Hailed by some Georgia employers as an example of dangerous and possibly harmful public policy, while praised by others as a way to prevent crime, in the end, Georgia’s “Bring Your Gun to Work” law may not pack the firepower that its drafters originally intended. The new Georgia law prohibits searching an employee’s vehicle and permits employees to have licensed guns in parking lots. The law is riddled with loopholes that may actually aid Georgia employers in preventing employees from bringing firearms onto an employer’s property. A question remains as to whether the existence of the statute in and of itself raises additional implications regarding the duty of Georgia employers to provide a safe workplace.
General Overview of the Law

Formally known as the “Business Security and Employee Privacy Act,” the law allows holders of concealed weapons to carry firearms in all parks, historic sites, recreational areas and wildlife management areas in Georgia. The law is of particular interest to Georgia employers because it allows employees to bring concealed weapons onto an employer’s property as long as the weapons are stored out of sight in a locked trunk or glove box within a motor vehicle, and the employee possesses a valid Georgia firearms license. An employer’s property would include the parking lots of Georgia employers. The law also prevents an employer from searching an employee’s or invited guest’s motor vehicle for a firearm.4

Georgia is Not Alone

Several other states have passed laws that prohibit employers from banning the possession of licensed firearms in employee-owned vehicles parked on employer premises. The state laws regarding employer restrictions on firearm possession in employee automobiles are generally summarized and divided into two categories. The first category includes those states with laws that constitute a severe restriction on employer regulation of firearms in parking lots. The second category, which includes Georgia, comprises those states whose laws contain significant exceptions that weaken the law’s actual impact on employers.

States with Severe Restrictions

Florida

Florida prohibits employers from asking employees whether they have a firearm inside a vehicle on the employer’s parking lot, searching a vehicle in a parking lot for a firearm, prohibiting access to a parking lot because of the presence of a firearm in a motor vehicle, taking any action against an individual because of a firearm in a motor vehicle, terminating employment of an employee for possession of a firearm in a vehicle or discriminating against an employee who exhibits a gun in the parking lot if the exhibition was for lawful defensive purposes. The law only applies where the employee in question has a concealed weapons permit.

Kentucky

Kentucky prevents employers from prohibiting any person legally entitled to possess a firearm from possessing such firearm in a vehicle on the employer’s property. The law also provides that a firearm may be removed from the vehicle or handled in the case of self-defense, defense of another or defense of property.

Louisiana

Louisiana prevents private employers from prohibiting any person from transporting or storing a firearm in a locked, privately-owned motor vehicle in any parking lot, parking garage or other designated parking area. Employers may require that any such firearm be hidden from plain view or held within a locked case or container within the vehicle.

Minnesota

Minnesota provides that “the owner or operator of a private establishment may not prohibit the lawful carry or possession of firearms in a parking facility or parking area.” The law does allow employers to ban possession of firearms in buildings or other structures and provides for criminal fines for individuals who refuse a property owner’s request that firearms not be brought into an establishment.

Oklahoma

In 2005, Oklahoma passed a parking lot gun law that prevented employers from establishing “any policy or rule that has the effect of prohibiting any person, except a convicted felon, from transporting and storing firearms in a locked motor vehicle, or from transporting and storing firearms locked in or locked to a motor vehicle on any property set aside for any vehicle.”

States with Significant Exceptions

In addition to the Georgia statute, the Mississippi statute is also recognized in the category of states with significant exceptions to their “bring your gun to work” laws, thus allowing employers to restrict employees from bringing firearms to work.

Mississippi

Mississippi prevents employers from adopting policies prohibiting a person from transporting or storing a firearm in a locked vehicle in any parking lot, parking garage or other designated parking area. The Mississippi law also allows private employers to prohibit the storage of firearms in vehicles in parking areas to which access is restricted or limited through the use of a gate, security station or other means. The law does not provide any civil penalties for violation.

Although similar to Georgia in that these laws would not prevent an employer from banning weapons in the actual workplace, they do place other restrictions on employers’ efforts to regulate the possession of firearms in employer parking lots. Georgia’s law also includes significant exceptions that weaken its actual impact on employers.

Loopholes for Employers

The prospect of employees in the workplace with ready access to firearms is not likely to be favorably viewed by most employers. A closer examination of the Georgia law reveals that the statute may not actually promote a likelihood of
firearm-related violence in the workplace as might have been originally feared. There are various steps that an employer can take to limit the availability of weapons to its employees in the workplace.

The statute recognizes that any employer that owns or leases its parking lot has a right to control the access to the property. Therefore, Georgia employers can ban guns on their legal property, including all parking lots. Employers, however, are not free to ensure that employees are complying with such bans. In other words, employers are not free to search vehicles owned by employees in company parking lots absent probable cause. The most effective way to implement the “parking lot ban” would be through the issuance of a policy prohibiting employees from bringing firearms onto the employer’s property, including the parking lot. Additionally, if an employer offers its employees a secure parking area that restricts public access, the employer may adopt a policy permitting the search of all vehicles entering the parking lot. Such a policy would have to be applied frequently and uniformly. It would be important to distribute the policy to all employees and, in some cases, obtain acknowledgments of receipt.

The law does not prevent Georgia employers from prohibiting the storage of concealed firearms in company vehicles, and employers may conduct searches of company-owned vehicles. Law enforcement personnel may also conduct reasonable searches of employee-owned vehicles in situations where a reasonable person would believe that the search of a locked vehicle would be “necessary to prevent an immediate threat to human health, life or safety.” Finally, law enforcement officers are authorized to search vehicles as a matter of law, based on a search warrant or warrantless search, as long as there is probable cause.

The new Georgia law also allows an employer to restrict an employee from carrying or possessing a firearm on the employer’s premises, including the parking lot, when the employee has a “completed or pending disciplinary action.” An employer may also restrict an employee from transporting a firearm on the premises of the employer if prohibited by “state or federal law or regulation.” For example, Georgia law prohibits the possession of a firearm on school grounds.

The Georgia law further provides that no employer shall be liable in any “criminal or civil action” for damages arising out of an occurrence involving the “transportation, storage, possession or use of a firearm,” including the theft of a firearm from an employee’s automobile, unless the employer “commits a criminal act involving the use of the firearm or unless the employer knew that the person using such firearm would commit such criminal act on the employer’s premises.” As a further liability deterrent for employers, the statute provides that an employee may incur the employer’s legal costs if the employer successfully defends a lawsuit brought by an employee based upon an occurrence involving a concealed firearm. The law does not apply to employees of penal institutions, companies responsible for organizing public gatherings and places where firearms are prohibited by federal law. For example, employees of federal facilities may not possess a firearm on the premises.

**Special Considerations for Employers Engaged in Organizing Public Gatherings and Operating Public Transportation Systems**

The new Georgia law provides additional limitations for employers engaged in organizing public gatherings and operating public transportation systems. Specifically, the new Georgia law makes it a misdemeanor for any person, including an employee, to possess “any explosive compound, firearm or knife” at a public gathering. This prohibition includes athletic or sporting events, churches or church functions, political rallies or functions, as well as publicly-owned or publicly-operated buildings and establishments at which alcohol is sold, but that do not derive at least 50 percent of their annual gross revenue from the sale of prepared meals or food. Employers in these settings should be mindful of the additional possibilities for restricting employees from transporting firearms in their vehicles on company property.

For Georgia employers engaged in the management and operation of public transportation systems, the new Georgia law appears to allow the public to carry concealed weapons onto public transportation. This particular provision appears to be aimed more at users of public transportation and will likely have little additional impact on the employees of these organizations other than as set forth above. At least one public transportation system in metropolitan Atlanta has adopted a policy advising patrons to inform police of any “suspicious activity” related to the possession of a firearm. This policy response appears to be otherwise consistent with existing state law. Additionally, this transit system has adopted work rules that prohibit all employees, whether licensed or not, from possessing a firearm when on company property. This prohibition applies to employees’ vehicles while parked on property designated as a “secured employee parking area.”

**Potential Challenge to Employers**

Although the new statute does not in and of itself place any additional duties on Georgia employ-
ers, the very existence of the statute may raise questions about the duty of an employer to provide a safe workplace. In Georgia, employers are statutorily obligated to implement policies and to make reasonable efforts to protect employees from known dangers at work. These efforts are measured by the reasonably prudent person standard. Based on the adoption of this new Georgia statute, the issue of whether the statute imposes additional duties and responsibilities for Georgia employers to provide a safe workplace is uncertain. One federal judge reviewing the applicability of this law to Atlanta’s Hartsfield-Jackson International Airport has concluded that there is a significant question as to whether permitting the carrying of firearms in the common non-secured areas of airports poses a threat to public safety and welfare. Arguably, this same threat would exist for employees working at the airport.

Additionally, at least one district court, evaluating a similar state statute, has held that the presence of firearms on company property might implicate the employer’s duty to provide a safe workplace. In ConocoPhillips Co. v. Henry, a suit was brought by various employers challenging the Oklahoma state statute prohibiting property owners from imposing any ban on the storage of firearms locked in or to vehicles. The employers’ request for a permanent injunction against enforcement of the statute was granted. Plaintiffs argued that the general duty to provide a workplace free of safety hazards and violence directly conflicted with the statute because they could no longer enforce policies prohibiting weapons on the employers’ property. In addressing this conflict, the trial court held that “gun-related workplace violence and the presence of unauthorized firearms on company property qualify as ‘hazards that are causing or are likely to cause death or serious physical harm.’” The trial court ultimately found that the statute was a “material impediment” to compliance with an employer’s duty to provide a safe workplace under one portion of federal law.

The U.S. Court of Appeals for the 10th Circuit later reversed this decision in Ramsey Winch Inc. v. Henry. The 10th Circuit relied on the Occupational Safety and Health Administration’s refusal to promulgate a standard banning firearms from the workplace as a pivotal fact. This pivotal fact refuted the claim that the statute was preempted by federal law, since the federal administration refused to recognize a conflict with the existing state statute.

The Restraining Order as a Means to Curb Potential Firearm Violence

Under Georgia law, employers are already authorized to seek a restraining order to curb incidents of workplace-related violence, including incidents involving the actual or threatened use of a firearm. Current Georgia law authorizes employers to seek a temporary restraining order if an employee or other person is the victim of or is being threatened by violence at the workplace. The ability to obtain a restraining order provides a measure of significant and immediate protection for employers facing the prospect of responding to acts of both actual and reasonably anticipated violence in the workplace. Of course, a restraining order should only be sought in severe cases and should not be used in place of adopting sound policies to minimize or eliminate the threat of violence in the workplace. Sound policies and vigilant observation are far superior deterrents for reducing the potential for firearm-related workplace violence when compared with the prospect of obtaining a restraining order.

Policies, the Employer’s Ultimate Weapon

At the end of the shootout surrounding the controversy of an employee’s ready access to firearms in the workplace, employment policies will ultimately prove to be the “silver bullet” for those Georgia employers seeking to eliminate the prospect of employees bringing guns into the actual workplace or accessing them from a locked vehicle on the company’s parking lot. Specifically, with the exceptions contained in the new Georgia statute, Georgia employers wishing to limit or restrict employees from bringing guns to work should articulate workplace violence policies and adopt gun policies. These policies should be placed where employees have easy access to them and should be included in employee handbooks. The policies will also need to be clearly communicated to all employees and may involve scheduling employee meetings and providing additional training. An acknowledgement form might also prove necessary and helpful in certain instances.

Conclusion

The Georgia “Bring Your Gun to Work” law arguably should not prevent most Georgia employers from providing a safe workplace. Through diligent observation by management and human resources, as well as sound policies, employers will be more than adequately prepared to respond to the potential for firearm-related workplace violence, even in the face of the implications raised by the new statute.

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Endnotes
3. Id. § 16-11-135(c)-(d) (Supp. 2008).
4. Id.
9. Id. § 624.714 (Westlaw through 2009 Reg. Sess.).
14. See id. § 16-11-135(c)(3), (4) (exception where necessary to prevent harm or loss to employer property).
15. See id. § 16-11-135(d)(1).
16. See id. § 16-11-135(c)(3).
17. See id. § 16-11-135(c)(4).
18. See id. § 16-11-135(d)(5).
19. See id. § 16-11-135(d)(6).
21. Id. § 16-11-135(e) (Supp. 2008).
22. Id. § 16-11-135(g).
28. Id.
29. See O.C.G.A. § 34-7-20 (2008); Smith v. Ammons, 228 Ga. 855, 855, 188 S.E.2d 866, 867 (1972) (duty of employer to keep workplace premises safe and protect employees from known dangers).
30. O.C.G.A. § 34-7-20. Although not the focus of this article, OSHA also encourages employers to reduce occupational safety and health hazards and to initiate policies that increase workplace safety. 29 U.S.C.A. § 651(b)(1) (West 2008).
34. Id. at 1328.
35. Id.
36. 555 F.3d 1199 (10th Cir. 2009).
37. See O.C.G.A. § 34-1-7(b) (2008).