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LEGAL ALERT



Legal Alert: Florida “Guns at Work” Law Challenged

4/22/2008

The Florida Chamber of Commerce and the Florida Retail Federation have filed suit in federal court challenging the constitutionality of the Florida “Guns at Work” law. As discussed in our prior Legal Alert, this law, which takes effect July 1, 2008, makes it illegal for public and private employers to have policies prohibiting firearms on their private property.

The lawsuit claims that the law unconstitutionally violates private property rights. Additionally, the lawsuit claims that the law conflicts with the requirements of the federal Occupational Safety and Health Act (OSHA). OSHA requires employers to furnish their employees a workplace that is “free from recognized hazards that are causing or are likely to cause death or serious physical harm” to employees. The lawsuit claims that the “Guns at Work” law conflicts with this OSHA obligation because it requires employers to allow firearms in the immediate vicinity of their place of employment and prohibits employers from obtaining knowledge about the presence of such firearms or acting on information relating to such presence. Thus, the complaint claims that the law creates a hazard in the place of employment that is likely to cause death or serious physical harm to employees.

The complaint 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, finding that the federal obligation to provide a safe workplace for employees under OSHA’s general duty clause trumps a state law that threatens workplace safety. See *ConocoPhillips Co. v. Henry*.

We will continue to keep you updated on the status of this law. However, employers should be prepared to comply with the law’s requirements unless and until a court enjoins its enforcement. If you have any questions regarding this law or other labor or employment related issues, please contact the Ford & Harrison attorney with whom you usually work or Edmund McKenna, a partner in our Tampa office, at emckenna@fordharrison.com or 813-261-7821.