



PROTECTED CLASSES INCLUDE (AMONG OTHER THINGS): RACE, SEX, AGE, DISABILITY, AND NOW GUNS? IS GUN OWNERSHIP THE NEW PROTECTED CLASS IN LOUISIANA?

On July 2, 2008, Gov. Bobby Jindal signed Senate Bill no. 51 into law. Senate Bill no. 51 has been dubbed the "take-your-gun-to-work law." Assuming there are no legal challenges which would delay its effective date, Senate Bill no. 51 becomes the law in Louisiana on August 15, 2008.

Louisiana is not the first state in the nation to enact such legislation. Other states with similar laws include Alaska, Kentucky, Oklahoma and our neighbors to the East in Mississippi, Georgia, and Florida.

The Florida law is the subject of two law suits, one seeking to invalidate the statute and a second seeking to overturn the discharge of a Disney security guard who brought a gun with him to work in violation of Disney policy. In the second case, Disney has claimed that it is exempt from the Florida gun-rights statute. Disney fired the security guard when he brought a gun to work. The guard lawfully owned the gun and had it locked in the trunk of his car, but violated Disney policy when he refused to confirm or deny that he had the gun in his vehicle and then refused to allow Disney officials to search his vehicle. The guard had previously announced his intention to bring his gun to work to challenge Disney's policy. The suit is pending in state court in Florida.

Louisiana's Senate Bill no. 51 enacts La.R.S. 32:292.1 and makes it lawful for a person who "lawfully possesses" a firearm to transport or store the firearm in a locked, privately-owned vehicle in any parking lot, parking garage, or other designated parking area. Property owners, tenants, employers, and businesses may not prohibit any person from transporting or storing a firearm in a locked, privately-owned vehicle in any parking lot, parking garage, or other designated

paring area. But, employers and business entities may adopt policies specifying that the firearms must be hidden from plain view or within a locked case or container within the vehicle.

The statute does not apply to vehicles "on property controlled by" employers or businesses if access to the property is restricted through the use of a fence, gate, security station, or other means of limiting access to the general public; and either one of the following applies: (a) the employer or business entity provides for the temporary storage of unloaded firearms, or (b) the employer or business entity provides an alternative parking area ("reasonably close") to the main parking area where employees and others may transport or store firearms in locked, privately-owned motor vehicles.

Property owners, tenants, employers, or businesses may not be held liable for damages "resulting from or arising out of an occurrence involving a firearm transported or stored" pursuant to the new law. But property owners, tenants, employers, or businesses may be held liable for damages for prohibiting the otherwise authorized transportation or storage of firearms.

Stay tuned.



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NEGLIGENT HIRING

Did you know that an employer may be liable for failure to properly screen employees when such failure results in hiring someone that has a history of violent or criminal acts? Louisiana recognizes claims against an employer that hires an employee with dangerous propensities when that employee injures third persons at work. An employer may be liable for negligent hiring if it knew or should have known that the employee posed a threat to others. Similarly, an employer is liable for negligent retention when it continues to employ an employee knowing of his dangerous propensities.

Negligent hiring is particularly implicated in the background check portion of an employer's hiring process. There are specific state and federal regulations that require employers to do background checks in connection with hiring which vary by the industry. Moreover, there are cases in which Louisiana courts have found an employer breached its duty when it failed to adequately inquire about an employee's criminal history. However, an employer is not negligent when it conducts a reasonable background investigation and where the wrong committed was not foreseeable based on the nature of any previous criminal conduct by the employee.

Louisiana law requires injured third parties to prove the following elements to prove negligent hiring: (a) a duty owed by the employer in selecting or retaining the employee; (b) breach of that duty; (c) the breach of that duty must be the cause-in-fact of the injury; (d) the resulting harm must fall within the scope of the employer's duty; and (e) damages sustained by the third party.

One example of a negligent hiring claim is shown in a recent case heard by the United States Court of Appeals for the Fifth Circuit (the federal appellate court in which Louisiana sits). In *Khan v. Houston NFL Holdings, L.P.*, 2008 WL 1984425 (5th Cir. 2008), four individuals brought suit against multiple defendants for injuries they suffered in an altercation with security guards during an event at a football stadium. The plaintiffs attended an event on the third-floor club level of the Reliant Stadium in Houston, Texas. The "Halloween Bash" that they attended was sponsored by Houston NFL Holdings, L.P. ("HNH"), the owner of the Houston Texans franchise of the National Football League. HNH hired the security guards for the purpose of the "Halloween Bash."

During the "Halloween Bash," a confrontation between some of the plaintiffs and security guards occurred inside the stadium. The plaintiffs were escorted out of the stadium by several guards. There was evidence that at least some of the plaintiffs were intoxicated, made threats and used profane language. A physical struggle occurred when arrests were made outside the stadium. The plaintiffs alleged that the guards used excessive force, assaulted them and fabricated charges against them.

In support of their negligent hiring claim, the plaintiffs argued that HNH should have discovered internal police personnel files on the officers, which would have put HNH on notice that one officer had numerous complaints filed against him. HNH submitted evidence that the three officers were hired because of their law enforcement training. Each was in good standing with the Houston Police Department ("HPD"). The plaintiffs submitted evidence that one of the officers had violated HPD regulations by missing a court appearance, using a bathroom in a strip club while in uniform and having a verbal confrontation with another officer. Also, the evidence showed the officer had been at fault in causing an automobile accident in which a child was killed.

Applying Texas law regarding negligent hiring (which is similar to Louisiana law regarding negligent hiring), the Fifth Circuit found that the evidence presented would not support a negligent hiring claim. The Fifth Circuit based its reasoning on a finding that even if HNH had known of these incidents, it still was not negligent to hire a trained policeman who was then employed by and in good standing with the HPD. Even if HNH had requested disciplinary records, there were no confirmed allegations of excessive force. Also, the Fifth Circuit noted there was no evidence presented of an industry practice that an employer would seek confidential discipline histories of policemen that they were considering hiring for off-duty work.

What this case and the general Louisiana standard for negligent hiring show is that employers should consider the particularities and standards of their industry in determining how much due diligence should be done for hiring. There are certain state and federal statutes and regulations that govern whether an employer is required to conduct a background check in connection with hiring. Employers should make sure they are in compliance with these statutes and regulations. Moreover, employers should consider the nature of the work that they do and the probability that a third person would be injured at the hands of one of their employees. If this analysis shows that there is a chance that third persons could be injured at the hands of an employer's employees, then an employer may want to consider doing more research during the hiring process to minimize the risk of a negligent hiring claim.



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