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Labor and Employment Update: New Gun Law Impacts Property Owners and Businesses

By Mark R. Bolton and John J. Balitis

During the 2009 legislative session, the State of Arizona became the 12th state to enact a “guns in parking lots” law. SB 1168 prohibits property owners, tenants, public or private employers and other business entities (collectively “Property Owners”) from establishing, maintaining or enforcing a policy that prohibits an individual from lawfully storing or lawfully transporting a firearm in their vehicle (including motorcycles) while it is parked in the Property Owner’s parking facilities. The bill requires that the firearms be kept out of visibility and locked in the individual’s vehicle. SB 1168 contains neither penalty nor administrative enforcement provisions and does not expressly create a new cause of action that would subject Property Owners to potential laws suits. Finally, the bill exempts several categories of Property Owners from its mandate.

Enforcement Mechanism

SB 1168 contains no administrative enforcement process and does not expressly create a new cause of action as an enforcement mechanism. However, SB 1168 does contain a legislative declaration that any policy established by a Property Owner that violates the bill’s mandate is “contrary to public policy, is null and void and does not have legal force or effect.” Individuals prohibited from transporting or storing firearms in their vehicle may have the ability to sue a Property Owner to nullify a policy in violation of SB 1168.

Exemptions

As previously indicated, SB 1168 exempts eight categories of Property Owners from the requirement that guns be allowed in parking facilities.

- 1. Where the possession of firearms is prohibited by federal or state law.** Both state and federal law prohibit certain individuals from possessing firearms and prohibit the possession of firearms in certain sensitive environments. SB 1168 recognizes these state and federal prohibitions and therefore exempts Property Owners that operate under circumstances where firearms are prohibited. For example, under state and federal law, it is unlawful to possess a firearm on grade or high school grounds. State law also prohibits a person from entering a public establishment or attending a public event carrying a firearm after the operator of the establishment or the sponsor of the event has requested that the person remove his/her firearm and place it in the custody of the operator or sponsor. To see a comprehensive list of federal laws prohibiting the possession of firearms, see the website for the Bureau of Alcohol, Tobacco, Firearms, and Explosives. www.atf.gov.

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2. **Motor vehicles owned or leased by the Property Owner.** Property Owners may prohibit individuals from transporting or storing firearms in motor vehicles owned or leased by the Property Owner. This exemption applies only when the individual is using the Property Owner's motor vehicle in the course of his/her employment.
3. **Secured parking lots.** The mandate set forth in SB 1168 does not apply to Property Owners that provide parking in an area that meets each of the following requirements: (1) the parking area is secured by a fence or other physical barrier; (2) access to the parking area is limited by a guard or other security measure; and (3) secure firearms storage is provided. The firearms storage unit must be monitored, readily accessible upon entry into the parking area, and allow for immediate retrieval of firearms upon exit from the parking area.
4. **Possession of firearms necessitates violation of federal or state law.** Property Owners are exempt from SB 1168's mandate if compliance would necessitate the violation of any state or federal law. Under this exemption, a Property Owner is exempt if it cannot comply with both the mandate set forth in SB 1168 and another applicable federal or state law.
5. **Nuclear generating facilities.** Nuclear generating facilities that provide a secured and gated or fenced parking area and secured firearms storage are exempt from SB 1168. The firearms storage unit must be readily accessible upon entry into the parking area and allow for immediate retrieval of firearms upon exit from the parking area.
6. **Single family detached residence.** The mandate set forth in SB 1168 does not apply to owner-occupied or tenant-occupied single family detached residences. The bill does not contain exemptions for apartment or condominium complexes.
7. **Defense contractors.** Property Owners that are current United States Department of Defense contractors may prohibit transporting and storing firearms on their property that is located in whole or in part on a United States military base or installation.
8. **Alternative parking.** A Property Owner may prohibit individuals from transporting or storing firearms in its parking area if it provides an alternative parking option that is "reasonably proximate" to the primary parking area and does not charge an extra fee to park in the alternative parking area.

How Does my Business Comply?

SB1168 exempts the eight categories of Property Owners described above from its mandate. First, you should determine whether your business qualifies for one of these exemptions. If you do qualify for one of the exemptions, your business may prohibit the transportation and storage of firearms in your parking facilities.

If, however, your business does not qualify for one of the exemptions, you can consider modifying your business operations to qualify for one of the exemptions. For example, you could secure your parking facilities by taking each of the following steps: (1) installing a fence or other physical barrier; (2) limiting access to the parking area with a guard or other security measure, and (3) providing secure firearms storage. Alternatively, your business could provide alternative parking for individuals wishing to transport or store firearms in your parking facilities. Either one of these alternatives would exempt a Property Owner from SB1168's mandate.

If you do not fit within one of the eight exemptions set out above and cannot modify your operations to qualify for an exemption, you must rescind all policies prohibiting the transportation or storage of firearms in your parking facilities and refrain from establishing such a policy in the future.

SB1168 takes effect on September 30, 2009. Please note that similar laws already exist in Alaska, Florida, Georgia, Kansas, Kentucky, Louisiana, Minnesota, Mississippi, Nebraska, Oklahoma, and Utah.

For questions related to compliance with SB 1168, please contact Mark Bolton at 602-916-5495, John Balitis at 602-916-5316, Barney Holtzman at 520-879-6810 or Sherry Downer at 520-879-6852.

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