Alabama’s New “Guns in the Parking Lot” Law Takes Effect on August 1, 2013

July 1, 2013

On August 1, 2013, Alabama laws regarding firearms will change to permit employees to bring guns to the parking lots of their workplaces, if certain conditions are met. Provided those conditions are met, an employer may not punish an employee for possessing a firearm on that part of the employer’s premises and an employee punished in violation of this statute may sue the employer.

Employee’s Rights Beginning on August 1, 2013

An employee may transport or store a legal gun or ammunition in the employee’s own automobile while it is parked or operated in a public or private parking area if:

1. the vehicle is operated or parked where it is otherwise permitted to be;
2. the firearm is either:
   a. kept inside the vehicle and away from view while the employee is attending the vehicle; or
   b. kept away from view and locked either inside a compartment within the vehicle or inside a container securely affixed to the vehicle while the vehicle is unattended;
3. the employee either:
   a. has a Concealed Weapons Permit (CWP); or
   b. if the weapon is legal for hunting in Alabama and is not a pistol:
      i. the employee has a valid Alabama hunting license; and
      ii. it is during a permitted hunting season in Alabama; and
      iii. the employee has not been convicted of a crime of violence nor is he or she subject to a Domestic Violence Order; and
      iv. the employee has “no documented prior workplace incidents involving the threat of physical injury or which resulted in physical injury.”

Even if the employee is otherwise qualified to carry a hunting weapon, the employee may be disqualified from bringing the gun on the employer’s premises if any of the following factors are present:

1. the employee is found guilty but mentally ill in a criminal case;
2. the employee is found not guilty in a criminal case by reason of insanity or mental disease or defect;
the employee is declared incompetent to stand trial in a criminal case;

the employee asserted a defense in a criminal case of not guilty by reason of insanity or mental disease or defect;

the employee was found not guilty only by reason of lack of mental responsibility under the Uniform Code of Military Justice;

the employee required involuntary inpatient treatment in a psychiatric hospital or similar treatment facility;

the employee required involuntary outpatient treatment in a psychiatric hospital or similar treatment facility due to a finding that he or she was an imminent danger to him or herself or others;

the employee required involuntary commitment to a psychiatric hospital or similar treatment facility for any reason, including drug use;

the employee was the subject of prosecution or of a commitment or incompetency proceeding that could lead to a prohibition on the receipt or possession of a firearm under state or federal laws;

the employee falsified any portion of a CWP application; or

the employee caused justifiable concern for public safety.

An employee may sue his or her employer if the employer takes “adverse employment action” against the employee in violation of this law, if the employee is in compliance with the law, or if the employee does not have an illegal gun in his or her vehicle. The employee can file a civil lawsuit against the employer to recover lost wages and benefits and “for other lost remuneration caused by the termination, demotion, or other adverse action.”

 Exceptions

An employee cannot knowingly bring a gun inside any building or facility that has limited access during regular business hours, regardless of whether an employee has a CWP, without express permission of the person or entity with authority over the premises. Limited access includes continuous posting of guards and the use of other security features (such as key cards, turnstiles, etc).

A person or entity with authority over such premises must place a notice at the public entrances of the premises or buildings to alert those who enter that firearms are prohibited. An employee’s violation of this restriction is a Class C misdemeanor.

Employer’s Rights After August 1, 2013

After August 1, employers may still:

restrict or prohibit employees from carrying guns while engaged in employment duties, including in company-owned vehicles;

restrict or prohibit employees from having guns outside their vehicles on the employer’s property;

prohibit guns inside buildings;

prohibit employees from keeping guns in vehicles that are not personally owned by that employee;
prohibit the discharge of guns on private company property except in the case of self-defense or defense of property;

ask an employee if he or she has a gun in his or her vehicle, if the employer believes that an employee presents a risk of harm to him or herself or others;

If the employee answers "yes," the employer may ask questions to determine compliance with the law.

If the employee is in compliance, the employer may not take an adverse employment action against the employee.

If the employee is not in compliance, the employer may take an adverse employment action against the employee.

report to law enforcement upon information and belief that there is credible evidence of the presence of:

an illegal gun (prohibited by state or federal law), or

a threat to cause bodily harm to self or others;

take an adverse employment action against the employee if law enforcement discovers an illegal gun after a valid search.

An employer (and the parking lot owner) is absolutely immune from lawsuits for damages that arise as a result of any firearm brought onto the property of the employer by an employee. The language of the statute does not limit this immunity to lawful firearms transported in the employee's vehicle. Only time will tell whether courts apply this immunity more broadly than the parking lot.

In addition, the statute does not impose a duty on employers to patrol, inspect, or secure any parking areas it provides for its employees. The law also does not impose a duty on employers to investigate whether an employee is in compliance with legal gun ownership requirements.

Changes Affecting Other Statutes

The new law does not affect any rights or defenses that an employer has under the Alabama Workers' Compensation Act (ALA. CODE § 25-5-1 et seq.).

The mere carrying of a visible pistol, holstered or secured, in a public place, in and of itself, does not necessarily constitute disorderly conduct under ALA. CODE § 13A-11-7.

No one can bring a pistol on the private property of another unless the person has the owner's consent, or the person has a valid CWP (ALA. CODE § 13A-11-52).

No one can have a pistol in any vehicle or concealed on him or herself without a valid CWP except on his or her own land or in his or her own home or fixed place of business (ALA. CODE § 13A-11-73(a)).

A person legally permitted to have a pistol, but who does not have a valid CWP, may have an unloaded pistol in his or her vehicle if the gun is locked in a compartment or container in or securely affixed to the vehicle and out of reach of the driver and any passenger (ALA. CODE § 13A-11-73(b)).

Therefore, reading the statutes together, it appears that if an employer provides parking for its employees at a location privately owned by another entity, neither the employer nor the separate entity may prohibit individuals who have a valid CWP
from having a gun in a vehicle or on the premises. The law allows prohibitions to be placed upon those who do not have a CWP.