

The New Wild West: Considerations for Commercial Landlords and Tenants in the Era of Open and Concealed Carry of Firearms

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In a retail setting like a grocery store, it might be shocking for the average customer to see an individual openly carrying a rifle slung over his shoulder. While the gun-toting patron might be shopping for cantaloupe and exercising his open-carry rights, other customers might panic and call 911 to report a "man with a gun."

Gun ownership laws continue to evolve nationwide and many states have expanded legal open carry laws in recent years. Currently, only a handful of states prohibit open carry of a firearm in any form. "Open carry" is generally characterized as carrying a gun in public where others can see it in plain sight. Every state, including the District of Columbia, allows the carry of concealed firearms in some regulated form. "Concealed carry" is usually defined as carrying a firearm where the casual observer cannot see it.

While most proprietors expect a person carrying a gun onto the property to have benign intentions, accidents (including accidental discharges) do happen. Furthermore, mass shootings and other incidents involving firearms continue to be an unfortunate part of reality in today's society. Landlords and tenants of retail properties should be aware that bodily injury or death caused by a weapon wielded by an employee or invitee on the property can leave a business open to lawsuits under various theories of liability. Consequently, it is important for landlords and tenants to be aware of the implications of allowing or prohibiting firearms on their property, and the resulting liability that might come from gaps in insurance coverage, or firearms policy decisions.

What options do commercial landlords and tenants have to address the risk of liability?

- **Check your state, city, and municipal laws regarding concealed and open carry**
 - Some state laws allow private businesses to ban guns from their premises, but not every jurisdiction permits private owners to ban guns from their property.
 - Some state laws may address liability. For example, Wisconsin law states that a property owner or occupier is immune from liability arising from the decision to allow firearms on the property. By inference, banning weapons from the premises may give rise to a standard of care where the owner or occupier has a duty to enforce the ban.

- **Evaluate the business occupying the premises and requirements under state law**
 - For example, bar owners or places where alcohol is served will likely have an affirmative duty under state law to ban firearms from their premises.
- **Engage in a dialogue with your landlord/tenant and property manager about firearms policy**
 - Consider making this a part of the lease, or amending the lease as to who can decide what is allowed on the premises (especially if seeking to ban concealed weapons.)
 - Discuss how any policy will be enforced.
 - Address insurance provisions for tenants regarding exceptions in coverage for firearms incidents.
- **Review any signage requirements under state, city, and municipal law**
 - States may require certain dimensions, language and placement for signs notifying patrons of firearms prohibitions on the property.
 - For example, in Texas the sign text must be in English and Spanish.
- **Talk to your insurance carrier**
 - Do not assume that you are currently covered for incidents relating to firearms.
 - Firearms are commonly excluded from commercial general liability policies.
 - Discuss the impact of allowing or prohibiting guns on the premises with your insurance carrier.
 - Consider purchasing additional gun liability coverage.

Regardless of personal position, commercial landlords and tenants must be aware of the state and local firearms laws that apply to their property. The intersection between premises liability and firearms statutes continues to develop, and sound risk management calls for review of current policies and insurance coverage to help mitigate any existing gaps in coverage.

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