

MEMORANDUM

TO: PERSONNEL MANAGEMENT LIAISONS

DATE: July 2, 1997
REFERENCE CODE: 97-025

THIS MEMORANDUM SHOULD BE DISTRIBUTED TO:

Personnel Management Liaisons
Personnel Officers
Employee Relations Officers

FROM: Department of Personnel Administration
Office of the Director

SUBJECT: Gun Control Act

CONTACT: Michael T. Navarro, Labor Relations Officer
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As you may recall, in March of this year, the Department of Personnel Administration (DPA) issued Personnel Management Liaison Memo (PML) 97-009. In this memo, departments were apprised of the recently-enacted Federal Omnibus Consolidated Appropriations Act of 1997 which amended the Gun Control Act (GCA) of 1968.

Specifically, the amendment makes it unlawful for any person convicted of a "misdemeanor crime of domestic violence" to ship, transport, possess, or receive firearms or ammunition. It also makes it unlawful for any person to sell or otherwise dispose of a firearm or ammunition to any person knowing or having reasonable cause to believe that the recipient has been convicted of such a misdemeanor.

These new prohibitions apply to all employees, including law enforcement officers employed by the State. Consequently, law enforcement officers and other miscellaneous employees who have been convicted of a qualifying misdemeanor will not be able to lawfully possess or receive firearms or ammunition for any purpose, including performance of official duties.

As defined in the GCA, a "misdemeanor crime of domestic violence" means an offense that:

1. is a misdemeanor under Federal or State law; and
2. has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.

This definition includes all misdemeanors that involve the use or attempted use of physical force (e.g., simple assault, assault and battery) if the offense is committed by one of the defined parties. This is true whether or not the State statute or local ordinance specifically defines the offense as a

domestic violence misdemeanor. In addition, the prohibitions apply to persons convicted of such misdemeanors at any time - even if the conviction occurred prior to the new law's effective date, September 30, 1996. The new law does provide one exception for those individuals for whom the conviction has been expunged, set aside, pardoned, or the person has had his or her civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense) AND the person is not otherwise prohibited from possessing firearms or ammunition.

In view of the above, each State agency employing law enforcement or miscellaneous employees who, in the normal course of their duties, are required to be armed or have access to firearms or ammunition, was asked to take affirmative steps to identify those employees subject to these prohibitions. Employees subject to these prohibitions must immediately relinquish State-issued firearms and ammunition in their possession to the employer. Furthermore, if the employee is not required to carry a firearm in his/her normal course of duties, but has ongoing access to firearms and ammunition, the employer must remove the employee from that work setting. In addition, employees should be apprised that these prohibitions also apply to any other firearms or ammunition in their possession deemed to be private property. It is suggested that employees discuss necessary steps to ensure conformance with the Federal statutes with private counsel or local law enforcement agencies.

The State has continued to assess the implications of this statute and the Governor's Office has determined that as an employer, the State shall implement these requirements in a uniform manner. In keeping with this policy, every State agency is to immediately take the following steps:

1. All employees potentially affected by this statute must be notified of its provisions by the employing State agency. Every State agency shall develop a self-certification form similar to the enclosed sample, Attachment A. Every employee identified as being affected by the Federal statute is to fill out the required form and return it to a central locale designated by the employing State agency. Every State agency shall take the necessary steps to ensure that all such records are periodically updated and kept current.
2. Every employee who self-identifies as having been convicted of a misdemeanor crime of domestic violence as defined by the provisions of the statute, must be immediately removed from a position that requires access to firearms or ammunitions. Such removal may be in a manner determined by the agency (e.g., transfer, reassignment) or under the provisions of Government Code Section 19585, if firearms access is required by the class specification.
3. An employee who self-identifies as possibly being in the affected category as defined by the statute, should so inform his/her superiors by means of the self-certification form and the employing State agency should immediately remove the employee from any position that potentially is violative of the statute until such time as his/her status is confirmed. Depending on the outcome of the investigation, appropriate action should be taken, either permanently removing the individual from such a position or returning the individual to his/her former duties.
4. In addition to the above, all employees who are identified by each agency as being in a position that requires access to firearms and ammunition, must be reported to the Department of Justice, Bureau of Criminal Information and Analysis, for a search of the history files. To access this information, agencies should submit a request on a 3-1/2 inch diskette in a prescribed format. Please contact Ms. Shelly Rife in the Bureau of Criminal Identification and Information at (916) 227-3841 to obtain details concerning the required

format. Please be aware that State agencies interested in determining the status of their peace officers are prohibited from utilizing the California Law Enforcement Telecommunications System to access State summary criminal history information.

Once a State agency has identified all employees potentially affected by this new statute, each agency must notice the affected exclusive representatives and offer to meet and confer on the self-certification form and any policies developed to implement the Federal law.

DPA has initially noticed all Supervisory Organizations and Exclusive Representatives (see Attachment B). Impact bargaining with the unions, will be delegated to individual State agencies. In the meantime, should you have questions concerning any of the above, please do not hesitate to contact Michael Navarro of the Labor Relations staff at (916) 324-0505 or Marguerite Shea of our Legal staff at (916) 324-0512.



David J. Tirapelle
Director

Attachments



CALIFORNIA DEPARTMENT OF _____

Certification of Receipt of Memorandum

Subject: NEW LEGISLATION; FEDERAL FIREARMS PROHIBITIONS

This certification shall be signed and dated by all Department of _____ peace officers and any nonpeace officer employees assigned to areas that, as part of their duties, handle, possess, purchase, repair, test or come in contact with firearms or ammunition. The immediate supervisor is responsible for ensuring completion of this certification within 60 days of the date of the subject memorandum, inserting the original copy in the employee's official personnel file and providing a copy to the employee.

Employee Certification

I certify that I received a copy of the subject memorandum regarding legislated federal firearm prohibitions which may relate to my eligibility to continue to perform peace officer or other duties related to possession or handling of firearms. I further understand that I am responsible for determining if I am in a prohibited class pursuant to this legislation. I understand I must report any such convictions to my supervisor even if I have previously reported such convictions and/or been previously disciplined.

Check One Box Only

- I declare under penalty of perjury that *I am covered by* the restrictions described above, and may not possess a weapon on or off duty.
- I declare under penalty of perjury that *I may be covered by* the restrictions described above.
- I declare under penalty of perjury that *I am not covered by* the restrictions described above, and may possess a weapon on or off duty.

Employee's Name (print)

Employee's signature

Date

Employee Refuses to Sign Certification

Employee refused to sign the certification. A copy of the subject memorandum was given to the employee on this date.

Supervisor's Name (Print)

Supervisor's Signature

Date

Immediate Supervisor's Verification

Date Received: _____

Employee Classification: _____

Employee's Reporting Unit: _____

Supervisor's Name (print)

Supervisor's Signature

Date

Original - Employee's Official Personnel File
Copy - Employee

State of California

MORANDUM

TO: Supervisory Organizations
Exclusive Representatives

DATE: July 1, 1997

FROM: Department of Personnel Administration
Labor Relations Division

SUBJECT: Gun Control Act

As you will recall, in March of this year, the Department of Personnel Administration (DPA) noticed all supervisory organizations and exclusive representatives of our intent to immediately begin implementation of a new Federal statute. Specifically, you were advised that the recently-enacted Federal Omnibus Consolidated Appropriations Act of 1997 amended the Gun Control Act (GCA) of 1968. The amendment makes it unlawful for any person convicted of a "misdemeanor crime of domestic violence" to ship, transport, possess, or receive firearms or ammunition. It also makes it unlawful for any person to sell or otherwise dispose of a firearm or ammunition to any person knowing or having reasonable cause to believe that the recipient has been convicted of such a misdemeanor.

These new prohibitions apply to all employees, including law enforcement officers employed by the State. Consequently, law enforcement officers and other miscellaneous employees who have been convicted of a qualifying misdemeanor will not be able to lawfully possess or receive firearms or ammunition for any purpose, including performance of official duties.

As defined in the GCA, a "misdemeanor crime of domestic violence" means an offense that:

1. Is a misdemeanor under Federal or State law; and
2. Has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.

This definition includes all misdemeanors that involve the use or attempted use of physical force (e.g., simple assault, assault and battery) if the offense is committed by one of the defined parties. This is true whether or not the State statute or local ordinance specifically defines the offense as a domestic violence misdemeanor. In addition, the prohibitions apply to persons convicted of such misdemeanors at any time, even if the conviction occurred prior to the new law's effective date, September 30, 1996. The new law does provide one exception for those individuals for whom the conviction has been expunged, set aside, pardoned, or the person has had his or her civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense) AND the person is not otherwise prohibited from possessing firearms or ammunition.

In view of the above, each State agency employing individuals who in the normal course of their duties are required to be armed or have access to firearms, were instructed to take affirmative steps to determine if any employee is subject to these prohibitions. If an employee is so identified, the employing State agency must take remedial to ensure conformance with the Federal statute.

The State has continued to assess the implications of this new Federal statute and the Governor's office has determined that as an employer, the State should implement these Federal requirements in a uniform manner. Consequently, every State agency that employs individuals who in the normal course of their duties are required to be armed or have access to firearms or ammunition, must immediately take the following steps:

1. All employees potentially affected by this statute must be notified of its provisions by the employing State agency. A self certification form is to be developed similar to the enclosed sample, Attachment A. Every employee identified as potentially being affected by the Federal statute is to fill out the required form and return it to a central locale designated by the employing State agency. Steps must be taken by the agency to ensure that all such records are periodically updated and kept current.
2. Every employee who self identifies as having been convicted of a misdemeanor crime of domestic violence as defined by the provisions of the statute must be immediately removed from a position that requires access to firearms or ammunitions. Such removal may be in a manner determined by the employer (e.g., transfer, reassignment) or under the provisions of Government Code 19585, if firearms access is required by the class specification.
3. An employee who self-identifies as possibly being in the affected category as defined by the statute, should so inform his/her superiors by means of the self-certification form and the employing State agency should immediately remove the employee from any position that potentially is in violation of the statute until such time as his/her status is confirmed. Depending on the outcome of the investigation, appropriate action will follow.
4. In addition to the above, all employees who are identified by the State as being in a position that requires access to firearms and/or ammunition, will be reported to the Department of Justice, Bureau of Criminal Information and Analysis for a search of the history files.

Please consider this document as formal notice of the State's intent to immediately begin implementation of this Federal statute in accordance with the above. This notice supersedes the previous notice dated March 20, 1997.

The Department of Personnel Administration has delegated implementation of these new requirements to each department. Departments have been instructed to notice and meet and confer with you on the self-certification form and any policies developed to implement this Federal law.

Should you have any general questions regarding the above, please contact the DPA Labor Relations Officer assigned to the bargaining unit.



Michael T. Navarro
Labor Relations Officer

Attachments