



Florida Court Lifts Open Carry Ban: What Employers Need to Know

Insights

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A Florida appeals court just struck down the state's open carry ban as unconstitutional. Moreover, Florida's Attorney General confirmed that the decision applies statewide, meaning that openly carrying firearms is considered legal in the Sunshine State. But that doesn't mean the debate is over. We may see conflicting rulings from other appellate courts in the state or challenges under existing Florida Supreme Court precedent. What does this all mean for employers? Although private employers in the state can still control and ban the possession of firearms in the workplace, the decision raises questions about the impact on employer policies and procedures. We'll tell you everything you need to know and what you should consider doing now.

Court Says Ban is Unconstitutional

In *McDaniels v. State of Florida*, the First District Court of Appeal overturned Florida's open carry ban, which had made it "unlawful for any person to openly carry on or about his or her person any firearm or electric weapon or device."

The court pointed to federal rulings on the Second Amendment and held that the ban is unconstitutional because it is inconsistent with the nation's "historical tradition of firearm regulation." The court emphasized that the right to bear arms in public includes the right to do so openly and that this right may not be altogether extinguished by the state for law-abiding, adult citizens.

The First District's September 10 decision to overturn Florida's open carry ban has been interpreted as applying statewide. Indeed, the state Attorney General confirmed the decision's statewide reach in a September 15 guidance memo.

Notably, however, *McDaniels* conflicts with the Florida Supreme Court's 2017 ruling in *Norman v. State*, which upheld the constitutionality of Florida's open carry ban – and other Florida appellate courts could rule that *Norman* is still the law in Florida.

Notwithstanding the clear conflict, *McDaniels* will inevitably reach the Florida Supreme Court because the court must review all district court decisions that invalidate Florida law.

Additionally, state lawmakers may consider or eventually pass legislation codifying an open carry right. So, you'll want to stay tuned for more developments.

Impact on Employers

The *McDaniels* decision applies only on public property. This means private property owners, including private employers, still retain the right to restrict firearms on their property.

But there's a key limitation. The *McDaniels* decision does not impact a Florida law that allows employees to store firearms in their locked vehicles on work property, and employers still may not search vehicles for firearms. Notably, however, employees are permitted to remove firearms from their vehicles only for self-defense purposes.

The *McDaniels* decision does not affect state and federal restrictions on firearm possession in specific locations. In Florida, for example, it is still illegal to carry firearms in the following places:

- Places of nuisance, such as buildings where prostitution, gambling, or criminal gang activity occurs;
- Law enforcement facilities;
- Correctional facilities;
- Courthouses;
- Polling places;
- Government meeting locations;
- School, college, or professional athletic events not related to firearms;
- Public and private elementary and secondary schools, bus stops, and school-sponsored events;
- Career centers;
- Places licensed to dispense alcoholic beverages;
- College or university facilities;
- Passenger terminals and sterile areas of airports; and
- State and federal government buildings.

4 Key Recommendations

Ultimately, the *McDaniels* decision has not changed a private employer's ability to control or ban firearms in the workplace. You may continue to restrict firearm access, so long as you do not prohibit employees from storing firearms in their locked vehicles.

However, in light of the recent ruling, you should consider taking the following steps to ensure compliance.

compliance.

- **Review existing weapons policies.** Private employers may continue to prohibit the possession of firearms inside the workplace. However, a blanket prohibition against the possession of firearms on company property may violate section 790.251, which allows employees to store firearms in their locked vehicles.
- **Reinforce disciplinary policies.** Employees who violate a “zero tolerance” firearms policy by open carrying in the workplace can still be disciplined or discharged in accordance with the employer’s policies.
- **Train supervisors and managers** to understand Florida’s open carry laws to prevent misunderstandings about what employees are and are not allowed to do.
- **Establish a point of contact with law enforcement** so you can respond quickly if a problem involving firearms arises.

Conclusion

We will continue to monitor developments impacting the workplace in Florida and will provide guidance accordingly. Make sure you are subscribed to [Fisher Phillips’ Insight System](#) to get the most up-to-date information delivered to your inbox. If you have further questions, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in [our Florida offices](#).

Related People



Maritza I. Gomez
Partner
954.847.4733
Email





Shannon E. Murphy

Associate

813.769.7466

Email

Service Focus

Workplace Safety and Catastrophe Management

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