

PUBLICATION

Guns At Work In Tennessee: What Can Be Banned, What Can Probably Be Banned, And What Is Left

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The Tennessee legislature's recent enactment of what has been widely named the "Guns in the Trunk" statute, codified at Tennessee Code Annotated § 39-17-1313, has sparked debate across the state about the statute's impact on an employer's ability to wholly ban firearms of any kind on its premises. Among the most impactful inquiries following this enactment is whether the statute has limited the ability of an employer who does ban firearms from its premises to take adverse action if an employee violates this policy or work rule by having a gun in his or her car. While this issue remains unsettled, on May 28, 2013, Tennessee's Attorney General (AG) issued an Opinion interpreting the new law, which is slated to take effect on July 1, 2013.

In AG Opinion-13-41, entitled "Employee's Possession of Firearms and Firearms Ammunition on Employer Property," the AG concludes that the at-will employment doctrine continues to allow Tennessee employers to broadly prohibit guns at work and to take adverse employment action if that prohibition is violated by an employee. The AG specifically notes that the law "[d]oes not address and thus has no impact on the employment relationship between an employer and employee." The AG further explains that "[w]hen one statute contains a given provision, the omission of this same provision from a similar statute is significant to show that a different intention existed." Since other Tennessee laws specifically address the impact, or lack thereof, on the employment relationship, the AG concludes that the absence of such language in this legislation further demonstrates that the statute was not intended to alter or affect employment policies or practices.

While the AG's Opinion is helpful and informative, it should be noted that it is not binding precedent upon Tennessee's courts. Thus, to put the AG's Opinion into context, employers and their legal counsel must examine and consider the framework within which a claim for wrongful discharge would likely arise. In order for an employee to state a claim for common law unlawful or retaliatory discharge in Tennessee, he or she must show, among other things, that the reason for the discharge "violates a clear public policy evidenced by an unambiguous constitutional, statutory, or regulatory provision." This standard frames the issue for employers in Tennessee, which becomes whether the passage of § 39-17-1313 has created a "clear public policy" supporting an unequivocal right to carry a gun in a vehicle even in the face of private employer prohibitions. Whether the recent "Guns in the Trunk" enactment establishes unambiguous statutory support for a clear public policy that requires employers to allow permit carriers to possess firearms in automobiles on employer property is ultimately unsettled, as no court has addressed this issue. But the AG's Opinion, when read together with the clear language of the statute, suggests that this law is not adequate support for a clear public policy, and that employers could therefore likely continue to implement and enforce firearm bans for all employees on their premises.

Background and Impact

Tennessee's "Guns in the Trunk" statute allows valid handgun carry permit holders to bring firearms onto certain commercial properties appropriately secured in their automobiles and eliminates the provision in prior law that made it a criminal offense to bring a firearm onto premises where valid notice was posted prohibiting this conduct. Although the statute protects employees from criminal consequences, it does not reference in any

way a protection for employees subjected to adverse employment actions if they violate an employer's prohibition against guns on its premises, even if the employees otherwise comply with the requirements of the statute. Prior to enactment of the new law, the existing notice statute allowed employers to prohibit possession of weapons on their property so long as proper notice was posted, and the statute specifically stated that a violation of the statute could constitute a criminal offense. The new statute allows valid concealed carry permit holders to lawfully store firearms in their vehicle on commercial property, and while this amendment represents a clear change in a business's ability to prohibit weapons on its property by posting proper notice, the legislation does not have as clear an impact on employer policies.

The enactment of § 39-17-1313 does not in any way alter the ability of employers to ban employees who do not have valid carry permits from bringing guns onto its premises, and it similarly provides no protection for an individual with a valid carry permit if the firearm is not stored in the manner required by the statute. Employers can, therefore, continue to ban firearms possessed by employees who do not have valid permits, and can continue to take adverse employment action against individuals who violate the prohibition. Similarly, employers can clearly take adverse action against a valid permit holder if the firearm stored on its premises is not maintained in strict compliance with the requirements of the statute, which means any employee who brings the firearm out of their trunk can be disciplined. What remains less clear is whether a blanket ban on all firearms anywhere on employer property is too broad, and whether a valid permit holder can be disciplined or have their employment terminated for violating such a work rule.

What's Next?

Until a court interprets this legislation, or until the Tennessee legislature modifies or clarifies the existing statute(s), the question addressed herein will remain unanswered. Given the language of the statute, its legislative history, and the recent AG's Opinion, however, it appears on balance more likely than not that employers can still ban all firearms and can continue to take adverse disciplinary action, including termination of employment, if these prohibitions are violated by any employee, including a valid permit holder. In other words, it appears that a public policy which would allow permit holding employees to bring a weapon onto employer property in an automobile is not clearly established. However, this issue is likely to be at the heart of significant litigation as this matter makes its way to the court system. Employers should consider their tolerance for the risk inherently associated with a case testing this right, and should evaluate their need to prohibit firearms for all employees instead of limiting the prohibition to those who do not possess valid handgun carry permits and/or those who do not store their firearms in accordance with the statute's strict requirements.

Employers in Tennessee should consult counsel to determine what work rules are appropriate, whether work rules prohibiting firearms are valid and enforceable, and whether they are willing to take on the risk associated with the potential that an employer who bans guns at work will be involved in a case testing the impact of this legislation.

For questions about the Tennessee "Guns in the Trunk" law or any employment-related issue, please contact [Jonathan Hancock](#), or any of our more than 70 Labor & Employment attorneys located in Birmingham, Alabama; Atlanta, Georgia; Baton Rouge, Mandeville and New Orleans, Louisiana; Jackson, Mississippi; Chattanooga, Johnson City, Knoxville, Memphis and Nashville, Tennessee; and Houston, Texas.