

Texas Legislature Permits Concealed Guns on Employers' Property

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In a heated battle over competing rights – an employer's private property rights vs. its employees' right to bear arms, guns have won out over land. On June 17, 2011, Governor Perry signed Senate Bill 321 into law, which permits properly licensed employees to keep a concealed firearm and ammunition locked in their cars while their vehicles are parked in their employers' parking lots, parking garages, or other parking areas, *even if the employers have a policy prohibiting employees from bringing weapons onto their property.*

Who Is Subject to the New Law?

The new law applies to both public and private employers, except for school districts, charter schools and private schools. The statute does not apply (a) to employees utilizing vehicles owned or leased by their employers, (b) on property owned by a third party subject to a valid mineral lease prohibiting the possession of firearms, or (c) on any property where the possession of a firearm or ammunition is otherwise prohibited by state or federal law.

Chemical manufacturers and oil and gas refiners with air authorizations under Chapter 382 of the Health and Safety Code are similarly exempt with respect to property **on which the primary business conducted is the manufacture, use, storage or transport of hazardous, combustible or explosive material**, unless they provide parking for employees that is outside of the secured and restricted area that contains the physical plant which is not open to the public and constantly monitored by security personnel.

Definition of "Premises" Is Narrow

Notably, the new statute acknowledges an employer's right to prohibit employees from carrying a firearm on its "premises," but adopts the Texas Penal Code's narrow definition of premises—"a building or a portion of a building." This definition of "premises" does not encompass all of the employer's property, such as private or public driveways, streets, sidewalks, walkways, parking lots, parking garages, or other parking areas.

Liability

The law shields employers, as well as their principals, officers, directors, employees and agents, from civil liability for personal injury, death, property damage or other damage arising from an occurrence involving a firearm or ammunition that the employer is required to allow on its property, except in cases of gross negligence. However, the law does not limit the personal liability of an individual who causes harm or injury by using a firearm or ammunition, an individual who aids or encourages someone else to cause harm or injury, or an employee who transports or stores a firearm or ammunition on an employer's property without complying with the requirements of the law.

The new law takes effect September 1, 2011. Most but not all Texas employers are subject to the new law. Employers who are uncertain if they are exempt from the new statute are encouraged to consult with counsel.

Actions Employers Must Take

- Many employers have workplace violence policies which prohibit bringing weapons anywhere on their property or premises, which may be defined broadly to include parking lots and garages. **Covered employers with broad workplace violence policies will need to revise those policies.**
- While the statute limits employers' liability for injury or property damage, employers could still be liable if the injury or damage was caused by their negligence in hiring, training or supervision. **Employers should review their workplace violence policies** to ensure they provide for prompt and effective discovery, investigation and response to violence issues and conduct training regarding how to handle violence issues, as well as adequate background checks.
- **Those employers with security personnel should consider revising policies** so that security personnel escort all discharged employees off employer property and subsequently monitor the parking area.

What's Next?

With so many in the business community opposed to the new law, its legality may eventually be tested in the courts on property and workplace safety grounds.

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