

## In This Issue:

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On July 13, 2009, Arizona became another state to enact a “Guns-at-Work” law after Governor Jan Brewer signed a bill that limits Arizona employers from enforcing any policies that prohibit employees from storing their lawfully owned firearms in their locked vehicles while parked in their employer’s parking lot.

## Arizona Joins the Growing List of States Enacting “Guns-At-Work” Laws

By Steven G. Biddle and Jennifer L. Mora

Arizona Governor Jan Brewer recently signed a new law severely limiting employers from implementing and maintaining policies that prohibit employees from lawfully storing firearms in their locked vehicles while parked in their employer’s parking lot. In so doing, the Arizona Legislature reiterated that the Constitution of Arizona “protects an individual’s right to bear arms in self-defense” and concluded that individuals, including employees, “are deprived of the means of self-defense in their personal motor vehicles” if forbidden from storing firearms in their locked and privately owned vehicles. The legislature also stated employers and business entities are not “unduly burdened by the presence of legally possessed items” secured within their employees’ motor vehicles.

Similar laws have been passed in other states including Alaska, Florida, Georgia, Kentucky, Louisiana, Minnesota, Mississippi, Oklahoma and Utah. Below is a brief discussion of the requirements under Arizona’s law and suggestions for various parking lot arrangements. Although the law does not take effect until September 30, 2009, Arizona employers are advised to modify their policies about guns in the workplace and provide appropriate training in anticipation of the new law’s effective date.

### How the New Law Applies to Arizona Employers

The new law<sup>1</sup> prohibits property owners, tenants, and public or private employers or business entities from maintaining or enforcing any policy or rule that would forbid employees, as well as other individuals such as visitors and customers, from lawfully transporting or lawfully storing any firearm that:

- is in the employee’s locked and privately owned vehicle or in a locked compartment on the employee’s privately owned motorcycle; and
- not visible from outside of the vehicle or motorcycle.

The new law, however, is not without restrictions. Specifically, employers may prohibit an employee from carrying a firearm in their vehicle while parked on company property if any federal or state law prohibits the employee from possessing the firearm, or if

complying with the law would result in the employer violating other federal or state laws or regulations. Further, the law does not apply if the parking lot, parking garage, or other area designated for parking vehicles or motorcycles is located on an owner- or tenant-occupied, single-family detached residence.

Moreover, employers may prohibit employees from carrying or storing firearms in any vehicles owned or leased by the employer when the employees are using the vehicle for their employment. Of course, an employee may transport or store a firearm in an employer owned or leased vehicle if the employer provides consent to do so or the employee is required to do so as part of the employee's official duties. The law also does not apply if the employer is a current United States Department of Defense contractor and the parking lot is located in whole or in part on a United States military base or military installation.

An employer also may prohibit employees from leaving firearms in their vehicles parked in the primary parking lot if the employer provides alternative parking in a location reasonably close to the primary parking area and does not charge an extra fee for such parking. Similarly, some employers provide parking lots or parking garages secured by a fence or other physical barrier and limit access to the area by a guard or other security measure. In these situations, the employer may prohibit employees from storing their firearms in their vehicles or motorcycles in the secured parking areas if the employer provides employees with temporary and secure storage for their firearms while the vehicles are parked in the secure area. However, the employer must monitor the storage, make it readily accessible to employees when entering and leaving the premises, and provide for immediate retrieval of the firearm when the employees leave the premises.

## What the New Law Does Not Address

"Guns-at-Work" laws in some other states are more detailed and impose greater restrictions on or provide greater rights to employers than Arizona's law. For example, in Georgia, employers are specifically permitted to search their employees' vehicles for firearms if there is a reasonable risk of an immediate threat to human life or safety or if the employee consents, based on probable cause that the employee is unlawfully possessing their employer's property. On the other hand, in Florida, employers are not allowed to inquire about the presence of a firearm in a vehicle and are not permitted to search a private vehicle to determine whether it contains a firearm. Unlike the laws in Georgia and Florida, the new law in Arizona does not contain any restrictions on the ability of an employer to search an employee's vehicle for firearms if the vehicle is located in the company's parking lot. As a result, particularly when the employer has a policy notifying employees that the employer may search all personal property, including vehicles, employers in Arizona generally are free to search employees' vehicles parked on company property, but the employer nonetheless should carefully evaluate whether a search is necessary and, if so, whether law enforcement should be contacted to perform the search.

Georgia's law also states it does not apply to employees who are restricted from carrying or possessing a firearm on the employer's premises due to a completed or pending disciplinary action, as may be appropriate for employees disciplined for fighting or engaging in other types of violent or threatening behavior. Arizona's law does not similarly allow an employer to prohibit employees from keeping a firearm in their vehicle if the employee has engaged in violent behavior in the workplace. Because Arizona employers may not discipline an employee, regardless of the employee's violent tendencies, for having a gun in his/her vehicle, terminating the employee for the workplace violence is the best course of action.

Finally, some states, such as Georgia, Louisiana and Mississippi, expressly provide employers with immunity from a civil action for any damages that result from occurrences involving the transportation or storing of firearms under their "Guns-at-Work" laws. Unfortunately, the new Arizona law does not provide immunity from suit if employees or others are injured or killed as a result of an employee carrying or storing a firearm in their private vehicle on the employer's premises. Of course, an employer may be able to defend a lawsuit by arguing it relied in good faith upon the statute and took other precautionary measures to ensure the safety of its employees.

## Employers in All States Should Consider Adopting and Implementing Safety Measures to Reduce the Likelihood of Violence in the Workplace

Although most employers used to enjoy the ability to ban firearms altogether from their property, including parking lots, the growing number of states adopting “Guns-at-Work” laws has changed the landscape for employers wishing to reduce the likelihood of gun-related violence in the workplace. Moreover, these laws arguably are in conflict with OSHA’s “General Duty Clause” that requires employers to provide employees with a safe workplace free from recognized hazards. According to a 2005 study in *The American Journal of Public Health*, workplaces that allow guns are five to seven times more likely to suffer homicides than those that ban firearms. With the current economic climate prompting so many reductions in force, the likelihood of violence could be considered a workplace hazard, particularly with guns on the property.

In anticipation of the new law’s effective date of September 30, 2009, public and private employers with operations in Arizona, along with employers in other states with “Guns-at-Work” laws, should review and update their workplace policies to ensure they do not prohibit guns in locked vehicles unless some exception applies as described above. At the same time, all Arizona employers should implement a strong workplace violence policy that, among other things, prohibits weapons anywhere on the property other than in locked vehicles in the parking lot. Moreover, if an employer in Arizona wants to be able to search vehicles on company property for weapons, that should be included in the workplace violence policy. Consistent enforcement of the policy may prevent employees from claiming they are being harassed or punished for exercising their right to carry lawful firearms in their private vehicles.

Employers in all states, regardless of whether they are in a state with a “Guns-at-Work” law, should consider taking additional steps in their ongoing effort to reduce the likelihood of any type of violence in the workplace, including:

- Implementing and disseminating a strong policy against workplace violence, setting forth conduct that will not be tolerated and steps employees should take to report any threatening or violent behavior. For employers located in states without laws regarding employees right to store firearms in their vehicles while on company property, the policy should contain a blanket prohibition against bringing any firearm or other weapon onto company property, even if left in a vehicle in the company’s parking lot. All employers may adopt a policy that prohibits bringing firearms in the workplace or removing them from a locked vehicle in the parking lot.
- Conducting pre-employment criminal background checks to determine whether applicants are at risk for engaging in violent behavior in the workplace.
- Providing employees with training on workplace violence and harassment, including how to reduce the potential for workplace violence and the appropriate action to take when confronted with a potentially violent or harassing situation.
- Reviewing and updating safety and security measures to deal with the increased risk of violence associated with the presence of guns on company property, including the installation of metal detectors and other mechanisms to ensure employees are not bringing firearms into the workplace.

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<sup>1</sup> Ariz. Rev. Stat. §12-781.