

ANNIE GET YOUR GUN ... AND BRING IT TO WORK

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On June 17, 2011, Texas Governor Rick Perry signed a bill into law that will limit an employer's right to prohibit guns and ammunition in the workplace. While the law does not necessarily allow employees to carry firearms at work, it does allow employees to store, and have access to, firearms kept in privately owned vehicles that are parked on or in employer provided parking areas. Considering the fact that 461,724 Texas residents hold a concealed handgun license, this law is likely to have a significant impact on the workplace across a broad swath of industries.

I. Background

After three failed legislative sessions, Texas State Sen. Glenn Hegar introduced Senate Bill 321 on January 7, 2011 to help Texas residents "regain their Constitutional right to protect themselves as they travel to and from work." The bill was passed by the Texas Senate on March 15, 2011 and the House of Representatives on May 4, 2011. Governor Perry signed the bill into law on June 17, 2011, with an effective date of September 1, 2011.

II. Scope Of The Law

Frequently referred to as a "guns-at-work" or "parking lot" bill, the law prohibits public and private employers from enacting and enforcing policies that prevent employees from transporting or storing firearms in their locked, private vehicles while parked on or in an employer provided parking area. However, the law does not prevent employers from prohibiting the possession of concealed handguns on company property; rather, the restrictions are limited to

employers' treatment of employee parking lots. Importantly, the law applies to all lawfully-owned firearms, not just those owned under a Concealed Handgun License (CHL).

In addition to Texas, a total of seventeen states have enacted "guns-at-work" or "parking lot" laws, including Florida, Indiana, Kentucky, Louisiana, Minnesota, Oklahoma, Alaska, Arizona, Georgia, Idaho, Kansas, Michigan, Mississippi, Nebraska, Ohio and Utah, with each state imposing varying restrictions on employers' right to restrict firearms on company property.

III. Exemptions From The Law

The Texas "guns-at-work" law comes packed with a number of significant exceptions that would allow an employer to retain some discretion regarding firearms on company property. Specifically, the law does not apply to:

1. School districts, open-enrollment charter schools, and private schools;
2. Vehicles owned or leased by the employer and used by an employee to perform his or her job (*i.e.* company car);
3. Property owned or leased pursuant to a mineral lease that prohibits the possession of firearms on the property; and
4. Property owned or leased by a chemical manufacturer or oil and gas refiner that is permitted under the Texas Clean Air Act, the primary purpose of which is the manufacture, use, storage, or transportation of hazardous, combustible, or

explosive materials; however, employees working on such property who hold a CHL may store firearms in their vehicles in or on an employer provided parking area that is:

- Outside of a secured and restricted area that contains the physical plant;
- Not open to the general public; and
- Under constant monitoring by security personnel.

The exceptions to the law could prove to be difficult for employers to negotiate, particularly in cases of employees who work between multiple work locations, some of which are covered by an exception, others of which are not. For example, consider the human resources employee who regularly works in an office that is covered by the law but who frequently visits an oil refinery that is subject to an exemption. The employee would be allowed to store a gun in his or her vehicle at one work place, but not the other. To avoid confusion, we therefore recommend that all employers review their facilities to determine which ones are covered by an exemption and advise employees of the governing restrictions.

IV. Immunity From Liability

While some employers may find that the law intrudes upon their private property rights, it also provides a shield from some liability. Unless gross negligence is involved, an employer cannot be sued for damages that result from an incident involving a firearm that is stored according to the provisions of the law.

V. Conclusion

Despite strong opposition to the law by a multitude of business groups, as of September 1, 2011, employees can begin taking their guns to work, without facing the risk of being terminated for doing so. Accordingly, employers are encouraged to promptly review any workplace policies relating to the possession of firearms on company property to ensure compliance with the new law.

If you have any questions regarding the new law, or other labor and employment issues, please contact David L. Barron, Daniel J. Schuch or Nelsy C. Gomez in the firm's Houston office.