

**To: The Honorable Karen S. Johnson
State Representative**

May 14, 2001

**Re: Authority to Prohibit State Employees from
Possessing Weapons While on Duty
I01-011 (R00-053)**

Questions Presented

May a State agency promulgate rules or policies barring their employees who hold concealed weapon permits from carrying concealed weapons while on duty?

Summary Answer

State agencies may promulgate rules or policies barring their employees, including those who have concealed weapon permits, from carrying weapons while on duty.⁽¹⁾

Analysis

A State agency has broad authority over its employees while they are on duty. A State agency director has the authority to employ personnel and determine the conditions of their employment. See, e.g., A.R.S. §§ 41-703(5) (Department of Administration); -1604(A)(7) (Department of Corrections); -1954(5) (Department of Economic Security). The Department of Administration also has specific authority to "[a]dopt rules relating to personnel and personnel administration." A.R.S. § 41-763(6).

This broad authority includes the ability to discipline employees. Employees covered by the State personnel system may be disciplined or dismissed for many reasons including insubordination, inefficiency, discourteous treatment of the public and conduct causing embarrassment to the State. A.R.S. § 41-770, A.A.C. R2-5-501. At-will employees not covered by the State personnel system may be disciplined or even fired for any reasons not prohibited by law. Cf., *Wagner v. City of Globe*, 150 Ariz. 82, 722 P.2d 250 (1986) (describing limits on employment at will doctrine). Concomitantly, a State agency's failure to control an employee's conduct may lead to both direct and vicarious liability. See generally *State Dep't of Admin. v. Schallock*, 189 Ariz. 250, 259, 941 P.2d 1275, 1284 (1997). In addition, courts have required that an employer provide a safe work environment for its employees. *Circle K Corp. v. Rosenthal*, 118 Ariz. 63, 68, 574 P.2d 856, 861 (App. 1978). Because of a State agency's authority and responsibility as an employer, a State agency can establish policies or rules concerning the conduct of its employees while on duty.

State agency authority over employee conduct, however, is not unlimited. For example, an employer cannot impose restrictions that violate an employee's constitutionally protected right to free speech. Cf., *Ruiz v. Hull*, 191 Ariz. 441, 456, 957 P.2d 984 (1998), cert. denied, 525 U.S. 1093 (1999) (English-only requirement violated First Amendment). In the first amendment context, courts analyze whether the "interest in making . . . [the] statement against the interest of the State, as an

employer, in promoting the efficiency of the public services it performs through its employees." *Rankin v. McPherson*, 483 U.S. 378, 387-88 (1987) (internal quotation and citation omitted). The right to bear arms, which is protected by Article II, section 26 of the Arizona Constitution, does not prevent a State agency from restricting employees from possessing weapons while they are on duty.⁽²⁾ The Arizona Constitution does not grant "an absolute right to bear arms under all situations." *Dano v. Collins*, 166 Ariz. 322, 323, 802 P.2d 1021, 1022

(App. 1990) (addressing Arizona constitutional provision). Courts have consistently upheld reasonable regulations of weapons in order "to promote the safety and welfare of . . . citizens." *Id.* at 324, 802 P.2d at 1023. A State agency could determine that prohibiting employees from possessing weapons while on duty is an appropriate safety measure in light of the agency's responsibilities to its employees and to the public. Such a restriction would not violate article II, section 26.⁽³⁾

The various criminal laws concerning weapons also do not prevent an agency from establishing more restrictive policies that apply to their employees while they are on duty. For example, it is illegal to enter a "public establishment" with a weapon if the operator of that establishment has followed the specified procedures to prohibit weapons in the facility.⁽⁴⁾ A.R.S.

§ 13-3102(10). If a State employee works in a "public establishment" and possesses a weapon under circumstances prohibited by this statute, that State employee is subject to criminal penalties, as are members of the public. This criminal statute, however, in no way limits the authority of a State agency to further restrict their employees from possessing firearms while on duty. Any restrictions imposed by the employer are enforced by the employer as a personnel matter rather than through the criminal laws. *Cf., Dallas Area Rapid Transit v. Plummer*, 841 S.W. 2d 870 (Tex. App. 1992) (concerning employee termination for violating policy against weapons).

Given the broad authority over their employees, State agencies may restrict employees from possessing weapons while on duty. One court described a private employer's policy prohibiting employees from possessing weapons at the workplace as a "business judgment" that the court would not "second guess." *Hinton v. Methodist Hosp's., Inc.* 779 F. Supp. 956, 961 (N.D. Ind. 1991) (upholding employee termination for violating company policy). Likewise, State agencies have the authority to make such judgments concerning the conduct of their employees while on duty.

Your opinion request specifically asked about the authority of agencies to restrict the ability of a person holding a concealed weapons permit to possess a weapon while on duty. The Legislature has authorized people who satisfy certain statutory requirements to obtain concealed weapons permits from the Department of Public Safety. See A.R.S. § 13-3112. Only holders of concealed weapons permits may legally carry concealed weapons. A.R.S. § 13-3102(A)(1), (2). The law exempting people with concealed weapons permits from the criminal law against carrying concealed weapons does not expressly or impliedly limit a State agency's authority over its employees. Therefore, a State agency could adopt policies prohibiting employees from possessing weapons while on duty, whether or not the employee has a concealed weapons permit.

Conclusion

A State agency may establish rules or policies prohibiting its employees from possessing a weapon while on duty, and such rules or policies could apply to an employee who has a concealed weapons permit.

Janet Napolitano
Attorney General

1. A State agency includes "any board, commission, department, office or other administrative unit of this State. . . ." A.R.S. § 41-1001(1). The term "agency" refers to the executive branch and does not refer to the Legislature or Judiciary. *Id.* Although this Opinion addresses State agencies, the analysis concerning the authority of agencies over their employees extends to the Legislature and Judiciary.

2. Although the Legislature has not specifically addressed the subject of State employees possessing weapons while on duty, the Legislature has expressly recognized the power of political subdivisions to regulate the use of firearms by their employees

and independent contractors. *See* A.R.S. § 13-3108(C)(4). The Legislature approved this provision in legislation that otherwise generally restricted the ability of political subdivisions to regulate firearms. *See* 2000 Ariz. Sess. Laws ch. 376.

3. The Second Amendment to the United States Constitution, which also protects the right to bear arms, does not apply to the States. *State v. Swanton*, 129 Ariz. 131, 132, 629 P.2d 98, 99 (App. 1981).

4. A "public establishment" is "a structure, vehicle or craft that is owned, leased or operated by this state or a political subdivision of this state." A.R.S. § 13-3102(K)(1).

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