



Firearms and Construction

by BART CANNON



Bart Cannon

Alabama's statute governing restrictions on firearms by employers (Ala. Code (1975) § 13A-11-90) has been the topic of much discussion recently. While

the statute's nuances deserve a detailed analysis for a full understanding (which is not the purpose here), a general understanding of the law is important for employers and employees because the statute provides unique rights, responsibilities, and remedies for both.

The statute reserves significant control to employers as it relates to the "carrying" of firearms. Under 13A-11-90(a), an employer "may restrict or prohibit its employees, including those with a [concealed weapon permit issued] under 13A-11-75, from carrying firearms while on the employer's property or while engaged in the duties of the person's employment." Employees have voiced concern with this portion of the statute, namely the not unusual scenario where the employee is required to leave the employer's property to perform job duties outside the confines of the workplace in high crime areas or where the employee otherwise feels unsafe. Under the statute, the employer can prevent the employee from "carrying" a firearm in that situation, even if the employee has a concealed weapon permit. This could present real Constitutional issues relative to the right to keep and bear Arms guaranteed by the Second Amendment. However, that issue has not yet been raised and this portion of the statute currently favors employers.

While the employer retains significant control over workplace "property", its control is not unlimited. Under 13A-11-90(b),

an employer "may not restrict or prohibit the transportation or storage of a lawfully possessed firearm and ammunition in an employee's privately owned motor vehicle while parked or operated in a public or private parking area" if the employee can satisfy either of two requirements. The first, and most straightforward, is if the employee has a valid concealed weapon permit issued under Section 13A-11-75. In that scenario, the employee has a statutory right to transport and store a lawfully possessed firearm and ammunition in the employee's privately owned vehicle in the parking area of company property (in a manner consistent with the statute).

The second is not as straightforward and is more restrictive. Initially, if the employee does not have a concealed weapon permit, the statute only covers "any firearm legal for use for hunting in Alabama other than a pistol." Thus, pistols are not expressly covered under the statute absent a concealed weapon permit. It should be noted that there is currently legislation being debated in Montgomery which could change this restriction. There are other restrictions as well. For example, the employee must possess a valid hunting license, it must be during a season in which hunting is permitted, and the firearm must be unloaded. Moreover, there are a litany of "character" requirements the employee must meet. The employee must have never been convicted of a "crime of violence" (as defined in Section 13A-11-70(2)) or an "offense involving danger to the person" (as defined in Section 13A-6-1, et seq.), must not be subject to a Domestic Violence Order (as defined in Section 13A-6-141), must not meet any of the "disqualifiers" for obtaining a concealed weapon permit (as set forth in 13A-11-75(a)(1)-(8)), and must not have any documented prior workplace incidents involving either the threat of physical injury or which resulted in physical injury. Regardless of which circumstance the employee meets, the employee's vehicle must be operated or

parked in a location where it is permitted to be. There are also differing requirements depending on whether the employee's vehicle is "attended" or "unattended".

While 13A-11-90(b) clearly favors employees, there is some employee dissatisfaction with the "privately owned motor vehicle" language. The concern here is that many employees drive company provided vehicles. Under the statute's express language, those employees can be prevented from keeping a firearm in a company provided vehicle, even if the vehicle is located within an area of the company property where it is permitted to be and even if the employee has a concealed weapon permit.

The statute provides various mechanisms for an employer to ensure that an employee is in compliance with the statute. Suffice it to say that if the employee is not in compliance, the employer may take adverse employment action against the employee. However, if the employer does so when the employee is in compliance with the statute, the employee is statutorily entitled to certain recovery via a "demand for recovery" or, if applicable, a civil action. This recovery includes compensation for lost wages, benefits, and "other lost remuneration caused by the termination, demotion, or other adverse action."

Not surprisingly, the primary concern voiced by employers is the potential for civil liability stemming from firearms being brought onto the employer's property. Employers are protected in this regard. Specifically, under 13A-11-91, employers are "absolutely immune" from claims and damages arising from firearms being brought onto the employer's property, including one that is transported in an employee's privately owned vehicle under 13A-11-90(b). Further, an employer does not have a duty to inspect the parking area or its employees' privately owned vehicles, nor is there a duty to investigate an employee's compliance with the law.

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HUIE