

Employers Can Still Say “No Carry” Under South Carolina’s New “Open Carry” Law

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On August 15, 2021, South Carolina’s new “Open Carry With Training Act” took effect. Under the new “Open Carry” law, individuals who possess a South Carolina concealable weapon permit (“CWP”) can carry a concealable weapon^[1] openly on the individual’s person or in a manner that is concealed, *i.e.*, hidden from public view in normal wear of clothing. Prior to the enactment of the Open Carry law, open carry of a concealable weapon was not permitted in South Carolina. Notably, individuals who do not possess a CWP continue to be prohibited from carrying a concealable weapon on their person either openly or in a concealed manner.

The Open Carry law also allows a South Carolina CWP holder to openly carry a handgun in a vehicle. Prior to the Open Carry law, a South Carolina CWP holder could carry a concealable weapon in a vehicle in a concealed manner, but could not open carry.

The new law has received significant media attention and provides a reminder to employers to be vigilant about their weapons in the workplace and workplace violence policies. Fortunately, the new law does not change the right of employers to allow or not allow firearms in the workplace.

Employer’s Right to Prohibit Firearms in the Workplace Prior to the Open Carry Law

Prior to the Open Carry law, employers and business owners could prohibit employees, vendors, contractors, visitors, and other guests from carrying concealed weapons in the workplace and on private property. Employers could accomplish this prohibition with employees by enacting a no weapons in the workplace policy. With respect to non-employees, in order to prohibit concealed weapons on their property, employers and business owners were required to post a “NO CONCEALABLE WEAPONS ALLOWED” sign at each entrance of a building that complied with a number of image, size, font, and other requirements. Importantly, an employer’s workplace included, and continues to include, employer-owned vehicles and employer parking lots. The workplace does not include an employee’s

personal vehicle when it is away from the employer's parking lot, and an employer may not prohibit the possession of a concealed weapon or other firearm in an employee's personal vehicle when it is away from the employer's parking lot, even if the employee is travelling for work.

Employer's Right to Prohibit Firearms in the Workplace under the New Open Carry Law

In a nutshell, nothing has changed with respect to employers' and business owners' right to prohibit firearms, concealed or otherwise, in the workplace and on private property. Fortunately, the South Carolina General Assembly retained the use of the defined term "concealable weapon" in the Open Carry law, but simply added an "openly carried" firearm (by a CWP holder) to the previous definition. Accordingly, policies and signage that effectively prohibited concealed weapons from the workplace and private property will continue to be effective after August 15, 2021. In addition, the workplace continues to include an employer's parking lot and employer-owned vehicles.

Correct Signage Is Key

The Open Carry law adopts the South Carolina Law Abiding Self-Defense Act of 1996's sign requirements. The text of the Open Carry law's sign requirements is set forth below. Compliance with each requirement is critical. Failure to comply with even one of the requirements renders the sign ineffective.

S.C. Code Ann. § 23-31-235 provides as follows:

- (A) Notwithstanding any other provision of this article, any requirement of or allowance for the posting of signs prohibiting the carrying of a concealable weapon, whether concealed or openly carried, upon any premises shall only be satisfied by a sign expressing the prohibition in both written language interdict and universal sign language.
- (B) All signs must be posted at each entrance into a building where a concealable weapon permit holder is prohibited from carrying a concealable weapon, whether concealed or openly carried, and must be:
- (1) clearly visible from outside the building;
 - (2) eight inches wide by twelve inches tall in size;
 - (3) contain the words 'NO CONCEALABLE WEAPONS ALLOWED' in black one-inch tall uppercase type at the bottom of the sign and centered between the lateral edges of the sign;
 - (4) contain a black silhouette of a handgun inside a circle seven inches in diameter with a diagonal line that runs from the lower left to the upper right at a forty-five degree angle from the horizontal'
 - (5) a diameter of a circle; and
 - (6) placed not less than forty inches and not more than sixty inches from the bottom of the building's entrance door.

How Should Employers Respond to the Open Carry Law?

Now is a good time to revisit weapons in the workplace and workplace violence policies to ensure they are current and accomplish the employer's objectives. Policies should clearly set forth the employer's position on weapons in the workplace and, if the employer prohibits concealed weapons in the workplace, policies should clearly say so and carefully define the workplace to include employer parking lots and employer vehicles, if so desired. In addition, employers who may have non-employee workers, visitors, or other guests on their property should be sure that all concealable weapon signage complies with the requirements set forth above.

For additional information or questions about the new Open Carry law, contact the Nexsen Pruet Employment & Labor Law team or Jamie Hedgepath at jhedgepath@nexsenpruet.com

[1] South Carolina law generally defines a concealable weapon as a firearm having a length of less than twelve inches along the firearm's longest dimension.