

Illinois's New Firearm Concealed Carry Act Requires Action Now by Employers

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Earlier this year, Illinois passed the [Firearm Concealed Carry Act](#) ("Act"), which generally allows individuals to carry concealed guns in Illinois as long as they have a license to do so. The Illinois State Police will start making "concealed carry" license applications available to the public by January 5, 2014, so the time for employers to take responsive steps is now.

The Act contains a few provisions that are important for employers:

- First, the Act contains broad exceptions to the right to carry a concealed weapon. Specifically, the Act provides that even individuals with concealed carry licenses cannot carry concealed guns at schools, child care facilities, government facilities, correctional institutions, hospitals, bars, playgrounds, public parks and athletic facilities, forest preserves, colleges, gambling facilities, stadiums, public libraries, airports, amusement parks, zoos, museums, or nuclear facilities, or on public transportation.
- Second, the Act permits private property *owners* to prohibit the carrying of concealed guns on property under their control as long as a specific sign issued by the Illinois State Police is posted. The sign is 4x6 inches and available at <http://www.isp.state.il.us/firearms/ccw>. No sign is required for private residences.
- Finally, the Act specifically allows individuals who are licensed to carry concealed guns to keep their guns in their cars in parking lots as long as the guns are locked up and out of sight (even if the owner of the parking lot has posted a sign prohibiting guns). This portion of the law does not apply, however, to facilities regulated by the federal Nuclear Regulatory Commission or their parking lots.

Surprisingly, the Act does not specifically address whether employers can adopt policies that prohibit their *employees* from bringing weapons on site (e.g., out of sight in locked cars in employer parking lots) or whether employers can otherwise restrict their employees' rights to own guns or have concealed carry licenses. Rather, the Act merely speaks in terms of what a "property owner" may or may not do with respect to duly licensed concealed guns. *This raises an interesting and important question—may an*

employer maintain a prohibition on guns in the workplace, or does the Act override the ability of employers to maintain such policies?

The Act does not address, and arguably leaves intact, an employer's ability to prohibit weapons in the workplace, even if the employer does not own the property. In contrast, similar laws in other states—Arizona, Florida, Georgia, and Indiana, for example—directly address the intersection of an individual's right to bear arms and employers' rights to establish rules concerning their workplaces. These laws specifically address what employers may and may not do with respect to guns.

Notably, there is nothing in the Act that expressly limits an employer's rights to restrict weapons in the workplace. Presumably then, an employer could maintain a ban on weapons in the workplace (whether it owns the property or not), simply by virtue of its inherent control of and discretion in the employment relationship. By way of analogy, although an employee might have a First Amendment right to free speech, a private employer is nevertheless generally well within its rights in placing restrictions on the exercise of that right as it deems best suited to its business. Employees who disagree with their employer's policies or are unwilling to give up their otherwise undisputed rights to engage in certain behavior or speech are always free to seek employment elsewhere.

Of course, it may also be argued that the Act establishes a broad right to carry weapons, and because the only exception in the Act applies specifically and solely to property owners rather than employers, the Act has elected not to allow employers (acting in their capacity as employers) to limit the newly granted right to carry. This question will likely be a subject of litigation under the Act.

It should be noted that while an employer might arguably retain the right to prohibit weapons in the workplace, such limitations could likely be applied only by virtue of the employer's rights to control the employment relationship. Thus, for example, while an employer could arguably prohibit its employees from carrying guns in the workplace, even in a locked car in a parking lot, it may not apply such restrictions against its customers or vendors.

The Act does not specifically set forth the potential liability of an employer that unduly restricts weapons in the workplace, although it is easy to imagine Illinois's courts crafting a common law remedy to address such a violation. Likewise, the Act does not address potential liability from the opposite perspective—potential negligence claims for an employer not doing enough to prevent workplace violence by barring guns in its workplace. Finally, the Act does not address whether an employer can adopt a policy requiring that employees disclose whether they hold a concealed carry license, or whether an employer can prohibit an employee from having a concealed carry license. Absent clear guidance from the legislature or courts, employers acting in their capacity as employers (rather than as "property owners" under the Act) are faced with multiple difficult questions.

What Employers Should Do Now

Given the uncertainties surrounding the new law, what should Illinois employers do before the state begins issuing concealed carry licenses in 2014?

- First, if an employer owns its premises and wants to generally prohibit guns on its property, it should, in conformity with the Act, post the required signage on all building entrances prohibiting guns inside the building.
- Second, if an employer that rents its office space wants to prohibit guns in its workplace, it may first want to ask its landlord to post the required signage and subsequently make such signage a condition of future leases.
- Third, the Act prohibits concealed guns in bars and their parking lots and requires that the bar owner (as opposed to the property owner) post the required signage. Thus, employers that operate bars should post the required signage irrespective of whether they own or rent the property. This requirement only applies, however, if more than 50 percent of the establishment's gross receipts in the prior three months come from the sale of alcohol.
- Fourth, if an employer operates a type of facility where concealed guns are banned, it should post the required signage to make sure that people entering the facility are aware of the prohibition.
- Finally, as noted above, it is unclear whether employers can also adopt policies barring employees from gun possession anywhere on an employer's premises (i.e., even in a parking lot in a locked vehicle with the weapon out of sight). While no provision of the statute bars such policies, this is currently an open issue under the law. In light of this ambiguity, employers may wish to post a notice prohibiting weapons, with the understanding that such a prohibition may, in the future, be deemed unlawful.

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