

Client Alert



A report for clients and
friends of the Firm

August 2008

Court Decision on Florida Gun Law Leaves Avenue for the Continued Protection of Florida's Workplaces

Our April 2008 Client Alert explained the Florida Legislature's effort to force employers to allow firearms in cars in parking areas with the passage of the Preservation and Protection of the Right to Keep and Bear Arms in Motor Vehicles Act of 2008. Given the detrimental effect that the Act would have on Florida businesses, the Florida Chamber of Commerce and the Florida Retail Federation filed a legal action challenging the constitutionality of the Act. The Society for Human Resource Management and its Florida state and county affiliates, acting as *amici curiae* and represented *pro bono* by Proskauer, conveyed to the court the specific concerns raised by the Act from the perspective of Human Resource professionals. Earlier this week, the court ruled on a motion seeking to preliminarily enjoin enforcement of the Act.

While the Act—which was drafted to permit an employee, customer, or invitee with a concealed weapons permit to keep firearms locked in a private motor vehicle in an employer's parking lot—was upheld by the court with respect to its application to employees, the court struck down portions of the Act as unconstitutional as they pertain to the right of customers and invitees to bring their guns onto company property.

For employers, however, a silver lining may remain. Regrettably, the court's opinion prevents an employer from including parking areas within a broader company ban against employee possession of firearms on company property. Nonetheless, employers may continue to prohibit customers and invitees from

entering the employer's parking areas with firearms by posting notices or otherwise. Because of the dichotomy drawn by the court between the treatment of employees on the one hand, and of customers and invitees on the other, when a company leases its space from a building owner (and thus it and its employees are customers or invitees of the landlord), if the landlord exercises its right to ban customers and invitees from bringing firearms into its parking areas, based on the court's opinion, that ban would include the lessee company's employees.

Employers should remember that the employee provisions of the Act, including the prohibitions against inquiring as to the presence of a firearm in a locked vehicle in a parking lot and against conditioning employment based on whether an employee has a concealed weapons permit, remain in effect. Accordingly, employers should not take action against an employee based on the employee's violation of the landlord's weapons ban. That enforcement should be left to the discretion of the landlord.

If there is an appeal of the court's decision to overturn its holding with respect to employees, Proskauer shall continue to represent SHRM and its state-wide affiliates as *amici curiae* on a *pro bono* basis. In our opinion, the court erred when it determined, unlike the Oklahoma court that previously examined this issue, that OSHA's General Duty Clause does not preempt the Florida Guns at Work law. To reach this conclusion, the court deferred to the Legislature's presumed determination that the Guns at Work Law would enhance worker safety, not endanger it, notwithstanding that:

- (1) a 2005 study published in the *American Journal of Public Health* found workplaces where guns were permitted were five to seven times more likely to be the site of a worker homicide as those where all weapons were prohibited;
- (2) Florida courts have recognized the overall hazardous nature of guns; and

- (3) the Legislature implicitly recognized the dangers that this law will create by excluding schools, prisons, and nuclear facilities from its coverage.

Because the Florida decision puts the desire of gun owners to possess firearms for their individual safety above employers' interests in maintaining an overall safe workplace under OSHA for everyone, this case may ultimately be ripe for Supreme Court review if the Tenth and Eleventh Circuits split over the issue.

BOCA RATON • BOSTON • CHICAGO • LONDON
LOS ANGELES • NEW ORLEANS • NEW YORK • NEWARK
PARIS • SÃO PAULO • WASHINGTON, D.C.

Client Alert

Proskauer's nearly 175 Labor and Employment lawyers are capable of addressing the most complex and challenging labor and employment law issues faced by employers.

If you have any questions about the impact of this new decision, please contact your Proskauer relationship attorney or one of the attorneys listed below:

Boca Raton

Allan H. Weitzman

561.995.4760 – aweitzman@proskauer.com

Andrea Rosenblum Bernstein

561.995.4785 – abernstein@proskauer.com

New York

Gregory I. Rasin

212.969.3940 – grasin@proskauer.com

Newark

John P. Barry

973.274.6081 – jbarry@proskauer.com

Los Angeles

Anthony J. Oncidi

310.284.5690 – aoncidi@proskauer.com

Washington, D.C.

Lawrence Z. Lorber

202.416.6891 – llorber@proskauer.com

New Orleans

Howard Shapiro

504.310.4085 – howshapiro@proskauer.com

Boston

Mark W. Batten

617.526.9850 – mbatten@proskauer.com

Proskauer Rose is an international law firm that handles a full spectrum of legal issues worldwide.

This publication is a service to our clients and friends. It is designed only to give general information on the developments actually covered. It is not intended to be a comprehensive summary of recent developments in the law, treat exhaustively the subjects covered, provide legal advice or render a legal opinion.

© 2008 PROSKAUER ROSE LLP. All rights reserved. Attorney Advertising.

You can also visit our Website at **www.proskauer.com**