

Employers Should Not Fear the So-Called “Take Your Guns to Work Act”

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On March 9, Florida Governor Rick Scott signed into law the newly enacted Marjory Stoneman Douglas High School Public Safety Act, on March 9, the first gun control measure enacted in the state in over 20 years. While, that law does not directly impact guns at work, its passage and the mass shootings that led to it, causes us to focus attention to guns in the workplace.

In 2008, the Florida legislature passed the formally titled “Presentment and Protection of the Right to Keep and Bear Arms in Motor Vehicles Act of 2008,” which has since come to be known as Florida’s “Take Your Guns To Work Act.” Perhaps because of this “reverse” euphemism, many Florida employers have come to believe that they can take no action to limit employees bringing guns to work. Actually, the statute’s protections are quite limited when it comes to permitting employees to have guns at work. If you remember that the purpose of the Act was to allow employees to exercise their alleged Second Amendment right to bear arms on their commutes to and from work, you will be on your way to having a better understanding of the limited reach of this Act.

The Act, codified at Florida Statutes Section 790.251, applies to all employers who have even one worker with a concealed weapon license. Since employers are not permitted to condition employment on whether an employee does or does not have a gun license, most employers rightfully assume that the Act applies to them if they have even one employee, independent contractor, volunteer or intern. In addition to conditional hiring, the statute prohibits:

1. Terminating or otherwise discriminating against an employee simply because the individual possesses a firearm inside his or her locked, privately owned vehicle when lawfully parked in the employer’s parking lot;
2. Preventing any employee from entering the parking lot or place of business because his or her vehicle contains a legal firearm;
3. Taking any action against an employee based upon verbal or written statements of any party concerning possession of a firearm stored inside a motor vehicle lawfully parked in an employer’s parking lot; and
4. Searching an employee’s vehicle for guns.

Accordingly, the Act does not prohibit employers from terminating an employee for bringing a firearm on the employer’s property. In the only reported Florida case to review this issue, the court found that terminating an employee for bringing a weapon on the business property, even after the commission of a crime on the property, was not protected under the Act. *Bruley v. Vill. Green Management Co.*, 592 F. Supp. 2d 1381 (M.D. Fla. 2008).

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Additionally, the Act does not apply to employees using a company vehicle, even if it is used during the employee's commute, or to vehicles that are leased or rented by the employer.

Importantly, the Act does not mandate that employers require employees to travel in vehicles of other employees who carry firearms in their cars. Instead, employers are encouraged to pay for transportation rather than insist that employees ride-share to an event or other location with an employee who carries a gun if the other employees object to doing so.

Employers can also limit employees carrying guns to customer sites. A federal court in Florida struck down as unconstitutional the Act's similar restrictions as applied to business invitees, customers and vendors. Therefore, limiting employees from having a locked weapon in their cars during at-work travel to customer or vendor sites does not violate the statute.

The bottom line: don't be afraid of the so-called "Take Your Guns to Workplace Act." Establish broad workplace violence policies. Conduct background checks, reference checks and interview candidates. If you can, have an EAP policy in place for employees with mental health, substance abuse or anger management issues, and encourage employees to use it. Have safety plans in place for active shooters or reported threats. In other words, employees with concealed weapons are permitted to keep their guns locked in their cars and to use them for self-defense. They are not permitted to threaten to use them or bring them into work or anywhere else but their locked car during work hours while on lawful business for the company at work.

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