

# JW | Employer's e-Alert

An important Labor & Employment law update from the law firm of Jackson Walker.

January 03, 2012

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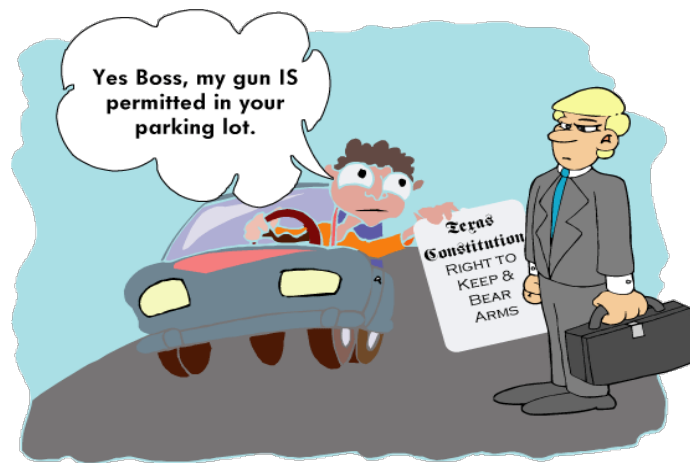
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## Guns In Company Parking Lots

By Karen Monsen and Alia Derrick



### Background

Since 1836 the Texas Constitution has declared that Texans possess the "Right to Keep and Bear Arms."<sup>1</sup> However, this right is not absolute and prior to September 1, 2011, Texas employees who were lawfully authorized to possess concealed hand guns, firearms, and ammunition (collectively "firearms") could transport them almost anywhere in their motor vehicles except at the workplace if their employers had a broad no-firearms policy that extended to employer-provided parking lots. Noting that such policies failed to consider Texas' gun laws, its strong sporting culture,<sup>2</sup> or that Texans transport firearms in their vehicles to protect themselves in a lawful and responsible manner, Texas legislators have passed a new law that extends the rights of employees to keep, store, and transport legally possessed firearms in their personal vehicles to their employers' parking lots.

### Who is Affected?

Most public and private employers—except school districts, charter and private schools—are affected by the new law.

### The New Law

Beginning September 1, 2011, public and private employers can no longer prohibit employees from storing legally possessed firearms in a locked vehicle parked in a designated public or private driveway, street, sidewalk or walkway, parking lot, parking garage, or other parking area (collectively referred to as "parking lot(s)").<sup>3</sup> One notable effect of this new law is that employees can no longer be disciplined or terminated for storing their legally possessed firearms

in their locked and parked vehicles. However, a few exceptions to this new law exist. Employees cannot:

(1) take their firearms on property where possession is prohibited by state or federal law;

(2) store their firearms in their employer's owned or leased vehicle that is used by employees in the scope of their employment unless employees are required to transport or possess firearms in the official discharge of their duties (e.g. security); or

(3) store or transport their firearms on:

i. school district, open-enrollment charter or private school property;

ii. property under a valid, unexpired oil and gas lease with a provision that bans the possession of firearms;

iii. secured or restricted areas of property owned or leased by a chemical manufacturer or oil and gas refiner where the primary business is the manufacture, use, storage, or transportation of hazardous, combustible, or explosive materials.<sup>4</sup>

Further, employers can still prohibit employees from possessing firearms on the employer's business "premises"—which is defined as "a building or a portion of a building. . . . [that] does not include any public or private driveway, street, sidewalk or walkway, parking lot, parking garage, or other parking area."<sup>5</sup>

### **Employer's Immunity/Civil Liability**

A. *Gross Negligence.* Absent gross negligence, public and private employers—together with their principals, officers, directors, employees, or agents—cannot be held liable for personal injury, death, property damage, or other damages resulting from any occurrence involving a firearm stored in a locked vehicle. This employer immunity also protects employers from liability for the theft or use of the firearm by a person other than the employee in whose vehicle the firearm is stored.<sup>6</sup> However, as has always been the case, employers can be held liable for any such injuries that result from the employers' gross negligence in hiring, training, or supervising employees.

B. *Safe Workplace.* The new law makes it clear that the presence of firearms in employees' locked vehicles in employers' parking lots does not, by itself, constitute evidence of an employer's "failure to provide a safe workplace."

C. *Patrol, Inspect, & Secure.* Public and private employers—their principals, officers, directors, employees, and agents—have no duty: (1) to patrol, inspect, or secure any: (a) employer-provided parking lot, or (b) privately-owned motor vehicle parked in the company parking lot or (2) to investigate, confirm, or determine an employee's compliance with laws related to ownership or lawful possession of firearms.

### **Steps Toward Compliance**

The National Rifle Association is asking employees to contact them to report any employers who violate the new law by misinterpreting it or ignoring it all together. That said, employers should start thinking now about revising their company policies or modifying applicable collective bargaining agreements. Below are just a few scenarios employers should consider:

A. *Check & Revise Policy.* Given that employers can no longer ban employees from storing legally possessed firearms in their locked vehicles parked in employer parking lots, employers should review their company policies to ensure they do not discipline or terminate employees for storing legally possessed firearms in their personal vehicles or otherwise violate this new law. This may require modifications to applicable collective bargaining agreements also.

B. *Avoid Gross Negligence Liability.* Since employers can be held liable if injury or property damage results from the employer's gross negligence in hiring, training, or supervising employees who store or

transport firearms in their personal vehicles, employers must review workplace policies regarding violence to ensure their policy provides for a prompt discovery, investigation, and response to violence as well as adequate background checks of employees. Additionally, employers who are considering permitting or prohibiting personal firearms in company vehicles should seek legal advice before doing so to guard against any potential liability for gross negligence.

*C. Disgruntled & Terminated Employees.* Given the close proximity of company parking lots to employers' business premises, employers should develop a procedure for dealing with disgruntled, involuntary leave, laid-off, and terminated employees who may have access to firearms locked in vehicles parked in company parking lots.

**To ensure compliance with this law or for assistance with questions contact your usual Jackson Walker Labor & Employment law advisor or:**

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<sup>1</sup>Art. I, § 23 of the Texas Constitution declares: "RIGHT TO KEEP AND BEAR ARMS. Every citizen shall have the right to keep and bear arms in the lawful defense of himself or the State; but the Legislature shall have power, by law, to regulate the wearing of arms, with a view to prevent crime."

<sup>2</sup>E.g., many Texans routinely transport firearms or ammunition in their vehicles in anticipation of an after-work hunting trip or visit to the local shooting range or gun club.

<sup>3</sup>TEX. LABOR CODE § 52.061.

<sup>4</sup>The new law expressly states that employees can store or transport firearms on the property of a chemical manufacturer or oil & gas refinery if the vehicle is parked outside of the secured or restricted area. TEX. LABOR CODE § 52.062.

<sup>5</sup>TEX. PENAL CODE § 46.035(f)(3).

<sup>6</sup>Individuals can be held liable for: (1) using, encouraging or assisting others to use firearms to cause harm or injury and (2) transporting and storing illegally possessed firearms in their vehicles on company parking lots.

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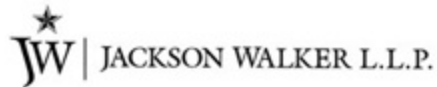
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