

What You Need To Know: Open Carry Law Brings About Changes For Employer Handgun Policies

January 8, 2016 | | [Employment Lessons](#), [Labor And Employment](#)

The Texas Legislature recently expanded the rights of licensed handgun owners to openly carry their firearms. This right is in addition to the already existing right of licensed handgun owners to carry concealed firearms. The so-called “open carry” law went into effect on Jan. 1 in Texas. Texas employers who desire to prohibit all—customers, employees, contractors, or vendors—who enter their premises from carrying licensed concealed or open carry handguns and who post the statutorily required notices in English and Spanish (with the requisite typeface conventions) do not need to give further notice to ban **employees** from bearing concealed or open carry handguns. Employers who post the statutorily required signage should still consider having detailed policies regarding:

- the reasons behind its employee safety requirements;
- its right to search employee workspaces and personal belongings if there is suspicion that the employee has a handgun in violation of the pertinent policy;
- what do in the event it is observed that a coworker is in violation of the policy;
- and exceptions to the policy such as the carrying of firearms that are expressly permitted by specific job descriptions.

Many Texas employers do not prohibit customers or other third-parties from carrying licensed handguns on to the employer’s property; nonetheless, those same employers do wish to ban the carrying of licensed concealed or open carry handguns on the company’s premises by their employees. These policies often refer more generally to “firearms” which would include rifles or shotguns, the carry of which is not prohibited in Texas on property where the bearer has a right to be or has been invited absent notice of the business owner’s lack of consent or statutorily specified locations such as a court, school, polling place, or airport. For employers seeking to ban employees, not customers or third-parties, from carrying licensed handguns on to the business premises, the statutory **signage** is not required ([see earlier alert](#)). However, the Texas Penal Code does require that **written notification** be given, if every employee is not given oral notification of the ban. This can be in the form of a written policy, procedure, or published notice, and the Texas Penal Code prescribes language to be contained in the notice. There is uncertainty whether the prescribed language is required to have effective notice or whether it is only required for the State to prosecute a criminal trespass (carrying the firearm in violation of the notice, a Class C Misdemeanor, punishable by a \$200 fine). Some legal commentators state that the prescribed language is required; others have not addressed the issue directly. Employers, when crafting their employee handgun policies, will have to weigh the benefit and the risk associated with including the following

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language set forth in sections 30.06 (trespass for carry of concealed handgun in violation of notice) and 30.07 of the Texas Penal Code (trespass for open carry in violation of notice): 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. Additionally, pursuant to Section 30.06, Penal Code (trespass by license holder with a concealed handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a concealed handgun. To ensure proof that written notification was received, employers adopting such policies should obtain a signed acknowledgment of receipt of the policy by employees. Texas employers should know that their prohibitions may not extend beyond the employer's buildings to parking areas or walkways. "Premises" or "property" means a building or a portion of a building. The term does not include any public or private driveway, street, sidewalk or walkway, parking lot, parking garage, or other parking area, where employee licensed handgun carry is expressly permitted by statute. Nothing contained in the employer's policy may prohibit employees from continuing to store their licensed firearms and ammunition in a locked, privately-owned vehicle in company parking lots. Like any state-law based policy, one size does not fit all. If you have operations spanning multiple states, broadening or carving out certain state-law mandated concealed or open carry requirements/restrictions will require further research and nuanced drafting. Now is also an ideal time to review the definition of "weapon" under your existing policies to ensure that prohibitions are broad enough to exclude the carrying of weapons other than handguns or firearms. Finally, no policy is more effective than the training behind it. When revisiting your employee handgun policy, it is the perfect time to consider whether employees have been properly trained to follow procedures for:

- handling hazardous incidents (such as turning over property to an armed assailant);
- operating equipment for contacting security personnel;
- recognizing potentially violent situations;
- and responding by seeking assistance or diffusing the situation.