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May 2008

Florida's New Guns-at-Work Bill

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On April 9, 2008, the Florida Senate approved House Bill 503, the Preservation and Protection of the Right to Keep and Bear Arms in Motor Vehicles Act of 2008 (the "Act"). The Act prohibits employers, with a few limited exceptions, from preventing employees with concealed weapons licenses from keeping firearms in locked vehicles at work. On April 15, 2008, Governor Crist signed the bill into law.

Specifically, the Act provides,

No public or private employer may prohibit any customer, employee, or invitee from possessing any legally owned firearm when such firearm is lawfully possessed and locked inside or locked to a private motor vehicle in a parking lot, and when the customer, employee, or invitee is lawfully in such area.

Its protections are limited to employees who possess a valid concealed weapons permit pursuant to Florida Statutes § 790.06. Importantly, the Act also prohibits employers from asking a customer, employee or invitee about the presence of a firearm or searching the vehicle, and from disciplining an employee or taking any other action based upon a statement or representation that there is a firearm in a private vehicle on the premises. Further, employers may not condition employment on whether the employee has a concealed weapons license and cannot enter into agreements to prohibit employees from keeping a firearm inside a locked vehicle on the parking lot. It also provides that an employer may not terminate a worker for exercising his or her right to self-defense.

Although there are a number of exceptions to the Act's prohibitions, they relate to specifically defined institutions such as school properties; correctional facilities; facilities involved in the manufacture, use, storage or transportation of combustible or explosive materials, etc. Notably, however, the Act does not apply to a motor vehicle which is owned, leased or rented by the employer and the employer may prohibit an employee from keeping a firearm therein.

The Florida Retail Federation, Inc. and the Florida Chamber of Commerce, Inc. filed suit on April 21, 2008 in the United States District Court for the Northern District of Florida, Case

No. 4:08-cv-00179, to block enforcement of the Act. In the suit, the Plaintiffs allege that the Act interferes with the rights of the Plaintiffs, and their members, to control access to and use of their private property and fails to rationally serve a legitimate state purpose by promoting the public health, safety or welfare. The lawsuit further alleges that the Act constitutes an unlawful taking of property. Finally, the lawsuit alleges that the Act conflicts with the requirements of the 1970 Occupational Safety and Health Act (OSHA) and creates a hazard in the workplace that is likely to cause death or serious physical harm to employees and, as such, it violates the supremacy clause of Article VI of the United States Constitution. The lawsuit seeks to have the court declare the Act unconstitutional and to enjoin the Attorney General, or any other person, from enforcing the Act.

It is not yet known how this lawsuit will affect the enforcement or codification of the Act into law. The Act is to be effective as of July 1, 2008 and will be codified at Florida Statutes § 790.251. Should it become effective and enforceable, the Act may require amendments to existing contracts or policy manuals. Further, employers must continue to act to protect the health and safety of their workers under OSHA and other state laws and, therefore, may wish to consider implementing procedures for prevention of workplace violence and responding thereto.

Should you have questions about the Act or how the Act may affect your workplace, please contact Nicky Mooney at nmooney@deanmead.com.

About the Author:

Nicky Mooney is a shareholder in Dean Mead's Litigation Department. She represents employers in labor and employment matters.

About Dean Mead:

Dean Mead provides full-service legal representation to businesses and individuals throughout Florida. The firm has more than 45 lawyers practicing in Orlando, Fort Pierce and Viera.