

PUBLICATION

An Overview of the Lingering Uncertainty Surrounding the "Guns in Trunks" Law

February 11, 2015

Background

The volume of gun sales has been increasing steadily across the United States over the last few years, and more citizens than ever are obtaining state-issued concealed firearms licenses. State governments, as well as private employers, have scrambled to strike a balance between the rights of these citizens to lawfully carry their firearms, and the rights of private employers to prohibit such firearms on their property for either moral or safety concerns. While the Tennessee legislature has attempted to craft a solution, the law it enacted has raised a significant question for both employees and employers.

Tennessee Code Annotated § 39-17-1313, known colloquially as the "Guns in Trunks" law, decriminalizes the transportation and storage of personal firearms and ammunition by valid Tennessee handgun carry permit holders, in their privately owned vehicles, while on or utilizing any public or private parking area. The statute requires that the permit holder's vehicle be "parked in a location where it is permitted to be" and that "the firearm and ammunition must be kept from ordinary observation and locked within the trunk, glove box, or interior of the person's motor vehicle or a container securely affixed to such motor vehicle." In exchange for what some employers might consider an invitation of liability, the law also provides protection for employers from civil suits arising from the misuse of firearms stored on their property in compliance with the law.

However, the law leaves open the question of whether an employer, though immune from a civil suit resulting from the misuse of an employee's firearm, can discharge an employee without being subject to a retaliatory discharge lawsuit. In other words, it is not entirely clear from the statute or its related legislative history whether the at-will relationship between Tennessee employers and employees is at all affected.

The law's sponsor in the House of Representatives, Rep. Jeremy Faison (R-Cosby), has stated that the at-will employment doctrine remains unaltered. He stated during discussions on the bill that ". . .we are not going to dictate policy setting at a business, and if a business decides to fire someone, or to reprimand someone that is their role . . ." However, this is in direct contravention to the opinion of Lieutenant Governor Ron Ramsey (R-Blountville) advocating a limitation on the employer's right to terminate. Lt. Gov. Ramsey has an expressed opinion that an employer may be subject to a retaliatory discharge suit if an employee is discharged for transporting and storing firearms under the law.

Former Tennessee Attorney General Robert Cooper, in his opinion on the law, sided with Rep. Faison and opined that the at-will relationship is not modified, and an employee can be discharged despite his or her compliance with the Guns in Trunks law. General Cooper is of the opinion that the law merely removes criminal sanctions, and does not create a statutory right to bring a firearm onto employee premises.

The General Assembly of Tennessee's Office of Legal Services issued their own opinion on the effect of the law on at-will employment relationships. It reached an opposite conclusion to General Cooper and opined that an employer would not be liable in a retaliatory discharge lawsuit for terminating an employee who possessed a firearm on their property if the employee is in compliance with the Guns in Trunks law. In that opinion, the Office of Legal Services looked to other relevant Tennessee laws regarding firearms possession and found that an "employer cannot discharge an employee for [possessing a firearm in compliance with the law] and,

thereby, effectively prohibit the possession, without being subject to a retaliatory or wrongful discharge cause of action.

What Does This Mean for Tennessee Employers?

For those keeping score, we have two votes for a public policy exception to the at-will employment relationship, and two votes against. Accordingly, if anything is clear, it is that the right of an employer to terminate an employee for violating an employment policy prohibiting firearms on employer property is, for the moment, uncertain. The standard for retaliatory discharge in Tennessee is "that the reason for the discharge was that the employee attempted to exercise a statutory or constitutional right, or for any other reason which violates a clear public policy evidenced by an unambiguous constitutional, statutory, or regulatory provision." Whether the Guns in Trunks law unambiguously evidences a statutory right, or clear public policy supporting a claim for wrongful or retaliatory discharge, is a matter that has yet to be addressed by Tennessee courts. The courts may accept the statute on its face and, in line with Rep. Faison and General Cooper's opinion, allow employers to discharge employees at-will. Conversely, the courts may find a public policy exception to the employment-at-will doctrine, as suggested by Lt. Gov. Ramsey and the General Assembly's Office of Legal Services, and effectively restrain employers from discharging employees who are in compliance with the law.

This will ultimately be an issue for the courts to decide. In the meantime, employers should be cognizant of the issue.