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**EMPLOYERS IN FLORIDA
FACE NEW "TAKE YOUR
GUN TO WORK" LAW**

On April 15, 2008, Florida Governor Charlie Crist signed into law Florida Statute §790.251 over the objections of several business associations and companies. While the bill is formally titled "The Preservation and Protection of the Right to Keep and Bear Arms in Motor Vehicles Act of 2008," pundits have dubbed the legislation the "Take Your Gun to Work" law. The new law, already the subject of a federal lawsuit, could potentially alter the workplace for any company with Florida facilities and operations.

The substance of the new law prohibits a business or employer from precluding employees (including independent contractors), customers and other invitees from bringing concealed firearms onto business property, such as a parking lot, providing the bearer has a valid permit for the weapon and the firearm is stored out of sight. Additionally, the law prohibits employers and business operators from making inquiries regarding the presence of a firearm in a motor vehicle on the business property or searching the vehicle to ascertain the presence of a firearm. Employers are also prohibited from conditioning an offer of employment on the fact that an applicant does or does not have a permit to carry a firearm, and may not require an employee to refrain from lawfully keeping a firearm in their personal vehicle. Most notably, the law prohibits an employer from terminating or "otherwise discriminating" against an employee or customer for possessing a firearm so long as the firearm is not exhibited on company property for "any unlawful purpose." The law applies exclusively to firearms and ammunition and not to other types of weapons such as knives or explosives.

Certain types of businesses such as schools, nuclear power plants, national defense contractors and properties where explosives or combustible materials are located are exempt from the law. Remarkably, businesses such as day care centers, hospitals, nursing homes, restaurants and shopping malls are not exempt. Employers or business operators who violate the new law are subject to suit by the state's attorney general or by private individuals.

Employers with facilities in Florida should be aware that under the provisions of the new law they can no longer enforce policies that prohibit employees with valid permits from bringing firearms into facility parking lots. Moreover, as the law is written, employers cannot discipline an employee with a valid permit for carrying a concealed weapon into the actual business facility. Employers may still have a policy that prohibits an employee from carrying a firearm into its facility, but employers will no longer be able to discipline the employee if she or he violates that policy.

The law does provide some measure of protection for employers and business operators by immunizing them from civil liability for any incident that arises directly from their compliance with the law. However, the statute does not provide immunity to individual managers, supervisors or directors, and it does not address immunity for an employer who had warning of an employee's propensity for violence. Moreover, the new law creates a significant problem for employers who



are trying to comply with the federal Occupational Safety and Health Act (OSHA). OSHA requires an employer to eliminate hazards from the workplace that create risk of death or physical harm. Employers who do not comply with OSHA face stiff consequences from the federal government. The new Florida statute puts employers in an uncomfortable situation of trying to comply with both a state and federal law that are in sharp contrast to each other.

On April 21, 2008 a group of Florida-based business associations and the state's chamber of commerce filed a lawsuit in federal court seeking to have F.S. §790.521 declared unconstitutional. Until the matter is resolved in the courts, however, employers with facilities in Florida should revisit their handbooks and workplace violence procedures to assess compliance with the new law.

FOR MORE INFORMATION

If you would like more information about this new law, please contact JC Miller, 202.263.4154 or JC.Miller@ThompsonHine.com, or your primary Thompson Hine Labor & Employment lawyer. Go to www.ThompsonHine.com/practices/Labor_Employment/lawyers for a list of our Labor & Employment lawyers.

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