

## **BRINGING IN A HIRED GUN - The Pitfalls Of Hiring Armed Security**

Hiring an outside security company that provides armed security guards raises serious liability concerns. One particular armed security company told our client, with great zeal, that their security guards are trained to detain suspects of crimes until the police arrive and that their guards are bonded to carry guns. Some clients have used armed security services for years. The Firm regularly advises clients on various vendor issues. Many clients have asked about hiring armed security patrol services. Hiring armed security is risky. Some properties (owners) have determined that it is a necessity. However, armed security will expose you to legal liability for events you did not cause.

Even prior to consulting us, clients are concerned about the possible liability associated with armed security. The central issue is whether you are liable for the actions of the armed security patrol. Outside security companies are vendors. Generally, a vendor is an independent contractor. An independent contractor is not an employee. An independent contractor is someone you hire to provide a service that you and your staff do not provide directly for the property. Normally, you are not liable for what a vendor (independent contractor) does. However, there are some exceptions. One major potential exception is when the vendor you hire engages in an inherently dangerous activity.

What is an inherently dangerous activity? An inherently dangerous activity is an activity that is always dangerous no matter how carefully it is performed. The very nature of the activity may result in injury to others if certain precautions are not taken. To fall within the inherently dangerous work exception, it is not necessary that the work be such that it cannot be done without a risk of harm to others, or even that it be such that it involves a high risk of such harm. It is sufficient that the work involves a risk, recognizable in advance, of physical harm to others, which is inherent in the work itself. This means that if you hire an independent contractor that performs an inherently dangerous activity, you should expect that contractor to take certain precautions to

protect the public or those in the vicinity of the work performed. Some textbook examples of inherently dangerous activities including dynamite blasting and bar club bouncing. A bouncer may frequently use physical force to do his job. Unless a bouncer is careful, a bouncer is very likely to injure a patron.

Vicarious liability is when you are liable for the actions of another even though you didn't cause the injury. In Colorado, the law imposes vicarious liability on you for hiring vendors who perform inherently dangerous activities. This liability is imposed based on public policy reasons. You wouldn't provide firearms to your onsite staff because you and the owner would never accept the associated risks with an armed onsite staff. When you hire an armed security guard, you know or should know that there are also significant risks involved. You cannot eliminate those risks and the associated liability by hiring an outside security service instead of arming your own employees.

Let's assume that the security company's guards are not just armed; they are trained to detain people on your property and possibly with guns! Is there any liability for the actions of these security guards? If there is an altercation at the property and the security guards fires at a criminal but misses and hits a resident, would you be liable to the resident if she sued your company? Worse, what if the resident dies and her family sues the management company and owner for wrongful death? Could your company be liable then? The answer is probably YES! You will be held liable if the court determines that security services involving armed guards is an inherently dangerous activity.

No Colorado court has ever directly addressed this exact issue. The leading case was decided by an Ohio court. In *Posey v. Bator*, an independent security guard shot and killed a man who he thought was an intruder. The company who hired the outside security company was a manufacturing company. The family of the man who died sued the manufacturing company that hired the security guard company. The Ohio Supreme Court held that armed security work is inherently dangerous and found that the manufacturing company could be held responsible for the death.

While no Colorado court has ruled on the armed security guard issue, the decision in the Ohio case accurately reflects the law in Colorado concerning vicarious liability for inherently dangerous activity. Further, not ruling on the armed security guard issue, a Colorado Supreme Court Justice has commented that armed security work is inherently dangerous. Specifically, in a vicarious liability case that dealt with truck driving, a Supreme Court justice, in a dissenting opinion, commented on security guard work. Justices write dissenting opinions when a justice disagrees with his colleagues about a case. In the truck driving case, the court was trying to define an inherently dangerous activity. When citing examples, the dissenting justice stated that security guard work is inherently dangerous. The justice reasoned that security guard work, especially with armed guards, can involve situations where a gun or handcuffs may have to be employed out of necessity, and such actions are inherently dangerous and require caution. The justice was also concerned that some security personnel are very tempted to use force. Based upon this dissenting opinion, a future court is very likely to hold that armed security guard work meets the definition of an inherently dangerous activity. Armed security work has great potential to be dangerous if not done with extreme caution. Accordingly, you probably will be held legally responsible for the actions of an armed security guard even if the armed guard works for a vendor.

Your liability is not limited to armed security guards. If unarmed security guards use force to detain people on your property, they are also engaging in an inherently dangerous activity. Security guards have some statutory authority in Colorado to detain suspects for the police to arrive, but they do so at risk to their employer and to the apartment community. As noted by the dissenting justice in the truck case, security companies may frequently employ individuals who are overzealous or think of themselves as an extension of law enforcement. This is not to say that all security personnel are want-to-be police officers. But some security personnel are too easily tempted to use force when force may not be necessary. Using a company that has both armed guards and guards who are specifically trained to detain people with handcuffs is quite a risky proposition.

The Firm's experience has borne this out. We once represented an individual in a negligent hiring lawsuit, who was beat up by a security guard. The security company hired the guard knowing that he had twice (yes not once, but twice) been convicted of impersonating an officer. The police records we obtained revealed that this security guard had bought a former police car at an auction and placed siren equipment on top. Using this car, he pulled two African American men over on a public street. The men thought he was an officer. The real police arrested this guard for impersonating an officer. This same individual tried to take our client into custody, causing injury and significant humiliation to our client. The armed security guard used both his firearm and handcuffs to detain our client. He then called the police and lied about our client. The security guard was an out of control security guard. Because of his past, he was never going to be a police officer. However, he wanted to be a policeman so badly that he acted like a policeman. As a result, he was overzealous and dangerous. We settled the case after the owner of the security company admitted that he knew about this guy's past. During the deposition of this guard, we thought he was just a Barney Fife-type (Mayberry's beloved overzealous deputy). However, when he refused to take off his weapon during his deposition, we knew he was actually a threat to the public. You don't want a guy like this patrolling your property.

Even if armed security is necessary at a multi-family community, hiring an independently contracted armed security guard company does not reduce the risk. If you decide to hire a company that employs armed guards or guards who are trained to detain members of the public, you do so with a definite financial risk. The risk outweighs the benefits in our opinion.