

FORD & HARRISON^{LLP}
THE RIGHT RESPONSE AT THE RIGHT TIME

LEGAL ALERT



Legal Alert: Florida's Guns At Work Law to Take Effect July 1, 2008

6/26/2008

As most employers in Florida are aware, the Florida "Guns at Work" law is scheduled to take effect July 1, 2008. The law, which prohibits public and private employers from banning guns in their parking lots, has been challenged by the Florida Chamber of Commerce and the Florida Retail Federation. A federal district court heard argument on the case yesterday (June 25). Although the judge did not rule at the close of the hearing, his comments reflected skepticism of the law. Many employers were hoping the judge would issue an order temporarily prohibiting enforcement of the law; however, the judge stated that he needed more time to consider the issue. The judge also stated that he doubted the groups challenging the law would suffer irreparable harm before he makes a decision, which likely will be in mid-July. Accordingly, it appears the law will take effect July 1, as scheduled.

Under the law, employers generally cannot:

- Prohibit any customer, employee or invitee from keeping a legally owned firearm inside or locked to a motor vehicle in a parking lot;
- Question customers, employees or invitees regarding whether they have weapons in their vehicles;
- Search the vehicle of a customer, employee or invitee for a weapon (searches can only be conducted by law enforcement officers);
- Refuse to hire an applicant based on whether he or she has a concealed weapons permit;
- Take action against an employee, customer or invitee based on written or verbal statements made by that individual regarding the possession of a gun stored inside a private motor vehicle in a parking lot for lawful purposes.

Additionally, the law prohibits employers from terminating or otherwise discriminating against an employee or expelling a customer or invitee "for exercising his or her constitutional right to keep and bear arms or for exercising the right of self-defense as long as a firearm is never exhibited on company property for any reason other than lawful defensive purposes."

Note that this law does not prohibit employers from taking action against employees, customers or invitees who make threats against other employees or supervisors.

The law does not apply to:

- Schools;
- Correctional institutions;
- Nuclear power plants;
- Property upon which substantial activities involving national defense, aerospace, or homeland security are conducted;
- Property upon which the primary business conducted is the manufacture, use, storage, or transportation of combustible or explosive materials regulated under state or federal law, or importing, manufacturing, or dealing in explosive materials;
- A motor vehicle owned, leased, or rented by a public or private employer or the landlord of a public or private employer;
- Property upon which possession of a firearm or other legal product by a customer, employee, or invitee is prohibited pursuant to any federal law, contract with a federal government entity, or general law of Florida.

While we cannot predict how the court ultimately will rule on the challenges to the law, we continue to believe that there is a good chance it will be stricken. If the law is not overturned, employers may need to modify their existing policies. For example, many employers have policies that flatly prohibit weapons anywhere in the workplace, including vehicles, and their policies specify that the company may search employees' vehicles. Unless the employer falls under one of the exceptions to the new law, these policies need to be modified to comply with the new law.

If this law is not overturned, we would also recommend tightening up existing policies and practices regarding workplace violence. Under the new law, guns could always be within easy reach of an employee or visitor and the employer would not be permitted to conduct a search or even ask if the individual has a gun in his or her car. This means that supervisors and managers will need to be even more vigilant on the front end about managing violence-prone employees and responding to potentially dangerous visitors.

Ford & Harrison attorneys can provide more detailed guidance regarding what is permitted and prohibited by the law. Accordingly, if you have any questions regarding the new law or its impact on your workplace, please contact the Ford & Harrison attorney with whom you usually work.