

Armed & at Work: Navigating Alabama's Guns in the Parking Lot Act

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Americans are not short on opinions regarding gun ownership. The debate over Second Amendment rights is often campaign fodder for politicians who answer to vocal constituencies on both sides of the issue. In the wake of tragic shootings at schools, worksites and in the public square, guns and their role in American society are on the forefront of lawmakers' agendas. Some argue the way to prevent these tragedies is to implement more stringent background checks and to limit or eliminate access to certain types of firearms. Others maintain an armed citizenry reduces violent crime. Thus, while some city and state governments have or are attempting to further restrict gun ownership, others are working to preserve and expand touted Second Amendment rights.

Employers are caught in the middle of this debate. The U.S. Department of Labor reported that, in 2012, 375 workers were killed by shootings on the job with 315 of those deaths occurring in private industry. *See* Department of Labor's 2012 Census of Fatal Occupational Injuries, available at <http://www.bls.gov/iif/oshcfoi1.htm>. Trying to limit exposure to liability for these types of incidents, and, in an effort to protect their employees, many employers have implemented workplace violence policies that prohibit any type of weapon on company property. In the last ten years, these prohibitions have been outlawed as a wave of state legislatures across the country enacted what are generally referred to as "guns in the parking lot" acts or "guns-at-work laws."

Guns-at-work laws are a result of these complete weapons prohibitions by employers which have prevented employees from possessing firearms in their locked motor vehicles and

subjected them to punishment for possessing a firearm on company property. Specifically, state legislatures felt the need to protect their citizens' right to possess a gun while at work so that the citizens could, if they so choose, have access to their gun for protection going to and from work and at their place of employment. Alabama is one of the latest states to enact such a law.

Alabama Guns in the Parking Lot Act

On May 22, 2013 Governor Robert Bentley signed into law Alabama Act 2013-283, better known as the “Guns in the Parking Lot Act.” Effective August 1, 2013, Alabama employers became subject to the new law and its requirements. The Act prohibits employers, with certain exceptions, from preventing an employee from lawfully possessing a firearm in his or her vehicle while it is parked or operated in a public or private parking area owned by the employer. *See* Alabama Act 2013-283 § 4(b) (2013) (to be codified as amended at Ala. Code § 40-12-143). Employers may still disallow employees from carrying their firearms into the workplace, even if that employee possesses a valid concealed pistol permit. Section 4(a). Employers may also prevent employees from carrying firearms while engaged in the employer’s work, whether on or off-site. *Id.* § 4(a).

To fall under the protections of the Act, the employee’s vehicle must be parked where it is otherwise permitted to be. *Id.* § 4(b)(2). If the employee is with the vehicle, the weapon must be kept inside the vehicle and away from view. *Id.* § 4(b)(3)(a). While the employee is not with the vehicle, the firearm must be kept away from view and locked either inside a compartment within the vehicle or inside a container securely attached to the vehicle. *Id.* § 4(b)(3)(b). Importantly, only employees who possess a valid concealed weapons permit (CWP) may have a pistol. *Id.* § 4(b)(1)(a)-(b). Other guns which are expressly permitted under the Act are firearms legal for hunting in Alabama. However, an employee who keeps a hunting firearm in his or her

vehicle must meet the following criteria: (1) have a valid Alabama hunting license; (2) carry the weapon during hunting season; (3) must not have been convicted of any crime of violence, nor any crime involving domestic violence, nor be subject to a domestic violence restraining order; (4) must not have been committed to a psychiatric hospital; and (5) must not have any “documented prior workplace incidents involving the threat of physical injury or which resulted in physical injury.” *Id.* § 4(b)(1)(b)(i-vi). In addition, employees may be disqualified from possessing any type of gun on the employer’s property for certain delineated reasons pertaining to the employee's mental health history and criminal record. *Id.* § 4(b)(1)(b)(v).

Unlike the guns-at-work laws in some states, Alabama’s law does not prevent employers from asking an employee if he or she possesses a firearm and whether or not that employee is abiding by the Act if the employer believes that employee possibly presents a risk of danger to himself or others. *Id.* § 4(c). The employer may ask the employee if a weapon is in his or her car. If the employee answers in the affirmative, the employer may then ask additional questions to determine if the employee is in compliance with the law. Employers may report to law enforcement, upon information and belief, credible evidence that an employee is storing illegal weapons in his or her vehicle as well as stolen property. *Id.* § 4(e). If employees make threats to physically harm themselves or others, employers are not prohibited from reporting those threats to the proper law enforcement officials. *Id.* § 4(e)(2). Even further, if a law enforcement officer pursuant to a valid search warrant or valid warrantless search discovers a prohibited firearm, stolen property, or another prohibited illegal item other than a firearm, the employer may take adverse action against the employee. *Id.* § 4(f). Thus, the law is not meant to prevent employers from taking necessary steps to protect their employees and their workplaces.

Nevertheless, an employer may **not** take an adverse action against an employee because he or she keeps a firearm in his or her car so long as the employee is in compliance with the law. *Id.* § 4(d). If an employee is terminated, suspended or demoted solely on the basis of possessing a weapon in his or her vehicle, the employee may bring a civil lawsuit for compensatory damages. If the employee is successful, he or she will be entitled to damages for lost wages and other lost benefits but not reinstatement. *Id.* § 4(g)(1-2) (stating violators will be liable “for other lost remuneration caused by the termination, demotion, or other adverse action”). *Id.*

Employers who are concerned about the liability which may result from employees having nearby access to firearms should note that the Act provides absolute immunity from harm that may arise as a result of the lawful storage of firearms in employees’ vehicles. *Id.* § 5(a). As per the statute, employers shall be:

[A]bsolutely immune from any claim, cause of action or lawsuit that may be brought by any person seeking any form of damages that are alleged to arise directly or indirectly, as a result of any firearm brought onto the property of the employer, owner or lawful possessor by an employee...

Id. § 5(a).

The presence of firearms in employee-vehicles does not establish a failure of the employer to provide a safe working environment, nor does it impose an obligation on employers to guarantee compliance with the law by its employees. *Id.* § 5(b-c). Employers are not required to inspect employees’ vehicles or parking lots. *Id.* § 5(c). It is important to note, however, that employers are not given immunity for “affirmative wrongful acts” that result in harm. *Id.* § 5(d).

Interestingly, business owners face a greater challenge under the Act in attempting to prohibit visitors or patrons from bringing guns into company buildings. To prohibit non-employees from carrying a firearm inside the workplace, the business owner must ensure “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.” *Id.* § 6(b). In other words, the business owner must have continuous posting of guards during normal business hours as well as some other security feature to completely ban all firearms. *Id.* In addition, the business owner is required to post a notice at the public entrances of the building indicating that weapons are prohibited. *Id.* § 6(c). Businesses that are open to the general public may not prevent a patron with a CWP from carrying a firearm into company buildings even if the business has security guards and other measures of protection. *Id.* § 6. However, the Act creates an exemption for certain public and private facilities including police stations, prisons and prison grounds, courthouses, and in-patient mental health facilities. *Id.* § 6(a)(1-6). Such facilities may ban firearms in buildings, and, in the case of correctional facilities and mental health institutions, may prohibit firearms on all premises including parking lots.

Legal Challenges To Guns-At-Work Laws in Other States

Alabama's law is not an outlier. Twenty-three (23) states, including Alabama, have enacted laws that place restrictions on employers and business owners related to the prohibition of guns in the workplace. Similar to Alabama's law, the majority of these state laws do not preclude an employer from banning guns inside company buildings. Most only preclude an employer from prohibiting employees from keeping a firearm locked in their vehicle on company property. Nevertheless, companies and business interest groups who are uncomfortable at the prospect of having employees and patrons with nearby access to guns have mounted legal challenges to these laws. *See ConocoPhillips Co. v. Henry*, 520 F. Supp. 2d 1282 (N.D. Okla. 2007), *rev'd sub nom. Ramsey Winch v. Henry*, 555 F.3d 1199 (10th Cir. 2009); *Fla. Retail*

Fed'n, Inc. v. Att'y Gen., 576 F. Supp. 2d 1281, 1298 (N.D. Fla. 2008); *cf. Florida Carry, Inc. v. Univ. of N. Fla.*, 38 Fla. L. Weekly 2592 (Fla. Dist. Ct. App. 2013) (holding university could not prohibit adult students from carrying a securely encased firearm within a motor vehicle on campus under Florida's guns-at-work law as university was not a "school district" exempted from the law). The results of these cases, however, strongly suggest that Alabama's law is not likely to be overturned.

In 2004, the Oklahoma legislature passed a guns-at-work law which it later amended in 2005. Okla. Stat. tit. 21, § 1289.7a (Supp. 2004) (amended 2005). Similar to Alabama's law, the statute, as amended, provides: "No person, property owner, tenant, employer or business entity shall maintain, establish or enforce any policy or rule that had the effect of prohibiting any person, except a convicted felon, from transporting and storing firearms in a locked motor vehicle, or from transporting and storing firearms locked in or locked to a motor vehicle on any property set aside for any vehicle." *Id.* A group of business owners and the Oklahoma Chamber of Commerce filed a lawsuit to enjoin the law from taking effect on the basis the law (1) was an unconstitutional taking of private property rights; (2) was facially vague; and (3) was preempted by federal law as it was in conflict with the federal Occupational Safety and Health Act ("OSH Act"). *See ConocoPhillips Co.*, 520 F. Supp. 2d at 1296. The district court rejected the constitutional arguments, but sided with the business groups on the issue of preemption pursuant to the OSH Act's general duty provision. *Id.* at 1340. Specifically, the district court determined "the OSH Act, which requires employers to abate hazards in their workplaces that could lead to death or serious bodily harm and which encourages employers to prevent gun-related workplace injuries" could not "coexist" with the Oklahoma law "which criminally prohibit[s] an effective method of reducing gun-related workplace injuries." *Id.*

The Tenth Circuit Court of Appeals reversed the district court's decision. *Ramsey Winch v. Henry*, 555 F.3d 1199 (10th Cir. 2009). The Tenth Circuit agreed the district court properly determined the Oklahoma statute was not unconstitutional. *Ramsey Winch*, 555 F.3d at 1210-11. However, the Tenth Circuit disagreed the statute was preempted by the OSH Act. The Tenth Circuit noted the Oklahoma law did not conflict with any specific OSHA standard and that the OSH Act was not intended to interfere with state's police powers. *Id.* at 1207. Thus, the Tenth Circuit held "Congress did not clearly intend the Osh Act to preempt the [Oklahoma guns-at-work law]." *Id.*

Like the legal challenge to the guns-at-work law in Oklahoma, business interest groups and human resource organizations in Florida sought to enjoin their state's "guns-at-work" law on the same constitutional and preemption grounds. *Fla. Retail Fed'n, Inc.*, 576 F. Supp. 2d at 1284. Enacted in 2008, the Florida "guns-at-work" law provides an "employer" may not "prohibit a worker with a concealed-carry permit from securing a gun in a vehicle in a parking lot" or "prohibit a customer – whether or not he or she has a concealed-carry permit – from securing a gun in a vehicle parking lot." Fla. Stat. § 790.251(4)(a). The law further provides an employer may not question workers as to whether or not the worker has a concealed carry permit or question a customer if he or she has gun in a vehicle in a parking lot. The law prohibits employers from terminating employees and business owners from expelling customers for having a gun in a vehicle on the business's property. Fla. Stat. § 790.251(4)(b).

The business groups argued the statute was unconstitutional as it "compel[ed] property owners to make their property available for purposes they do not support." *Fla. Retail Fed'n, Inc.*, 576 F. Supp. 2d at 1284. However, the district court determined the law as it pertained to employers "easily passes constitutional muster." The district court held the legislature had the

constitutional authority to require employers that choose to provide parking to allow guns secured in vehicles in the business's parking lot and that this requirement was not a "taking" or in violation of the *Due Process Clause*. *Fla. Retail Fed'n, Inc.*, 576 F. Supp. 2d at 1289-90.ⁱ

The business groups also contended the OSH Act preempted the Florida law because forcing employers to allow guns on company property stood "as an obstacle to accomplishing the congressional purpose of safe and healthy workplaces." *Id.* at 1298. The district court rejected this argument for two (2) reasons. The first reason was that Congress "explicitly authorized the states to act on worker safety issues." *Fla. Retail Fed'n, Inc.*, 576 F. Supp. 2d at 1298 (citing 29 U.S.C. § 667(a)). The district court's second reason was that the OSH Act "is not a general charter for courts to protect workers," but is composed of "explicit standards that courts must enforce." *Fla. Retail Fed'n, Inc.*, 576 F. Supp. 2d at 1298.

One legal challenge to guns-at-work laws that was successful was based upon religious freedom grounds. *See Edina Community Lutheran Church v. State*, 745 N.W.2d 194 (Minn. Ct. App. 2008). In *Edina*, two churches sought a religious exemption to the Minnesota Citizens' Protection Act which prohibits employers from banning licensed gun owners from carrying or possessing a gun in a parking area and which requires business establishments to post conspicuous signs or provide personal notice to a gun-carrying individual that guns are not allowed on the property before requesting that such individuals leave the premises. *See Edina Community Lutheran Church*, 745 N.W.2d at 202 (citing Minn. Stat. § 624.714). The churches argued the statute's requirements were antithetical to the church's religious beliefs regarding peacemaking and nonviolence and to providing a place of sanctuary. *Edina Community Lutheran Church*, 745 N.W.2d at 204. The Minnesota Court of Appeals agreed, holding that the Act

violated the churches' freedom-of-conscience rights and granting a permanent injunction on state constitutional grounds as applied to church property. *Id.* at 208

Alabama's parking lot law does not provide an exception for churches or religious organizations. Thus, it is conceivable such a group may challenge the law on religious liberty grounds. However, based upon persuasive authority from outside jurisdictions, it appears that the law is likely to withstand other constitutional challenges. Moreover, Alabama's law includes a provision that it does not authorize the possession or carrying of guns "where prohibited by federal law," rendering a preemption challenge even less likely to be successful. Section 4(j).

The Creation of A New Protected Class Under Guns-At-Work Laws

As noted *supra*, Alabama's law prohibits employers from taking adverse action against employees based upon the lawful possession of guns in their vehicles. As such, the law creates a protected class of gun-carrying employees. Notably, employee lawsuits for wrongful termination are being filed in other states with similar laws. *See e.g., Bruley v. Village Green Mgt. Co.*, 592 F. Supp. 2d 1381 (M.D. Fla. 2008); *Holly v. UPS Supply Chain Solutions, Inc.*, Civil Action No.: 3:13-CV-00980-TBR (W.D. Ky. Jan 30, 2014). In *Bruley*, the apartment complex terminated a property manager after he came to the aid of a tenant who had been shot. The property manager took his shotgun to the scene of the crime. *Bruley*, 592 F. Supp. 2d at 1384. The apartment complex's policies forbid employees from carrying weapons. The employee argued his termination violated Florida's parking lot law which prohibits employers from precluding employees from bringing a gun to work. *Id.* at 1386. The district court rejected the employee's argument as the Florida statute only prevented an employer from firing an employee for keeping a firearm *in the employee's vehicle* while on company property. *Id.* at 1387. It was undisputed

the property manager carried his weapon across the property. Thus, the district court determined the employee could not prevail on his wrongful termination claim. *Id.*

The district court reached a different conclusion in *Holly* in which an employee transferred his gun to a co-worker's car on company property for safekeeping while the employee took his car to a mechanic. The employer terminated the employee for allegedly asking his co-worker to perform a personal favor (store his gun in the co-worker's car) while on company time. *Holly*, Civil Action No.: 3:13-CV-00980-TBR at *3. The employee argued the true reason for his termination was for exercising his right to keep a gun in his vehicle on company property in violation of Kentucky's statute that prohibits employers from banning employees from keeping a deadly weapon in their vehicle. *Id.* at *3 (citing Ky. Rev. Stat. § 527.020). Although the Kentucky statute does not expressly bar employers from terminating employees who keep weapons in their car, it provides an employer may be liable for money damages for violating the statute. Ky. Rev. Stat. § 527.020. The employer argued the statute did not provide protection for the employee as it was undisputed he removed the gun from his vehicle and gave it to a co-worker. *Holly*, Civil Action No.: 3:13-CV-00980-TBR at *6. The district court disagreed and noted that, regardless of whether the employee kept the gun in his vehicle or that of another employee, his conduct was protected by the statute. *Id.* Thus, the district court held the employee stated a claim for wrongful termination under Kentucky's guns-at-work law. *Id.*

The take-away for Alabama employers is that they should be careful in terminating any employee for possession of a weapon on company property. Each situation must be examined closely to determine whether the employee's conduct is protected by statute. Employers also need to be careful when taking disciplinary action against individuals who they know have

concealed weapons permits and may keep their weapons in a vehicle on company property. In such situations, the employee may contend that their protected conduct in keeping a gun in their vehicle was the true reason for his or her termination and is thus unlawful.

BEST PRACTICES FOR EMPLOYERS

Alabama employers and business owners can take steps to protect their employees and patrons while complying with the law. Specifically, employers may wish to consider the following:

1. Review current policies and practices to make sure they are compliant with Alabama's guns in the parking lot law.
2. Do not replace an old policy with an overly broad policy without any restrictions on guns in the workplace. Employees may be precluded from bringing guns into company buildings or removing them from their vehicles while at work. In addition, employees who do not have the appropriate permit or licenses may be precluded from keeping guns in their vehicle on company property.
3. Provide training to employees on bullying and workplace violence prevention.
4. Train managers and supervisors on how to identify and respond to volatile employees and situations.
5. Develop and disseminate reporting procedures for employees to quickly notify management of threats of violence.

6. Consider providing increased security in parking lots such as video surveillance or security guards to decrease the likelihood that a gun will be removed from a vehicle without notice.
7. Carefully investigate any alleged employee violations of weapons policies to make sure the conduct is not protected under the law before taking any adverse action.

Although the role of guns in American society will continue to be debated for years to come, Alabama's guns-at-work law is likely here to stay. Employers and business owners can protect themselves from liability by staying informed of their obligations under the law and by putting measures in place to reduce the likelihood of gun violence in the workplace.

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ⁱ The district court determined, however, that the portion of the statute which required businesses with at least one worker who had a concealed-carry permit to allow a *customer* to have a gun in the parking lot was unconstitutional as it drew a distinction without a rational basis between businesses with employees who have concealed-carry permits and those who do not. *Fla. Retail Fed'n, Inc.*, 576 F. Supp. 2d at 1292-93.