

in this issue:

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Georgia's new "Parking Lot Law" throws out company workplace violence policies that prohibit employees who drive their own vehicles to work from bringing a gun to the company parking lot, even throwing out those policies that would allow a gun to be brought to work if kept in a locked trunk of the vehicle. Balancing the employee's gun rights against the employer's property rights, this confusing statute has a number of exceptions and pitfalls for employers.

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Southern Edition

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Georgia's Parking Lot Law Has Less Bang for Employers Than Predicted

By Donald W. Benson and Julie E. Jordan

Georgia is a state where many employees in both rural and urban areas own guns; many are licensed to carry those guns; and many commute long distances and leave their guns in locked compartments of their vehicles parked on company property during work hours. Knowing this, many employers worry about their liability risks for possible workplace violence and prohibit bringing guns onto company property, even the parking lots.

On May 14, 2008, Governor Sonny Perdue signed a new Georgia law that restricts the ability of employers to adopt policies that prohibit employees and visitors from storing firearms in their vehicle while parked in an employer's parking lot. This new law, which has yet to be formally titled but has been dubbed the "Parking Lot Law,"¹ takes effect on July 1, 2008.

As background, the new law reflects a nationwide push by the National Rifle Association to override employers' policies prohibiting firearms on their property. Similar laws have been passed in Alaska, Florida, Kentucky, Minnesota, Mississippi, and Oklahoma.

Below is a brief discussion regarding the requirements under Georgia's law and the broad exceptions to this law for many (if not most) parking lot arrangements. Indeed, most Georgia employers are either not covered by the law or should have little trouble modifying their policies about guns in the workplace in order to comply.

Requirements for Employers Under Georgia's Parking Lot Law

The original bill on this subject began as a blanket prohibition against any mechanism that would prevent an individual from carrying a licensed firearm in his or her vehicle while parked in a parking facility accessible to the public. Instead, the final law was scaled back to prohibit private or public employers from:

- "establish[ing], maintain[ing], or enforc[ing] any policy or rule" that allows an employer "to search the locked privately owned vehicles of Employees or invited guests on the employer's parking lot and access thereto;" or
- "condition[ing] employment upon any agreement by a prospective employee that prohibits an employee from entering the parking lot and access thereto" when the employee's personal vehicle contains a licensed concealed firearm in his or her vehicle.

However, these restrictions do not apply, first, to vehicles owned or leased by the employer. Thus, the company can still have a policy that prohibits an employee from bringing their guns to work in a company vehicle.

Second, the company may search a vehicle for a gun when the vehicle is parked on its property if "a reasonable person would believe that accessing a locked vehicle of an employee is necessary to

prevent an immediate threat to human life or safety.” While the Georgia courts will need to flesh out the guidelines for such a search, where an employee makes a threat to immediately commit an act of violence, a search might be sanctioned despite the new law. However, mere irrational behavior or a threat to shoot someone after work will likely not fall within the “immediate threat” exception.

Finally, employers will not violate the Parking Lot Law if the search is incident to an employee’s consent to search his/her locked privately owned vehicle “by licensed private security officers for loss prevention purposes based on probable cause that the employee unlawfully possesses employer property.” Of course, this raises a multitude of confusing issues such as what is “consent,” who is a licensed private security officer, whether a supervisor who helps in the search would be in violation of the statute, whether the search is reasonable given the size of the employer property at issue, and what happens if the employer searches not just for stolen property but also for drugs or other items for personal or business reasons unrelated to the retrieval of company property.

Exempted Employers Under the Parking Lot Law

In addition to the narrow exceptions above, the final version of the law was amended to include a confusing list of exempt circumstances covering different parking lot arrangements.²

The most widely applicable exception for most employers is if the employer: (1) provides employees with a secure parking area with restricted public access (i.e., through the use of a gate, security officers, etc.); and (2) the employer’s policy “allowing vehicle searches upon entry shall be applicable to all vehicles entering the property and applied on a uniform and frequent basis.” This has the curious result of encouraging more searches of employee vehicles in order to prove that

the policy is uniformly applied and “frequently” enforced.

The statute also appears to allow an employer to discipline a particular employee and condition that discipline on restricting a specific employee from bringing a gun onto the parking lot and workplace. This might be appropriate for employees disciplined for fighting, making threats, etc.

One Final, Confusing Exception

The debate surrounding Georgia’s Parking Lot Law was framed in the legislature as a dispute over whether the right to bear arms trumped the rights of property owners to limit access to their property. The final version passed into law contains the curious language that, “Nothing in this code section shall restrict the rights of private property owners ... to control access to such property. When a private property owner or person in legal control of property through a lease, a rental agreement, a contract, or any other agreement is also an employer, his or her rights as a private property owner ... shall govern.”

Many legal commentators suggest that this provision allows any employer who is also the property owner to limit guns on its parking lots. Under this interpretation, the Parking Lot Law would only prohibit employers from adopting “no gun rules” for public streets and public parking lots around their facilities. However, caution is advised against such a narrow interpretation. Courts will likely read the statute in its entirety and so that all of its provisions have meaning. There could be a number of ways to “split the baby” so as to uphold the restrictions on employers and still allow property owners to control other types of “access:” no guns inside the building, locking the gun in a vehicle compartment before entry to the lot, etc.

Complying with Georgia’s Parking Lot Law

How should an employer handle complying with Georgia’s Parking Lot law?

First, an employer should review any current restrictions on bringing guns onto its parking lots and into its workplace to ensure that there is no prohibition against licensed concealed firearms found in employee vehicles. In that regard, the employer may not condition employment or continued employment of an employee (i.e., it should not be an offense in the employer’s disciplinary policy) to refrain from carrying concealed weapons in that employee’s vehicle.

Second, if an employer has a policy that allows for vehicle searches, this policy should be very carefully considered and most likely redrawn to parrot the wording of the statute and its multiple, confusing exceptions.

Finally, in order to minimize the risk of workplace violence and the potential for employer liability should it occur, employers should still consider adopting a policy that prohibits bringing guns into the workplace or accessing them from a locked vehicle on the company’s parking lot. Even though the statute purportedly insulates employers from liability for complying with this law, employers will continue to be attractive targets in lawsuits that arise from a workplace violence incident.³

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¹ O.C.G.A. § 16-11-135.

² The statute also exempts any parking area designated as “temporary.” In other words, any “visitors” spaces or other spaces designated for temporary use may be “no gun” areas.

³ The statute provides that “[n]o employer ... shall be held liable in any criminal or civil action for damages resulting from or arising out of an occurrence involving the transportation, storage, possession, or use of a firearm ... unless the employer commits a criminal act involving the use of a firearm or unless the employer knew that the person using such firearm would commit such criminal act on the employer’s premises.”