



New Gun Law Poses Challenges for Florida Businesses

Insights

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Beginning July 1, Florida businesses will begin dealing with the reality that their employees may legally bring firearms onto work property, as long as they keep them in their cars. That's because on April 15, 2008, Governor Charlie Crist signed into law the "Preservation and Protection of the Right to Keep and Bear Arms in Motor Vehicles Act of 2008."

This Act permits employees to bring firearms onto their employers' premises, provided the employees hold a valid Florida license to carry a concealed firearm and keep the firearms secured out of sight in their locked vehicles. The Act also applies to visitors or "invitees" parking in a business's parking lot.

Specific Provisions

The Act defines "employee" broadly to include interns, volunteers, and independent contractors. This expansive definition obviously increases the challenges employers will have to maintain safe workplaces once the law goes into effect.

The new law applies to both the public and private sector, but excludes some employers. These include most schools, correctional institutions, property where a nuclear-powered electricity generation facility is located, certain facilities that transport, make or store combustible or explosive materials, and property upon which a public or private employer conducts activities involving national defense, aerospace, or homeland security. The law does not give employees the right to maintain a firearm in a company vehicle, only their personal vehicles.

Under the new law you are prohibited from: 1) conditioning employment on whether an applicant has a concealed weapon permit; 2) asking employees if they keep firearms in their vehicles or whether they hold a concealed weapons permit; and 3) searching employees' vehicles for firearms. Employers also may not condition employment on, take action against, or terminate employees who acknowledge that they have a firearm license or hold firearms in their locked vehicles.

Our Advice

In light of these restrictions, we recommend employers consider the following steps to begin preparing now for the Act to become effective:

- Review and revise any existing weapons policy to comply with the Act. Unless an employer is exempt from the law, policies that contain a blanket prohibition against the possession of

firearms on Company property may violate the Act. You basically have two choices: revise your existing policy to state that firearms are prohibited on Company premises *except as authorized by law*; or, revise your existing policy to incorporate all the specifics of the new law.

- Review and revise (if necessary) any policies giving the Company a right to search an employee's vehicle. Under the new law, you are prohibited from searching an employee's car based upon suspicion that the employee has a firearm in the vehicle. In such circumstances, only on-duty law enforcement can legally search an employee's car.
- Develop a written action plan now with respect to when and how to search an employee's vehicle for firearms, drugs, stolen property, and the like.
- Reinforce existing (or add) "zero tolerance" for workplace violence policies to your handbook. The new law allows employees to remove firearms from their vehicles for only one purpose: self-defense. Employees who remove a firearm from a vehicle for any other reason, such as to "show off" or frighten a coworker can still be disciplined or discharged in accordance with the employer's policies.
- Train supervisors and managers to understand the basic requirements of the Act. Training is critical to prevent misunderstandings about what the new law does and does not allow employees to do.
- Contact local law enforcement to establish a point of contact in the event of problems. Ideally, this contact person will provide immediate assistance in the event a firearm is discovered in the course of a search for illegal items or other serious issues arise.

Current Status

The Florida Retail Federation and the Florida Chamber of Commerce filed a motion in Federal court requesting the court to enjoin the law from becoming effective. A hearing on this motion is scheduled for June 23, but it is not clear whether a court ruling will issue before July 1.

The time to consider these changes is now, before a problem arises. When in doubt, contact your Company's attorneys for guidance.

This article is intended to provide a useful overview of various aspects of this new law, but is not intended to be legal advice for any particular fact situation.