

Business Groups Challenge Florida “Guns at Work” Law

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A new state law that will allow Florida residents to keep firearms in their cars at work is being challenged by several employer groups.

The law, which takes effect July 1, prohibits public and private employers from having policies prohibiting firearms in their parking lots. It allows employees with valid weapons permits to keep guns locked in their cars in employers’ parking lots. It also prohibits all public and private employers from discriminating against or taking action against any employee, customer or guest for exercising the right to keep and bear arms.

Florida Gov. Charlie Crist signed the bill into law April 15. The following week, the Florida Chamber of Commerce and the Florida Retail Federation filed suit in the U.S. District Court for the Northern District of Florida challenging the “Guns at Work” law. The lawsuit claims the law conflicts with the Occupational Safety and Health Act (OSHA), which requires employers to provide employees with a workplace that is free from hazards that are likely to cause death or serious physical harm.

This law creates a whole new protected class—a subclass of protected employees right up there with age, sex, pregnancy, gender, disability,” says Sherril Colombo, an employment attorney at Cozen O’Connor’s Miami office. “You now will not be able to discriminate against someone for having a concealed weapons permit.”

However, the law does not make it legal to bring guns into the office or factory—the gun has to be kept in the locked car in the parking lot—and the gun must be owned legally.

There are exceptions to the law. It does not apply to employees of schools, correctional facilities, nuclear-powered electricity generation facilities and other places where possession of a firearm is prohibited under any federal or state law.

And it would still be illegal for any employee to have a gun in his vehicle if he did not have a permit to carry a concealed weapon.

Safety Standard

But despite the limitations, the law has many employer groups concerned about workplace safety. The Florida Chamber of Commerce and the Florida Retail Federation’s lawsuit argues that the law unconstitutionally violates private property rights and conflicts with OSHA because it requires employers to allow firearms in the immediate vicinity of their buildings. The complaint claims the law creates a hazard that is likely to cause death or serious physical harm to employees.

The lawsuit asks the court to declare the law unconstitutional and enjoin the Florida Attorney General and any other person from enforcing its provisions.

A federal court in Oklahoma has enjoined a similar law in *ConocoPhillips Co. v. Henry*, finding that the federal obligation to provide a safe workplace for employees under OSHA’s general duty clause takes precedence over a state law that threatens workplace safety. An appeal of that decision is pending before the 10th Circuit. Similar legislation

has passed or is pending before the legislatures of several states.

“What happened in Oklahoma is not binding on us here in Florida, but the judge will certainly take a strong look at that,” says Colombo, who believes the court will strike down the Florida law.

Handbook Hindrance

If the courts fail to block implementation of the law, employers will have to revise any employment policies that ban guns at work, according to Colombo. Employers prohibiting concealed weapons at the workplace will have to specify that “workplace” refers to the office. “If you just say ‘the workplace,’ that is too broad. That technically can include the parking lot if the employer owns it and/or provides it for employee use,” she says.

Training also will be required for supervisors. “If a supervisor learns that an employee has a concealed weapons permit or keeps a gun in his or her car, that employer has to be sure they don’t treat that employee any differently—you can’t discriminate,” she says. Employers also will have to eliminate any questions regarding gun ownership on employment applications.

In the past, an employer could ask the employee if he had a gun in his possession or if he had a permit to carry one, says Charles Caulkins, managing partner at the Fort Lauderdale office of Fisher & Phillips. “But now, if the law goes into effect, you’re not allowed to ask that.”

In a situation where one employee says he is being threatened by another employee who has a gun, it’s not clear what leeway the employer has in questioning the co-workers. “You may be better off calling in the law enforcement agency and letting them ask the questions like, ‘Do you have a gun in your car?’ ‘Do you have a permit to carry a gun?’” Caulkins says.

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