

Guns at Work Law

On July 1, 2010, a new law concerning the possession of firearms and ammunition in locked vehicles, commonly referred to as the “Guns at Work Act,” went into effect in Indiana. See Indiana Code § 34-28-7-1, *et seq.* This statute prohibits any person from adopting or enforcing a policy that prohibits or has the effect of prohibiting an employee from possessing a firearm or ammunition that is locked in the trunk of the employee’s vehicle, kept in the glove compartment of the employee’s vehicle, or stored out of plain sight in the employee’s locked vehicle. The Act, however, only applies to possession of a firearm or ammunition by an individual who may legally possess such items.

This new law, like all legislation dealing with the regulation or deregulation of firearms, has been the center of controversy, having been heavily backed by the National Rifle Association and just as strongly opposed by the Brady Campaign to Prevent Gun Violence. The purpose of this article is not to take sides or become involved in the debate, but to provide businesses with information concerning their rights and obligations under the Act so that they may formulate policies that best meet their needs and limit their exposure to liability.

Initially, employers need to determine whether the Act actually applies to business in their industry. The legislature created numerous exceptions for various types of employers. For example, an employer may prohibit employees from possessing firearms on the property of a school, a child-care institution or care center, or a post-secondary educational institution. And, in regard to smaller, family-owned businesses, the Act does not apply if the business’s location is also the owner’s residence.

Perhaps the broadest exception to the Act is for businesses that are subject to the U.S. Department of Homeland Security Chemical Facility Anti-Terrorism Standards (CFATS). The Department of Homeland Security has published a list of chemicals of interest and provides on-line information that permits employers to determine whether the CFATS apply to them (as well as information concerning registering for security assessments and developing site security plans). See www.dhs.gov/files/programs/gc_1169501486179.shtm. Based on these standards,

many Indiana businesses – those engaged in industries such as chemical manufacturing, storage, and distribution; agriculture; mining; healthcare; or the manufacture of electronics or plastics – are exempt from the Act.

If the Act does apply to your business, there are two provisions that are of particular interest in regard to liability. First, the Act creates a private right of action allowing employees who believe that they have been harmed by violations of the Act to file civil lawsuits against their employers. Accordingly, any business that currently has a policy regarding firearms should review the policy and to make sure it does not violate some provision of the Act. Further, a second, equally important reason for reviewing firearms policies is that the Act absolves employers from any liability for any injury or damage resulting from the business's compliance with the Act.

Although a business has no liability for injury or damage resulting that may occur because it followed the new law, an employer could still face liability if an incident occurred where the law was only partially followed. Because of this, employers should insist on strict compliance with the terms of the Act. This includes requiring any vehicle in which a firearm or ammunition is stored be kept securely locked and the firearm stored out of plain sight. And the vehicle must be the employees' own, not a company vehicle or one belonging to a friend or some other person with whom the employee carools. Finally, it would be wise to require proof that the employee is in lawful possession of any firearm stored on company property. In the case of a handgun, this would entail requiring employees to show that they have concealed carry permits that are valid and current. In regard to a rifle or other long gun, the employee should be able to state the lawful purpose for having the weapon in the vehicle, which is limited by Indiana law to going to or from the sale or purchase of the firearm or transporting it for repair, to or from a shooting range, or for hunting.

In addition to ensuring compliance with the terms of the Act, employers may wish to consider some additional restrictions to limit their potential exposure to liability. For example, a business may designate a particular parking area for employees transporting firearms or require those employees to park a designated distance from the entrance to the building. Further, although the Act permits the transport of firearms and ammunition, it does not require employers to allow loaded firearms on their property. Thus, a business may enforce a rule prohibiting employees from storing loaded firearms in their vehicles.

Indiana's recently enacted "guns at work" law both provides employers with a means of shielding themselves from liability and opens them up to a whole new range of potential lawsuits. Businesses must, as with any change in market conditions, adapt to survive. If your business currently has a firearms policy in place, it would be wise to review it and make sure it does not conflict with the new law. And if you do not have such a policy, now would be an opportune time to implement one and reduce your company's potential exposure to liability. Whether you have a current policy in need of revision or are just now developing a firearms policy, Tuesley Hall Konopa can help. Contact us for assistance with drafting a policy that both meets your business' needs and avoids any potential pitfalls under the new law.



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