

AN OVERVIEW OF ILLINOIS' CONCEALED CARRY LAW FROM AN EMPLOYER'S PERSPECTIVE

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The State of Illinois recently became the 50th state to pass a concealed carry law – the Firearm Concealed Carry Act (“FCCA”) – which will soon allow a properly licensed individual to carry a firearm. The FCCA lists certain, limited locations at which concealed carry is prohibited in all circumstances and also allows property owners who do not fall within the limited exceptions to prohibit concealed carry on property under their control. However, the FCCA does not generally authorize an employer to prohibit concealed carry and leaves many questions with respect to employers’ rights and responsibilities unanswered. Under the FCCA, an individual licensed to carry a concealed weapon may not knowingly carry a firearm on or into certain types of property, such as, to name the most common: elementary school buildings or parking lots; pre-school or child care facilities or parking lots; buildings or portions of buildings under the control of local or state government, including the courts; hospitals, mental health facilities, or nursing homes and their parking lots; public bus or train stations, airports and their parking lots; buildings and parking under the control of an establishment that receives more than 50% of its gross receipts from the sale of alcohol; public parks and athletic facilities; and buildings and parking controlled by colleges or universities.

In addition, the FCCA provides that: “the owner of private real property of any type may prohibit the carrying of concealed firearms on the property under his or her control.” To do so, “the owner must post a sign . . . indicating that firearms are prohibited on the property, unless the property is a private residence.” The FCCA requires that the sign prohibiting firearms must be 4 inches by 6 inches and “clearly and conspicuously posted at the entrance of a building premises, or real property” and shall be “of a uniform design” established by the State Police. Even if the building, facility, or property is of the type exempted above or has otherwise been designated by the property owner as prohibiting concealed carry, the licensee “shall be permitted to carry a concealed firearm on or about his or her person within a vehicle into the parking area and may store a firearm or ammunition concealed in a case [which includes glove compartment or console] within a locked vehicle or locked container out of plain view within the vehicle.”

The FCCA is silent on whether an employer, simply by virtue of the employer/employee relationship, may prohibit concealed carry. Therefore, under one interpretation, if an employee is properly licensed, an employer may only prohibit that employee from carrying a concealed firearm at work if: 1) the employer falls under one of the specifically enumerated exceptions to concealed carry; or 2) if the employer is the “owner” of the property at which the employee is employed and the employer has properly posted that concealed carry is not allowed on the property. Under that interpretation, an employer may not preclude an employee from bringing a concealed firearm onto the employer’s parking lot so long as the firearm is properly stored in the vehicle. Others believe that the FCCA is an exception to the criminal law, and that it does not restrict an employer’s right to prohibit firearm possession during working hours or on its premises, where the result of violations would be disciplinary action rather than criminal prosecution. This issue may not be definitively decided for some time.

The Practical Implications

First, it is important to note that an individual is not authorized to carry a concealed firearm until such time as the individual’s application for a concealed carry has been approved by the State Police. The State Police have not yet finalized the application procedure and have until January 5, 2014 to do so. Further, the State Police have 90 days after an individual’s completed application is received to approve or deny the application. Accordingly, it is likely that the first individuals licensed under the FCCA to carry a concealed weapon will not receive their licenses until February or March 2014, giving employers a little time to determine what, if any actions, they may need to take with respect to FCCA.

Second, if an employer does not fall under one of the enumerated exceptions to concealed carry (i.e., governmental body, school, hospital, mental health facility, nursing home, establishment at which 50% of gross receipts are from the sale of alcohol, etc.), the employer must decide whether it will allow concealed carry in the work place. Because the FCCA provides that it is the property “owner” that determines whether to allow concealed carry on the premises, unless the State Police interpret the term “owner” to include those that have legal possession of the property such as renters or lessees, the ability of an employer to prohibit concealed carry may be limited unless the employer actually owns the premises. If the employer does not own the premises, the employer may wish to work with the property owner in order to be certain that firearms are prohibited on its premises.

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Third, regardless of whether an employer decides to allow or prohibit concealed carry, the employer should review its employment policies to ensure that they appropriately reflect the employer's position on the issue and revise the policies if necessary. We strongly advise that employers consult employment counsel when undertaking this review and revision of its policies.

Fourth, if an employer determines that concealed carry should be prohibited in the workplace, then the employer (or property owner if not the employer) must post an appropriate sign at the entrance to the premises. A template for the sign can be found at the State Police's website: <http://www.isp.state.il.us/firearms/ccw/CCWProhibitedAreaSign.pdf>.

Questions Currently Left Unanswered by the FCCA

The FCCA leaves many questions related to the employer/employee relationship unanswered. Some of the more frequently asked questions are:

1. Should an employer ask its employees whether they possess a concealed carry license?

Although, the FCCA does not explicitly prohibit an employer from asking its employees if they possess a concealed carry license, we advise that unless the employer has reason to believe that an employee is carrying a firearm in violation of the employer's policies, that it not ask employees if they have a concealed carry license. Under the FCCA, individuals have a legal right to concealed carry. Illinois law prohibits employers from discriminating against individuals for engaging in lawful, off duty conduct. Therefore, if an employer has no reason to believe that an employee is carrying a firearm at work in violation of its policies, it has no legitimate reason to ask about its employees' otherwise legal activities. Additionally, in the FCCA, the legislature signaled its desire to protect the privacy of concealed carry applicants by amending the State's Freedom of Information Act to preclude the release of the application files for concealed carry licenses.

2. Does an employer face potential liability if the employer permits concealed carry and a shooting occurs on its premises?

The FCCA does not address the issue of potential liability in the case of a workplace shooting. Concealed carry laws in other states such as Florida, Ohio, Indiana, and Wisconsin, to name a few, explicitly provide immunity to employers under such circumstances. However, because the FCCA purports to establish an extensive screening process to determine who should be allowed to carry a concealed firearm, unless the employer has an independent reason to believe that a specific employee or a specific situation is potentially violent, and it fails to exercise proper care to prevent the violence, it is not likely that the employer would be held liable on the basis of allowing concealed carry.

Conclusion

In short, employers should: 1) review their policies to ensure that they are consistent with the employer's position on concealed carry; 2) if the employer does not own its work location, work with the property owner to ensure that proper steps are taken to prohibit concealed carry if it is the owners' and employer's intent to do so; and 3) as the end of the year approaches, work with counsel to ensure that appropriate signs are posted putting employees on notice that concealed carry is prohibited, where appropriate.

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