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Texas Employers Should Take Notice of Gun Law Changes

By Jordan Faykus and Jacob Crumrine of Baker & McKenzie – (Sept. 23, 2016) – Over the course of the past year, there have been two major gun law developments affecting employers in Texas.

On Aug. 8, 2016, the United States Court of Appeals for the Fifth Circuit held in *Swindol v. Aurora Flight Sciences Corporation* that Mississippi employees who were fired for storing guns in their cars may bring a wrongful discharge claim against their former employers.

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The decision was based on a Mississippi statute that bears a striking resemblance to a Texas statute. In light of the similarity, Texas employers should take note that local courts could reach the same holding.

Additionally, on Jan. 1, 2016, Texas' new "open carry" law went into effect. This development caused considerable confusion for some employers and has prompted many companies to review their relevant policies.

Given these legal developments, employers should review their relevant policies to ensure compliance.

Mississippi Sets the Stage

Mississippi Code Section 45-9-55 provides that employers generally may not prohibit their employees from storing guns in locked cars on company property.

With certain enumerated exceptions, "a public or private employer may not establish, maintain, or enforce any policy or rule that has the effect of prohibiting a person from transporting or storing a firearm in a locked vehicle in any parking lot, parking garage, or other designated parking area."

While this language seems clear, the statute contains no enforcement provisions and does not mention a private cause of action.

When a Mississippi man was fired for storing a gun in his locked car on company property, he sued his former employer for wrongful discharge, bringing his claim in federal court under diversity jurisdiction. The district court dismissed his claim, holding that the statute does not create a cause of action for fired employees.

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The man appealed to the Fifth Circuit, which in turn certified the following question to the Mississippi Supreme Court: "Whether in Mississippi an employer may be liable for a wrongful discharge of an employee for storing a firearm in a locked vehicle on company property in a manner that is consistent with Section 45-9-55."

The Mississippi high court answered that the statute created an exception to the at-will employment doctrine, akin to existing public policy exceptions. Based on that ruling, the Fifth Circuit held that the statute did create a cause of action for wrongful discharge in Mississippi.

Looking Ahead in Texas

The Mississippi statute at issue in Swindol is nearly identical to Texas Labor Code Section 52.061, which provides:

A public or private employer may not prohibit an employee ... from transporting or storing a firearm or ammunition the employee is authorized by law to possess in a locked, privately owned motor vehicle in a parking lot, parking garage, or other parking area the employer provides for employees. ›

As in Mississippi, this means that Texas employers generally may not prohibit their employees from storing guns in locked cars on company property. And like the Mississippi statute, the Texas Labor Code creates exceptions to this general rule for schools, hazardous material sites and vehicles owned by the employer.

The Texas Supreme Court has yet to decide if the Texas statute creates a private cause of action for wrongful discharge, but given the similarities between the statutes, it could reach the same result as the Mississippi Supreme Court.

In light of this possibility, Texas employers should review their policies to ensure that employees are permitted to store firearms and ammunition to the extent allowed by Texas law. Oil and gas refiners and chemical manufacturers should be especially mindful of the detailed requirements for meeting the exceptions relevant to their work sites, as contained in Texas Labor Code Section 52.062(2)(F).

Of course, Texas and Mississippi are not the only states that require employers to permit employees to store firearms in locked vehicles on company property. Many states have similar laws, with some variations. Companies with employees in other states should review those states's laws to ensure compliance.

Texas Concealed and Open Carry Gun Laws

Texas employers should also be aware of other state gun laws that may affect their business.

Texas drew national headlines when it passed "open carry" legislation, permitting licensed handgun owners to carry their weapons in plain sight. That law, amending scattered provisions of the Texas Government, Labor, and Penal Codes, took effect January 1, 2016. Many companies remain uncertain of their rights to limit handgun possession on their premises.

Under Texas Penal Code Sections 30.06 through 30.07, Texas employers still have the right to prohibit employees and third parties from possessing firearms on the company's premises, with the exception that they generally must permit firearm storage in locked vehicles.

Even if a person has a valid handgun license, employers are not required to allow that person to carry a concealed or openly displayed handgun on company property.

After the passage of open carry, much has also been made of the detailed requirements for "no handgun" signs. However, contrary to popular belief, companies that wish to ban firearms do not need to post a sign. The law provides for several valid and enforceable means of prohibiting firearms.

One of these methods is to display a sign "in a conspicuous manner clearly visible to the public" that uses certain prescribed statutory language. Such signs must appear in both English and Spanish and written in contrasting colors with block letters that are at least an inch tall.

A second method companies may use is giving individual written notice to those entering the premises, again using prescribed statutory language. Companies could effect such notice to employees by distributing a memorandum with the required language, or by including it in an employee handbook distributed to all employees.

The third method is to give oral notice that handguns are not permitted on the premises. No specific language is required for this method – a representative of the company can simply tell the armed individual that firearms are prohibited. But there are practical concerns with relying on oral notice, such as lack of documentation and the risk that the message is not effectively communicated. ›

After receiving notice of the handgun prohibition by any of the above methods, an armed individual is required by statute to leave the premises. Failure to leave in the face of valid notice is a crime under the statute, depending on whether the weapon is concealed or openly carried.

So, if a company does not wish to display a sign for aesthetic or other reasons, it may choose one of the other enforceable methods of effecting notice. Of course, unless firearm possession at a particular location is otherwise restricted by law, companies are free to permit employees or third parties to carry handguns openly, concealed or both.

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