

One Minute Memo®



Clarifying Employer Misconceptions About Texas' New "Open Carry" Gun Law

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Introduction to Texas' "Open Carry" Law

A new law became effective earlier this year in the Lone Star State, making Texas' broad gun-rights laws even more permissive. Before January 1, the only firearms Texas citizens were permitted to openly carry were long-barreled weapons, such as shotguns and rifles. On the other hand, handguns had to be concealed if they were to be carried at all. Under Texas House Bill Number 910 ("HB910"), Texans are now permitted to carry handguns in plain view, so long as the handgun is maintained in a shoulder or belt holster and the carrier has a proper license or permit. Media outlets and legal observers have spread misconceptions and confusion about the "open carry" law, particularly as it pertains to the rights of private employers to keep guns off their premises. Here, we clarify some of these common misconceptions.

"Section 3.06 and 3.07" Signs Are Not Mandatory

Some commentators have suggested that the only way for businesses to lawfully prohibit the carrying of firearms in the workplace under Texas law is to post specially-worded notices in compliance with Texas Penal Code Section 3.06 and (new) Section 3.07.¹ But this is a misinterpretation of the law. While the carrying (concealed or open) of a handgun on private property where compliant Section 3.06/3.07 signs are posted constitutes criminal trespass under those statutes, nothing in HB910 or in any other Texas statute requires private employers to post Section 3.06 or 3.07 signs to prohibit guns in the workplace. In fact, HB910 makes it clear that the law "does not prevent or otherwise limit the right of a public or private employer to prohibit persons who are licensed . . . from carrying a handgun on the premises of the business."

A Simple "No Guns/Firearms Allowed On The Premises" Sign Will Work

While posting written notices meeting the criteria described in Sections 3.06 and 3.07 can be an effective way of communicating an employer's no-firearms policy, HB910 preserves the right of private property owners to prohibit handguns and other firearms on their premises by any reasonable means, including posted signage, handbook policy, or simply word-of-mouth. Employers should consider using all or a combination of these methods to communicate the message, keeping in

¹ Under the new Section 3.07, an individual commits trespass if she carries a handgun onto private property after being notified "by oral or written communication" that handguns are not permitted on the premises. A "written communication" must meet very specific requirements regarding font type and size, must be translated into Spanish, and must include the following language: "**Pursuant to Section 30.07, Penal Code (trespass by license holder with an openly carried handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a handgun that is carried openly.**" A similar notice requirement applicable to concealed handguns already existed prior to HB910 and remains effective under Section 3.06.

mind that a simple and clear “No Guns/Firearms Allowed On The Premises” sign is not prohibited under Texas law. On the other hand, failure to comply with Sections 3.06 and 3.07 would make it difficult for the State to prosecute trespass claims, which may hinder—in some circumstances—an employer’s ability to obtain a TRO or restraining order against offending employees or third parties. Given the safety-sensitive nature of the issue (especially in light of the many unfortunate incidents of workplace violence involving guns), employers should consider defaulting to compliant Section 3.06 and 3.07 signs. Employers in Texas do have a choice, however.

Employees May Still Store Firearms And Ammunition In Their Cars

HB910 does not affect the already-existing right of employees in Texas (under Section 52.061 of the Texas Labor Code) to transport or store firearms or ammunition in their locked, privately owned motor vehicles in a parking lot, parking garage, or other parking area provided by their employers. This right is not unlimited. For example, it does not apply to a vehicle owned or leased by an employer and used by an employee in the course and scope of employment, unless the employee is required to transport or store a firearm in the official discharge of duties. The law also does not apply to school districts, charter schools, private schools, and certain leased properties used for the drilling or mining of oil, gas, or minerals.

Before HB910, Section 52.061 applied specifically to “an employee who holds a license to carry a concealed handgun.” The plain reading of the statute required employees to keep firearms or ammunition in their cars, albeit concealed. HB910 removed the word “concealed” from this section of the statute, raising the question whether employees can now store these items in plain view. This particular section requires employees to have a handgun license before taking advantage of the statute; it does not alter or define how the handguns must be kept inside the locked vehicles. On the other hand, if one can now “openly” carry in a holster, why can’t an employee “openly” keep her gun or ammunition in the employee’s vehicle? Until this ambiguity is clarified, employers can adopt either interpretation, in compliance with their security needs and their stance on gun rights.

Summary for Employers

To prevent misunderstandings and address security concerns, employers wishing to prohibit guns in the workplace should make their policies clear and conspicuous to everyone who enters their property, including employees, visitors, and other third parties. And while HB910 allows “open carry,” it did not change the right of private employers in Texas to prohibit handguns and other firearms on their premises by any reasonable means, including posted signage, handbook policy, or simply word-of-mouth. Employers should take advantage of all these options to meet their security needs, keeping in mind that employees have countervailing rights to store firearms in their privately owned vehicles—even on company property.

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