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## The GSH 60-Second Memo

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GSH partner  
Jill Pedigo Hall's article  
"Leveling the Playing Field  
for Employers? Government  
Initiatives Against  
Misclassification" was just  
published in the June 2011

### Wisconsin Employers Face Loaded Decision with Impending Concealed Carry Law

By Matthew J. Feery, Esq.

Concealed carry is coming to Wisconsin. Both the Wisconsin State Senate and State Assembly have already approved a concealed carry bill, Senate Bill 93, that is now set to go to Governor Walker, who has already stated his support for the bill. The bill would make Wisconsin the 49th state to allow some form of concealed carry, leaving Illinois as the sole remaining exception. The question for employers is whether that means they have to allow their employees to carry concealed weapons at work.

The answer is yes, and no.

Assuming the bill passed by the Wisconsin legislature becomes law, employers will be able to prohibit employees from carrying concealed weapons at work, but not in their cars, even if the employer owns the parking lot, or the employee uses the car for work.

Among the provisions in Senate Bill 93 is the creation of Wisconsin Statutes section 175.60(15m), which provides, "an

issue of DRI's *For the Defense*.

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employer may prohibit a licensee [i.e., an individual with a license to carry a concealed weapon] ... that it employs from carrying a concealed weapon ... in the course of the licensee's ... employment or during any part of the licensee's ... course of employment."

But it contains the following exception: "An employer may not prohibit a licensee ... as a condition of employment, from carrying a concealed weapon ... in the licensee's ... own motor vehicle, regardless of whether the motor vehicle is used in the course of employment or whether the motor vehicle is driven or parked on property used by the employer."

Assuming an employer wants to exercise its full rights, it should adopt a written policy prohibiting employees from carrying concealed weapons at work. An employer that wants to prohibit clients, vendors, or other non-employees from carrying concealed weapons in the workplace should post signs at the entrance to the building (if the employer is also the building owner) or the entrance to the employer's office space (if the employer does not also own the office building) stating as much. According to the bill, the sign should be at least 5 inches by 7 inches and in a location visitors can be reasonably expected to see the sign. But an employer cannot apply this ban to the parking lot or to employees when they are using their own motor vehicles while they work.

Having a written policy to that effect in place, and following it strictly, will avoid allegations that the policy is enforced in a discriminatory or otherwise unlawful manner. But at some point, some employer will violate the law by terminating an employee for keeping a weapon in his car. The question will arise, "What can the employee do about it?"

Possibly, nothing.

If an employer terminates an employee because of race, gender, or some other impermissible reason, federal and state statutes specifically addressing the issue entitle the employee to a host of potential remedies, such as back pay, reinstatement and attorney's fees.

The remedies for assorted violations of section 175.60 are set forth in subsection 175.60(17), but it says nothing about the remedies available if an employer violates subsection (15m). If no private right of action were allowed, then there would be a wrong inflicted for which there is no remedy, something courts disfavor. So, it is possible the only remedy available would be a standard action for wrongful termination. Under Wisconsin law, "A wrongful discharge is actionable when the termination clearly contravenes the public welfare and gravely violates paramount requirements of public interest." *Brockmeyer v. Dun & Bradstreet*, 113 Wis.2d 561, 335 N.W.2d 834 (1983).

Many employers certainly believe that bringing a handgun to work, even if it stays in the employee's car, is not a "paramount requirement[] of public interest." But the bill, assuming it is enacted in its current form, says otherwise. Indeed, the bill

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Tennessee  
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Wisconsin

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contains a strong incentive for employers to allow the concealed carrying of weapons: immunity. Subsection (21)(c) states, "An employer that does not prohibit one or more employees from carrying a concealed weapon under sub. (15m) is immune from any liability arising from its decision."

If, as expected, Governor Walker signs the bill, the statute will not take effect until the first day of the fourth calendar month following the bill's publication. Employers should take that time to consider whether to adopt new policies or update existing policies in light of the new law.

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