

Secondary Employment: Renting a Cop – What Are the Concerns

Description

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Secondary policing, private duty, or off-duty work is the practice by which municipalities allow their sworn officers to moonlight as private security during off hours. Officers are generally allowed to wear their official uniforms, carry department-issued weapons, and maintain all the police powers of an active, on-duty police officer, which includes the power to: search, seize, arrest, and use deadly force. The concern, however, is that they execute their powers as a police officer under the direction of a private entity. Let's call it what it is – renting a cop. So, what's the concern? The concern is that many police departments and officers earn a considerable commission for this work, which has the potential for corruption and liability issues. Departments should also be concerned about insurance coverage, equipment usage and fatigue of officers.

The demand across the country for law enforcement security services is high. Officers enjoy the benefit of earning a secondary income, and police departments enjoy the benefit of earning administrative fees. The focus of this article is the organizational structure of secondary employment, with the goal of limiting disciplinary and liability issues that will directly affect the department's operations. As such, our discussion should start with the department's need to develop an effective process within policy that will clearly identify the process, rules, and organizational structure related to secondary employment.

Policy

According to the Bureau of Justice Statistics, eighty-three (83%) percent of all the nation's police departments have written policies for secondary employment.^[1] A police department's policies and procedures provide the agency with core liability protection. Policies that are comprehensive and current are the backbone of effective and constitutional policing. A police department's policies and procedures shall reflect and express the department's core values and priorities, while providing clear direction to ensure that officers lawfully, effectively, and ethically carry out their law enforcement responsibilities. It is not enough, however, to simply have sound policies. Officers must be trained on the policies, supervisors must hold officers accountable, and, when the policies are violated, a sound disciplinary process should be engaged.

A Secondary Employment policy should begin with clarifying the question of “who is the officer working for” when working in a secondary employment position. The mere fact that a person is employed by a police department does not transform all their actions into law enforcement actions, even if they relate to policing. We must recognize that a police officer, while not on duty for the police department, still has the same responsibilities and power to affect arrests as a police officer. Officers in secondary employment are usually working as they would on duty, and they will need to take action to keep themselves safe. Does your agency require secondary employers to indemnify the department, or even sign a release discharging the City or Town from all legal responsibility related to the secondary employment?

Prohibiting Secondary Employment

There must be a clear section in the policy identifying prohibited secondary employment positions, which may include, but are not limited to:

- Performing tasks other than those of a law enforcement nature while in police uniform.
- Professional sporting events – risk of serious injury and mass demonstrations
- Repossessing or towing, process server, bill collector etc.
- Employment that requires access to police info
- Assisting in case preparation for defense of criminal actions
- Selling or dispensing intoxicating beverages
- Any involvement in the marijuana industry

1099 Employee

Some municipalities allow their employees to moonlight freely. Under certain circumstances, the officer is considered an independent contractor to the secondary employer, working for that employer as a 1099 employee. If the police officer is injured while moonlighting, generally, he will not be covered by worker's compensation unless the officer is acting under color of law. In that case, the secondary employment ends the instant the officer switches from acting as a security guard, for example, to a role in which he/she assumes his/her police powers. If the police officer affects an arrest for shoplifting while working as a security guard, for example, then his role changes, as well as that of his employer. Under those circumstances, the officer has reverted to being the municipality's employee. The policy must also clearly state that officers are not allowed to receive cash payments for work conducted as a secondary employee.

Insurance

Another consideration is that if the officer slips, trips, or falls, and is injured while moonlighting, the officer is not covered by the insurance of either the municipality or the secondary employer. The officer would have to rely on his personal health insurance coverage.

Industry Standards

The best way to evaluate your department's operations is to take a look at issues that have arisen within other departments in their secondary employment scenarios, and review the lessons learned. As always, we believe the most difficult part in drafting policy is determining the best method for assessing your operations, including where you are and what topics you can address for liability protection. In the subject of secondary employment, we recommend a review of the "Findings" for the New Orleans Police Department, and the progress the department has made to rectify the issues raised in the findings.

To summarize, the U.S. DOJ's Civil Rights Division identified issues with secondary policing during its 2011 investigation of the New Orleans Police Department. The Findings Report identified a broadly troubling "Paid Detail" system. A review of the NOPD's Detail system, as currently structured, revealed the following concerns – that it:

- 1) Drastically undermines the quality of NOPD policing;

- 2) Facilitates abuse and corruption by NOPD officers;
- 3) Contributes to compromising officer fatigue;
- 4) Contributes to inequitable policing by NOPD; and
- 5) Acts as a financial drain on NOPD rather than fulfilling its potential as a source of revenue for the City and Department.

As discussed above, there needs to be specific policies related to secondary employment. The detail system can contribute to poor policing, as was evidenced in NOPD, where some officers were more committed to their details than their work as police officers. Department leaders must be aware that with poor documentation, no restrictions on officers soliciting work, and officers being allowed to negotiate their compensation, the opportunity to extort businesses and individuals exists. Department executives must evaluate their current system to ensure that secondary employment is not undermining the department's operations.

Final thoughts on things to consider:

- Do you have an effective policy?
- Can officers negotiate wages?
- Do officers use department equipment while working details?
- Is the department charging to cover wear and tear on equipment, such as cars?
- What are the insurance coverage/workers' compensation issues if officers are injured?
- Do you have an effective accountability record-keeping system?
- Is your system centralized in operations?
- Are your supervisors inspecting and auditing the detail operations?

Research

- AELE Research <http://www.aele.org/law/Digests/empl137.html>
- New Orleans –
 - Findings Letter https://www.justice.gov/sites/default/files/crt/legacy/2011/03/17/nopd_report.pdf
 - Agreement https://www.justice.gov/sites/default/files/crt/legacy/2013/01/11/nopd_agreement_1-11-13.pdf
 - NOPD Policy <https://www.nola.gov/nola/media/OPSE-Media/Policy.pdf>
- Seattle Police – Secondary Employment Policy – <https://www.seattle.gov/police-manual/title-5—employee-conduct/5120—secondary-employment>

1. <https://www.bjs.gov/content/pub/pdf/lpd07.pdf> (page 13) ?

Date Created

08/08/2017