



# UNDER THE GUN

SCRAPYARDS GRAPPLING WITH THE SAFETY AND LEGAL ASPECTS OF GUNS IN THE WORKPLACE WONDER, WHAT'S THE RIGHT MOVE? **BY MEGAN QUINN**

The manager of a scrapyard in the Southwest had a dilemma. A few weeks after he had fired an employee, workers noticed the man drive slowly past the scrapyard multiple times. The workers, who knew the fired employee didn't leave on good terms, wondered if he might be planning something violent. The manager called the police and explained the situation, but officers said they couldn't issue a restraining order because the man had not stepped onto company property. The manager mulled his options, but one particular question nagged at him: Would everyone be safer if he allowed employees to carry guns at work? Or would that put employees in more danger?

The company doesn't have a firearms policy, but the scrapyard manager believes it needs to create one. Yet he isn't sure how to write a policy that respects the state's concealed-carry laws, his employees' Second Amendment rights, and, above all, the safety of everyone in the scrapyard. "We don't want it to become a situation where we

## POLICY POINTERS

When working with a lawyer to craft your firearms policy, here are a few questions to consider:

**To whom does your policy apply?** All employees, customers, visitors, and vendors?

**To what areas of your facility does the policy apply?** List all applicable areas, such as the parking lot, entire facility, company vehicles, or other specific places.

**Where can you search for weapons?** If state or local law allows it, does your company reserve the right to search the property, company vehicles, or personal property such as backpacks or purses to determine if someone brought in a weapon?

**What are the consequences?** If they violate the policy, how will employees be subject to discipline? Will they be sent home for the day or fired?

**What about company-sponsored events?** Does your policy apply just to the day-to-day operations of your company, or does it also apply to company-sponsored events, such as barbecues or sporting events?

*Sources: Seyfarth Shaw, Society for Human Resource Management*

don't have [a firearms policy] until *after* something bad happens," he says.

This scrapyards is hardly the only one to grapple with the complexities of weapons in the workplace, and this manager isn't the first to recount worries about disgruntled employees. Although violent incidents are rare, those that occur can make national news. Just weeks ago, for example, a former employee of an RV parts manufacturer in Florida shot and killed five former co-workers before killing himself. Across the recycling industry, there is no consensus around a single best practice for firearms policies. The decision is left up to individual employers and local laws. Businesses might be tempted to put off committing to paper a workplace violence and firearms policy to avoid the contentious issue, but safety experts and lawyers agree: Have a written policy, and go over this policy with all of your employees. A written policy makes the rules about guns clear for everyone involved, and it could help protect employers or employees from liability should a situation turn violent. Scrapyards without a firearms policy could be putting themselves at legal risk of negligence, says Mark Lies, a labor and employment attorney at Seyfarth Shaw (Chicago). Work with a lawyer who is familiar with your state and local firearms laws to update or draft a policy that reflects your values as a business.

## READING THE REGULATIONS

The Occupational Safety and Health Administration does not have a specific standard for workplace violence or firearms in the workplace. Yet the general duty clause of the Occupational Safety and Health Act requires employers to provide a workplace that "is free from recognizable hazards that are causing or likely to cause death or serious harm to employees."

OSHA rules dictate that an employer who becomes aware of threats, intimidation, or other signs that a situation might take a violent turn should implement a workplace violence prevention program. That could include anything from an employee assistance program, which provides resources such as counseling to employees who may be in distress, to training employees to recognize and respond to workplace harassment and violence. Scrapyards also have the right to ban weapons on certain parts of company property or to limit the areas where employees can store or carry a weapon.

The details of specific firearms laws vary from state to state, Lies says. Some states, such as Illinois, Michigan, Texas, and Florida, allow an employer to prohibit employees from carrying firearms, whether concealed or unconcealed, only if the employer meets certain conditions. In Illinois, for example, an employer can ban a worker from carrying a firearm into the workplace, but it must "clearly and conspicuously" notify employees that firearms are prohibited by posting state-approved signage of a firearm with a circle and a line through it, he says. Some states may have even more specific requirements about what the signage must look like or say. South Carolina, for example, requires that signs use the exact phrase "No concealable weapons allowed" in black, 1-inch-tall capital letters. Other states, such as Arkansas, California, Massachusetts, and New York, allow employers to prohibit firearms without requiring signage or other such caveats.

Parking lots are another facet of the law that varies from state to state. State "parking lot laws" might allow employers to ban weapons in the workplace but give employees the right to keep firearms in their personal vehicles, even if those vehicles are parked in the company parking lot, Lies says. Depending on the state, the law might require employees to keep these guns away from view and under lock and key inside a glove box, trunk, or secure gun box within the vehicle, he adds. Some scrapyards owners see these parking lot



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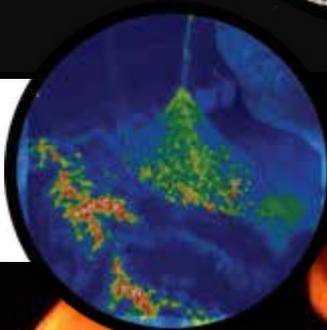
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laws as a good compromise, he says, because they ban the weapons inside the scrapyard but still allow workers to exercise their Second Amendment rights. "It strikes a balance," he says. Employers can and typically do ban employees from carrying guns while operating any company-owned vehicles, Lies notes.

## **SAYING NO TO GUNS**

Some scrapyard managers and safety professionals believe guns never belong in the scrapyard, no matter what. Terry Cirone, ISRI's vice president of safety, says scrapyards that allow guns put themselves at serious safety risk. "You just never

know what is going to happen," she says. Workplace violence is one concern, she says, because guns have the potential to elevate a "heat of the moment" argument into a deadly brawl. According to the U.S. Bureau of Labor Statistics, workplace violence contributed to the death of 518 workers in 2010, and firearms were used in 78 percent of the killings. Cirone believes it is unsafe for employees to leave their guns in their cars, too. An employee or customer who is angry enough to use a weapon won't mind a quick trip to the parking lot to get it, she says. "People get angry, and they do something stupid," she says.

Another concern is the chance that a well-meaning employee accidentally injures himself or others, Lies adds. He tells his clients he "prefers" they not allow workers to carry guns on the premises because of the risk of accidental shootings. "We tell people there are just too many liabilities," he says.

## **SAYING YES (OR MAYBE) TO GUNS**

Of course, not every scrapyard manager agrees that a gun ban is the way to go. In fact, Bill Rouse, quality, environmental, health, and safety manager at PK Metals (Coram, N.Y.), says it's common for smaller scrapyards to have at least one gun on site or employ a worker with a concealed-carry permit, in part because alternatives, such as hiring private security, can be expensive. Some scrapyards that pay in cash might keep a gun on site because they have been robbed in the past, he says. They might designate a responsible employee to carry a weapon, or the business could decide to keep one in a strategic location,

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such as the office or the cashier area. While some yards keep the gun out of sight to use "just in case," the owner of one Midwestern scrapyard says he makes sure the gun strapped to his hip is clearly visible because it's a theft deterrent. Meanwhile, at PK Metals in New York, "the state is really strict," Rouse says, so no one is allowed to carry a gun on the premises except for two owners. They have a specific type of "business-carry" permit, meaning they had to prove a special need for protection. These employees, who handle the scrapyard's cash transactions, carry concealed guns to ward off thieves, he says.

Though safety is the foremost concern when crafting a policy, some scrapyards in states with less strict laws consider their workers' preferences when deciding what to allow or prohibit. One Texas scrapyard, for example, allows workers to keep guns locked in their cars because hunting is a popular activity in the area.

Brady Mills, ISRI's director of law

enforcement outreach, says he doesn't support a total ban on guns in the workplace, but he says no scrapyards should take its gun policy lightly. "It comes down to a very personal decision by the owner(s)," he says. Scrapyards that do choose to allow guns should be careful to follow all local laws related to firearms, he adds. "If an owner chooses to be armed or have designated employees armed, they should be trained in the use of the weapon and have the proper credentials as required by law," Mills says.

#### INFORMING AND TRAINING EMPLOYEES

Regardless of which approach seems right for your scrapyard, write a policy that clearly reflects your stance, then "make sure you train your people on it," Cirone says—not just employees, but also customers, vendors, or other visitors to the property. If your policy bans weapons, it also should describe the consequences of violating the rules, such as suspension or even termination. The policy should explain your right, if the law allows it, to search the premises or personal property, such as purses or backpacks, if you suspect someone is bringing in a weapon, she adds. PK Metals recently added a search clause to its weapons policy after having employee theft problems, Rouse says. "We realized we didn't have a policy that allowed us to search vehicles, and when we called the police, we realized it was within our right. So we went to our legal team and talked to them" about expanding the search policy to also include the ability to search for weapons, he says. He hasn't had to enforce that part of the policy, but if it were to come up, "I still would probably call my local police" to assist with the search, he says.

Rouse says PK Metals trains all 80 employees to recognize and respond to workplace violence, including what to do if they suspect someone has brought a weapon to work. He

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encourages all employees to speak up if they see or hear something suspicious. That policy worked well for one Midwestern scrapyards, where a disgruntled employee threatened to get a gun out of his locker if a co-worker kept bothering him. The co-worker reported the situation to his supervisor, who called the police. Police searched the locker, found the gun, and arrested the man.

PK Metals' workplace violence training also covers what to do if there is an armed robbery. Since the majority of the company's employees

*Be proactive about addressing employee problems that could lead to violence. Personal problems can affect your workers' concentration, productivity, and overall safety, experts say.*

don't carry weapons, "we [explain] where the panic buttons are and when they should be used," Rouse says. He also circulates a short active-shooter training video from the City of Houston called "Run, Hide, Fight" that outlines the best way to respond to an active-shooter situation. The U.S. Department of Homeland Security also has a three-minute video that covers the same topic, which Mills recommends as a training tool during safety meetings.

### ADDITIONAL RESOURCES

Scrapyards can implement other policies or practices that complement their firearms rules, Cirone says. One option is to hire a private security company, she suggests. Many large recycling operations hire private security instead of allowing employees to have guns, especially if the company has locations in multiple states and needs to craft a corporate policy that fits multiple locations. Private security is less common at smaller scrapyards

because of the cost, Rouse says. Cirone argues it can be worth the money if a scrapyards worries there's a chance an uneasy situation might come to a head, such as with the Southwestern scrapyards disgruntled, terminated employee. "If you are worried someone is going to come to work and do something bad, leave it to a professional. Hire a private security guard who is trained," she says. Other ideas include upgrading or installing security cameras or consulting with local police for more options, she says.

Scrapyards also can implement a visitor-control program that prevents unauthorized visitors from roaming the property, Rouse says. "The policy should be that you approach everyone as they enter the facility instead of letting them walk right in," he says. It helps keep tabs on every visitor and prevents visitors from walking into areas of the facility where they shouldn't be. This policy should apply to all visitors, even if they are regular peddlers or an employee's spouse. "If someone always walks right in to visit their wife, and we let them go every time, what happens if they start fighting and it gets violent?" he asks.

And regardless of a company's weapons policy, it's important to be proactive about addressing employee problems that could lead to violence. Personal problems and disputes at work can affect workers' concentration, productivity, and overall safety, safety experts say. Workers struggling with a divorce, substance abuse problems, or financial difficulties can take their anger out not just on the scrapyards equipment, but also on their fellow workers. An employee assistance program can connect workers to counseling or other helpful services targeted to their needs. Though it's an added cost for scrapyards, affordable EAP options exist, and "they might decide it's worth it and that it pays off," Rouse says. **\$**

Megan Quinn is reporter/writer for Scrap.



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