

February 26, 2013

New York Passes “Toughest, Strongest” Gun Law in the Nation

By Terri Solomon and Morgan Matson

In the aftermath of the Connecticut and Colorado mass shootings, national attention has turned to attempts to stem the tide of gun violence through stricter firearm regulations. Most of the debate has centered on limiting the type of firearms that are on the market and the qualifications for purchasing a firearm. We expect that as the debate continues there will be greater attention given to workplace violence and regulations that will impact firearms in the workplace.

Following the Connecticut mass shooting, New York was the first state to pass legislation revising its gun regulations. On January 16, 2013, New York Governor Andrew M. Cuomo signed into law the New York Secure Ammunition and Firearms Enforcement Act (“NY SAFE Act”).¹ According to Governor Cuomo, “This new law will limit gun violence through common sense, reasonable reforms that will make New York a safer place to live . . . the NY SAFE Act will now give New York State the toughest, strongest protections against gun violence in the nation.”

New York is one of 19 states² that do not have any specific laws that restrict an employer’s ability to prohibit employees from storing firearms in cars parked in a company parking lot or to prohibit employees from carrying firearms into the workplace. Only 23 states³ and the District of Columbia expressly permit employers to prohibit employees from carrying firearms in the workplace, but the workplace does not necessarily extend to company-owned parking lots in all of these states. There are 19 states⁴ with laws that permit employees to store guns in private vehicles parked in

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- 1 The full text of the NY SAFE Act is available at the New York State Assembly’s website, <http://assembly.state.ny.us/>. The governor has created an FAQ on his website, <http://www.governor.ny.gov/2013/gun-reforms-faq>. As of the publication of this article, a number of New York counties, including Lewis, Ulster, and Oswego, have passed resolutions or are in the process of passing resolutions that call upon the governor and the state legislature to repeal the Act. The counties oppose the expedited process by which the governor pushed the bill through the state legislature and the Act’s perceived infringement on the U.S. Constitution’s Second Amendment.
 - 2 Alabama, California, Delaware, Hawaii, Iowa, Maryland, Massachusetts, Montana, Nevada, New Hampshire, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, South Dakota, Vermont, Washington and Wyoming.
 - 3 Alaska, Arkansas, Colorado, Connecticut, Illinois, Kansas, Kentucky, Louisiana, Minnesota, Mississippi, Missouri, Nebraska, New Mexico, North Carolina, Ohio, Oklahoma, South Carolina, Tennessee, Texas, Utah, Virginia, West Virginia, Wisconsin and the District of Columbia. Please note that some of these states only prohibit carrying *concealed* weapons in the workplace and do not address any rights related to open carry laws.
 - 4 Alaska, Arizona, Florida, Georgia, Indiana, Kansas, Kentucky, Louisiana, Maine, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Dakota, Oklahoma, Texas, Utah and Wisconsin. Notably, Idaho does not have a law that specifically permits employees to store firearms in a vehicle in a company parking lot; the law does provide immunities to an employer who has a policy that either allows firearm storage or does not prohibit the lawful storage of firearms by employees in their personnel motor vehicles.

an employer's parking lot and prohibit employers from implementing policies that ban such storage. As over half the states and the federal government do not have specific legislation regulating firearms in the workplace, we expect more attention to this issue as the gun regulation debate continues.

There are no direct provisions in the NY SAFE Act that regulate firearms in the workplace. There are, however, several provisions that affect workplaces. These few provisions, particularly for employers in the health care and security industries, trigger new reporting requirements or increase existing penalties.

Mental Health Reporting Requirements

The NY SAFE Act imposes new reporting requirements upon "mental health professionals," which are defined as physicians, psychologists, registered nurses, or licensed clinical social workers currently providing treatment services. Specifically, mental health professionals are now required to report a patient to the Director of Community Services⁵ when there is reason to believe the patient "is likely to engage in conduct that would result in serious harm to self or others."

The new law also places additional reporting and other requirements on directors of assisted outpatient treatment programs.

Although the law imposes these additional reporting requirements, there are no penalties imposed on those who do not report, so long as the decision was made reasonably and in good faith. According to the law, "[t]he decision of a mental health professional to disclose or not to disclose in accordance with [the law], when made reasonably and in good faith, shall not be the basis for any civil or criminal liability of such mental health professional."

The law does not require any specific notification to employees of this new reporting procedure, but affected employers should ensure that employees are aware of the procedure to facilitate implementation.

Stronger Regulations on Ammunition

All ammunition dealers must now register with the New York State Police and each ammunition sale will require both a state background check and transmission of a record of the sale to the state police. The new law also bans all direct internet sales of ammunition.

Additionally, the law limits high capacity magazines to seven rounds, rather than 10 rounds as had been permitted. As there is no specific exemption for law enforcement personnel, the state legislature is expected to rectify this oversight shortly.

Universal Background Checks

Going forward, all gun transfers between private parties will be subject to a federal National Instant Criminal Background Check and the transfer must be conducted through a federal firearms licensee. In addition, an applicant's background check must be approved and filed with the state police prior to purchasing a firearm, as well as in connection with applications for a license to carry and/or possess a firearm.

In addition, all individuals who have a handgun license or have registered an assault weapon in New York are now required to recertify their license and/or registration every five years through the state police.

Increased Penalties for Firearms in Schools

The NY SAFE Act increases the penalty for possession of a firearm on school grounds or a school bus from a misdemeanor to a Class E Felony.

⁵ A director is appointed in each New York county to serve as the chief executive officer of such county's community services board. These boards are formed, and the director is appointed, pursuant to New York's Mental Hygiene Law for the purpose of assisting with the implementation of state and county mental health services. Appointment of a director is a prerequisite for receiving state funds for mental health services. See N.Y. Mental Hyg. §§ 41.01 *et seq.*

In a speech on December 19, 2012, shortly after the Connecticut shootings, President Obama indicated that gun control will be a priority in his second term stating, "I will use all the powers of this office to help advance efforts aimed at preventing more tragedies like this." The president made steps towards that commitment a month later on January 16, 2013, by signing 23 executive orders related to gun control and safety.⁶With the nation focused on gun control, we are likely to see additional legislation in the coming months. We will continue to alert employers about further legal developments.

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6 The executive orders do not specifically address employers or the workplace. President Obama's plan on reducing gun violence is available on the White House website, <http://www.whitehouse.gov/issues/preventing-gun-violence>.