

Sample Fire Department Firearms On-Duty Policy (11/28/2017).

This is a sample policy to serve as a template for a specific policy based on local needs. In October of 1996, the Department of Safety began issuing handgun carry permits pursuant to T.C.A. § 39-17-1351. While Tennessee allows persons with a valid handgun carry permit to carry handguns in places where they are not otherwise prohibited by law, an employer has the right to set policy for the workplace. There is debate on this issue, but the consensus of most municipal governments is to prohibit guns in the workplace except for commissioned law enforcement officers and similar employees with a need to go armed in the performance of their duties.

Tennessee's "guns in trunks" law allows valid permit holders to bring and store firearms and ammunition "in the permit holder's motor vehicle" in compliance with the law. However, the law provides no protection to a valid permit holder if the firearm is not stored and maintained in strict compliance with the requirements of the law. This means that any employee who stores the firearm in a manner that is inconsistent with the law can be disciplined.

Even though Tennessee law may allow an employer to permit an employee with a handgun carry permit to carry a firearm at work, there are other laws and risks that affect such a decision. The first is the TOSHA/OSHA General Duty Clause, which requires an employer to provide a workplace "free from recognized hazards that are causing or are likely to cause death or serious physical harm." Workplace violence is a foreseeable recognized hazard that can be exacerbated by the presence of a firearm. Though T.C.A. § 50-3-201(d) states that a decision not to post property pursuant to T.C.A. § 39-17-1359, thereby allowing persons with handgun permits to carry a handgun on such property, does not constitute an occupational safety and health hazard within the jurisdiction of this chapter, TOSHA has stated that they will make such decisions on a case-by-case basis.

The second is Worker's Compensation. An employer may be liable for Worker's Compensation benefits for injuries arising to an employee out of a firearm-related incident in the workplace.

The third is risk. Though T.C.A. § 39-17-1313(b) limits liability, an employer may face negligence claims from a third-party. For example, an injured party from an incident involving a firearm in the workplace could claim the employer was negligent in the hiring, supervision, and/or retention of the employee with the firearm.

MTAS recommends that municipalities not allow employees, including volunteer firefighters, to carry firearms while on duty. Before making a decision or setting policy, municipalities contemplating this issue should consult with the city attorney and contact their insurance carrier. Most general liability insurance policies specifically exclude intentional acts from coverage, and it is likely the insurance carrier will refuse coverage if the employer allows permit holders to bring firearms into the workplace.

Carrying Firearms On-Duty

PURPOSE AND SCOPE

The purpose of this policy is to promote the safety of all members by restricting the possession of firearms in the workplace consistent with Tennessee law. This policy applies to all members of the <Anytown> Fire Department.

POLICY

- A. In accordance with T.C.A. § 50-1-312(d), all <Anytown> Fire Department personnel, including personnel with a valid handgun carry permit, are prohibited from possessing firearms or ammunition while on-duty or inside fire department buildings or facilities. Personnel who have firearms or ammunition in their possession when arriving at fire department buildings or facilities, and before going on-duty, shall, in accordance with T.C.A. § 39-17-1313 and T.C.A. § 50-1-312, secure their firearms or ammunition before going on duty, or entering fire department buildings or facilities.
- B. To properly store a firearm or ammunition in a private vehicle, as required by T.C.A. § 39-17-1313(a), the member's vehicle must be parked in a location where it is permitted to be, the firearm and ammunition being transported must be stored in the motor vehicle, kept from ordinary observation, and locked within the trunk, glove box, or interior of the member's motor vehicle, or in a container securely affixed to such motor vehicle if the permit holder is not in the motor vehicle. As allowed under T.C.A. § 50-1-312(b)(1)(a), if it is found that a member is storing firearms in a manner that is inconsistent with T.C.A. § 39-17-1313(a), said member will be subject to disciplinary action up to, and including, termination.
- C. As permitted by T.C.A. § 39-17-1313(d), the reasonable actions necessary to properly secure a firearm in a personal vehicle while on fire department property shall not be considered a violation of this policy.
- D. On-duty refers to times in which any member is performing services for the fire department, has access afforded to them because of their employee or volunteer status, is engaged in official fire department activities, is inside any fire department building, facility, or vehicle, or is representing themselves as a member of the fire department. Off-duty members who respond to fire department incidents and are in uniform, or are otherwise identifiable as members of the fire department, shall be considered on-duty for purposes of this policy, and shall be required to comply with all requirements of this policy.
- E. Firearms are never permitted to be stored, or carried, in fire department vehicles or apparatus, or inside fire department buildings or facilities.