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LEGAL ALERT



Legal Alert: “Guns at Work” Laws Resurface in Several States

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The “bring your guns to work” bill, HB 503/SB 1130, has resurfaced this session in the Florida legislature, and appears headed toward passage. This legislation would make it illegal for businesses and other private property owners to have policies prohibiting firearms on their private property. The House Environmental & Natural Resources Council has approved HB 503 and the Senate Criminal Justice Committee passed SB 1130 on March 18, 2008 by a vote of 7-1. Essentially, the bill makes it unlawful for an employer to “discriminate against” an employee for exercising the constitutional right to bear arms or exercising the right of self-defense if a gun is never exhibited on company property other than for lawful defensive purpose.

The bill would prohibit any public or private employer from banning any customer, employee, or invitee from possessing any legally owned firearm when the firearm is lawfully possessed and locked inside or locked to a private motor vehicle in a parking lot and when the customer, employee, or invitee is lawfully in such area. In addition, the bill would prohibit any public or private employer from making any inquiry about the presence of a firearm inside a private motor vehicle in a parking lot or by an actual search of a private motor vehicle in a parking lot to ascertain the presence of a firearm within the vehicle. Further, no public or private employer may take any action against a customer, employee, or invitee based upon verbal or written statements of any party concerning possession of a firearm stored inside a private motor vehicle in a parking lot for lawful purposes. A search of a private motor vehicle in the parking lot of a public or private entity to ascertain the presence of a firearm within the vehicle may only be conducted by on-duty law enforcement personnel based upon due process and must comply with constitutional protections.

The bill also provides that no employer shall condition employment upon any agreement by a prospective employee that prohibits an employee from keeping a legal firearm locked inside a motor vehicle when such firearm is kept for lawful purposes. Finally, the bill provides that no employer shall prohibit or attempt to prevent any customer, employee, or invitee from entering the parking lot of the employer's place of business when the customer's, employee's, or invitee's motor vehicle contains a legal firearm, being carried for lawful purposes, that is out of sight within the customer's, employee's, or invitee's motor vehicle.

Additionally, the bill permits any person “aggrieved under this act” to bring a civil action for violation of rights protected under the act. In any successful action brought by a customer, employee, or invitee under the act, the court shall award all court costs, attorney's fees, and reasonable personal costs

and losses suffered by the person as a result of the violation of rights under this act. The Senate Criminal Justice Committee amended the bill prior to passing it by adding a provision stating that the entity or employer is not liable in a civil action based on the unlawful or tortious actions of an invitee, a customer, or an employee that involve the use of a firearm brought to the property under the protections of the law.

Florida is not alone in considering such legislation. A similar bill is currently pending in Tennessee. HB 3063/SB 2928 prohibits any person who is the owner, lessee, or occupant of real property from prohibiting any person who is legally entitled to possess a firearm from possessing a firearm on the property. This bill applies to employers, as well as other persons. The bill creates a cause of action for civil damages for any person who suffers an adverse employment action for possessing or using a firearm as authorized by the bill. HB 3063 was referred to the Judiciary Criminal Practice and Procedure Subcommittee on January 29, 2008. SB 2928 was referred to the Senate Judicial Committee on January 23, 2008.

Similar legislation was pending in Georgia; however, it died in committee earlier this year.

Conclusion

The passage of this type of legislation would have a significant impact on employers in the states in which it is passed, and on multistate employers who must ensure that their employment-related policies and procedures comply with relevant state laws. We will continue to monitor these bills and keep you updated on their status.

If you have any questions regarding this legislation or other labor or employment related issues, please contact the Ford & Harrison attorney with whom you usually work or the author of this Alert, Edmund McKenna, a partner in our Tampa, Florida office, at emckenna@fordharrison.com or 813-261-7821.