

Georgia's New Law Permits Concealed Weapons

On May 14, 2008, Georgia Governor Sonny Perdue signed into law the Business Security and Employee Privacy Act. The Act allows holders of a Georgia firearms license to carry guns into certain public places, including business parking lots. The law goes into effect July 1, 2008. The Act has three major prohibitions.

1. The Act prohibits private and public employers from establishing, maintaining, or enforcing any policy or rule that bans concealed weapons from company property.
2. The Act prohibits an employer from conditioning employment upon any agreement that would prohibit a prospective employee from entering the parking lot and access thereto when the employee's privately owned motor vehicle contains a firearm that is locked out of sight within the trunk, glove box, or other enclosed compartment or area, provided that the employee possesses a Georgia firearms license.
3. The Act also limits the employer's right to search the locked privately owned vehicles of employees or of invited guests on the employer's parking lot.

Limited Exemptions

Employers that own the property on which employees park their vehicles are exempt and may continue to bar firearms and search employees vehicles as before the passage of the Act. Specifically, the Act provides in relevant part:

Nothing in this Code section shall restrict the rights of private property owners or persons in legal control of property through a lease, a rental agreement, a contract, or any other agreement to control access to such property. When a private property owner or person in legal control of property through a lease, a rental agreement, a contract, or any other agreement is also an employer, his or her rights as a private property owner or person in legal control of property shall govern.

It appears that employers who fall within the meaning of this provision may continue to enforce policies restricting handguns on their premises and allowing the searches of vehicles.

The Act also does not apply to any area used for parking on a temporary basis or for secured lots that restrict general public access. The Act also recognizes an exemption as to employees who have either completed disciplinary action or have such disciplinary action pending.

What About Employers Who Are Not Property Owners?

Employers who are not property owners are also permitted to search vehicles under the following limited situations:

- (1) When searches are conducted by certified law enforcement officers pursuant to valid search warrants or valid warrantless searches based upon probable cause under exigent circumstances;
- (2) When vehicles are owned or leased by an employer;
- (3) When there exists any situation in which a reasonable person would believe that accessing a locked vehicle of an employee is necessary to prevent an immediate threat to human health, life, or safety; or
- (4) When an employee consents to a search of their locked privately owned vehicle by licensed private security officers for loss prevention purposes based on probable cause that the employee unlawfully possesses employer property.

Employer Liability

Employers may not be criminally or civilly liable for damages resulting from or arising out of an occurrence involving the transportation, storage, possession, or use of a firearm, including, but not limited to, the theft of a firearm from an employee's automobile, unless the employer commits a criminal act involving the use of a firearm or unless the employer knew that the person using such firearm would commit such criminal act on the employer's premises. The law explicitly states that the new law does not create a new duty on the part of the employer.

Enforcement

All actions brought under the act can be brought only by the Attorney General. Thus, there is no private right of action.

Significance

Although the Act will likely be challenged on constitutional grounds, employers will need to comply with the Act until it is held to be invalid. Employers should review existing policies and handbooks to ensure that they are in compliance with the new law. As with any policy, training management about any changes in the law or company policy would be prudent.