

NEW TEXAS GUN LAWS: WHAT THEY MEAN FOR EMPLOYERS

The prevalence of civilian gun ownership in Texas makes concealed, and now “open carry”, a hot-button issue of contention. In its most recent session in 2015, the Texas Legislature passed two bills—House Bill No. 910 (“HB 910”) legalizes the open carry of handguns in Texas, and Senate Bill No. 11 (“SB 11”) permits handgun license holders, under some circumstances, to carry a concealed handgun onto college campuses in Texas. With fierce opposition on both sides of the gun rights issue, employers often find themselves caught in the middle—between trying to ensure a safe workplace while also staying within the confines of the law.

With new gun laws taking effect on January 1, 2016, it is important that employers know what to expect. This quick go-to guide provides a summary of the changes created by the new open carry law and can aid employers in navigating through the legal and business implications that could arise as a result.

FAQS:

1. What do you mean by open carry?

For the last 20 years, Texas has allowed handgun license holders to carry concealed handguns in public and private places. Beginning January 1, 2016, license holders in Texas will be allowed to carry handguns in plain view of others, so long as the gun is holstered in a shoulder or waist holster. Handguns will still be prohibited (i.e. it will still be illegal to possess a handgun) in certain places such as nursing homes, professional sporting events, correctional facilities, hospitals, amusement parks, government buildings, churches and synagogues, and airports. The new law goes into effect on January 1, 2016.

2. Can employers generally prohibit handgun owners from entering their premises?

Yes, if the property is owned by the employer. Not surprisingly, property rights trump gun rights in Texas. Texas allows private property owners to ban guns on their premises by notifying the public either “orally or by written communication” that guns are prohibited on their property. Therefore, for an employer (or any private property owner) to generally prohibit handguns on its premises (including employees, customers and all third parties), the employer must post a sign (with language specified in the law) in a conspicuous manner that is clearly visible to the public.

This posting requirement will not change under the new law. What will change is that if the property owner wants to prohibit the open carry of guns in addition to licensed concealed guns, the owner will need to add language to the sign making clear the scope of the prohibition.

3. What if the employer does not own the property - can it prohibit employees from bringing guns to work?

Yes. An employer can still set the rules for the workplace. For example, an employer may prohibit employees from carrying guns of all types into the workplace (without regard to whether they are concealed, licensed, etc.). An employer may also broadly prohibit employees from carrying guns while in the course and scope of employment, which would include operating company vehicles or traveling while on duty.

4. Can an employer make exceptions and allow certain employees to carry guns in the workplace?

First, you must look at whether the employer owns the property. For example, if an employer leases office space in a building with a sign from the property owner prohibiting firearms, any employee who violates the rule would be trespassing. The employer’s permission does not trump the property owner’s rights.

If the employer owns the property, however, the employer can decide whether to make exceptions. For example, an employer may allow security guards to carry weapons. Other exceptions might include executives or employees with a military/law enforcement background who are trained to assist with an active shooter or other threat of violence in the workplace.

5. Can employers prohibit workers from storing licensed handguns in their private vehicles?

Generally, no. In 2011, Senate Bill No. 321 was signed into law. Under SB 321, most public and private employers in Texas may not prohibit employees, who hold a license to carry a handgun, from transporting or storing a lawfully possessed firearm in the employee's locked, privately owned motor vehicle in a parking lot, parking garage or other area provided by the employer. Of course, there are several exceptions, including, vehicles leased or owned by the employer; vehicles parked in lots owned or controlled by schools; or specified properties owned or leased by chemical manufacturers or oil and gas refiners.

6. How does the new law regarding concealed carry on college campuses work?

SB 11 (dubbed the “campus carry” law) will now allow license holders to carry concealed handguns in university campus buildings under certain circumstances. This law will go into effect on August 1, 2016, for private and public colleges, universities other institutions of higher learning. Notably, the law will not go into effect for private junior and community colleges until August 1, 2017. Campus carry should not be confused with “open carry”. The open and unconcealed carry of handgun on college campuses is still prohibited under the new law.

To be eligible under the new campus carry law, an individual must:

1. Be over 21 years of age;
2. Be a legal resident of the state for a six-month period preceding the application;
3. Not have been convicted of a felony;
4. Not currently be charged with commission of a Class A or B misdemeanor;
5. Not be chemically dependent;
6. Be capable of exercising sound judgment;
7. Be qualified under federal and state law to purchase a handgun; and
8. Be current on child support payments or other monies collected by a state agency.

Colleges and universities are expected to adopt reasonable policies and rules for individuals who want to carry concealed handguns on campus. SB 11 permits private universities to “opt-out” (i.e. ban concealed handguns on campus), and public universities will be permitted to set up gun-free zones; however, universities may not adopt policies that would effectively ban the carrying of a concealed handgun on campus.

7. We already have a policy that prohibits guns in the workplace. Can we keep this policy in place? What, if any, changes will we need to make?

Yes, existing policies prohibiting guns in the workplace can be maintained under the new law (as long as they were lawful under the old law). The chief aim of HB 910 was to amend several Texas Codes to remove the term “concealed” and leave only the word “handgun.” Thus, employers have the right to continue to prohibit employees from bringing guns, both concealed and openly carried, in the workplace.

Employers who own their own property may also continue to prohibit third parties from bringing guns onto the property so long as the proper posting requirements are met.

8. Now that the law has changed, what should employers do?

Employers should review their current policies to ensure that they are in compliance with the new laws. Also, we recommend that employers clearly communicate gun policies to their employees and be sure that the policies are consistent with the requirements imposed by Texas law.

9. What happens if an employer violates the “open-carry” law?

The “open carry” law—like the 2011 law permitting firearm storage in employer parking lots—does not provide or create a private cause of action for employees who believe their right to carry a handgun has been infringed. Thus, it appears that the employee's only remedy at this time would be to report the alleged violation to the Attorney General's office or seek declaratory relief through an injunction.