

## Publications

### *Labor and Employment Alert: West Virginia Now Permits Employees to Keep Guns in Their Cars at Work*

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Michael C. Griffaton

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Labor and Employment

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West Virginia law allows property owners and employers to prohibit carrying firearms on any property “under his or her domain,” which previously included parking lots. West Virginia’s new Business Liability and Protection Act” (BLPA) carves out an exception for parking lots. The BLPA now restricts employers’ ability to prohibit the lawful carrying of firearms in their parking lots by employees, customers, and other invitees. The BLPA becomes effective on June 8, 2018.

Under the BLPA, an owner, lessee, or other person having the care, custody, and control of real property (a property owner) may not prohibit a customer, employee or invitee from possessing a legally owned firearm when the firearm is: (1) lawfully possessed; (2) out of view; (3) locked inside a motor vehicle or locked to a motor vehicle in a parking lot; and (4) when the person is lawfully allowed to be present in that area. While “motor vehicle” is broadly defined to include any privately-owned vehicle (including motorcycles and scooters), the BLPA expressly excludes vehicles owned, rented or leased by an employer and used by the employee in the course of employment.

The BLPA further prohibits property owners from violating “the privacy rights” of a customer, employee or invitee (1) by inquiring about the presence or absence of a firearm locked inside or locked to a motor vehicle in a parking lot; or (2) by conducting an actual search of a motor vehicle in a parking lot to ascertain the presence of a firearm within the vehicle. The BLPA restricts those searches to “on-duty, law enforcement personnel, in accordance with statutory and constitutional protections.” Moreover, property owners may not take any action against a person based upon statements that the person lawfully possesses a firearm in compliance with the BLPA unless those statements pertain to unlawful purposes or terrorist acts. Finally, a property owner may not prohibit or attempt to prevent a person from entering the parking lot because his or her motor vehicle contains a legal firearm, carried for lawful purposes, and out of view within the vehicle.

Employers are specifically prohibited from conditioning employment upon the fact that an employee or applicant holds or does not hold a license to carry a concealed firearm. Employers are further prohibited from requiring an employee or applicant to agree not to keep their firearm in their motor vehicle when in the employer's parking lot.

While the BLPA restricts employers' and property owners' right to control their parking areas, the law does not create any additional or heightened duty of care related to the law's prohibitions. Further, employers and property owners are not liable for money damages based upon actions they take to comply with the BLPA.

The state's Attorney General is authorized to enforce the BLPA and may seek civil penalties of up to \$5,000 per violation. Additionally, a customer, employee, or invitee may bring a civil action if he or she is aggrieved by violations of the BLPA.

The BLPA only applies to parking areas, so employers may continue to prohibit firearms (concealed or otherwise) in other areas of their business. Employers with operations in West Virginia should review their weapons policy to ensure the policy complies with the new law. Contact your Vorys lawyer if you have questions about workplace safety and security.