

STATE BAR OF TEXAS LABOR & EMPLOYMENT SECTION
JW Marriot, Galleria
Houston, Texas



“Stick to Your Guns: Legal
Compliance in the Age of Open
Carry”

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Presenters



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Agenda



Open Carry Statute



Concealed Carry Statute



Parking Lot Laws



Campus Carry Laws



**The impact on K-12 School
Districts and other Educational
Institutions**

Open Carry

- Effective Jan. 1, 2016
- Legalized Open Carry of Handguns



Eligibility for Open Carry

1. Must have a Concealed Handgun License
2. At least 21 years of age (could be younger if a honorably discharged veteran)
3. Not convicted of a felony
4. Not charged with the commission of a Class A or Class B misdemeanor
5. Not a fugitive from justice
6. Not chemically dependent
7. Capable of exercising sound judgment regarding the use and storage of gun
8. Paid up in child support
9. Must have completed 4-6 hours of training



Open and Concealed Carry

- Employers may prohibit employees with CHL's from carrying handguns on the employer's premises if the employer provides effective notice under the statute
- What is effective notice?
 - Oral or written
 - By owner of premises
 - Lessee with Apparent Authority



Effective Notice Banning Concealed Handguns

- Effective notice includes (Penal Code § 30.06)
 - Oral communication from the owner or someone with apparent authority OR
 - A written card or document which contains the following language: “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” OR
 - A sign posted on the property that includes the above language in both English and Spanish, is written in contrasting colors with block letters at least one inch in height and which is displayed in a conspicuous manner clearly visible to the public

Effective Notice Banning Concealed Handguns



Requirements for Signs Banning Openly Carried Handguns

- If the sign is the **only** notice you provide to visitors that openly carried handguns are prohibited:
 - The notice must be in English and Spanish
 - Appear in contrasting colors with block letters at least one inch in height
 - Displayed in a conspicuous manner clearly visible to the public at each entrance to the property



Specific Language Prohibiting Open Carry

- “Pursuant to § 30.07, penal code (trespass by license holder with an openly carried), 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.**”



Open Carry Questions

Can the employer prohibit *employees* from carrying handguns if the employer does not own the building?

Answer: Yes

- For public and private employees - the employer need only provide a weapons policy to employees giving them notice that weapons of any kind are prohibited on the employer's premises. The Handbook language does **not** have to track the language in a § 30.06 or § 30.07.
- Example: *“As permitted by law, it is the policy of ABC company to prohibit employees from carrying weapons of any kind, without written authorization from the VP of HR, on company premises.”*



Open Carry Questions

Can the employer prohibit *visitors* with handguns if the company does not own the building?

Answer: Yes

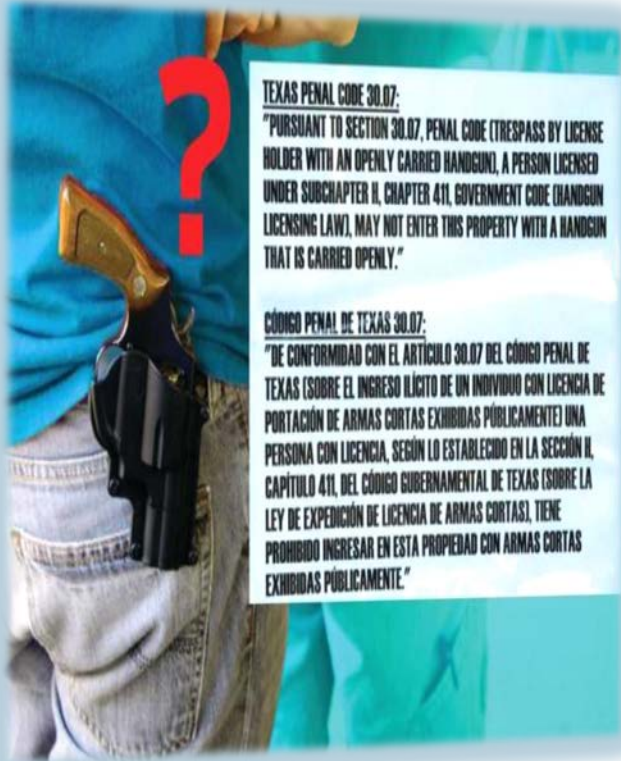
- With regard to most private companies, the employer can choose one or more of four ways to give notice to visitors that handguns are prohibited:
 - **A card** available to guests entering the employer's premises which announces the prohibition, or
 - **A document** (like a letter or leaflet) that is available to people entering the premises, or
 - **Oral communication** to visitors that weapons are not permitted, or
 - **A § 30.06 Sign**-posted at each entrance to prohibit open carry or posted conspicuously to prohibit concealed carry.

Open Carry Questions

Can state and local governmental agencies prohibit visitors from carrying licensed handguns in the same manner as private organizations?

Answer: No. Not unless handguns carried by licensed owners are prohibited by law.

Open Carry Questions



Are some employers required to post § 30.06 or § 30.07?

Answer: Yes

- Hospitals licensed under Chapter 241 of the Health And Safety Code- must prominently display the sign at each entrance;
- Nursing homes licensed under Chapter 242 of the Health and Safety Code;
- A business that has a permit issued under the Alcoholic Beverage Code.

Concealed and Open Carry Questions

Are handguns prohibited by law on some premises?

Answer: Yes.

- The Penal provides that people with CHL's may not bring a handgun on the premises of:
 - A K-12 public or private school, including passenger transportation vehicles of a K-12 school or educational institution (§ 46.036);
 - A correctional facility;
 - A hospital or nursing home (owner must post notice prohibiting handguns);
 - A racetrack;
 - An amusement park (owner must also post notice);
 - A house of worship (if notice is posted);
 - Meetings covered by the Open Meetings Act(if notice is posted);
 - A courtroom and judicial offices; and
 - Polling premises on day of election or during early voting.

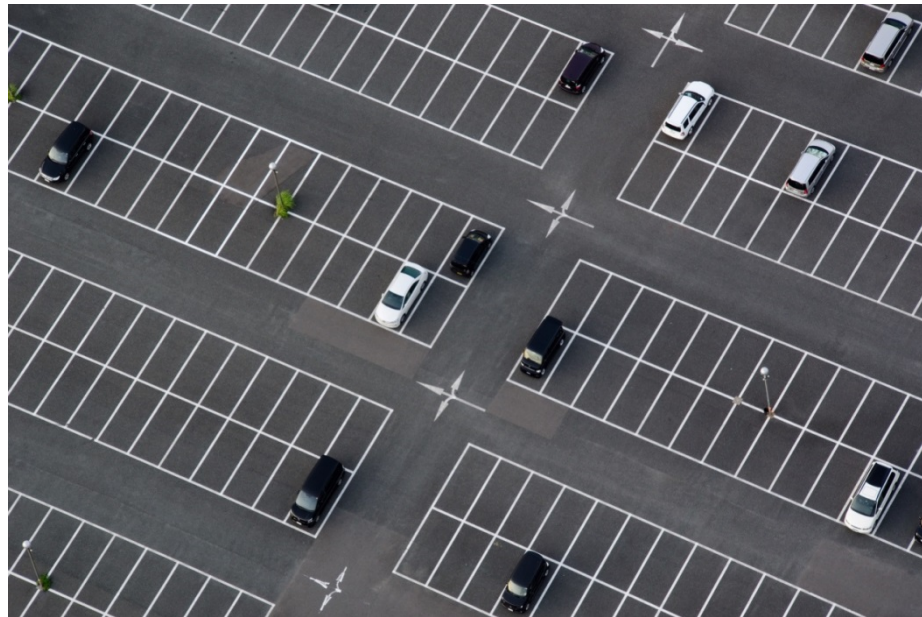
Parking Lot Storage

- Premises do not include parking lots offered by the employer to employees!



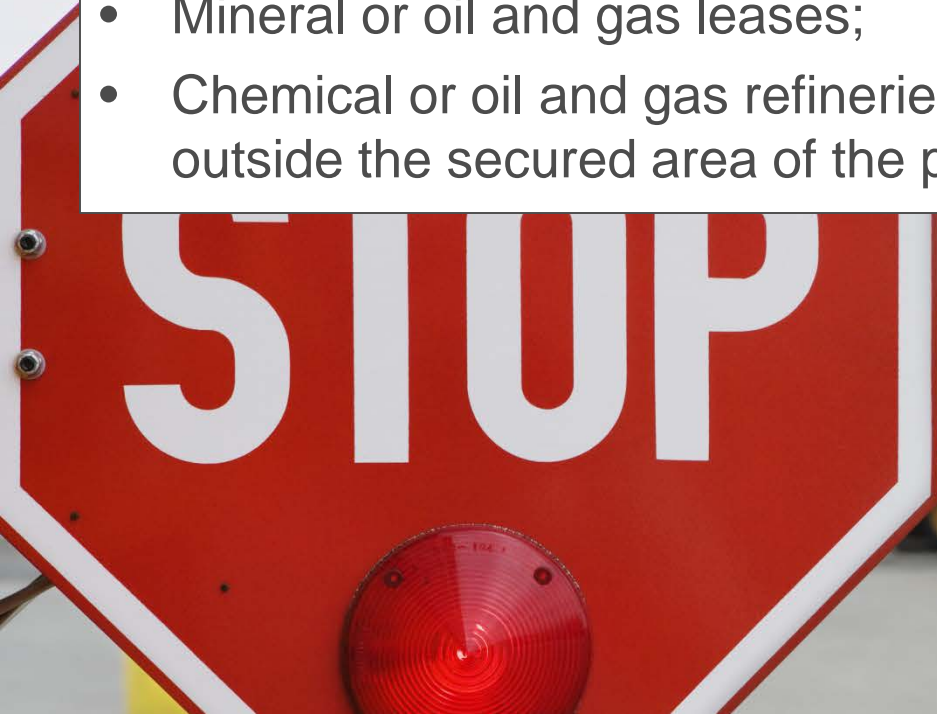
Parking Lot Storage

- Tex. Labor Code § 52.06: Employers may not prohibit employees from storing firearms in a locked, privately owned vehicle in the employer's parking lot, parking garage, or other parking area.



Exceptions

- Places where firearms are prohibited by federal or state law;
- Company vehicles;
- Parking lots of public, open-enrollment charter, or private K-12 schools;
- Mineral or oil and gas leases;
- Chemical or oil and gas refineries (but can store in a parking lot outside the secured area of the plant).



Employer Considerations

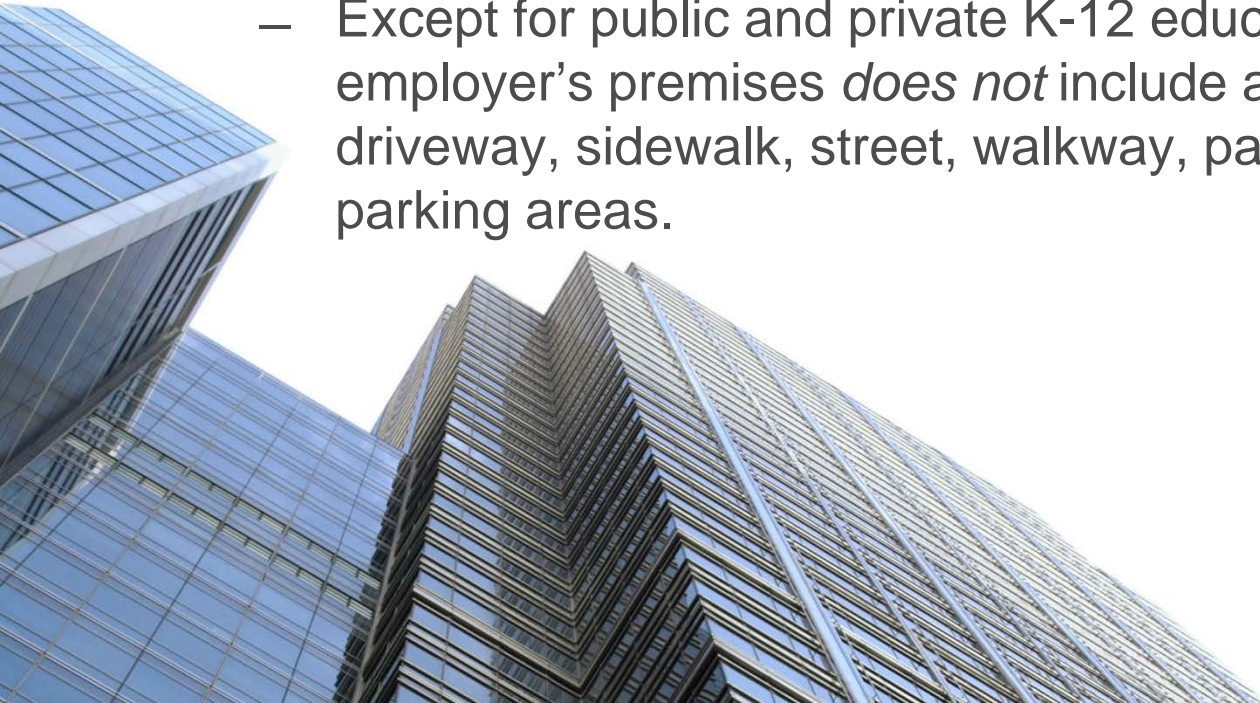
Parking Lot Law

- Employers may prohibit firearms and handguns on the premises;
- Employer has immunity from civil liability except in cases of gross negligence;
- Employer has no duty to patrol, inspect, or secure the parking lot or to confirm the employee's compliance with the law.



Authority of Employers to Prohibit Employees from Carrying Weapons in the Workplace

- In general, public employers can limit the right of employees to carry weapons on the employer's premises:
 - Premises includes the employer's building. *Section 411.203 Gov. Code*;
 - Except for public and private K-12 educational institutions, the employer's premises *does not* include any public or private driveway, sidewalk, street, walkway, parking lot, garage or other parking areas.



Intentional **Open** Display of Handguns on College Campuses is Prohibited



- *Penal Code Sections 46.03 and 46.035*
 - It is a violation of Penal Code Section 46.035 to **intentionally and openly display** a handgun in plain view of another person on the premises of a public or private institution of *higher* education;
 - This includes the open display of handguns in public and private campus driveways and parking areas;
 - This does not restrict the rights of people to store handguns in locked cars on private or public college campuses.

Handguns at Public and Private Higher Education Institutions

After August 1, 2016 - 4 Year Colleges

Penal Code Section 46.035

- A person possessing a *concealed handgun license (CHL)* under Chapter 411 Gov. Code may carry a *concealed weapon* at :
 - Institutions of higher education (Private Colleges may opt out);
 - On any grounds or building on which an activity sponsored by the institution is being conducted (subject to the institutions Rules and Regulations).
 - The handgun must be *completely concealed while the person is in a public place.*
 - **Remember: Open carry on campus is not permitted** by persons possessing a CHL.

Handguns at Public and Private Higher Ed Institutions

4 Year Colleges

Section 411.2031 Tex. Gov. Code - Campus Carry

- **The institution must establish rules and regulations concerning the storage of handguns in dormitories, or other residential facilities owned or operated by the school;**
 - The institution must give notice under Penal Code Section 30.06 with respect to any portion of the premises on which the license holders may not carry handguns
 - Note: Prohibition on concealed campus carry cannot include parking garages, streets, or driveways located on the campus

Limits of Civil Liability

Section 411.208 Tex. Gov. Code

- No liability for public and private institution employees due to:
 - Failure to perform a duty imposed by Section 411.000
 - Actions of licensed gun holder or an applicant for a license
 - Immunity does not cover acts that are capricious or arbitrary
 - Immunity does not cover employees with handguns whose acts form the basis of a claim for personal injury or property damage

Questions and Answers



Thank
You!



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