



Employment Law ALERT

FEBRUARY 23, 2009

Appellate Court Reinstates Employee Gun Rights

On February 18, 2009, the United States Court of Appeals for the Tenth Circuit issued a long-awaited decision regarding the right of Oklahoma employers to ban firearms from their property. Reversing a lower federal court decision in favor of employers, the appellate ruling reinstates a controversial Oklahoma statute that prohibits Oklahoma employers from maintaining certain anti-firearms policies. Employees are once again protected by Oklahoma law from any policy that “has the effect of” prohibiting the transport or storage of firearms in locked vehicles, even on private company property.

Background

In March of 2004, the Oklahoma legislature enacted a series of laws limiting an employer’s ability to prohibit firearm possession by employees on company property. For example, the Oklahoma Firearms Act of 1971 was amended to provide, in relevant part, as follows:

No ... employer ... shall maintain, establish, or enforce any policy or rule that has the effect of prohibiting any person, except a convicted felon, from transporting and storing firearms in a locked motor vehicle, or from transporting and storing firearms locked in or locked to a motor vehicle on any property set aside for any motor vehicle.

21 Okla. Stat. §1289.7a(A)

At the same time, the Oklahoma Self-Defense Act of 1995 was amended in a similar manner, using nearly identical language. 21 Okla. Stat. §1290.22.

In their original form, these amendments established standards of criminal conduct, and a violation could result in a misdemeanor criminal conviction. *Whirlpool Corp. v. Henry*, 110 P.3d 83 (Okla. 2005). However, the laws were subsequently further amended to provide an aggrieved employee with a right to pursue a civil action in court to obtain actual damages, injunctive relief and attorney’s fees. 21 Okla. Stat. §1289.7a(C).

Critics of the amendments argued that the presence of firearms



on company property could contribute to workplace violence, as well as increased employer liability for accidental and intentional gun-related injuries. Furthermore, employers argued that the amendments invaded upon a private property owner’s right to prohibit firearms from his or her private property. Proponents of the laws, on the other hand, argued that these amendments merely protected employees’ Constitutional rights to bear arms.

Legal Challenge to the Amendments

In October of 2004, a group of Oklahoma employers filed suit in federal court challenging the validity of the referenced amendments under a variety of legal theories. In October of 2007, after rejecting several of those theories, the court issued a permanent injunction prohibiting the enforcement of the new Oklahoma laws, finding them to be preempted by federal law. More specifically, the Court concluded that the Oklahoma amendments served as a “serious obstacle” to employers attempting to meet their obligations under the “general duty” clause of the federal Occupational Safety and Health Act (the “OSH Act”).¹ Therefore, according to the lower court, the Oklahoma amendments were preempted by federal law and unenforceable.

This week, the United States Court of Appeals for the Tenth Circuit issued its opinion on the resulting appeal and reversed the district court. Specifically, the appellate court concluded that

the presence of firearms on company property did not trigger a violation of the OSH Act “general duty” clause, and therefore, no “serious obstacle” was presented by the Oklahoma amendments. The court also rejected the employers’ contention that these laws improperly interfered with the rights of private property owners. And finally, the appellate court concluded that the district court’s injunction was an improper interference by federal courts with Oklahoma’s inherent right to police the conduct of its citizens.

The Bottom Line

This week’s opinion by the appellate court reinstates the amendments to full force. Thus, it is once again a violation of Oklahoma law to “maintain, establish or enforce” any policy that “has the effect of” prohibiting the transport or storage of firearms in locked vehicles in designated vehicle areas, even on private company property.

Although this matter may certainly be further appealed, the

likelihood of such action is not yet clear. Therefore, immediately, Oklahoma employers should examine their existing policies to ensure conformity with these provisions, and refrain from any efforts to enforce a prohibited policy.

Of course, going forward, it is important to keep in mind the limited scope of these laws. Employers may not prohibit an employee from storing or transporting a firearm in a locked vehicle on property designated for vehicles. However, nothing in the relevant amendments or the resulting court opinions prevents an employer from prohibiting firearms in its buildings, on sidewalks, or otherwise outside of a locked vehicle in a designated vehicle parking area.

- ¹ The “general duty” clause under the OSH Act requires that “[e]ach employer shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees.”

This Alert has been provided for information of clients and friends of McAfee & Taft A Professional Corporation. It does not provide legal advice, and it is not intended to create a lawyer-client relationship. Readers should not act upon the information in this Alert without seeking professional counsel.

MCAFEE & TAFT LABOR & EMPLOYMENT ATTORNEYS

LAUREN E. BARGHOLS

lauren.barghols@mcafeetaft.com
(405) 552-2343

HEIDI SLINKARD BRASHER

heidi.brasher@mcafeetaft.com
(918) 574-3012

TIMOTHY J. BOMHOFF

tim.bomhoff@mcafeetaft.com
(405) 552-2339

BRANDON L. BUCHANAN

brandon.buchanan@mcafeetaft.com
(405) 552-2307

VICKIE J. BUCHANAN

vickie.buchanan@mcafeetaft.com
(405) 552-2331

JOHN A. BURKHARDT

john.burkhardt@mcafeetaft.com
(918) 574-3001

TODD COURT

todd.court@mcafeetaft.com
(405) 552-2330

REUBEN DAVIS

reuben.davis@mcafeetaft.com
(918) 574-3008

JACQUE BRAWNER DEAN

jacque.dean@mcafeetaft.com
(405) 552-2364

BRADLEY K. DONNELL

brad.donnell@mcafeetaft.com
(405) 552-2308

MARK FOLGER

mark.folger@mcafeetaft.com
(405) 552-2327

SAM R. FULKERSON

sam.fulkerson@mcafeetaft.com
(405) 552-2369

SHAWN E. HARRELL

shawn.harrell@mcafeetaft.com
(405) 552-2205

GERALD L. HILSHER

gerald.hilsher@mcafeetaft.com
(918) 574-3036

RODNEY K. HUNSINGER

rodney.hunsinger@mcafeetaft.com
(405) 552-2275

MICHAEL F. LAUDERDALE

michael.lauderdale@mcafeetaft.com
(405) 552-2257

ANDREW S. LONG

andy.long@mcafeetaft.com
(405) 552-2293

LINCOLN C. MCELROY

lincoln.mcelroy@mcafeetaft.com
(918) 574-3011

CHARLES S. PLUMB

charlie.plumb@mcafeetaft.com
(918) 574-3003

TONY G. PUCKETT

tony.puckett@mcafeetaft.com
(405) 552-2251

TAMARA S. PULLIN

tamara.pullin@mcafeetaft.com
(405) 552-2290

NATALIE K. RAMSEY

natalie.ramsey@mcafeetaft.com
(405) 552-2325

PAUL A. ROSS

paul.ross@mcafeetaft.com
(405) 552-2383

KRISTIN M. SIMPSEN

kristin.simpson@mcafeetaft.com
(405) 552-2395

JOSHUA W. SOLBERG

josh.solberg@mcafeetaft.com
(405) 552-2345

MARK D. SPENCER

mark.spencer@mcafeetaft.com
(405) 552-2368

PETER T. VAN DYKE

peter.vandyke@mcafeetaft.com
(405) 552-2211

SUSAN E. WALKER

susan.walker@mcafeetaft.com
(918) 574-3014

DARA K. WANZER

dara.wanzer@mcafeetaft.com
(405) 552-2340

JAMES R. WEBB

jim.webb@mcafeetaft.com
(405) 552-2246

NATHAN L. WHATLEY

nathan.whatley@mcafeetaft.com
(405) 552-2365

AMY D. WHITE

amy.white@mcafeetaft.com
(405) 552-2337

ELIZABETH SCOTT WOOD

elizabeth.wood@mcafeetaft.com
(405) 552-2270

McAfee & Taft

www.mcafeetaft.com

Oklahoma City

TWO LEADERSHIP SQUARE
211 NORTH ROBINSON • SUITE 1000
OKLAHOMA CITY, OK 73102-7103
(405) 235-9621 • FAX (405) 235-0439

Tulsa

500 ONEOK PLAZA
100 WEST 5TH STREET
TULSA, OK 74103
(918) 587-0000 • FAX (918) 599-9317