



# Alabama Firearm Act Gives Right of Action Against Employer

Insights

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Alabama has become the most recent state to adopt a “bring your gun to work law,” with Governor Robert Bentley signing a firearms-related bill into law on May 22, 2013. The law takes effect August 1, 2013. The law will impact Alabama employers and companies with operations in that state.

The law contains many provisions, including denial of permits to mentally ill citizens and how and when guns can be transported onto a company’s property. Below is a summary of the provisions most pertinent to employers and generally found in sections 4 and 5.

## Contours of the Right to Have Guns on Employer Property

The new law provides that a public or private employer may restrict or prohibit its employees from carrying firearms while on the employer’s property or while engaged in the duties of the employment. However, a public or private employer may not restrict or prohibit the “transportation or storage” of a lawfully possessed firearm or ammunition in an employee’s privately owned motor vehicle while parked or operated in a public or private area, if the employee satisfies certain conditions:

- (i) either the employee has a valid concealed weapon permit or, if the weapon is any firearm for legal use other than a pistol, the employee must possess a valid Alabama hunting license, the weapon must be unloaded, hunting season must be in session, the employee cannot have been convicted of a crime, the employee must not meet any of certain risk factors set forth elsewhere in the Alabama Code, and the employee must have no documented prior workplace incidents involving the threat of physical injury or which resulted in physical injury;

- (ii) the motor vehicle is operated or parked in a location where it is otherwise permitted to be; and

- (iii) the firearm is either kept from ordinary observation within a vehicle attended by the employee **or** in a vehicle unattended by the employee, both kept from ordinary observation and locked within a compartment, container, or in the interior of the person’s privately owned motor vehicle or in a compartment or container securely affixed to the motor vehicle.

As a general rule, employers should not ask employees if they have a firearm in their vehicle.

## When An Adverse Employment Action May Be Taken

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The law provides, however, that if an employer believes an employee presents a risk of harm to himself/herself or to others, the employer may inquire as to whether the employee possesses a firearm in his or her vehicle on the employer's property. The law does not define how an employer may arrive at such a belief, so employers should tread cautiously. If, after the inquiry, it is determined that the employee is not in compliance with the above conditions, the employer may take adverse action against the employee. If the employee has met the conditions at all times, however, the employer may not take adverse action against the employee based solely on the presence of the firearm. Moreover, if the employer discovers by other means that an employee is transporting or storing a firearm in his or her private vehicle, the employer may not take adverse action based solely on the possession of the firearm so long as the employee has complied with the above conditions.

The law further provides that an employer may report a complaint that there is credible evidence (1) the employee's vehicle contains an illegal firearm, or stolen or illegal property, or (2) the employee made a threat to physically harm himself, herself, or others. An employer can take adverse employment action when a law enforcement officer legally discovers a stolen firearm, one prohibited by state or federal law, or other illegal item. The law also accords an employee a cause of action for any adverse employment action if the employee is in compliance with the provisions for having a firearm on the employer's property.

### **Employee Right of Action for Adverse Action**

The new law does not define "adverse employment action." The definition of the "compensation" that may be recovered in a civil action includes lost wages or benefits and "lost remuneration caused by the termination, demotion, or other adverse action." This definition provides the only information for employers as to what the Legislature intended to be considered as "adverse employment action." It is likely the courts will interpret this phrase by use of cases dealing with worker's compensation or age discrimination claims. To pursue a claim, an employee makes demand for compensation and may bring a civil action if not satisfied within 45 days.

### **Immunity Provision**

Finally, Section 5 provides the employer with immunity from suit because of the actions of its employees taken outside of the line and scope of employment. It provides, "an employer and the owner and/or lawful possessor of the property on which the employer is situated shall be absolutely immune from any claim, cause of action or lawsuit that may be brought by any person seeking any form of damages that are alleged to arise, directly or indirectly, as a result of any firearm brought onto the property of the employer, owner, or lawful possessor by an employee, including a firearm that is transported in an employee's privately owned motor vehicle." The interplay of this provision and the state torts allowed against an employer, such as, negligent hiring, firing, supervision or retention will require some thoughtful training and likely litigation.

For further advice about how this law affects your business, contact your Fisher Phillips attorney or contact Marion Walker in Birmingham, Alabama at (205) 327-8354.

*This Legal Alert provides an overview of a specific new law. It is not intended to, and should not be construed as, legal advice on any particular fact situation.*

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