

CONSIDERATIONS FOR HR 218 IMPLEMENTATION

The Law Enforcement Officers Safety Act of 2004 (LEOSA), Public Law 108-277, codified at 44 U.S.C. sec 926 B & C, permits certain eligible current and retired law enforcement officers the right to carry a concealed weapon throughout the United States. The passage of this law has raised a number of questions regarding the specific details for active duty officers, retired officers, and active and retired officers visiting our state.

ACTIVE DUTY OFFICERS

Active duty officers must meet the following qualifications:

- Have successfully completed the department's firearms qualification course within the past 12 months.
- Not be subject to any disciplinary action by the agency.¹
- Not be under the influence of alcohol or drugs while carrying the weapon.
- Not prohibited from Federal or state law from possessing a firearm.
- Your departmental policy may contain restrictions on carrying department weapons out of state. The law does not supersede your department policies regarding department issued weapons. However, your department cannot restrict a current law enforcement officer's right under LEOSA to carry a concealed, personally-owned off duty firearm.
- Annual qualification and a commission card are adequate documentation.
- NOTE: LEOSA does not apply to reserve officers.

RETIREEES

Retirees must meet the following qualifications:

- Retired in good standing as a law enforcement officer.
- Retired for a reason other than mental instability.
- Was employed as a law enforcement officer for 15 years or more prior to retirement or retired due to a service-connected disability.
- Has a non-forfeitable right to retirement benefits.
- Cannot be under the influence of alcohol or other intoxicating or hallucinatory drug or substance while carrying the weapon.
- Cannot be prohibited by Federal or state law from having a firearm.
- During the past 12 months, the retiree has, at his her own cost, met the standards for training and qualification for active law enforcement officers² to carry a firearm.

The standard for qualification

- For retirees who live in Washington, there is no ongoing standard for active duty officers. WASPC suggests you use your current qualification program or the Basic Handgun Proficiency Course that CJTC requires for law enforcement certification for new or lateral police officers. If the retiree does not live in Washington, the retiree must qualify to the standard of the state where they live.

Locations to Qualify

- Departments may choose to allow retirees from their own or other agencies to qualify at the same location where active officers qualify. The Department may charge retirees a reasonable fee for allowing them to use the course and issuing appropriate certification if

¹ IACP Legal Officers Section has interpreted this language to apply to a situation when an officer is disciplined to such an extent that he is temporarily disqualified by the officer's agency from working as a police officer and carrying a weapon. (See Police Chief Magazine, Oct. 2004, article by Craig Ferrell, General Counsel, Houston Police Department.)

² The qualification standard is the Basic Handgun Proficiency Course for certification through the Criminal Justice Training Commission for both the Basic Law Enforcement Academy and Equivalency Academy. A copy of that standard is attached to this memo.

the retiree qualifies. Departments are not required to allow retirees to qualify on their range.

Documentation to Give to the Retirees

In order to be covered by this law retired officer must carry the following items:

- Photo ID issued by the department from which the officer retired.
- A certification issued by an appropriate entity in the state where the retiree resides that the retired officer has been tested to meet the standards established by the state for active law enforcement officers to carry a firearm. This certification must indicate the type of firearm on which the retired officer qualified.³ This certification can be a separate letter or card issued by the agency or it could be accomplished by issuing a new retirement photo ID card each time the retired officer qualifies.
- Attached is a sample information bulletin to give to your retired officers.
- Some sources suggest requiring retirees sign a liability waiver and release as a condition of receiving any qualification verification.

Police Officers from Other States:

- Active duty and retired police officers from jurisdictions outside of Washington State are ordinary citizens while visiting Washington and possess no police powers. HR 218 does not grant any right to exercise police powers.
- Officers living in Washington who retired from other states should qualify with the Basic Handgun Proficiency Course.

The law does not do the following:⁴

- Grant active or retired officers any law enforcement authority.
- Allow active or retired officers to fly armed.
- Allow active or retired officers to possess a weapon in any place where there is a local law that prohibits or restricts possession of a concealed weapon – for example certain government buildings, parks, schools, courthouses, jails etc.

Review the options with your risk management department and legal advisor.

Additional Resources:

AELE Model Policy: www.aele.org/hr218specimen.html

U.S. Attorney General Memo on application of LEOSA, January 2005

<http://www.usdoj.gov/olp/agmemo01312005.pdf>

Arizona Department of Public Safety LEOSA Information: www.azdps.gov/cc/safetyAct.asp

Police Chief Magazine "Chiefs Counsel" October 2004

IACP 2005 presentation on HR 218 <http://www.aele.org/ferrell2005.pdf>

³ It would be advisable to make sure your dispatch center has a list of retirees who have been issued annual qualification letters or cards from your agency in case they need to be verified by an out-of-state agency.

⁴ It is suggested that you adopt a policy or issue a bulletin to your active duty officers setting out these rules. There is a great deal of misinformation about the effects of this law on law enforcement sites on the internet.