



Federal Court Rules Against Employers on Florida's Guns-at-Work Law

Insights

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A Federal judge in Florida has issued a mixed ruling on the request for an injunction against the new so-called "guns-at-work" law in Florida. Judge Robert Hinkle of the Northern District of Florida denied the request to enjoin the law as it relates to employees. Therefore, employees with concealed weapons permits will be able to bring guns onto an employer's property if locked in or to a vehicle. The Judge granted the preliminary injunction with respect to business invitees and customers, who, at least for the time being, will not be allowed to bring firearms onto business premises.

Shortly before the new law went into effect on July 1, 2008, the Florida Chamber of Commerce and the Florida Retail Federation requested an injunction to halt the law's implementation. Many business groups, employers and attorneys strongly opposed the bill and viewed it as a blow to workplace safety.

This mixed ruling is disappointing to employers who are dedicated to maintaining a safe working environment. We continue to urge all employers to immediately ensure that they are in compliance with the law. Employers must implement policies and strategies that ensure compliance.

The law applies to most Florida employers. It permits employees to have firearms on company property if locked inside or to their vehicles while in a parking lot owned by their employer. Employees must have a concealed weapons permit and the firearm must be legally owned. Firearms may only be removed from vehicles for self-defense.

Background

On July 1, 2008, Florida joined a handful of other states with the enactment of the so-called "guns-at-work" law. The new law, as it is currently written, requires businesses to allow employees and customers who possess permits to carry guns in their vehicles if they are locked in or to the vehicle and it is lawfully parked on company property. In other words, the law prevents businesses, both public and private alike, from maintaining a general policy banning anyone from possessing a gun on any company owned property.

The Chamber and the Retail Federation challenged the new law on both constitutional and safety grounds.

In its decision, the Court explicitly rejected the claim that the law, as applied to employees, violates the U.S. constitution. It also determined that it is not a violation of OSHA's general requirement that employers provide a safe workplace. The Court also found that the legislature was within its authority when it prevented employers from conditioning employment on whether an employee, or prospective employee, possesses a concealed weapons permit.

How Does This Ruling Affect You?

The Court explicitly found that the provision as it relates to the workforce is constitutional, so employers must continue to abide by it. Employers, if they have not already done so, need to examine their policies and make sure they are not in violation of the law. Remember that the law does not affect an employer's right to ban guns inside any buildings or structures, or prevent the exhibition of a gun for any reason other than a lawful self-defense purpose. Rather the law only requires that you allow workers to keep weapons locked in (or to) their vehicles if they possess a concealed weapons permit, a fact that was reinforced by the Court. Further, in light of the Court's ruling, employers are under no obligation to allow any customers or visitors to the worksite to store guns in their vehicles, regardless of whether they possess concealed weapons permits.

Our Advice

We recommend employers consider the following steps to comply with the law:

- Review and revise any existing weapons or violence in the workplace policy to comply with the law. 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 law. 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 vehicle 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 vehicle.
- 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 law. 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.

If you need further advice or information about how this law affects your particular business, or your employment policies, contact any attorney in one of our Florida offices:

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This Legal Alert provides an overview of a particular court ruling. It is not intended to be, and should not be construed as, legal advice for any specific fact situation.

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