

PUBLICATION

Guns at Work in Tennessee, Part II: Clear as Mud?

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The Tennessee legislature's enactment of Tennessee Code Annotated (TCA) 39-17-1313 (also known as the "Guns in the Trunk" legislation) has sparked wide debate among employers and employees alike regarding the interpretation of this law as it relates to an employer's policy to ban firearms wholly from its premises. While Tennessee courts have not yet interpreted the legislation, conflicting opinions from the Tennessee Attorney General (AG) and the Tennessee General Assembly's Office of Legal Services (OLS) show that employers must be cautious when creating policies that will intersect with the legislation.

In May of 2013, the Tennessee AG issued an Opinion interpreting the "Guns in the Trunk" legislation, which was to become effective on July 1, 2013. AG Opinion 13-41 concluded that the at-will employment doctrine allowed Tennessee employers to prohibit all guns at the workplace, and it also enabled employers to take adverse employment action if an employee violated such a prohibition. Specifically, the Opinion stated that "[t]he plain and unambiguous language of Chapter 16 does not address or alter the employer/employee relationship or prohibit an employer from terminating an employee for possessing a firearm or firearm ammunition on the employer's property."

Earlier this month, however, the OLS issued a Memorandum reaching a conclusion at odds with the AG's Opinion. In pertinent part, the Memorandum provides that "[t]he plain and unambiguous language of TCA 13-17-1359 prevents an employer from prohibiting the possession of a firearm by an employee complying with TCA 39-17-1313, and effectively prohibits the employer from discharging an employee for conduct allowed by such section." However, employers and employees should note that the employee's right to keep a gun in his or her car is not absolute and is subject to the factors in TCA 39-17-1313(a)¹ and the language in TCA 13-17-1359 was amended to protect employees who comply with these factors. In the context of Tennessee's at-will employment doctrine, the Memorandum suggests that an employer could be subject to a retaliatory or wrongful discharge claim for discharging an employee solely on the basis of possession of a firearm at the employment site.

While neither the AG's Opinion nor the OLS's Memorandum are binding precedent on Tennessee courts, taken together the Opinion and Memorandum highlight the fact that this controversial issue remains unsettled and subject to conflicting positions. Until a Tennessee court resolves this issue, Tennessee employers should exercise caution when contemplating an employment action as the result of a violation of the employer's gun prohibition policy.

¹ The statute protects a person who (1) holds a valid handgun carry permit; (2) owns the vehicle in which the firearm is stored; (3) does not allow the firearm to be observed inside or outside the vehicle; (4) properly stores the firearm; and (5) does not remove the firearm from the vehicle in the parking area.