The Dawn Of A New Wild, Wild West In Mississippi? State Supreme Court Rules On Employees Workplace Firearm Rights

Insights
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On March 24, 2016, the Mississippi Supreme Court issued an opinion that allowed an employee to proceed with a wrongful discharge lawsuit after being terminated for possessing a gun on company premises, significantly altering employers' ability to forbid the presence of firearms at the workplace (*Swindol v. Aurora Flight Services Corporation*). In doing so, the court created another exception to Mississippi's venerable employment at-will doctrine, a doctrine that has existed in our state for 150 years. All employers, both public and private, should take note.

The Law At Issue
Before examining the decision, it is helpful to first review a relatively new state statute. In 2006, the Mississippi legislature enacted a statute that expands an employee's rights to have a firearm. That law, found at Mississippi Code Section 45-9-55, states that employers may not establish, maintain, or enforce any policy that prohibits workers from transporting or storing a firearm in a locked vehicle in any parking lot, parking garage, or other designated area.

However, the law does permit private employers to prohibit workers from transporting or storing a firearm in a vehicle in a parking lot, parking garage, or other parking area provided for employees as long as access is restricted through the use of a gate, security station, or some other means of limiting general public access.

The law also permits both private and public employers to prohibit the transportation or storage of firearms in company vehicles that are used by an employee in the course of work, and states that employees may not transport or store a firearm on any premises where the possession of a firearm is prohibited by state or federal law.

Finally, the statute provides some measure of additional legal protection for Mississippi employers. It states that public and private employers shall not be liable in a civil lawsuit resulting from any situation involving the transportation, storage, possession, or use of a firearm covered by the new law. The Mississippi Supreme Court's decision turned on an interpretation of this subsection of the law.

Employee Brings Gun To Work, Gets Fired
The case began when Robert Swindol, an employee of Aurora Flight Services Corporation located in Columbus, MS, brought a firearm onto Aurora's premises. He stored it in his locked vehicle in

Aurora's general access parking lot. These actions violated Aurora's policy forbidding firearms on Company property. Once his managers learned that he had a firearm in his vehicle, they discharged him.

Swindol sued Aurora in federal court for wrongful termination and defamation. Mississippi does not recognize a general cause of action for wrongful termination, but Swindol argued that the 2006 statute described above provided a legislatively created exception to the employment at-will doctrine.

The district court dismissed Swindol's lawsuit and he appealed the decision to the 5th Circuit Court of Appeals. The 5th Circuit, in turn, certified the following question to the Mississippi Supreme Court: whether in Mississippi an employer may be liable for a wrongful discharge of an employee for storing a firearm in a locked vehicle on company property in a manner that is consistent with Section 45-9-55.

State Supreme Court: Lawsuit Can Go Forward

The state Supreme Court ruled in Swindol's favor, allowing him to proceed with a lawsuit against his former employer. In holding that Swindol could sustain a cause of action for wrongful termination, the court had to reconcile two seemingly irreconcilable statutory provisions.

Although the statute clearly states that an employer may not prohibit exactly the kind of conduct in which Swindol admittedly engaged (storing a firearm in his locked vehicle in an employer's open access employee parking lot), the statute also clearly states that employers shall not be liable in any civil action for damages resulting from an occurrence involving the transportation, storage, possession, or use of a firearm. Swindol argued that the statute allowed him to have his firearm in his locked vehicle. Aurora argued that Swindol's position may be accurate, but the statute also shielded Aurora from liability when it discharged him.

In considering these arguments, the Supreme Court recognized its own precedent that says all parts of a statute are to be given effect when possible. It also relied on Mississippi's constitutional grant to its citizens of the right to keep and bear arms.

The Supreme Court read the two seemingly conflicting provisions in harmony, giving effect to each subsection to the extent possible. The court held that the statute plainly establishes immunity from liability for the actions of employees or third parties, while granting employers with immunity should some sort of "occurrence" result from the employee having a stored firearm on the Company premises (including, perhaps, a workplace violence incident).

The Court noted such a reading of the statute as a whole was necessary in order to avoid one subsection of the statute nullifying another. Reading the statute in this fashion, the Court thereby recognized another exception to Mississippi's employment at-will doctrine for the first time in more than 20 years. The last time this occurred was in 1993, when the state Supreme Court established two exceptions to the employment-at-will doctrine (employers cannot discharge employees who

two exceptions to the employment-at-will doctrine (employers cannot discharge employees who refuse to participate in an illegal act, and cannot discharge employees who report illegal acts to the employer or to anyone else).

What Does The Decision Mean For Mississippi Employers?

Most employers maintain "no firearms" policies in order to help ensure that there are no violent events at the workplace. What does this decision mean for Mississippi employers who want to retain and enforce such policies?

The statute still permits you to take certain actions limiting guns at work. First, you may still maintain and enforce a "no firearms" policy if you have a parking lot for employees to which access is restricted or limited (e.g., through a gate or security station). Second, you may prohibit the transportation or storage of firearms in company vehicles owned or leased by your business and used by an employee in the course of work. Finally, an employee may not transport or store a firearm on any premises where the possession of a firearm is prohibited by state or federal law. Accordingly, the first thing you should do is determine whether you can rely on any of these three statutory exemptions.

Unfortunately, however, this decision raises more questions than it answers. For example:

- What happens if your general liability insurance carrier or workers' compensation carrier mandates that you have a "no firearms" policy?
- Does the statute allow an employee to store in a locked vehicle just one firearm or can it be multiple firearms?
- Does the firearm have to be a legal firearm?
- Does the statute really protect you from liability if an employee injures or kills other employees or third-parties with the firearm that is stored in the vehicle?
- Just what is an "occurrence" that is shielded from liability?
- Can you require employees to self-identify if they have a firearm in their locked vehicle in the parking lot? Would you want to?
- What happens if an employee references his or her firearm in general workplace discussion as a means to intimidate other employees?

At least with respect to the last question, you still have the ability to terminate employees who intimidate other employees, especially with threats of violence. As to the other questions, you will have to weigh the risks against the benefits of prohibiting firearms in the workplace in this new frontier.

If you have any questions about this case, or how it may affect your business, please contact your Fisher Phillips attorney or one of the attorneys in our Gulfport office at 228.822.1440.

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

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