

TEXAS: LOCKED AND LOADED

Insights

Jun 12, 2015

The Texas Legislature took aim this session at expanding Second Amendment rights by passing “campus carry” and “open carry” bills, which have sparked controversy both in the workplace and at public colleges and universities. The bills were signed into law today by Gov. Abbott, and have raised questions for employers and higher educational institutions. The new laws will not go into effect immediately, allowing time to get up to speed and get into compliance with the new laws.

The open-carry bill will have the greatest impact on employers, as it will affect almost all private employers in the state. Surprisingly, Texas, known to be a strong advocate of Second Amendment rights, is not a pioneer in this area. In fact, it follows 44 other states in passing some form of open-carry legislation. If signed, the new legislation will take effect on January 1, 2016, so employers should begin to prepare immediately.

What Will Change When Open Carry Becomes Law?

The state legislature passed a law in September 2011 granting most employees with a concealed handgun license (CHL) the right to store firearms in the parking lot of their employer, as long as they are concealed in locked, privately owned vehicles.

The new open-carry bill expands on this by permitting employees with a CHL to have their firearms in plain sight in their vehicles in the workplace parking lot. Companies managing employees who work in high-risk environments, including schools and certain areas of oil and gas refineries, are exempt under both the new and old laws.

How To Comply

Employees who choose to assert their new right to leave guns visible in their vehicles will subject employers to increased risk. Though private employers in Texas cannot be sued for allowing firearms or ammunition in the parking lot, they may be subjected to liability in some situations, including theft. Our advice is to post signage

in the company parking lot as soon as possible stating that the company is not liable for theft or damage.

In addition, employers should know that if a parking lot shooting occurs, they may be required to pay an injured employee workers' compensation if the incident was triggered by a workplace matter and the injured employee was not attempting to unlawfully injure the shooter. If you wish to have more control over your company parking lots, you may want to explore options such as having a secured lot, offering an alternative gun-free lot, or offering employees secured storage for their firearms.

Private employers may continue to set their own gun policy in all other areas of their workplace, whether they ban guns in their entirety, allow concealed weapons, or allow employees to openly carry. If you choose to prohibit firearms, you must display appropriate signage and include the ban in your written policies.

Campus Carry

Texas is now the eighth state to institute campus-carry laws, following Colorado, Idaho, Kansas, Mississippi, Oregon, Utah, and Wisconsin. The new law will take effect on August 1, 2016 for four-year universities, and on August 1, 2017 for community colleges. It requires public schools to implement policies allowing CHL holders to bring guns onto campuses, but will allow the school to designate gun-free zones. Private schools, on the other hand, may opt out of the campus-carry requirement and apply more restrictive policies.

Determining Campus Policies

Under the new law, the school's president or CEO will determine what policies are appropriate taking into consideration the nature of the student population, specific safety considerations, and the uniqueness of the campus environment. After consulting with students, staff, and faculty, administration should set forth a policy outlining reasonable rules, regulations, or other necessary provisions.

Though public colleges may not prohibit guns, the new law allows them to establish gun-free zones. As the law was being developed, some thought schools would be able to ban guns from classrooms and other buildings, and only permit them in open areas such as courtyards. But the final version of the law requires that schools provide a "legitimate rationale" for an area to be deemed gun-free.

There is initial speculation that areas such as chemistry labs, counseling centers, medical facilities, and child care facilities will be approved as gun-free zones on most, if not all, public campuses. However, there are many questions about how and to what extent appropriate gun-free zones can be designated, as the new law has very few guidelines – seemingly leaving it to the courts to decide the limits.

Once the school's policy is finalized, the school must distribute it to faculty, staff, and students, and post it on their websites. The policy should include a section addressing what actions must be taken if faculty and staff wish to carry on campus. State law is unclear as to whether *employees* could be prohibited from carrying on campus. It appears that the state law that allows public and private employers to prohibit certain actions of employees still applies.

If your school is going to allow employees to carry firearms, it should set some basic limitations, such as requiring employees to notify the human resources or another department of their intent to carry, and providing a copy of their CHL to designated school officials.

Addressing Safety Concerns

In addition to forming a policy in compliance with the new legislation, schools must also determine the logistics of enforcing the rules and addressing safety concerns. In order to ensure that gun-free zones are, in fact, free of guns, schools may simply rely on the honor system; but this method may subject the school to substantial liability.

The safest way to avoid guns on campus is for schools to have metal detectors and trained security officers at all points of entry. Schools then must determine how to respond if people show up at these entry points with their firearms. While they may deny entry and require the person to leave campus to store their firearm, another option would be to provide on-campus lockers designated for gun storage.

Another concern of faculty, and with good reason, is that students may present risks in the classrooms. Unless deemed a gun-free zone, firearms will be permitted in classrooms. Prior to the first day a gun enters a classroom, schools should provide training to faculty on their policies and how to respond to an emergency situation. Some professors are advocating for panic buttons installed in the classroom or the ability to hold their meeting hours in a public setting, possibly the school's library, rather than in their offices.

Private employers and public colleges are sure to face obstacles as they shoot for compliance with the new gun legislation. Whether drafting new policies or updating the old ones, employers must ensure the safety of their employees. As this is likely to be a difficult feat, general counsel should work with their employment attorney to minimize the potential of liability.

For more information visit our website at www.fisherphillips.com or contact any attorney in one of the Texas offices of Fisher Phillips:

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