

In This Issue:

March 2010

On March 18, 2010, Indiana enacted the Possession of Firearms and Ammunition in Locked Vehicles Law. The new law prevents employers from enforcing any policy that prohibits employees from storing legal guns and ammunition in the trunk, glove compartment, or otherwise hidden out of sight in employees' locked vehicles while the vehicles are on the employer's premises.

Indiana Employers Must Allow Employees to Store Guns in Locked Cars

By Jane Ann Himsel and Adam H. Berry

On March 18, 2010, Indiana Governor Mitch Daniels signed the Possession of Firearms and Ammunition in Locked Vehicles Law (Indiana Code 34-28-7). Under the new law, as of July 1, 2010, Indiana employers (both public and private sector) must refrain from adopting or enforcing any rule that prevents an employee, including a contract employee, from storing firearms and ammunition:

- in the locked trunk of the employee's vehicle;
- in the glove compartment of the employee's locked vehicle; or
- otherwise out of plain sight in the employee's locked vehicle.

Indiana joins twelve other states with similar laws, including Alaska, Arizona, Florida, Georgia, Kansas, Kentucky, Louisiana, Minnesota, Mississippi, Nebraska, Oklahoma, and Utah, most of which were passed in the last five years. Although the law does not take effect until July, Indiana employers should familiarize themselves with its requirements now and modify any affected policies and practices.

Coverage of the Law

The core provision of the new statute is very simple. Employers may not adopt or enforce an ordinance, resolution, policy or rule that prohibits, or has the effect of prohibiting, any "employee, including a contract employee" from possessing a firearm or ammunition that is "locked in the trunk of an employee's vehicle, kept in the glove compartment of the employee's locked vehicle, or stored out of plain sight in the employee's locked vehicle."

The new statute protects only those individuals who may legally possess a firearm or ammunition without a specific federal license. It does not apply to the possession of a weapon "for which an individual must possess a valid federal firearms license issued under 18 U.S.C. § 923 to possess the firearm, ammunition, or other device." The Indiana General Assembly included a wide variety of exceptions in the statute. Some

are extremely broad and contain undefined terms. Specifically, an employer may prohibit an employee, including a contract employee, from bringing any firearms or ammunition, whether or not locked in a vehicle – on the property of:

- a child caring institution;
- an emergency shelter care child caring institution;
- a private secure facility;
- a group home;
- an emergency shelter care group home;
- a child care center.

The Indiana Administrative Code (IAC) already contains descriptive definitions of each of these institutional types and provisions that exclude weapons from them. The new statute references the IAC's provisions excluding weapons from such facilities, but does not adopt the IAC's descriptive definitions of the institutions themselves, leaving ambiguity and room for litigation about what institutions will qualify as "child care centers," "group homes" or "private secure facilities" for purposes of this legislation. In addition to the exceptions outlined above, the new law also allows employers to adopt and enforce rules prohibiting an employee from having firearms and ammunition – inside or outside of a locked vehicle:

- if the employee provides direct support to developmentally disabled individuals and uses his or her vehicle to transport such individuals;
- on school property, on property that is "being used by a school for a school function," or on a school bus;
- on the property of a penal facility;
- in or on the property of an approved postsecondary educational institution;
- on the property of a domestic violence shelter;
- at a person's residence;
- on property that is subject to the United States Department of Homeland Security's Chemical Facility Anti-Terrorism Standards issued April 9, 2007, and licensed by the United States Nuclear Regulatory Commission under Title 10 of the Code of Federal Regulations;
- on property owned by either a public utility that generates and transmits electric power, or a department of public utilities; or
- in violation of federal law.

Available Relief

The new legislation explains available relief in expansive terms. An "individual" who believes he or she "has been harmed by a violation" of the new statute may file a private civil action. If the court finds that "a person" has violated the new statute, the court may award actual damages, court costs, and attorney's fees to the "prevailing individual." A court may also "enjoin further violations of this chapter."

The very broad damages language is troubling in at least two respects. First, it does not define "harm," leaving open the question of whether an employer could be liable under the statute if it maintains a statute-violating policy on its books but never enforces the policy. Second, the private right of action is not limited to employees and contract employees. Any "individual" who could prove "harm" because an employer had a policy that prevented an employee from keeping a weapon in his or her locked vehicle could potentially gain relief.

On the positive side, the new law strips courts of jurisdiction over any actions brought against an employer "who is in compliance with

[with the new law] for any injury or damage resulting from the employer's compliance." It will, however, be up to the courts to decide the breadth of this immunity provision.

What the Law Does Not Address

Similar legislation in other states provides more detailed guidance as to what employers may or may not do with respect to vehicle searches and weapons in company-owned vehicles.

In Georgia, for example, employers may search an employee's vehicle for firearms if there is a reasonable risk of an immediate threat to human life or safety, or, if an employee consents, for loss prevention purposes based on probable cause that the employee unlawfully possesses the employer's property. In contrast, Florida law explicitly prohibits employers from inquiring about the presence of a firearm in a vehicle and forbids an employer from searching a private vehicle to determine whether it contains a firearm.

The Indiana statute says nothing about vehicle searches. Presumably vehicle searches for weapons, stolen property, or other similar materials are still acceptable. Employers should, however, be particularly careful to conduct only vehicle searches that are actually necessary and well supported by the factual circumstances. And, of course, if a search reveals legal firearms in a previously locked trunk, a glove compartment, or otherwise out of plain view, the employer should not take action against an employee as a result of the discovery.

Weapons in company-owned vehicles are another area that the Indiana General Assembly chose not to address. In contrast, Arizona law explicitly allows employers to prohibit the storage of firearms in company-owned vehicles under all circumstances. General principles of property law suggest that an Indiana employer may continue to control the contents of its own vehicles, regardless of whether employees have primary responsibility for storing and maintaining such vehicles. However, the same principles would have suggested that an employer should be allowed to exclude all weapons of any kind from its premises. Simply put, the new law does not define the phrase "employee's vehicle," and it creates an ambiguity by using the phrase "employee's vehicle" and the phrase "employee's personal vehicle" at different places within the statutory text. Accordingly, an employer who issues vehicles to specific employees for their use may find itself as the test case if it takes a strong stand with a policy banning firearms and ammunition from the trunks, glove compartments, and otherwise obscured places in locked company-owned vehicles that it has issued to employees.

How to Implement the Possession of Firearms and Ammunition in Locked Vehicles Law in Your Workplace

Indiana's legislation regarding firearms in locked vehicles comes on the heels of an office shooting at the Department of Workforce Development in Portage, Indiana, on March 5, 2010. An employee, reportedly upset by a poor performance review, retrieved a gun from his car and shot out an office window allegedly trying to kill his reviewing supervisor. Fortunately, no one was injured. However, the event rallied a variety of people to join the Indiana Chamber of Commerce, Indiana Manufacturers Association, and other pro-business lobbying groups in their ultimately unsuccessful opposition to this legislation. Strong opposition still exists. Press reports suggest that employers or employer groups may seek to enjoin the law before it takes effect. Nevertheless, employers with workers in Indiana should start taking steps now to be ready for the July 1, 2010, effective date.

Now is the time to:

- Study the exceptions to the statute, and, if necessary, consult counsel about whether your business falls within one of them;
- Scan employee handbooks for and eliminate language stating or suggesting that a company-owned vehicle becomes an employee's vehicle simply because it is issued to an employee for use;
- Update and redistribute (or distribute for the first time), a strong policy against workplace violence. The policy should:

- Describe conduct that will not be tolerated and outline steps employees should take to report threatening or violent behavior;
 - Include a provision prohibiting employees from having firearms and ammunition any place on an employer's premises except in employees' locked trunks, glove compartments of employees' locked vehicles, or elsewhere out of sight in employees' locked vehicles;
 - Completely prohibit all other weapons;
 - Reserve the employer's right to search employees' personal vehicles as well as company-owned vehicles under appropriate circumstances.
-
- Conduct pre-employment criminal background checks to determine whether applicants have engaged in violent behavior in past;
 - Provide 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;
 - Ensure that on-site security personnel – whether employees or contractors – understand the new legislation and how it will be enforced in your workplace;
 - Review and update safety and security measures to deal with the increased risk of violence associated with the presence of guns on company property, including the possible installation of metal detectors and other mechanisms to ensure employees are not bringing firearms into the workplace.

Jane Ann Himsel is a Shareholder and Adam H. Berry is an Associate in Littler Mendelson's Indianapolis office. If you would like further information, please contact your Littler attorney at 1.888.Littler, info@littler.com, or Ms. Himsel at jhimsel@littler.com.