

West Virginia Employees Can Keep Guns in their Cars – What Employers Need to Know

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On June 8, 2018, the Business Liability Protection Act (a.k.a “the Parking Lot Gun Bill”) goes into effect and creates a series of new standards which prohibit employers from maintain or establishing “no firearms” policies in vehicles on company-owned parking lots and property where vehicles are parked.

Specifically, the statute provides that employers may not prohibit any employee from possessing a legally-owned firearm under the following conditions: (1) the firearm is lawfully possessed; (2) the firearm is out of view; (3) the firearm is locked inside or locked to a motor vehicle in a parking lot; and (4) the employee is lawfully allowed in the parking lot or parking area.

The statute is broadly drafted, and employers should take note of the following:

1. The term “employee” includes any person over the age of 18 who is paid wages, a salary, or *any other remuneration* – including independent contractors, interns, and volunteers.
2. All parking lots (whether permanent, temporary, formal, informal, gated, etc.) are included; *except* the private residence of the employer and any primary or secondary school lot.
3. The firearm does not need to be inside the vehicle – it can be attached to the vehicle itself so long as it is locked and out of view (i.e., toolboxes or saddlebags would be ok if locked).
4. You cannot ask an employee whether he or she has a firearm in his or her vehicle or make the employee sign an agreement as a condition of employment that they will not bring a firearm to work.
5. You cannot search a vehicle to determine whether there is a firearm in the vehicle unless you call an on-duty police officer to conduct the search.
6. You cannot take *any action* against the employee for having a firearm in their vehicle UNLESS they are in violation of the statute (for example, the firearm is on the dashboard in plain view) or they have made threats of harm or unlawful use.
7. Employers still can prohibit firearms anywhere else on their premises; can prohibit employees from taking their firearms out of their cars in the parking lots; can prohibit employees from keeping firearms in company-owned, leased, or rented vehicles; and can discipline or discharge employees who make any threats of action involving the firearm.

8. If the unthinkable were to happen and an employee was to use the firearm stored in his or her vehicle to harm another on your property, the statute protects employers from liability for those acts of violence.

If you violate the statute you are not only opening yourself up for civil penalties (up to \$5,000.00 per offense) and attorneys' fees and costs, you are also exposing yourself to a private cause of action by an aggrieved employee. The good news is, however, if an employee brings an action and loses, the employee must pay your attorneys' fees and costs.

So what can you do to be in compliance with the new law while maintaining control over your workplace?

1. Update your policies to permit employees to have firearms in their vehicles in your parking lots so long as they are following the requirements (lawfully possessed, locked, and out of sight).
2. Make sure your policy is clear concerning whether firearms are prohibited elsewhere on your site.
- 3.
4. Train your employees and your managers on your policy, particularly if you currently prohibit firearms anywhere on your premises.
5. Stop searching employee vehicles without consulting your lawyer first, or consider calling on-duty law enforcement to do the search for you. You want to be sure that you have a good reason for the search that cannot be tied back in anyway to the fact that an employee has a firearm in his or her vehicle.
6. Check with your insurance broker (if you have one) to see how this statute impacts your coverage.

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