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LEGAL ALERT



Legal Alert: Court Rules on Florida's "Guns at Work" Law

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In a decision highly anticipated by Florida employers, a federal court has refused to enjoin portions of the Florida "Guns at Work" law that apply to employer actions toward employees and applicants, but ruled that the law is only applicable to workers with a valid Florida concealed-carry permit. See *Florida Retail Federation v. Attorney General* (July 28, 2008). However, the court did issue a preliminary injunction prohibiting enforcement of the law as it applies to a business and its customers.

The law, Florida Statute § 790.251, defines "employee" as a person "who possesses a valid license issued pursuant to s. 790.06" – that is, who has a valid Florida permit to carry a concealed weapon – and who is either an employee or an independent contractor or a volunteer. Employer is defined as a business that has "employees." Thus, the restrictions relating to employers only apply to those who employ at least one person with a concealed weapons permit.

The court held that the legislature acted on a rational basis in making this distinction and that the groups challenging the employment-related provisions are not likely to succeed on their Constitutional challenges of these provisions. Specifically, the court held:

The Florida Legislature acted within its constitutional authority when it afforded a worker with a concealed-carry permit a statutory right to have a gun secured in a vehicle in a parking lot. The Legislature acted within its constitutional authority in protecting that right by prohibiting a business from asking such a worker whether he or she has a gun in a vehicle in a parking lot, taking action against such a worker based on a statement about whether the worker has a gun in a vehicle in a parking lot for lawful purposes, searching such a worker's vehicle for a gun, conditioning employment on whether a worker has a concealed-carry permit, or terminating or otherwise discriminating against a worker with a concealed-carry permit for having a gun in a vehicle in a parking lot.

The court also held that the plaintiffs are not likely to prevail on their claims that the federal Occupational Safety and Health Act (OSHA) pre-empts the Florida law. According to the court, since OSHA has not issued a standard addressing guns in parking lots, the state is free to regulate this area as it chooses.

However, the court found that there is no rational basis for distinguishing between businesses with regard to whether they permit customers to have weapons in their parking lots based upon whether the business has at least

one employee with a concealed weapons permit. Specifically, the court held:

The Legislature violated the United States Constitution, however, when it imposed limitations on a business's treatment of its customers but made those limitations applicable only to a business with a worker with a concealed-carry permit, not to an otherwise-identically-situated business with no such worker. There is no rational basis for this disparate treatment of such businesses.

Employers' Bottom Line:

The court's decision refusing to issue a preliminary injunction prohibiting enforcement of the employment-related provisions of the law is not a final decision on the merits of the law. While the law ultimately may be overruled, its employment-related provisions are in effect and employers should be prepared to comply with these requirements. Although originally there was concern that the law would require an employer to allow all employees to have guns in their vehicles, the court's decision clarifies that the law only applies to workers with a valid Florida concealed-carry permit.

If you have any questions regarding this decision or the Guns at Work law, please contact the Ford & Harrison attorney with whom you usually work.