

Weapons and the Workplace: What Employers Need to Know about Florida's New Constitutional Carry Law

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Executive Summary

For years, a number of Florida's elected officials have had their sights set on eliminating the statutory requirement that Florida residents obtain a concealed weapons license ("CWL") to lawfully carry a concealed weapon. Proponents of the change finally hit their target when, on April 3, 2023, Florida Governor Ron DeSantis signed House Bill (HB) 543 making Florida the 26th state to enact "Constitutional Carry" legislation. Upon taking effect on July 1, 2023, HB 543 authorizes an individual to carry a concealed weapon, including a firearm, if he or she possesses a CWL **or** without a CWL if the individual meets certain specified requirements. The enactment of this new legislation has, understandably, triggered uncertainty among employers regarding the potential impact of HB 543 on the ability to restrict firearms at their workplace. This article will discuss the current state of the law following the enactment of HB 543 and identify what employers can and cannot do with respect to employees possessing firearms at the workplace.

What Does HB 543 Actually Say?

Although the enactment of Constitutional Carry is often the subject of heated disagreement, it is now the law of the land in Florida. Accordingly, it is important for employers to understand what HB 543 actually does. HB 543 amends several Florida statutes to extend the protections previously afforded only to those possessing a valid CWL to an additional category of individuals – namely individuals who do not possess a CWL but who nevertheless can satisfy certain criteria for receiving and maintaining a CWL in Florida. These criteria include, among other things:

- That the individual is a resident of the United States and a citizen of the United States or a permanent resident alien of the United States;
- That the individual is 21 years of age or older;
- That the individual does not suffer from a physical infirmity which would prevent the safe handling of a weapon or a firearm;
- That the individual is not prohibited from possessing a firearm by virtue of being convicted of a felon; and
- That the individual has not been found guilty of a crime relating to controlled substances within a three-year period, has not been committed for abuse of a controlled substance, and is not a chronic or habitual user of alcoholic beverages to the extent that the individual's faculties are impaired.

If an individual meets these requirements, HB 543 now permits the individual to carry a concealed weapon regardless of whether he or she maintains a valid CWL. As a result, such individuals now have the same protections as those who possess a CWL.

What does it Mean for Employers?

HB 543, and the statutes it amended, apply to all employers who have employees. The law amends the definition of “employee” to include individuals authorized to carry a concealed weapon or firearm without or without a CWL, and who work for an employer for a salary, wages, or other remuneration. This can include independent contractors, volunteers, interns, or other similar types of workers. Under the new legislation, employers are specifically prohibited from:

- Conditioning employment on whether employees are authorized to carry a concealed weapon or firearm;
- Conditioning employment on any agreement by employees or applicants that prohibits them from keeping a legal firearm locked inside or to a private vehicle in a parking lot for lawful purposes;
- Prohibiting or attempting to prevent employees, customers, or invitees from entering employer parking lots because their private vehicle contains a legal firearm that is being carried for lawful purposes and cannot be seen within the vehicle;
- Discharging or otherwise discriminating against employees for exercising their constitutional right to keep and bear arms or for exercising their right to self-defense, as long as the employee never exhibits a firearm on employer property for any reason other than lawful defensive purposes;
- Violating the privacy rights of employees through verbal or written inquiries regarding the presence of a firearm inside or locked to a private vehicle in a parking lot or by searching a private vehicle in a parking lot to determine whether a firearm is in the vehicle; or
- Taking any action against an employee based on anyone’s verbal or written statements regarding the storage of a firearm inside a private vehicle in a parking lot for lawful purposes.

The Florida Attorney General’s Office is tasked with enforcement of the provisions permitting employees to possess a weapon or firearm in his or her private vehicle in employer parking lots. If there is reasonable cause to believe that an employer has violated any of these prohibitions, the attorney general may initiate a civil or administrative action against an employer. If employers are found to have violated these statutory provisions, the employer can be subject to injunctive relief, damages, fines, attorneys’ fees, and court costs. Additionally, employees can sue their employer for violations and can recover all reasonable personal costs and losses suffered by the employee as a result of the violation.

What Can Employers Prohibit?

HB 543 and the related statutes it amended primarily permit employees to maintain a weapon or firearm locked within or locked to a private vehicle in the employer’s parking lot. It is important

to note that HB 543 does not impact an employer's ability to prohibit employees from actively carrying a concealed weapon or firearm while at work, or to prohibit employees from possessing a concealed weapon or firearm at the workplace that is not locked within or locked to the employee's vehicle. Employers may still implement policies which prohibit the carrying of concealed weapons or firearms and may continue to take disciplinary action against employees for carrying a concealed weapon or firearm or for displaying such weapon or firearm at the workplace.

What Should Employers Do Now?

With HB 543 now in effect, employers should revisit their current policies relating to the possession of a weapon or firearm at the workplace. Employers should be cautious when drafting handbooks or revising any such policies to ensure that such policies comply with the law. Policies should be created and/or revised to include language that either excludes the employer's parking lot or explicitly states that employees may maintain a weapon or firearm within their locked personal vehicle in the employer's parking lot. Additionally, employers must be cautious and refrain from taking any adverse employment action against an employee for keeping a legal firearm locked inside their personal vehicle on company property.

Generally speaking, HB 543 should not serve as a cause for panic among employers. Any argument and/or concern that the passage of Constitutional Carry legislation is likely to result in increased incidences of violence in the workplace is not supported by the historical evidence from the 25 other states which adopted similar legislation before Florida. Nevertheless, employers should be aware that the passage of HB 543 is likely to result in more employees choosing to carry concealed weapons and/or firearms while not at work. Employers would be well served to take a reasoned and pragmatic approach to the new law, ensuring that employees are made aware of what is and is not permissible when it comes to possession of a weapon and/or firearm at the workplace. Finally, employers should seek the assistance of knowledgeable and qualified legal counsel when preparing or revising policies related to weapons at the workplace or if they are contemplating disciplinary action against an employee for possession of a weapon or firearm.

¹ If you have any questions about HB 543 or its application to your company's policies, please contact Daniel K. Miles, 813-261-7816 or dmiles@fordharrison.com.