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Florida Governor Charlie Crist signs new bill permitting Florida residents who possess a valid concealed-weapons permit to keep firearms locked in their cars at work.

Littler Mendelson is the largest law firm in the United States devoted exclusively to representing management in employment and labor law matters.

## Southern Edition

A Littler Mendelson Southern-specific Newsletter

### Florida Enacts Law Allowing Employees to Keep Guns in Their Cars at Work

By Gaye L. Huxoll

On April 15, 2008, Florida Governor Charlie Crist signed into law a bill that will allow Florida residents who possess a valid concealed-weapons permit to keep firearms locked in their cars at work. The law, which is effective July 1, 2008, prohibits all public and private employers<sup>1</sup> from discriminating against any employee,<sup>2</sup> customer, or invitee<sup>3</sup> for exercising the right to keep and bear arms.

#### Prohibited Acts

- Under the new law, which will be codified at Florida Statutes section 790.251, employers are barred from:
- Prohibiting employees and invitees from possessing legally owned firearms that are locked inside or locked to a private motor vehicle in a parking lot<sup>4</sup> when the employee or invitee is lawfully in the area;
- Inquiring about the presence of a firearm in the employee or invitee's vehicle;
- Searching a private motor vehicle in a parking lot to determine whether it contains a firearm;
- Taking any action against an employee or invitee based on any verbal or written statement regarding the possession of a firearm in a private vehicle for lawful purposes;
- Conditioning employment on the fact that an employee or prospective employee holds or does not hold a concealed-weapons permit;
- Conditioning employment on an

agreement by the employee or prospective employee that forbids the employee from keeping a legal firearm locked in his or her vehicle when the firearm is kept for lawful purposes;

- Prohibiting or attempting to prevent any employee or invitee from entering the parking lot of the employer's place of business because the employee or invitee's vehicle contains a legal firearm that is out of sight and is being carried for lawful purposes; and
- Terminating or otherwise discriminating against an employee, or expelling an invitee, for exercising the right to keep and bear arms or for exercising the right to self-defense so long as the firearm is not exhibited on company property for any reason other than lawful defensive purposes.

The above prohibitions do not apply to motor vehicles owned, leased or rented by the employer or the employer's landlord. The law also does not apply to schools, correctional institutions, nuclear-powered electricity generation facilities, properties where substantial activities are conducted involving national defense, aerospace, or homeland security, properties where the primary business conducted involves combustible or explosive materials, or any other property on which the possession of a firearm is prohibited under any federal law, contract with a federal government entity, or Florida law.

## Enforcement of Rights

Any person whose rights under the new law are violated on or after July 1, 2008, may bring a civil action to enforce those rights. If successful, he or she can recover “all reasonable personal costs and losses suffered.” The prevailing party in such an action is entitled to an award of attorneys’ fees and court costs.

The Florida Attorney General also is authorized to bring a civil or administrative action to enforce the rights of any person aggrieved by a violation of this law. In addition to damages, the Attorney General may seek injunctive relief and civil penalties of up to \$10,000 per violation. If the Attorney General prevails, the state is entitled to recover its reasonable costs and attorneys’ fees.

## Challenges by Employer Groups

Several employer groups, including the Florida Chamber of Commerce and the Florida Retail Federation, have announced that they intend to challenge the new law. Similar legislation in Oklahoma was overturned in October by a federal judge who ruled that the legislation conflicted with the federal Occupational Safety and Health Act (OSHA), which requires employers to reduce workplace hazards that could lead to death or serious injury. Oklahoma’s attorney general has appealed that ruling, which appeal is currently pending before the U.S. Tenth Circuit Court of Appeals.

## Compliance with New Restrictions

Assuming that Florida’s new law goes into effect as planned, there are several steps that employers with operations in Florida should consider taking to comply with the law’s new restrictions. These steps include:

- Reviewing and updating policies prohibiting firearms on the employer’s property to exclude a bar against

keeping legally owned firearms locked in personal vehicles in parking areas by persons with valid concealed-weapons permits;

- Providing training on the new law to all supervisory and human resource personnel;
- Providing training to all security personnel on the new restrictions concerning vehicle searches; and
- Reviewing and updating safety and security measures to deal with the increased risk of violence associated with the presence of guns on company property.

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<sup>1</sup> Employer includes any type of business that has “employees,” as that term is defined in the statute. See note 2 below.

<sup>2</sup> The term *employee* means any person who possesses a valid concealed-weapons license and who works for salary, wages, or other remuneration, or who is an intern or volunteer, or who is an independent contractor.

<sup>3</sup> *Invitee* means any business invitee, including a customer or visitor, who is lawfully on the employer’s premises.

<sup>4</sup> *Parking lot* is defined as “any property that is used for parking motor vehicles and is available to customers, employees, or invitees for temporary or long-term parking or storage of motor vehicles.”