

Secondary Employment Renting a Cop – What Are the Concerns?

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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 weapons issued to them, maintain all of powers of an active, on-duty police officer and can search, seize, arrest & use deadly force. The concern 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 that leads the discussion is that many police departments and officers earn a considerable commission for this work which has a potential for corruption and liability issues.

The demand across the country for law enforcement security services is high and officers are always happy with an income increase and police departments are earning administrative fees. The focus of this article is the organizational structure of secondary employment to limit the discipline and liability issues that will directly affect the operation of secondary employment. Let's start our discussion with departments' need to focus on the development of an effective process with a policy that will clearly their rules and organization.

Policy

According to the Bureau of Justice Statistics, eighty-three percent of all the nation's police departments have written policies for secondary employment. 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 should 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.

The policy should begin with clarifying the question of who the officer is working for while working in a secondary employment. 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 arrest 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 and even sign a release to the City or Town from all legal responsibility that could go wrong during the secondary employment?

Prohibiting Secondary Employment

There needs to be a clear section identifying prohibited secondary employment recommended in the following areas:

- Performing tasks other than those of a LE nature while in police Uniform.
- Professional sporting events – risk of serious injury
- Repossessing or towing, process server, bill collector etc.
- Employment which requires access to Police information
- Assisting in case preparation for defense of criminal action
- Sell or dispense intoxicating beverages
- Marijuana industry

1099 Employee

Some municipalities allow their employees to moonlight freely and consider that them to be 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 changes from acting as a security guard, for example, and has assumed his or her police powers. If the police officer affects an arrest for shoplifting while working as a security guard, then his role changes, as well as his employer. He has now reverted to being the municipality's employee. The clear language of the policy should clarify that officers are not allowed to receive case payments for work conducted.

Insurance

If the officer slips, trips or falls and is injured while moonlighting, the officer is not covered by the municipality or the secondary employer. The officer would have to rely on his personal health insurance.

Industry Standards

The best way to evaluate your departments operations is to review departments that have experienced issues in their secondary employment and review the lessons learned. As always, we believe the most difficult part is determining the method to assess your operations and determine 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 those findings.

The U.S. DOJ's Civil Rights Division identified issues with secondary policing during its 2011 investigation of the New Orleans Police Department. The finding report identified a broadly troubling than its Paid Detail system. NOPD's Detail system, as currently structured found the following concerns:

- 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
- 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 when there is evidence that some officers in NOPD were more committed to their details than their work as a police officer. Department leaders must be aware that with poor documentation, no restrictions on officers soliciting work and officers being allowed to negotiate their compensation, the individual does have the opportunity to extort businesses and individuals. Executives must evaluate to ensure that the secondary employment is not undermining the department 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 is the insurance coverage/ workers compensation issues when 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>

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