot prevent its customers from keeping a "legally owned firearm" locked in their car while on its property. In addition, a business is prohibited from making any "verbal or written inquiry" about the presence of a firearm inside of the car of an employee, customer or invited guest.

However, the act does not prohibit employers from terminating an employee for bringing a firearm on the employer's property or from displaying a firearm in the workplace. In *Bruley v. Vill. Green Management*, 592 F. Supp. 2d 1381 (M.D. Fla. 2008), the U.S. District Court for the Middle District of Florida held that terminating an employee for bringing a weapon on the business property, even after the commission of a crime on the property, was not protected under the act.

Exceptions to the Act

The act provides exceptions for schools, correctional institutions, nuclear power plants, or employers associated with national defense, homeland security, or the aerospace industry. Notably, the definition of “school” encompasses preschool and elementary through secondary schools as well as career centers and post-secondary schools, whether public or private. However, in *Florida Carry v. University of North Florida*, 133 So. 3d 966, 968 Fla. 1st DCA 2013, Florida’s First District Court of Appeal held that the University of North Florida could not prohibit the carrying of a securely encased firearm within a motor vehicle that was parked in a university campus parking lot as the Florida Legislature had not delegated its authority under Art. I, Section 8(a) of the Florida Constitution, to regulate the manner of bearing arms to state universities.

It should be noted the act also provides employers with immunity from civil suits arising from any “actions or inactions” taken in connection with the law. This means that as a general rule, a business may have defenses to claims of workplace violence caused by individuals who legally brought their firearms onto the employer’s property. On the other hand, an employer can be liable for damages if it violates the rights of an employee, customer or other invited guest under the act.

When developing and implementing a workplace safety plan, employers must be mindful of Florida’s laws concerning guns at work. However, these requirements should be incorporated into a broad-based workplace safety plan, that is an ever evolving document that employees and management alike receive training on and have a stake in keeping relevant to the threats in the workplace. As the “Rust” shooting shows, the failure to do so can be tragic.

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