

STATE'S AT-WILL EMPLOYMENT DOCTRINE VULNERABLE IN GUN LAWSUIT

News

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The article, "State's At-will Employment Doctrine Vulnerable in Gun Lawsuit," featured in the *Mississippi Business Journal*, discussed how a federal lawsuit over the firing of Aurora Flight Sciences worker, Robert Swindol, for having a gun in his car at work could soon punch a large hole in Mississippi's 150-year-old "at-will employment" doctrine.

Attorneys Steve Cupp and Jaklyn Wrigley weighed in on the case.

Steve said he thinks Swindol has the edge, especially with the Mississippi Supreme Court ruling his right under Mississippi law to possess a firearm in a locked vehicle trumps the at-will employment doctrine. He said he expects the U.S. 5th Circuit will return the case to Aycock for a rehearing in which the conclusions the state Supreme Court made must guide her treatment of the case.

"If I was a betting man I would say that is how this will be resolved," said Steve, referring to the likelihood that Swindol will prevail.

"From the defense side, as an attorney I would be looking at this and saying, 'Let's settle this thing. Let's try to get rid of this and regroup,'" he added.

Aurora Flight Sciences may have relied too much on an immunity clause included in the 2006 Mississippi firearms statute that freed employees from liability for shootings that occur on company property. "The statute says no liability should accrue to the employer for an employee's transportation, storage or use" of a firearm on company property, Steve said.

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Steven R. Cupp

Partner

[228.822.1440](tel:228.822.1440)

"The employer said this gave it protection from you suing me," he said.

Aurora's defense, however, ran up against a provision of the 2006 state law that authorized employers to prohibit workers from having guns in their vehicles when entering a company parking lot that has a guard gate, guard house, fence or other protections for workers.

Had Aurora secured its parking lot, the defense would not have been immunity, said Jaklyn.

"Since Aurora's parking lacked the protections articulated by the statutes, Swindol was lawfully permitted to keep a firearm in a locked vehicle in the company parking lot," Jaklyn said.

Swindol's case and the exception to the at-will employment doctrine it has brought created new questions for employers to address. Here are several of them compiled by Steve and Jaklyn:

- What happens if your general liability insurance carrier or workers' compensation carrier mandates that you have a "no firearms" policy? The Hobson's Choice here, Steve said, is whether you are going to have a firearms prohibition in place just to satisfy the insurance carrier but not enforce it.
- Does the statute allow an employee to store in a locked vehicle just one firearm or can it be multiple firearms?

"It doesn't address if it is one firearm or multiple firearms," Jaklyn said.

- Does the firearm have to be a legal firearm?
- Does the statute really protect you from liability if an employee injures or kills other employees or third-parties with the firearm that is stored in the vehicle?

"We're not exactly sure what will be the case," Steve said.

- Just what is an "occurrence" that is shielded from liability?

Aurora Flight Sciences argued Swindol's action and subsequent firing was an occurrence. "We are not going to read that as an occurrence protecting from liability," Jaklyn said.

- Can you require employees to self-identify if they have a firearm in their locked vehicle in the parking lot? Would you want to?

Trouble could be ahead if you have an employee who is quick to anger and keeps a gun in his car and you declined to implement protective measures, she said. "On the flip side, a plaintiff could sue and say you should have required them to self-identify" as a way to protect employees.

Steve noted that he has never had an employer client say the business requires employees to reveal whether they have a firearm in their vehicle.

- What happens if an employee references his or her firearm in a general workplace discussion as a means to intimidate other employees? Both of the lawyers said the employer would be free to fire this worker.

You still have the ability to terminate employees who intimidate other employees, especially with threats of violence, Steve and Jaklyn said. As to the other questions, you will have to weigh the risks against the benefits of prohibiting firearms in the workplace in this new frontier, they added.

Steve said his advice to his employer clients has been to keep the no-guns-in-the-workplace policy in place. "But before discharging someone" for violating the policy talk to a lawyer, he advised.

"Let's see how it shakes out," he said. "It's a little early for employers to ask should we scrap" a firearms ban.

To read the full article, please visit [Mississippi Business Journal](#).