



Guns-to-Work Bill Passed in Alabama

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On May 21, 2013, Alabama Governor Robert Bentley signed legislation that will expand Alabama gun rights in a number of ways. Most significantly, SB286 allows employees to store firearms in their personal vehicles in employer-owned parking lots under certain circumstances. The Alabama House of Representatives voted 73-28 on May 20, 2013, in approval of a conference committee version of the bill. The new law becomes effective on August 1, 2013.

Under the so-called "guns-to-work" law, Alabama employers may prohibit employees, including those with a concealed weapons permit, from possessing firearms while on the employer's premises or when engaged in work for the employer whether on or off-site. Subject to limited exceptions, public and private employers may not restrict an employee's transportation or storage of a lawfully possessed firearm in an employee's privately owned motor vehicle while it is parked or operated in a public or private parking lot. An employee, however, may only possess a firearm in an employer's parking lot if it is out of sight in his or her locked motor vehicle and under the following circumstances:

1. The employee has a valid concealed weapon permit; or
2. The weapon is legal for hunting in Alabama other than a pistol, and
 - (a) the employee possesses a valid Alabama hunting license;
 - (b) the weapon is unloaded at all times on the property;
 - (c) it is during a season in which hunting is permitted by Alabama law or regulation;
 - (d) the employee has not been convicted of a crime of violence;
 - (e) the employee has no documented prior workplace incidents involving the threat of physical injury or which resulted in physical injury;

In addition to the above circumstances, an employer may restrict the transportation or storage of a lawfully possessed firearm in a motor vehicle operated or parked where it is not permitted to be. Further, if the vehicle is attended by the employee, the firearm or ammunition must be kept from ordinary observation within the vehicle, or, if the vehicle is unattended, the firearm or ammunition must be kept from ordinary observation and locked within a compartment or container. An employer may also restrict an employee who does not have a concealed weapons permit from having a firearm in his or her car if (1) the employee has been convicted of a crime involving domestic violence; (2) the employee is subject to a domestic violence restraining order; or (3) the employee has been previously committed to a psychiatric hospital.

If an employer reasonably believes that an employee is a risk of danger to themselves or others, the employer may inquire as to whether the employee has a weapon in his or her vehicle. If the employee

states that he or she does possess a weapon, the employer may take whatever steps necessary to determine if the employee is in complete compliance with the law.

If the employee is not in compliance with the law, the employer may take disciplinary action against the employee in the employer's discretion. If the employee is in compliance with the law, the employer may not take any action against the employee that is solely based on the presence of the lawful weapon. An employee terminated solely on the basis of the presence of a weapon that is in compliance with this law may bring an action for wrongful termination against the employer. The employee may seek damages for lost wages and other lost remuneration.

Under the law, an employer is immune from civil liability that arises directly or indirectly from the presence of a firearm on its property. In addition, the law expressly states that the presence of a firearm on an employer's property does not constitute the employer's failure to provide a safe workplace. However, employer immunity does not extend to the "affirmative wrongful acts" of an employer that causes harm. Nor, despite language suggesting otherwise, does the law keep OSHA from following its current enforcement directives and citing the employer under that federal law's General Duty Clause for failing to provide a safe workplace.

The final version of the law sets forth certain places where firearms may be prohibited, including, but not limited to, buildings and facilities of all kinds where "access of unauthorized persons is limited during normal hours of operation by the continuous posting of guards and the use of other security features, such as metal detectors, key cards, turnstiles or other physical barriers." Though earlier versions discussed in the legislature read differently, the law as enacted makes clear that employers may prohibit weapons in all such secure buildings and facilities whether or not they are open to the public.

Employers are encouraged to review their policies and procedures to ensure compliance with the new law before its goes into effect on August 1, 2013. Employers may also consider additional training on workplace violence and proper reporting mechanisms when threats or incidents of workplace violence occur. In addition, employers may consider implementing appropriate pre-employment screening procedures to reduce the number of employees who could be prone to violence in the workplace.

Similar gun-to-work bills have been enacted by the states such as Mississippi, Florida, Tennessee, and Louisiana. Challenges to the law based on property rights, OSHA, etc. are expected. We have developed guidelines to assist employers in determining how to respond to this law, and will continue to monitor this law and its interpretation.

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