



CALIFORNIA RESERVE PEACE OFFICERS ASSOCIATION

Law Enforcement Officers Safety Act – 2018 Update

This article provides an update on the status of our efforts to work with California law enforcement agencies to gain their compliance with the Law Enforcement Officers Safety Act of 2004 (18 U.S. Code §§ 926B, 926C) (“LEOSA”). LEOSA was passed by the U.S. Congress in 2004 to provide means of protection for active and retired law enforcement officers (“LEOs” and “RLEOs,” respectively) who face threats associated with encountering vindictive criminals in the officers’ civilian and retired off-duty life. As the U.S. Court of Appeals for the District of Columbia Circuit recently held in the case of *Duberry v. District of Columbia*, “Congress used categorical language . . . to preempt state and local law to grant qualified law enforcement officers the right to carry a concealed weapon.”¹

LEOSA authorizes LEOs and RLEOs to carry a concealed firearm off-duty within their state and anywhere in the nation, subject to certain limited exceptions.² The CRPOA published a legal memo in 2013 explaining in detail the basis upon which California reserve officers clearly satisfy the general duty and authority eligibility requirements of LEOSA.³ Reserve officers must still meet certain individual eligibility requirements, including that they be in compliance with their agency’s firearms qualification requirements, not be subject to any disciplinary action, not be prohibited by Federal law from receiving a firearm, and not be under the influence of alcohol or drugs.⁴ Many California law enforcement agencies, both large and small (most recently the Los Angeles County Sheriff’s Department [see Appendix B hereto]), have already acknowledged that LEOSA applies to any reserve peace officer who meets the statute’s individual requirements.⁵

¹ 824 F.3d 1046, 1052 (2016); *see also id.* at 1054 (“LEOSA imposes a mandatory duty on the states to recognize the right it establishes. . . . This is evident from the categorical preemption of state and local law standing in the way of the LEOSA right to carry.”).

² The geographic scope of the right is subject to the limitation set out at sub-section (b) of §§ 926B and 926C, which provides that LEOSA carry does not supersede “the laws of any State that— (1) permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property; or (2) prohibit or restrict the possession of firearms on any State or local government property, installation, building, base, or park.”

³ *See* Appendix A: CRPOA Legal Memo. The case law and other relevant authorities cited in the CRPOA Legal Memo remain current in their analysis and findings, and nothing in the case law since 2013 changes our conclusion in that memo that LEOSA applies to reserve peace officers on the same basis as full-time law enforcement officers.

⁴ *See* 926B(c)(4), (3), (6), (5); 926C(c)(6), (7). Section 926C, applicable to RLEOs, also requires retired officers to have served for 10 years or more, separated from their agency in good standing, and not been found to be “unqualified for reasons relating to mental health.” 926C(c)(1), (3), (5).

⁵ *See, e.g.,* Appendix B: Notice from the Office of the Sheriff, County of Los Angeles, dated Aug. 15, 2018 (“After a careful review, it is our belief that the definition of a ‘qualified law enforcement officer’

Critically, LEOSA “does *not* afford discretion” to state or local authorities to decide who is and who is not a “qualified” LEO or RLEO.⁶ The *Duberry* court was particularly clear on this: Congress “contemplated *no* state reevaluation or redefinition of [LEOSA’s eligibility] requirements” to suit state or local policy preferences or for any other reason.⁷ There is no role for states, municipalities, or law enforcement departments themselves to “allow for” (much less prohibit) LEOSA carry,⁸ and LEOs or RLEOs⁹ who qualify under the federal criteria may carry without regard to their department’s prior approval. Nor is there any federal mechanism that issues “LEOSA licenses” or otherwise approves or qualifies LEOs or RLEOs. Under LEOSA’s unique structure, officers may exercise their rights and carry under LEOSA authority simply by virtue of their satisfaction of the statutory criteria and by carrying their department-issued ID.¹⁰

Another critical aspect of the recent *Duberry* decision was the court’s affirmance that the “individual right” granted by LEOSA is fully enforceable under the civil rights statute 42 U.S.C. § 1983 (“Section 1983”).¹¹ That is, officers may bring a lawsuit under Section 1983 to challenge any acts by state or local authorities (or “under color” of any such authority) that in any way deprive them or “cause” them to be deprived of their LEOSA right to carry.¹² Such deprivations are “presumptively remediable under Section 1983.”¹³ The process is no different than what reserve officers would be entitled to under Section 1983 if they suffered infringement of any other constitutional or federal law rights at the hands of their departments, for example if they were subject to unlawful discrimination under Title VII. While the plaintiffs in the *Duberry* elected to proceed seeking only declaratory and injunctive relief, various forms of damages are typically available under Section 1983 for established violations of federal rights and 42 U.S.C. § 1988

and a ‘qualified retired law enforcement officer’ under LEOSA applies to both full-time and reserve law enforcement officers (whether Level ID, IND, II or III) who meet the statutory definition and requirements.”). Many other California law enforcement agencies, too numerous to mention here, have made this same determination over the last 14 years since LEOSA’s passage.

⁶ *Duberry*, 824 F.3d at 1053 (emphasis added).

⁷ *Id.* at 1054 (emphasis added).

⁸ Some states have chosen to *facilitate* the exercise of LEOSA rights by issuing LEOSA-specific ID cards to officers. These cards and associated procedures serve to protect LEOSA-carrying officers from mistaken arrest by local police officers who may not be aware of LEOSA, and, to some extent, to protect officers who are *not* LEOSA eligible for some statutory reason from carrying mistakenly and thus facing not just arrest but prosecution. Such cards and procedures, however, do *not* prevent qualified LEOs and RLEOs from carrying under LEOSA alone, that is by virtue of their qualification and their department ID, “notwithstanding” the state’s LEOSA ID process. 926B(a), 926C(a).

⁹ In order to carry under LEOSA, RLEOs must also carry two documents: a “retirement ID” from their department and a separate certification document reflecting their firearms (range) qualification status. 926C(d)(2).

¹⁰ An officer who erroneously, mistakenly, or insincerely purports to carry under LEOSA while not fully satisfying the statutory criteria would be subject to prosecution for violation of state or local concealed carry restrictions. *See, e.g., Ass’n of N.J. Rifle & Pistol Clubs, Inc. v. Port Auth. of N.Y. & N.J.*, 730 F.3d 252 (3d Cir. 2013); *Torraco v. Port Auth. of N.Y. & N.J.*, 615 F.3d 129 (2d Cir. 2010).

¹¹ *Duberry*, 824 F.3d at 1053.

¹² *Duberry*, 824 F.3d at 1053-55.

¹³ *Id.* at 1054.

typically requires a government defendant to pay the legal fees of any person who is forced to use Section 1983 to vindicate his or her rights.

CRPOA remains concerned that a number of law enforcement agencies in California continue to maintain policies and practices that broadly prohibit the carrying of firearms off-duty by reserve officers, thereby infringing the exercise of LEOSA rights. Police and sheriffs' departments typically do this by requiring reserve officers to obtain a separate concealed carry license from the department or another authority (*e.g.*, "no reserve officer will be permitted to carry a concealed firearm while in an off-duty capacity, other than to and from work, except those reserve officers who possess a valid CCW [concealed weapon] permit"), even though reserve officers have the right to carry off-duty under LEOSA alone. Other policies institute precisely the kind of highly discretionary "approval" procedures that the *Duberry* court made clear would be inconsistent with the nature and scope of LEOSA.¹⁴

The injunctive prohibitions in these sorts of policies act to deprive reserve officers of their "presumptively remediable" individual LEOSA rights granted by Congress. Based on the facial language of the policies and how they are being implemented, we believe that many California law enforcement agencies may currently face legitimate and significant civil liability under Section 1983 because of the limitations or outright prohibitions relative to the exercise of LEOSA rights by their reserve police officers and reserve deputy sheriffs.¹⁵

That said, we prefer to avoid litigation and work collaboratively with law enforcement agencies to educate them on LEOSA and their mandatory duty to comply with it (with a view towards persuading these agencies to change their policies to comply with LEOSA relative to their reserves). The CRPOA remains hopeful that a process of consultation and negotiation can be used to reach a consensus understanding of the proper requirements of LEOSA that will lead to the policy changes necessary to fully protect the federal law rights of reserve peace officers while still respecting the policy objectives of our employing agencies to the maximum extent possible. As already noted, many jurisdictions have already moved to modify their policies with respect to both their regular and reserve officers to conform with a correct understanding of LEOSA without any

¹⁴ The following is an example of the type of policy language that inappropriately purports to allow for off-duty carry (via a CCW license) only at the department's discretion:

The decision to issue a concealed weapon permit will be made by the Police Chief with input from the Reserve Program Coordinator and Range staff. In issuing a concealed weapon permit a reserve officer's qualification will be individually judged. A reserve officer's dedication to the program and demonstrated performance, among other factors, will be considered before a concealed weapon permit will be issued.

Although such approval processes concern the issuance of a concealed weapon license as opposed to the exercise of LEOSA rights generally, the process would only be consistent with LEOSA if it was built exclusively on LEOSA criteria, akin to the state procedures mentioned in footnote 8.

¹⁵ An additional problem we have identified is that a somewhat common agency firearms policy appears to maintain that only "active, full-time officers" may rely on the provisions of § 926B in order to be "carry a concealed firearm in all other states." This is incorrect, and while the policy provision does not expressly prohibit reserve officers from relying on LEOSA authority, we believe that many departments' implementation and enforcement of this policy is furthering the deprivation of LEOSA rights in practice.

difficulty and we are optimistic that our continuing efforts to gain LEOSA compliance in every California law enforcement agency employing reserve peace officers will ultimately succeed.

From the discussions CRPOA has had with some law enforcement agencies, we know that this will not always be an easy process. In particular, CRPOA notes that in some cases individuals outside of the agencies—such as city attorneys, county counsels and other executive and political staff—apply pressure to limit the proper appreciation of LEOSA’s scope.¹⁶ The CRPOA is committed to working as necessary to address and resolve these challenges in order to advance the safety of our members when they are off-duty.

We again request our members to keep us engaged and involved with their agencies in cases where LEOSA compliance remains elusive. Should you find yourself in that situation, please reach out to our General Counsel, Jim René (rene@crpoa.org), with your thoughts and concerns.

¹⁶ A common refrain we have encountered is that the off-duty carry of firearms by reserves poses a risk of civil liability for the associated agency. CRPOA is not aware of even a single incident anywhere in the country where the actions of an officer carrying under LEOSA led to imposition of civil liability on a police or sheriff’s department—and certainly no cases involving a California reserve peace officer, all of whom are rigorously trained and qualified. We further note that this same objection to LEOSA was raised in the debate leading up to the passage of LEOSA but was specifically rejected by Congress.

ANNEX A



CALIFORNIA RESERVE PEACE OFFICERS ASSOCIATION

OFFICER SAFETY AND CALIFORNIA RESERVE PEACE OFFICERS:

*THE LAW ENFORCEMENT OFFICERS SAFETY ACT AND
CALIFORNIA ASSEMBLY BILL 703*

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October 2013

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The California Reserve Peace Officers Association has published its views on the Law Enforcement Officers Safety Act (LEOSA), which can be found on the CRPOA website at www.crpoa.org. This article provides an update on LEOSA as well as our analysis of California concealed carry laws applicable to reserve peace officers with the enactment of California Assembly Bill 703, which was signed into law on September 9, 2013, and becomes effective on January 1, 2014.

ACKNOWLEDGMENTS

CRPOA wishes to thank The Sheepdog Academy (www.hr218leosa.com), which has graciously granted us permission to reprint its Table of Authorities appearing herein as Exhibit B. The Sheepdog Academy has trained approximately 250 law enforcement agencies and thousands of law enforcement officers from Federal, State and local law enforcement agencies and notes in its training materials that LEOSA applies with equal force to full-time and reserve peace officers alike.

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General Counsel, California Reserve Peace Officers Association
October 18, 2013

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***OFFICER SAFETY AND CALIFORNIA RESERVE PEACE OFFICERS:
THE LAW ENFORCEMENT OFFICERS SAFETY ACT AND
CALIFORNIA ASSEMBLY BILL 703***

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October 2013

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I. Introduction

The California Reserve Peace Officers Association interacts frequently with California law enforcement agencies with regard to officer safety issues, including the personal protection of reserve peace officers when they are off-duty. Over the years, many agencies have authorized and indeed encouraged their reserve police officers and deputy sheriffs to carry a firearm off-duty for the same reasons as they recommend to their full-time officers and deputies. Others have not; in fact some agencies have forbidden it. Recent Federal and State legislation aimed at ensuring that law enforcement officers have the option to protect themselves off-duty by allowing them to carry a concealed firearm reflects the recognition by our lawmakers at both the Federal and State levels that peace officers, including reserve peace officers, face significant officer safety threats on-duty which follow them off-duty. This article explores that legislation in depth.

In 2004, the U.S. Congress enacted and President George W. Bush signed into law the Law Enforcement Officers Safety Act of 2004 (“LEOSA”). In September, 2013, the California legislature enacted and Governor Edmund G. Brown Jr. signed into law Assembly Bill 703 (“AB 703”), which amended the California Penal Code to mandate the issuance of endorsements on retirement credentials for eligible retired Level I California reserve peace officers, the effect of which exempts them from California’s concealed firearm laws. Through CRPOA’s discussions with its members and numerous California law enforcement agencies on these issues, CRPOA has learned that LEOSA remains frequently misunderstood as well as subject to interpretations which find no support in the text of the statute or the legal precedents applying it. CRPOA also recognizes that the interplay between Federal and State law

as set forth in LEOSA and the California Penal Code with respect to carrying concealed firearms by reserve peace officers remains perplexing for many law enforcement officers and their employers.

This article provides an update to CRPOA's previous articles on LEOSA which appear on our website at www.crpoa.org. This article also provides an analysis of AB 703. LEOSA is devoid of any regulatory federal administrative agency's rules or regulations. The words of the statute itself, various court opinions, LEOSA's legislative history as found in the House and Senate Reports on LEOSA, States' Attorneys General opinions and selected Federal and State agency policies and pronouncements provide ample guidance on LEOSA, its meaning and how the courts will apply that law in actual cases. In 2012, a new LEOSA case arose in Washington, D.C., in which the United States Attorney for the District of Columbia shed light on the broad reach of LEOSA and gave a definitive view on the part of the U.S. Department of Justice as to how LEOSA likely will be enforced at the Federal law enforcement level. This view carries particular weight given that the U.S. Attorney for the District of Columbia oversees Federal law enforcement for Washington, D.C., a government municipality at the center of firearms legislation and policy and a jurisdiction well-known for its rigorous and stringent firearms laws.

Finally, significant discussion appears in this article with respect to a legal analysis of two key issues which seem to have emerged from a minority of California law enforcement agencies which take the view that reserve peace officers are not entitled to LEOSA's protections because they are not "employees of a governmental agency" or they do not have "24-hour peace officer authority." The legal analysis set forth below addresses both of those issues in depth, not with a view towards advocating a point of view but rather by presenting applicable legal authorities on both of those issues. In short, there is no legal authority supporting either of those views. While a growing list of California and other Federal, State and local law enforcement agencies have now implemented policies and practices consistent with LEOSA, various agencies still have not, particularly as regards California reserve peace officers. In light of the foregoing, and with the enactment of AB 703, this article analyzes both laws in detail.

II. Background

President George W. Bush signed LEOSA into law on July 22, 2004. Originally introduced as House Resolution 218 (H.R. 218) and codified within the provisions of The Gun Control Act of 1968 as Chapter 44 of Title 18 of the United States Code, §§ 926B and 926C, LEOSA defines two classes of law enforcement officers, active and “retired,” both of which are exempt from the concealed firearms carry laws of the 50 States (as well as the District of Columbia, Puerto Rico and U.S. Possessions) provided they meet LEOSA’s requirements and subject to certain exceptions. On October 10, 2010, President Obama signed into law Senate Bill 1132 (codified as The Law Enforcement Officers Safety Act Improvements Act of 2010 and referred to below as the “Improvements Act”), which, among other things, amended LEOSA by eliminating “retirement” and replacing it with “separation from service” in the definition of “qualified retired law enforcement officer.” In 2013, the National Defense Authorization Act of 2013 amended LEOSA to provide that military and Department of Defense police and civilian law enforcement officers with apprehension authority under the Uniform Code of Military Justice are LEOSA-eligible. The text of LEOSA, as amended by the Improvements Act and 2013 amendments and as currently in effect, is reproduced in its entirety in Exhibit A hereto.

III. Analysis

A. LEOSA Preempts State and Local Laws

If an active or separated law enforcement officer qualifies under LEOSA, then "notwithstanding any other provision of the law of any State or any political subdivision thereof," he or she may carry a concealed firearm in any State or political subdivision thereof. Assuming the law enforcement officer qualifies under LEOSA, the officer does not require a State-issued CCW permit for carrying a concealed firearm anywhere in the United States. In effect, law enforcement officers who meet the requirements of LEOSA are not required to abide by any State or local law regarding the carrying of concealed firearms except under two circumstances, as described below.

B. LEOSA Applies in All 50 States

Some observers of LEOSA have contended that LEOSA does not apply in the “home jurisdiction” of the person invoking its coverage. That view is not supported by the language of the statute itself or its legislative history. As noted in a brief filed in a recent criminal case, *District of Columbia v. Barbusin*, Crim. No. 2012-CDC-913 (filed July 2, 2012 in the Superior Court of the District of Columbia, Criminal

Division), the United States Attorney for the District of Columbia stated that LEOSA applies in all 50 States, including the “home state” of the officer:

“LEOSA permits a “qualified” officer to carry a concealed firearm notwithstanding “any” State or local laws. 18 U.S.C. §926B(a). Thus, the plain language of the statute exempts a qualified officer from any laws that would preclude the officer from carrying a concealed firearm in his home jurisdiction....Congress also expressed LEOSA's purpose more broadly to implement “national measures of uniformity and consistency” and allow officers to carry a concealed firearm “anywhere within the United States.” Moreover, Congress also rejected efforts to allow jurisdictions to opt-out of, or restrict, LEOSA. For example, the House defeated, and the Senate tabled, proposed amendments that would have permitted States to opt-out of coverage. See H.R. Rep. 108-560, at 7-8, 29-37; Sen. Rep. 108-29 at 7. The House also defeated, and the Senate tabled, proposed amendments that would have clarified that the bill was not intended to interfere with the ability of State or local law enforcement agencies to regulate “the conditions under which their officers may carry firearms.” Amicus Brief of the United States Attorney for the District of Columbia, *District of Columbia v. Barbusin*, at pp. 9-10.

There is no authority for the proposition that LEOSA only applies to an officer carrying a firearm outside his State of residence. LEOSA, by its terms, applies in all 50 States. In addition, the *Booth* case, discussed below, involved a person who was carrying a firearm in his “home State” and was found by the court to be LEOSA-eligible.

C. Can Agencies Opt-Out of LEOSA?

The statutory language of LEOSA does not contain any provision by which law enforcement agencies may either exercise approval rights, decline to follow its provisions, or otherwise adopt policies which forbid their law enforcement officers from its protections. That very issue was the subject of vigorous debate at the time LEOSA was being drafted by the House of Representatives. Whether law enforcement agencies could adopt policies by which they could choose not to “recognize” LEOSA was proposed in an amendment to H.R. 218, which House members rejected by a vote of 21-11. Rep. Bobby Scott offered the defeated amendment and noted:

“This amendment would simply protect the ability of the police chief to control what goes on with his police officers.... [T]he bill apparently supersedes his ability for off-duty police officers of his own force. If he should want to decide to prohibit his own officers from carrying concealed weapons when they are off duty, this bill will override his

power over his own police officers.” H.R. Rep. No. 108-560, 108th Cong., 2nd Sess. 2004, p. 54.

Senator Ted Kennedy offered the same amendment in the Senate debate on LEOSA and that amendment was defeated by a vote of 16-3. In his dissent to the adoption of LEOSA without that amendment, Sen. Kennedy was clear that LEOSA overrides agency policy:

“The bill removes the ability of police departments to enforce rules and policies on when and how their own officers can carry firearms. Police chiefs will lose the authority to prohibit their own officers from carrying certain weapons on-duty or off-duty.” Sen. Rep. 108-29 at p. 17.

Senator Kennedy cited a U.S. Supreme Court case, *Norfolk & Western Ry. Co. v. Am. Train Dispatchers’ Assoc.*, 499 U.S. 117 (1991), for the proposition that rules, policies and practices promulgated by State and local police departments must adhere to legislation adopted by Congress. LEOSA’s preemption language applies to any “law” of any “political subdivision,” which clearly would include a local municipality such as a law enforcement agency. LEOSA begins with the words “Notwithstanding any other provision of the law of any State or any political subdivision thereof....” The question whether a policy of an agency constitutes a “law” within the meaning of LEOSA and thus would be preempted by it was a central issue in *Norfolk*. Senator Kennedy took that position based on the Supreme Court precedent established in *Norfolk*:

“If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress....[T]he otherwise general term “all other law” includes (but is not limited to) State and municipal law.” 499 U.S. at 128-129.

LEOSA as adopted does not give law enforcement agencies the choice to opt out of or adopt policies which supersede its provisions. Given the legislative history as reflected in the rejection of amendments which would have given law enforcement agencies that choice as well as the dissenting statements of two opponents of LEOSA expressing the view that LEOSA does not give a law enforcement agency the ability to opt-out (or, as some would have it, “confer” LEOSA privileges on law enforcement officers), it is clear agencies do not have the ability to deny LEOSA privileges to its officers by adopting policies in conflict with LEOSA. Disciplinary action for violating a policy which denies rights conferred by the U.S. Congress, in this case under LEOSA, are likely unenforceable under the *Norfolk* decision.

D. Exceptions to LEOSA Preemptions

Law enforcement officers relying on LEOSA to carry a concealed firearm are still required to abide by State laws which: (1) permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property; or (2) prohibit or restrict the possession of firearms on any State or local government property, installation, building, base or park. Because these exceptions relate exclusively to State laws, LEOSA trumps local laws and ordinances which would purport to ban concealed carry by LEOSA-eligible active and retired law enforcement officers. Furthermore, LEOSA has no effect whatsoever on Federal laws concerning the carrying of concealed firearms, typically on Federal property such as courthouses and other Federal buildings, parks and other Federal facilities. Those laws still apply despite LEOSA.

E. Persons Covered

A person may rely on LEOSA to carry a concealed firearm if that person is either a "qualified law enforcement officer" or a "qualified retired law enforcement officer" as defined under LEOSA. These definitions are described below:

1. Qualified Law Enforcement Officer [18 U.S. Code §926B(c)]

A "qualified law enforcement officer" is a person who satisfies the following criteria:

- (i) Must be "an employee of a governmental agency;"
- (ii) Must be "authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law;"
- (iii) Must have "statutory powers of arrest or apprehension under section 807(b) of the [Uniform Code of Military Justice];"
- (iv) Must be "authorized by the agency to carry a firearm;"
- (v) Must not be "the subject of any disciplinary action by the agency that could result in the suspension or loss of police powers;"
- (vi) Must meet "standards, if any, established by the agency which require the employee to regularly qualify in the use of a firearm;" and
- (vii) Must not be "prohibited by Federal law from receiving a firearm."

A law enforcement officer is not entitled to rely on LEOSA if he or she is "under the influence of alcohol or another intoxicating or hallucinatory drug or substance." The officer also must carry "the photographic identification issued by the governmental agency for which the individual is employed that identifies the employee as a police officer or law enforcement officer of the agency."

2. Qualified Retired Law Enforcement Officer [18 U.S. Code §926C(c)]

The definition of qualified retired law enforcement officer, which in many respects mirrors provisions applicable to active officers, was changed significantly on October 10, 2010, when the Improvements Act became law. This legislation changed the definition of “qualified retired law enforcement officer” and made other material changes as follows:

- a. It eliminated the concept of “retirement” and replaced it with “separation from service.”
- b. It eliminated the requirement that the officer have a non-forfeitable right to benefits under a retirement plan.
- c. It merely requires that the person “served as a law enforcement officer.”
- d. It lowered the number of years of aggregate service from 15 years to 10 years (or sooner if separation occurred following an officer’s probationary period and was related to a service-connected disability).
- e. Three additional classes of officers were deemed to be covered by LEOSA: Amtrak Police, the Federal Reserve (the U.S. central banking system) and federal executive branch law enforcement officers.
- f. It expanded the options for firearms qualification to allow separated officers to qualify with their firearms either according to standards for qualification in firearms training for active law enforcement officers as determined by the former agency of the individual, the State in which the individual resides or, if the State has not established such standards, either a law enforcement agency within the State in which the individual resides or the standards used by a certified firearms instructor that is qualified to conduct a firearms qualification test for active duty officers within that State.

On January 2, 2013, President Obama signed into law the National Defense Authorization Act for Fiscal Year 2013 (the “2013 Act”). That legislation contained an amendment to LEOSA which now allows active and retired Department of Defense military police and civilian law enforcement officers assigned to DoD to carry firearms under LEOSA. The 2013 Act also added a requirement that photographic identification cards must specifically identify the person as an active or former law enforcement officer. The 2013 Act was implemented because military police and civilian law enforcement officers do not have “statutory powers of arrest” (a requirement to be a “qualified law enforcement officer”), but rather have powers of “apprehension” under the Uniform Code of Military Justice (“UCMJ”). The

amendment adds language which clarifies that any person who meets all of the other requirements of LEOSA and has powers of “apprehension” under the UCMJ still satisfies that prong of the definition of “qualified law enforcement officer” under LEOSA.

F. Principal LEOSA Requirements

LEOSA is a self-executing, preemptive Federal statute. No State or local governmental or agency discretionary action, permit or approval is necessary for the individual to carry a concealed firearm under LEOSA assuming that person meets the definition of “qualified law enforcement officer” or “qualified retired law enforcement officer,” qualifies with his or her firearm and abides by the other conditions of LEOSA.

The methodology for analyzing LEOSA is referred to in the law as “rules of statutory construction.” LEOSA has engendered widely divergent views of what certain terms used in LEOSA mean even though they appear clear and unambiguous on their face. In a recent Federal case, the rule of statutory construction was described as follows:

“Statutory interpretation is a holistic endeavor, and, at a minimum, must account for the statute's full text, language as well as punctuation, structure, and subject matter. Generally speaking, if the plain meaning of statutory language is clear and unambiguous and will not produce an absurd result, we will look no further. When the terms of a statute are undefined and not recognized terms of art, we presumptively accord them their ordinary meaning in common usage, taking into account the context in which they are employed. The primacy of the statutory text means that resort to legislative history to construe a statute is generally unnecessary (if not, indeed, disfavored); usually it is appropriate only to resolve a genuine ambiguity or a claim that the plain meaning leads to a result that would be absurd, unreasonable, or contrary to the clear purpose of the legislation.” *Hood v. United States*, 28 A.3d 553, 559 (D.C. 2011).

Insofar as various agencies have interpreted LEOSA in ways which diverge from the statutory text, this article explores LEOSA’s legislative history in detail. That history reveals LEOSA’s drafters on both sides of the aisle (those in favor of and those opposed to LEOSA) viewed the various categories of law enforcement officers at the Federal, State and local levels who are LEOSA-eligible as expansive and include many types of law enforcement officers nationwide. In the brief filed by the U.S. Attorney for the District of Columbia in *Barbusin*, the U.S. Attorney noted that LEOSA encompasses many types of law enforcement officers (as its drafters intended), not a more limited list as desired by dissenting U.S. Senate and House members, a debate which they eventually lost:

“LEOSA's legislative history reflects that this definition was intended to be construed broadly. See S. Rep. No. 111-233, at 2-3 and n.12 (2010) (adding provision to make clear that law enforcement officers of the Amtrak Police Department, Federal Reserve [whose primary responsibility "is the protection of the Federal Reserve facilities and its employees"], and executive branch of the Federal Government qualify for LEOSA's benefits; indicating that the named agencies "constitute a non-exhaustive list"; and noting by way of example that special police assigned to the National Zoo “should, in the Committee's view, be eligible”); H.R. Rep. No. 108-560, at 20, 57 (2004) (Rep. Coble acknowledging that bill "contains a fairly broad definition" of law enforcement officers, and dissenting Congressmen finding broad definition to be “cause for concern”). Amicus Brief filed by the U.S. Attorney for the District of Columbia in *District of Columbia v. Barbusin*, Crim. No. 2012-CDC-913 (filed July 2, 2012 in the Superior Court of the District of Columbia, Criminal Division), pp. 3-4.

With the foregoing in mind, below is a step-by-step analysis of the key elements of LEOSA:

1. “Employee of a Governmental Agency” – 18 U.S. Code §926B(c)

a. LEOSA Case Law

LEOSA does not provide a statutory definition of the term “employee of a governmental agency.” This article analyzes in detail the legal framework for determining whether a person is an “employee” in a Federal statute which omits this definition. When a Federal statute does not define the term “employee,” one must look to the case law to determine the method by which courts analyze the employment relationship. To date, there is one published opinion considering the narrow issue of employment status specifically under LEOSA, *The People of the State of New York v. Arthur Rodriguez* (Indictment Number 2917/06 [November 3, 2006]). Another Federal case, *United States v. Weaver*, 659 F.3d 353 (4th Cir. 2011), also addressed the concept of “employment” as used in The Gun Control Act of 1968 (the “Gun Control Act”) which, of course, is the statute within which LEOSA is codified. Both *Rodriguez* and *Weaver* are discussed below.

i. *Rodriguez*

The *Rodriguez* case involved a Pennsylvania Constable who was arrested in New York for carrying a concealed firearm and asserted a LEOSA defense. At issue in *Rodriguez* was whether a Pennsylvania Constable met the definition of an “employee of a governmental agency” as required by LEOSA. The *Rodriguez* court found that a Pennsylvania Constable is a “peace officer” under Pennsylvania law and in this case was engaged by the State of Pennsylvania on an *ad hoc* basis to perform warrant service. As to the question of whether the Constable is an “employee of a governmental agency” under LEOSA, the court took judicial notice of the fact that *Rodriguez* and other Pennsylvania Constables are not “personnel” of the Pennsylvania court system, are not “supervised” by the Pennsylvania court system, and, most notably, “are considered ‘independent contractors’ with respect to the Court system.” *Rodriguez* at p. 7.

LEOSA does not provide a statutory definition of “employee,” LEOSA does not specifically require compensation as a required element and LEOSA does not require that the officer be “full-time,” “part-time,” or “regularly employed.” The court determined that Constable *Rodriguez* is an “employee of a governmental agency” under LEOSA even though he (1) is not paid a salary, (2) does not wear a uniform, (3) does not use a municipal vehicle, (4) is not considered a State employee for purposes such as legal representation, (5) is not directly supervised in the way a police chief supervises police officers, and (6) is not accountable to any municipality for his actions.

The court pointed out that *Rodriguez* was not an “employee” in a traditional sense but, in many respects, was engaged (i.e., “employed”) in a manner similar to an independent contractor. Nevertheless, *Rodriguez* was an “agent” of the government when performing his duties (see below for a discussion of the common law “agency” doctrine) and thus, under LEOSA, met the statute’s use of the term “employee of a governmental agency:”

“Based on this analysis, the Court finds that the defendant is an “employee of a government agency” as the phrase is used in 18 U.S.C [Section] 926B. The Court has reviewed all the other requirements listed under this section and finds that Pennsylvania constables come under the protection of 18 U.S.C. 926B.” *Rodriguez* at 13.

The *Rodriguez* court held that the Constable is an “employee of a governmental agency” under LEOSA because he is performing the duties of a peace officer under Pennsylvania law and thus “is in fact ‘employed’ by the court, district justice or judge which engaged his services.” The court found that *Rodriguez* is an

“employee” within the meaning of LEOSA even though he has none of the attributes of a full-time, salaried employee.

ii. *Weaver*

In *United States v. Weaver*, 659 F.3d 353 (4th Cir. 2011), the Fourth Circuit analyzed the meaning of the term “employed” as used in section 922(h) of the Gun Control Act, the same statute in which LEOSA is codified and which also uses the word “employee” without any further qualifications. Section 922(h) and Section 926B (LEOSA) both use these terms without a specific definition. In *Weaver*, the employer in question did not pay compensation to the person he employed and thus argued that he could not be deemed to have employed such person within the meaning of Section 922(h). *Weaver* is directly on point with respect to the meaning of “employee” as to those California reserve peace officers who may not be directly compensated in the form of wages or a salary. *Weaver* thus guides the discussion as to how the Federal courts would view the term “employee” as used in the Gun Control Act of which LEOSA forms a part.

The *Weaver* court applied an expansive view of the word “employed” as used in the Gun Control Act and specifically held that the payment of compensation is not required in order for one to be employed for purposes of the Gun Control Act. Rather, it looked to the common law definition of employment:

“Like their federal counterparts, state courts have long interpreted “employ” and “employee” as being determined by elements other than compensation. *See, e.g., General Accident Group v. Frintzilas*, 111 Misc. 2d 306, 443 N.Y.S.2d 989, 992 (N.Y. Sup. Ct. 1981) (“The word ‘employee’ does not necessarily connote the payment of compensation[.]”); *State ex rel. Cooper v. Roth*, 140 Ohio St. 377, 44 N.E.2d 456, 458 (Ohio 1942) (“The term ‘employment’ connotes service or that which engages one’s time and attention. It may be with or without compensation.”); *State v. Gohl*, 46 Wash. 408, 90 P. 259, 261 (Wash. 1907) (defining “employ” as “[t]o use; to have in service; to cause to be engaged in doing something; to make use of as an instrument . . . for a specific purpose.”).” *Weaver* at 358.

“[T]he cases reinforce the proposition that law does not treat compensation as the *sine qua non* of an employer-employee relationship. Rather, courts have defined the terms “employ” and “employee” via flexible, multi-factor tests that highlight elements of agency and control. Consistent with these decisions, [18 U.S. Code] 922(h) cannot be construed as applying only to persons receiving some form of payment.” *Weaver* at 355.

The absence of any mention of compensation in a Federal statute using the term “employee” was noted for special consideration by the *Weaver* court. The court noted that Congress had the opportunity to restrict the definition of “employ” or “employment” but specifically did not do so. As such, it is not a required element of the employment relationship in the Gun Control Act:

“Had Congress wanted to narrow the scope of § 922(h), it could have used a monetary term, such as “hire,” “compensation,” or “wages,” as it has done elsewhere in Title 18.... But Congress did not do so.... We refuse to read into § 922(h) language that Congress declined to include.” *Weaver* at 356.

“[This court has embraced a more flexible definition of the word “employ.” In *United States v. Murphy*, 35 F.3d 143 (4th Cir. 1994), we held that a county prison guard was “employed to assist” federal agents under 18 U.S.C. § 1114. In reaching this result, we noted that “[t]he term ‘employ’ has a broad sweep and is expansively used: ‘employ’ means ‘to make use of,’ ‘to use advantageously,’ ‘to use or engage the services of,’ ‘to provide with a job that pays wages or a salary,’ as well as ‘to devote to or direct toward a particular activity or person.’” *Weaver* at 357-358.

The *Weaver* decision thus stands for the proposition that the term “employee” as used in LEOSA does not require compensation. It would be incongruous for a person to be considered “employed” under Section 922(h) of the Gun Control Act without requiring compensation as an element of the employment relationship (as the *Weaver* court held) and yet require compensation as a necessary element under Section 926B of the Gun Control Act (LEOSA). Such an outcome could not be reconciled with the binding precedent of *Weaver*.

Other than the *Rodriguez* and *Weaver* cases discussed above, two related cases are worthy of note, although technically they do not deal with employment status *per se*. These cases are *Ord v. District of Columbia*, 810 F. Supp. 2d 261 (D.C. 2011), and *Thorne v. United States*, 55 A.3d 873 (D.C. 2012). In *Ord* and *Thorne*, the LEOSA-related issue was whether employees of a private security company who were appointed as “Special Conservators of the Peace” (SCOP’s) in connection with their employment could be considered “employees of a governmental agency” under LEOSA. The issue in fact did not address whether or not *Ord* or *Thorne* could be considered employees in a labor law context, but rather whether their private security company employer could be considered a governmental agency. The court found that merely because the company employed them (and during such time they had SCOP status), the company itself could not be considered a component of the government. *Ord* and *Thorne* are unhelpful with regard to who is an employee but rather addresses whether an entity can be considered part of the government. In that sense, those cases are not relevant to the question of who is an “employee” under LEOSA.

b. California Law Defines Reserve Peace Officers as “Employees”

i. The California Labor Code

The California Labor Code explicitly defines reserve peace officers as employees. Labor Code § 3362.5 falls within the parameters of California’s workers compensation statute and provides:

“3362.5 Whenever any qualified person is deputized or appointed by the proper authority as a reserve or auxiliary sheriff or city police officer, a deputy sheriff, or a reserve police officer of a regional park district or a transit district, and is assigned specific police functions by that authority, *the person is an employee* of the county, city, city and county, town, or district for the purposes of this division while performing duties as a peace officer if the person is not performing services as a disaster service worker for purposes of Chapter 10 (commencing with Section 4351) [emphasis added].”

ii. California POST Regulations

California law enforcement agencies are regulated by the California Commission on Peace Officer Standards and Training (POST) and as such are required to abide by POST regulations with respect to their law enforcement officers, including reserve peace officers. Under California law, reserve peace officers are considered employees by statute and administrative POST regulations. To set the context of these regulations, Section 830.6 of the Penal Code refers to the agency which employs reserve peace officers as an “employing agency.” A reserve peace officer candidate is required to meet the requirements set forth in Government Code § 1031 before that candidate is appointed as a peace officer in the State of California. These are the same requirements applicable to “regular officers” (defined by POST as an officer “regularly employed and paid as such”). Government Code § 1031.1, applicable to regular and reserve peace officers alike, refers to a person being “employed as a peace officer.” This provision is one of a myriad of statutory and administrative provisions which make no distinction between reserve peace officers and their “regular” colleagues. Some of the more salient provisions are described below.

California POST regulations make clear that reserve police officers who are appointed as peace officers by a law enforcement agency are indeed “employed” by their agencies. Illustrative examples include, but are not limited to the following:

1. POST Profile: California POST maintains a “POST Profile” for every California law enforcement officer, including California reserve peace officers. Prominently displayed at the top of the POST profile of every reserve peace officer in the State of California is a section entitled

“Employment” which lists the employment of that officer with each agency which has employed him or her. Under the “Employment” section of the POST Profile, there is a designation for that officer regarding paid or unpaid status, indicating that compensation is irrelevant to employment status.

2. POST Reg. 9050(a). This regulation implements the peace officer candidate selection process required by Government Code § 1031 and refers to the date of appointment of a peace officer (which includes a reserve peace officer) as the “date of employment” and the process of “hiring” the peace officer trainee.
3. POST Reg. 1004(a): Refers to agencies which “employ” reserve peace officers.
4. POST Reg. 1005(d): Requires Continuing Professional Training for peace officers (including reserve peace officers who are “employed” by POST participating agencies).
5. POST Reg. 1008(b)(2)(C): Refers to “law enforcement employment.”
6. POST Reg. 1008(b)(3)(A)(3): Refers to “law enforcement employers” in the context of reserve peace officers.
7. POST Reg. 1951(a): Describes the role of a peace officer as a “job.”
8. POST Reg. 1952: Notes that the oral interview of a peace officer candidate must occur prior to the “date of employment.”
9. POST Administrative Manual Procedure H-1: Applies exclusively to reserve peace officers and uses the terms “works” or “working” when describing the activities of reserve peace officers.

iii. California Attorney General Opinion

Under California law, it is not necessary that a person be “regularly employed” and paid in order to be considered “employed” as a peace officer. This question was addressed in California Attorney General Opinion No. 06-204, January 5, 2007. In that opinion, the California Attorney General found that an unpaid, volunteer district attorney investigator is considered “employed” as a California peace officer. In its opinion, the California Attorney General stated that “we believe that a district attorney’s investigator, whether paid or unpaid, is “employed in that capacity” as a peace officer...[emphasis added].” In so doing, the California Attorney General in essence found that “to use or engage the services of” a person constitutes “employment” within the meaning of laws relating to the use of persons as California peace officers.

iv. California Government Code (Government Claims Act)

The Government Claims Act, codified at California Government Code §§ 810.2 et seq., provides the statutory mechanism by which parties injured by the acts of public entities and their employees can bring claims for such acts. These provisions also provide various defenses and limits on liability which public entities are entitled to assert when claims against them are brought. The California Law Revision Commission summarized these provisions as follows:

“The purpose of the Government Claims Act is to define and limit public employee and public entity tort liability. It abolished common law tort liability for public entities, making all public entity liability statutory. See Section 815 & Comment; *Hoff v. Vacaville Unified Sch. Dist.*, 19 Cal. 4th 925, 932, 968 P.2d 522, 80 Cal. Rptr. 2d 811 (1998). The Government Claims Act can be categorized into three broad areas: (1) liability and immunity of public entities and employees, (2) public employee rights to indemnification, and (3) claim presentation. Sections 810-998.3. These areas balance the traditional tort theories with the unique needs of government. The liability and immunity provisions provide an avenue of compensation for those injured by governmental activities. At the same time, they protect [public funds] by limiting the activities for which compensation is allowed, and they allow the government to govern by minimizing interference with governmental activities. The indemnification provisions encourage public employees to execute their employment duties with zeal by limiting their personal tort liability. They also remove the risk of making a public employee personally liable for risks created by public employment when the public entity is not liable.” California Law Revision Commission, Study G-200, February 11, 2010 at p. 7.

The definition of “employee” in the Government Claims Act is provided in Government Code § 810.2 as follows:

"Employee" includes an officer, judicial officer as defined in Section 327 of the Elections Code, employee, or servant, *whether or not compensated*, but does not include an independent contractor.” [emphasis added]

Reserve peace officers are “employees” within the meaning of the Government Claims Act. See the discussion of the *Munoz* decision below. When they are on-duty, their public agency employers have vicarious liability for their acts, but at the same time they may assert the immunities and limits on liability as provided in the statute. Similarly, reserve peace officers have indemnification rights under these

provisions for acts which occur within the scope of their employment. The Law Revision Commission noted that:

“Compensation is not dispositive in determining employee status because the Legislature recognized that a public official may hold office without compensation. However, an unpaid volunteer is not considered a public employee. Section 810.2; see also *Munoz v. City of Palmdale*, 75 Cal. App. 4th 367, 372, 89 Cal. Rptr. 2d 229 (1999).” California Law Revision Commission, Study G-200, February 11, 2010 at p. 9.

The *Munoz* decision, described above, held that reserve peace officers are not subject to the volunteer exclusion cited by the Commission above. Thus, reserve peace officers acting within the scope of their employment are employees for purposes of the Government Claims Act even though they may serve without compensation. California law enforcement agencies routinely assert the defenses and limitations of the Government Claims Act in a “course and scope” incident involving their on-duty law enforcement officers, which include reserve peace officers, on the basis that such officers are “public employees” as defined in the Act.

v. California Government Code (Eligibility Requirements)

Government Code § 1029(a) imposes eligibility requirements upon any person who seeks to become a peace officer, including a reserve peace officer, and recognizes that a person is “employed” as a peace officer *whether with or without compensation*, and cannot hold office if that person is subject to certain disqualifying events:

[E]ach of the following persons is disqualified from holding office as a peace officer or being employed as a peace officer of the state, county, city, city and county or other political subdivision, *whether with or without compensation*, and is disqualified from any office or employment by the state, county, city, city and county or other political subdivision, *whether with or without compensation*, which confers upon the holder or employee the powers and duties of a peace officer....”

Government Code § 1030 (another statutory provision applicable to reserve peace officers) reflects this same notion, i.e., reserve peace officers are “employed” *whether with or without compensation*, with respect to fingerprint requirements for peace officers in the State of California:

“A classifiable set of the fingerprints of every person who is now *employed*, or who hereafter becomes *employed*, as a peace officer of the state, or of a county, city, city and county or other political subdivision, *whether with or without compensation*, shall be furnished to the

Department of Justice and to the Federal Bureau of Investigation by the sheriff, chief of police or other appropriate appointing authority of the agency by whom the person is *employed*.

vi. California Penal Code

Penal Code § 830.6 deals specifically with the definition of the categories of persons who are reserve peace officers. That section refers specifically to a class of reserve peace officers being “employed” by an “employing agency.”

“Whenever any qualified person is deputized or appointed by the proper authority as ... a reserve housing authority patrol officer *employed* by a housing authority defined in subdivision (d) of Section 830.31, and is assigned specific police functions by that authority, the person is a peace officer, if the person qualifies as set forth in Section 832.6.... A reserve park ranger or a transit, harbor, or port district reserve officer may carry firearms only if authorized by, and under those terms and conditions as are specified by, his or her *employing* agency.”

c. The “Common Law Agency Doctrine” as Established by the U.S. Supreme Court: *Clackamas* and *Reid*

Law enforcement agencies nationwide employ broad categories of law enforcement officers in many capacities: full-time, part-time, reserve and auxiliary law enforcement officers, as well as officers who serve by special appointment or commission. LEOSA does not provide a statutory definition of the term “employee of a governmental agency.” Two U.S. Supreme Court cases, *Clackamas Gastroenterology Associates, P.C. v. Wells*, 538 U.S. 440 (2003), and *Community for Creative Non-Violence v. Reid*, 490 U.S. 730 (1989), have established that when a Federal statute omits a statutory definition of the term “employee,” the determination of whether a person is an employee is left to common law principles referred to in the case law as the “agency control” test:

“Quoting *Reid*, 490 U.S., at 739-740, we explained that “when Congress has used the term ‘employee’ without defining it, we have concluded that Congress intended to describe the conventional master-servant relationship as understood by common-law agency doctrine.” 538 U.S. at 445.

In *Clackamas*, the Court described the agency control test as follows:

“At common law the relevant factors defining the master-servant relationship focus on the master's control over the servant. The general definition of the term “servant” in the Restatement (Second) of Agency § 2(2) (1958), for example, refers to a person whose work is “controlled or is subject to the right to control by the master.” See also *id.*, § 220(1) (“A servant is a person employed to perform services in the affairs of another

and who with respect to the physical conduct in the performance of the services is subject to the other's control or right to control"). In addition, the Restatement's more specific definition of the term "servant" lists factors to be considered when distinguishing between servants and independent contractors, the first of which is "the extent of control" that one may exercise over the details of the work of the other. *Id.*, § 220(2)(a). We think that the common-law element of control is the principal guidepost that should be followed in this case." 538 U.S. at 448.

Reid involved a federal law, The Copyright Act of 1976, and included a reference to "employee" without defining it in the statute itself (just as "employee" is not defined in the statutory text of LEOSA). The specific issue in *Reid* was whether a sculpture was 'a work prepared by an employee within the scope of his or her employment' under the Copyright Act of 1976. However, because the Copyright Act did not specifically define the term "employee" as used in the Copyright Act, the *Reid* Court found that the term "should be understood in light of the general common law of agency." *Reid* at 741.

California courts also follow this rule:

"[W]hen 'a statute refer[s] to employees without defining the term, courts have generally applied the common law test of employment." See *Martinez v. Combs*, 49 Cal. 4th 35 (2010) at 63.

The common law agency doctrine has been expressed in many court cases as a multi-factor test involving a *de facto* examination of the relationship between the parties in determining whether an employment relationship exists or not. The United States Equal Employment Opportunity Commission, in its Compliance Manual 915.003, compiled from these legal authorities a list of relevant factors and the manner in which the EEOC will assess this relationship. The factors it takes into account, as will the courts, includes the following:

- "The employer has the right to control when, where, and how the worker performs the job.
- The work does not require a high level of skill or expertise.
- The employer furnishes the tools, materials, and equipment.
- The work is performed on the employer's premises.
- There is a continuing relationship between the worker and the employer.
- The employer has the right to assign additional projects to the worker.
- The employer sets the hours of work and the duration of the job.
- The worker is paid by the hour, week, or month rather than the agreed cost of performing a particular job.
- The worker does not hire and pay assistants.

- The work performed by the worker is part of the regular business of the employer.
- The employer is in business.
- The worker is not engaged in his/her own distinct occupation or business.
- The employer provides the worker with benefits such as insurance, leave, or workers' compensation.
- The worker is considered an employee of the employer for tax purposes (i.e., the employer withholds federal, state, and Social Security taxes).
- The employer can discharge the worker.
- The worker and the employer believe that they are creating an employer-employee relationship.”

The EEOC notes further that:

“Not all or even a majority of the listed criteria need be met. Rather, the determination must be based on all of the circumstances in the relationship between the parties, regardless of whether the parties refer to it as an employee or as an independent contractor relationship.” EEOC Manual 915.003, Section 2.III, “Who is an Employee?”

The agency control test has as one of its factors the payment of wages, a factor which may or may not apply to a reserve peace officer. Federal courts have consistently held that this is not a dispositive factor. As the Supreme Court noted in *Clackamas*, right to control is the guidepost determining employment status and compensation is merely one element relevant to the determination of employment status. The United States Supreme Court in the *Clackamas* and *Reid* cases, the Fourth Circuit in *Weaver* as discussed above, and the many cases citing them, held that if Congress does not specifically define “employee” in a federal statute (as it chose not to do under LEOSA) and thus does not specifically tie compensation to the “employee” definition, compensation is not a specifically required element of the employer-employee relationship.

d. The Common Law Agency Doctrine and California Reserve Peace Officers

The nature of law enforcement requires that a law enforcement agency function in a paramilitary environment. It is difficult to imagine an employer exerting more control over its employees than the control a law enforcement agency exerts over its sworn law enforcement officers, including reserve peace officers. California reserve peace officers, when deployed by their agencies, are treated no differently than other full-time sworn personnel. Many reserve and full-time sworn personnel work general law enforcement duties, including uniformed patrol, side-by-side as a team. To the general public, there is no discernible difference. Reserve peace

officers are managed and “controlled” in nearly every facet of their deployment, identically to full-time law enforcement officers, including the following:

1. Reserve peace officers generally are required to serve a minimum number of hours per deployment period (typically monthly), and many serve in excess of that minimum amount.
2. Failure to report to duty or other acts determined by the agency to constitute misconduct often result in termination, thus satisfying the “right to hire and fire” prong of the agency control test.
3. Once on duty (in particular in a general law enforcement capacity, such as uniformed patrol), the reserve peace officer may not simply leave, i.e., the reserve peace officer is not free to “come and go” as he or she pleases, a factor distinguishing true volunteer status from employment status.
4. Reserve peace officers are required to submit to the same hiring process as full-time officers in accordance with California law (Government Code § 1031), including pre-employment screening, background investigation, physical agility and mental evaluation tests, and academy training requirements (Level I reserve peace officers must fulfill the same academy training requirements as full-time officers).
5. Reserve peace officer candidates in most cases are required to submit “Employment Applications” to agencies seeking to hire them.
6. Reserve peace officer applicants are processed through agencies’ Human Resources or Personnel Departments.
7. Reserve peace officers are “appointed” to their departments in accordance with POST rules applicable to all California law enforcement officers and are sworn peace officers, occupying the same legal status when on-duty as their full-time colleagues.
8. Reserve peace officers are supplied equipment by their agencies (referred to by the agency control test as the “instrumentalities” and “tools” of the workplace). When they join their departments, they are typically issued all the tools of the trade: a firearm, baton, handcuffs, duty belt, uniform and other necessary law enforcement equipment. When reserve peace officers go on patrol in the field, they are issued a marked police vehicle, a radio, camera, safety and other equipment.
9. Reserve peace officers are supervised, directed and controlled (given orders) during their on-duty time by their superiors, and are also required to abide by a code of conduct both on-duty and off-duty.

10. Reserve peace officers may receive annual employee performance evaluations.
11. Reserve peace officers are given agency email addresses and receive emails from “all-employee” mailing lists.
12. Reserve peace officers are referred to in their employee manuals and on their agency forms and correspondence as “employees” and are required to sign agency forms in their capacities as “employees.”
13. Reserve peace officers frequently are compensated for their work (including through the payment of hourly wages, stipends or other regular forms of payment).
14. Reserve peace officers are subject to liability in their capacities as police officers and can subject their cities and counties to liability for actions in their capacities as “employees” of their departments (emanating from the doctrine of *respondeat superior* as codified in the California Government Claims Act).
15. Reserve peace officers can be sued personally for their actions as peace officers and are entitled to seek indemnity as public employees from their agencies in accordance with the Government Claims Act.
16. Reserve peace officers testify in court as employees of their agencies in civil and criminal actions.
17. Reserve peace officers in some agencies have the option to be members of their police unions with attendant employee benefits (e.g., legal representation, life insurance and similar benefits).
18. Reserve peace officers by State and Federal law receive various employee benefits, such as workers’ compensation, disability, life insurance, legal representation and line of duty death benefits (see below).
19. Reserve peace officers are subject to discipline and termination.
20. Reserve peace officers can be the subject of “personnel” complaints and are investigated for both on-duty and off-duty conduct in the same manner as full-time officers.
21. Reserve peace officers appear on agency personnel rosters and computer databases as “employees.”

Although this article does not attempt to describe every situation in which a reserve peace officer may be employed by their agencies, the agency doctrine and the other authorities cited above establish that a reserve peace officer is an “employee” within the meaning of LEOSA, a Federal statute which does not otherwise define the term.

e. Title VII Cases and “Economic Realities”

i. Background

Even though the agency control test applies in determining employment status as discussed above, a number of courts have begun to apply what is known as the “economic realities test” in the context of legislation governing employees who depend upon that particular employment for their livelihood (primarily equal employment opportunity statutes such as Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the Americans with Disabilities Act of 1990 and the Equal Pay Act of 1963). For the reasons discussed below, the “economic realities” test does not apply to the analysis of employment status in the context of LEOSA.

ii. The “Economic Realities” Analysis Does Not Apply to LEOSA-Related Issues

Legislation such as the Fair Labor Standards Act has a specific statutory exception for volunteers and thus persons who provide service on a volunteer basis would not be covered by the terms of the statute itself. FLSA § 3(e)(4)(A)(i). Congress specifically provided for a volunteer exclusion in the statute itself. LEOSA has no such specific exclusion. Some courts have begun to analyze Title VII cases from the standpoint of Title VII’s “economic reality” and superimposed a compensation element as a requirement. LEOSA, on the other hand, is legislation specifically designed to protect law enforcement officers from physical danger (obviously of direct relevance to reserve police officers), not to protect their economic rights in the workplace. Thus, the application of the economic realities test likely would not be, and to date has not been, applied by a court assessing LEOSA. Rather, the *Weaver* analysis as discussed above (a case decided precisely in the context of The Gun Control Act in which LEOSA is codified) would apply. Furthermore, and even more persuasively, the *Rodriguez* decision discussed above wholly rejects the “economic realities” reasoning, instead treating a person with quasi-independent contractor status as LEOSA-eligible.

iii. The “Economic Realities” Analysis Does Not Apply to California Reserve Peace Officers

The controlling precedent as established by the U.S. Supreme Court in *Clackamas* and *Reid* requires that federal courts apply the agency control test for determining employment status with respect to Federal statutes which do not specifically define “employee.” The United States Court of Appeals for the Ninth Circuit, which has federal law jurisdiction over California among other western U.S. States, followed this precedent in *Fichman v. Media Ctr.*, 512 F.3d 1157 (9th Cir. 2008), and thus the agency control doctrine continues to be binding precedent under Federal law as applied in California.

A number of recent cases have emerged with respect to volunteer firefighters in the context of Title VII claims. Neither the U.S. Supreme Court, the Ninth Circuit nor the California Supreme Court has adopted this test. Nor has the Sixth Circuit, which in *Bryson v. Middlefield Volunteer Fire Dep’t, Inc.* 656 F.3d 348 (6th Cir. 2011), rejected the economic realities test in a case involving a volunteer firefighter, finding that compensation is not a threshold requirement but rather is one of many factors in assessing the existence of an employment relationship. Thus, binding precedent in the Ninth Circuit (including California) requires courts in California applying Federal law to use the agency control test.

The California Supreme Court rejected the economic realities test and affirmed the agency control approach with respect to its methodology for analyzing employment status in the context of wage and hour law. In *Martinez v. Combs*, 49 Cal. 4th 35 (2010), the California Supreme Court broadened the definition of the employer-employee relationship and noted that the economic realities test “has no basis in California law.” 49 Cal. 4th at 67. *Martinez* is highly illustrative of the California Supreme Court’s view of what constitutes an employer under California law (and thus those persons that are considered employees).

Deferring to the statutory intent of the Legislature, the California Supreme Court in *Martinez* focused on the employment relationship in terms of the “direct and control” test and thus refused to read into California law the “economic realities” test in the absence of specific statutory language or intent to do so. Noting that the California legislature did not define “employee” (in this case, within Labor Code § 1194), just as LEOSA does not define “employee,” the California Supreme Court looked to the common law as determinative of the issue. Quoting an earlier decision, the Court noted that “when ‘a statute refer[s] to employees without defining the term...courts have generally applied the common law test of employment’....” *Martinez* at 63. Using the state agency’s common law definition, the Court adopted the definition of an employer as follows:

“To employ...has three *alternative* definitions. It means: (a) to exercise control over the wages, hours or working conditions, *or* (b) to suffer or permit to work, *or* (c) to engage, thereby creating a common law employment relationship.” *Martinez* at 64 (emphasis in original, i.e., by using the disjunctive, the Court indicated any one of those conditions constitutes an employment relationship). *Martinez* at 64. [emphasis added]

iv. Even if the Economic Realities Test is Used, California Reserve Peace Officers Would be Considered Employees of Their Agencies Under LEOSA

Compensation may be paid directly, such as in the form of wages or salaries, or through indirect financial benefits. In *Pietras v. Board of Fire Commissioners*, 180 F.3d 468 (2d Cir. 1999), the court held that a volunteer firefighter was an employee because the volunteer received indirect economic benefits. Those indirect benefits were described by the *Pietras* court as those provided under State law such as survivor’s benefits in case of line of duty death, scholarship benefits for dependent children, life insurance benefits, disability benefits, pension and retirement benefits, or other benefits associated with the activities of the purported “volunteer.” The *Pietras* court stressed that the determination of whether a person receives such benefits is fact-based and must be analyzed in each case. In *Pietras*, because the volunteer firefighter received such benefits, the trial court was correct in concluding that she was an employee, and accordingly that determination was upheld. The *Bryson* case in the Sixth Circuit followed the *Pietras* rationale and ordered the lower court to conduct an analysis of indirect financial benefits to determine whether the volunteer firefighter has employee status consistent with the *Pietras* case.

The Ninth Circuit, in an unpublished opinion in a case brought by a former California reserve peace officer under Title VII, *Waisgerber v. City of Los Angeles*, 406 Fed. Appx. 150, 2010 U.S. App. LEXIS 26829 (9th Cir. 2010), framed the economic reality test as follows:

As evidenced by our discussion in *Fichman*, the fact that a person is not paid a salary does not necessarily foreclose the possibility that the person is an "employee" for purposes of federal statutes, including Title VII. Other circuits have taken a similar approach. See, e.g., *United States v. City of New York*, 359 F.3d 83, 92 (2d Cir. 2004) ("[R]emuneration need not be a salary, but must consist of substantial benefits not merely incidental to the activity performed") (internal citation and quotation marks omitted); *Pietras v. Bd. of Fire Comm'rs of the Farmingville Fire Dist.*, 180 F.3d 468, 471-73 (2d Cir. 1999) (holding that an unpaid firefighter was an employee under Title VII because she received a retirement pension, life insurance, death benefits, disability insurance, and limited medical benefits); *Haavistola v. Cmty. Fire Co. of Rising Sun*,

Inc., 6 F.3d 211, 221-22 (4th Cir. 1993) (finding Title VII coverage of a volunteer firefighter to be a disputed issue of fact where volunteer received death and disability benefits, scholarships for dependent children upon death in the line of duty, life insurance, and certain tax-exemptions); cf. *Jacob-Mua v. Veneman*, 289 F.3d 517, 521 (8th Cir. 2002) (holding that an unpaid volunteer researcher was not an employee under Title VII because she did not receive annual or sick leave, retirement benefits, or insurance benefits).

It is possible Waisgerber can amend her complaint to allege the "substantial benefits" necessary to make her an employee under Title VII or FEHA. For the same reason, an amendment could save her claim under *California Labor Code* § 1102.5, which protects employees from retaliatory termination. Although the Los Angeles Administrative Code states that reserve officers are not "employees," a city code's label cannot trump a state statute.

The EEOC Manual cited above confirms that, in the view of the EEOC, volunteers can be considered employees under the analysis of the *Pietras* and *Haavistola* cases:

“[A]n individual may be considered an employee of a particular entity if, as a result of volunteer service, s/he receives benefits such as a pension, group life insurance, workers' compensation, and access to professional certification, even if the benefits are provided by a third party. The benefits constitute "significant remuneration" rather than merely the ‘inconsequential incidents of an otherwise gratuitous relationship....’ Benefits may be provided by a third party, such as a state agency, as long as they are provided as a consequence of the volunteer service.” EEOC Manual 915.003, Section 2-III(a)(1)(c) and footnote 73.

The Ninth Circuit in *Neronde v. Nevada County*, 2010 U.S. Dist. LEXIS 117742, analyzed whether a student volunteer asserting a claim under the California Fair Employment and Housing Act (FEHA) could be considered an employee for purposes of the FEHA. The court concluded she was an employee under the FEHA because she received various indirect financial benefits:

[T]he court finds that plaintiff received credits toward graduation and community college and she learned invaluable skills in exchange for her services....[T]he court finds that plaintiff was an employee at the time of the alleged incident.” *Neronde* at 7.

But see *Juino v. Livingston Parish Fire District No. 5*, 717 F.3d 431 (5th Cir. 2013), and *Estrada v. City of Los Angeles*, 218 Cal.App.4th 143 (2013) (departing from the

authorities noted above by finding that volunteers are not “employees” for purposes of federal and State anti-discrimination laws).

The financial benefits to which law enforcement officers are entitled must be analyzed on a case by case basis. In general, California reserve peace officers receive substantial financial benefits, some of which are described in the Officer Down Memorial website¹ as follows:

1. Training: Reserve peace officers receive hundreds of hours of law enforcement training representing a significant financial benefit. They are required to attend POST-certified training academies where they receive the same law enforcement training taught by the same instructors as full-time peace officer candidates. Level I reserve officers receive the same amount of hours of training as full-time law enforcement officers, and Level III officers receive more law enforcement training than numerous categories of other full-time paid California peace officers. After they are appointed to their positions, reserve peace officers are also required, either by POST or their agencies, to satisfy “field training” and probationary requirements in order to continue in their positions as law enforcement officers. Failure by a reserve officer to pass field training or complete a probationary period in most cases results in termination.
2. Professional Qualification: Upon completion of training and satisfaction of all testing requirements, Level I reserve peace officers receive a level of training which may qualify them for employment as full-time peace officers in States outside California.
3. Preference in Hiring: Many reserve peace officers receive preference in hiring as full-time officers with their law enforcement agencies.
4. California Workers’ Compensation Benefits: Under Section 3362.5 of the California Labor Code, California reserve peace officers are defined as employees and entitled to all the rights of any employee under California’s Workers’ Compensation Law.
5. Line of Duty Death – Workers Compensation Benefits: Administered by the California Department of Industrial Relations, this benefit is supplied by the municipality’s insurance carrier. The benefits are paid out in all cases where a peace officer dies in the line of duty as follows: (a) \$290,000 payable in weekly checks of two-thirds of the employee’s pay up to \$840 maximum (if there is a surviving child or children, the weekly payments can exceed the maximum amount and continue until the youngest child turns 18 years old), and (b) \$5,000 burial expenses.

¹ <http://www.odmp.org/benefits/state?state=California>

6. California State Public Safety Officers Program (California Labor Code § 4709(a)): "A dependent of a peace officer...as defined in Section [830.6 (reserve peace officers)] who is killed in the performance of duty or who dies or is totally disabled as a result of an accident or an injury caused by external violence or physical force, incurred in the performance of duty shall be entitled to a scholarship at any institution described in subdivision (1) of Section 69535 of the Education Code. The scholarship shall be in an amount equal to the amount provided a student who has been awarded a Cal Grant scholarship as specified in Article 3 (commencing with Section 69530) of chapter 2 of Part 42 of the Education Code."
7. Alan Pattee Scholarship Act (Education Code § 68121): Under this Act, no fees or tuition of any kind shall be required of or collected by the Regents of the California State University from any surviving child, natural or adopted, of a public safety official in the State of California who is killed in the line of duty. Effective January 1, 2001, Governor Davis signed AB1850 which provides surviving spouses the same benefit that their surviving children receive. This consists of tuition-free education throughout the University of California, Hastings College of Law, and California State University systems.
8. Federal Public Safety Officers' Death Benefits (42 U.S. Code § 3796) (referred to as the Public Safety Officers' Benefits Program): peace officers, including reserve peace officers, are entitled to death benefits and benefits for permanent and total disability. The current benefit is \$328,613 payable to surviving children and spouses. Subsection (b) provides a one-time benefit to public safety officers in that same amount who were permanently and totally disabled as a result of a catastrophic injury sustained in the line of duty on or after November 29, 1990. (The dollar amount of the death and disability benefit is higher now due to Consumer Price Index adjustments as stated in subsection (h) of that statute.)
9. Violent Crime Control and Law Enforcement Act of 1994 (Omnibus Crime Bill, 42 U.S. Code § 14905, subdivision (e)): A dependent child of a law enforcement officer shall be entitled to scholarship assistance without a repayment obligation. Further, an officer himself/herself may be entitled to scholarship money up to \$40,000 for agreeing to work in a state or local police force.
10. Federal Workers' Compensation Benefits: Survivors of local or State law enforcements officers who are killed while arresting a fugitive wanted by, or committing a crime against, the Federal government, or by prisoners held on Federal charges, may be eligible for Federal works compensation benefits. Public Law 90-291, enacted April 19, 1968,

added sections 8191 et seq. to the Federal Employees' Compensation Act, and provides compensation coverage for non-Federal law enforcement officers who sustain an injury or disease under circumstances involving a crime against the United States. Coverage is also extended to eligible survivors of officers whose deaths occur under such circumstances. The law was intended to recognize the assistance given to the Federal government by State and local law enforcement officers.

11. Tax Benefits: Reserve officers are entitled to deduct certain out-of-pocket expenses associated with their law enforcement employment on their Federal and State tax returns.
12. Union Membership Benefits: Certain reserve peace officers are entitled to become members of public employee labor unions representing rank and file peace officers (with attendant benefits such as life insurance, legal representation, identity theft protection, retirement planning and other benefits extended on terms common to all union members).
13. Employee Assistance Programs: Some agencies offer Employee Assistance Programs to their full-time and reserve peace officers alike, entitling them to consultation, counseling and similar valuable services.

f. “Employee of a Governmental Agency” for Any Purpose Satisfies LEOSA

The preceding analysis provides ample authority for the conclusion that California reserve peace officers are “employees of a governmental agency” as contemplated by LEOSA. The employment issue is a complex one, yet it is clear that a reserve peace officer (and other persons for that matter) can have employment status for some purposes under applicable law, yet not have employment status for other purposes. For instance, under the Fair Labor Standards Act, it is clear that the statute explicitly excludes persons who are unpaid volunteers (FLSA section 3(e)(4)(A)(i)). Yet, as the foregoing discussion points out, those same persons can be employees for a wide variety of other purposes. In the case of reserve peace officers, the California Legislature classified reserve peace officers as employees under the Labor Code, Government Code and Penal Code. California POST has taken the same position. Under applicable law as set forth by the Supreme Court, the California Supreme Court and the Ninth Circuit Court of Appeals, reserve peace officers would be classified by Federal courts as employees under the agency control test and likely the economic realities test as well. LEOSA’s purpose, its legislative history and the authorities promulgated to date (notably *Rodriguez* and *Weaver*) all support the conclusion that California reserve peace officers are “employees of a governmental agency” entitled to LEOSA’s protections.

2. “Authorized by Law to Engage in or Supervise the Prevention, Detection, Investigation, or Prosecution of, or the Incarceration of Any Person for, Any Violation of Law” – 18 U.S. Code §926B(c)(1)

a. Law Enforcement Authority of California Reserve Peace Officers

California Penal Code §§ 830.1 through 832.6 specify the persons who are “peace officers.” Penal Code § 836 allows a “peace officer” to make an arrest, i.e., it provides a “statutory” power of arrest.

Penal Code § 830.6 provides that if a person is appointed as a reserve peace officer, the person is a peace officer provided he or she meets the requirements of Penal Code § 832.6. Penal Code § 832.6 specifies 3 levels of reserve police officers, Levels I, II and III. In general, Levels I and II are assigned to the prevention and detection of crime and the general enforcement of the laws of California. Level III reserve police officers are assigned to more limited support duties but they still are defined as “peace officers” with the same on-duty peace officer legal status as any other peace officer in the State of California. Those limited duties include some of the same requirements as those which LEOSA identifies as law enforcement functions within its purview, and thus the Level III officer meets that prong of the statutory definition. Even though Level III reserve peace officers are not authorized to engage in “general law enforcement” duties, the duties which they are authorized to undertake would satisfy this requirement of LEOSA. For example, the taking of a crime report (permitted to be submitted only by a peace officer and the potential basis for an arrest and prosecution of a suspect) would satisfy the definition of the “investigation” of any violation of law. Level III officers are authorized by law to issue citations for violations of law. Because Level III officers are considered “peace officers” with statutory powers of arrest, they have the power to engage in the “incarceration” of a person for a violation of law. Additionally, prisoner transport, a typical Level III activity, is clearly engaging in activities relative to the incarceration of a person for a violation of law. In sum, the status of reserve peace officers as “peace officers” under California law satisfies this prong of LEOSA.

b. Is “Off-Duty” Peace Officer Authority Required Under LEOSA?

In California, certain classes of peace officers have the authority to take law enforcement action when they are off-duty if certain circumstances exist. Some have described this as “24-hour peace officer authority.” In actuality, the phrase “24-hour peace officer authority” is, legally speaking, a misnomer. The California Penal Code does not define any law enforcement officer as being a “24-hour a day peace officer” or as having law enforcement authority “24 hours a day.” Rather, the construct of the chapter of the Penal Code which defines peace officers involves a two-step process.

First, it identifies various persons who are defined categorically as peace officers. Second, the Penal Code separately prescribes the authority of each category of peace officers.

“24-hour peace officer authority” is most commonly used with respect to peace officers defined under Penal Code §§ 830.1 and 830.2. Those sections provide that these peace officers’ law enforcement authority extends anywhere in California under 3 specific circumstances described below. A significant number of peace officer categories under the Penal Code impose substantial limits on the authority of the officer in question. They are too numerous to list here, but by way of example, parole officers designated in Penal Code § 830.5 have peace officer authority only “while engaged in the performance of the duties of their respective employment and for the purpose of carrying out the primary function of their employment.” For correctional officers designated under § 830.55, their authority is described as follows: “This section shall not be construed to confer any authority upon a correctional officer except while on duty.” Generally, these peace officers’ authority is limited in time (periods when they are on-duty) or place (physical location of assignment, such as a correctional facility).

Similar limitations apply to a broad list of California peace officers. For reserve peace officers (other than Designated Level I officers, who have the same authority as Penal Code § 830.1 officers), their authority is described in the Penal Code as extending only “for the duration of the person’s specific assignment.” In concept, that limitation is no different than that of other officers whose law enforcement authority extends to periods of time or specific locations when and where they are “on-duty.” They are conceptually identical.

With regard to officers whose authority is colloquially described as existing on a “24-hour” basis, technically that authority only exists under the Penal Code in the following 3 situations:

- “(1) As to any public offense committed or which there is probable cause to believe has been committed within the political subdivision that employs the peace officer or in which the peace officer serves,
- (2) Where the peace officer has the prior consent of the chief of police or chief, director, or chief executive officer of a consolidated municipal public safety agency, or person authorized by him or her to give consent, if the place is within a city, or of the sheriff, or person authorized by him or her to give consent, if the place is within a county, and
- (3) as to any public offense committed or which there is probable cause to believe has been committed in the peace officer's presence, and with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of the offense.”

In theory, these circumstances are limited and do not exist on a 24-hour a day basis: as to subparagraph 1 above, a geographical limitation applies, as to subparagraph 2, a conditional limitation applies (consent of the local authorities), and as to subparagraph 3, an incident-based limitation applies. Nevertheless, some observers of LEOSA have asserted that only officers who have the authority to “activate” themselves as law enforcement officers when they are off-duty satisfy the “authorization” prong of LEOSA (and, by necessity, contend that this applies to statutory powers of arrest and authority to carry a firearm, which are additional requirements of LEOSA as set forth below). That contention is erroneous as this article describes below. Furthermore, adopting that theory of LEOSA suggests that even Penal Code §§ 830.1 and 830.2 peace officers who carry a firearm off-duty and engage in purported law enforcement activity in which none of the 3 circumstances noted above are present would mean that those officers would not be LEOSA-eligible. That proposition is inconsistent with the express words of the statute and its legislative history and for all intents and purposes if adopted as the rule would eviscerate LEOSA.

In addition, most peace officers in the U.S. do not have peace officer authority when they are outside their home State of employment. LEOSA was intended to apply to them in circumstances which implicate true “off-duty” status where no law enforcement authority exists. The proposition that LEOSA-eligibility is inextricably linked with the exercise of law enforcement authority in a quasi on-duty capacity not only finds no support in the statute itself, the legislative history disproves that theory in its entirety.

That being said, the following analyzes whether “24-hour a day peace officer authority,” as it applies to an analysis of LEOSA and California reserve peace officers (and by analogy any other law enforcement officer whose authority is limited to their on-duty time based on principles similar to those of the California Penal Code), is a requirement of LEOSA.

c. Peace Officer “Status” Compared with Peace Officer “Authority”

The statutory definition of a peace officer in the State of California set forth in Penal Code § 830 is distinguishable from the peace officer authority of that person at a given moment in time. As California law enforcement officers (reserve or otherwise) go on-duty and off-duty, they do not lose their statutorily defined status as peace officers (sometimes referred to as their “designation” or their “appointment”). Rather, their authority to take law enforcement action in an off-duty capacity is conditioned upon various circumstances materializing (as noted above with respect to peace officers authorized, for example, under Penal Code §§ 830.1 and 830.2), or their authority may be limited or non-existent as is the case with a broad category of peace officers in California, not just reserve peace officers.

Many components of the Federal government, as well as State and local law enforcement agencies, authorize peace officers to take law enforcement action only when they are on-duty. In fact, as noted in the U.S. House of Representatives Report when it passed LEOSA, prior to LEOSA many States prohibited law enforcement officers from carrying a firearm off-duty altogether (see H.R. Rep. No. 108-560, 108th Cong., 2nd Sess. 2004, at page 4). LEOSA does not conflate the definition of a statutorily identified class of persons (qualified law enforcement officers) with their authority to take law enforcement action at all times. In other words, LEOSA does not state that the various requirements of LEOSA relative to who is a “qualified law enforcement officer” have to apply around the clock, 24 hours a day. Not only would that interpretation gut LEOSA, but it is antithetical to the entire rationale of LEOSA, namely to allow persons who serve as law enforcement officers the right to protect themselves by carrying a concealed firearm in their personal, off-duty time either at home or when they are out of State, for example, on vacation. The LEOSA case law, legislative history and agency practice since LEOSA was passed in 2004 confirm that on-duty status is the determinative factor, and those authorities are addressed below.

d. LEOSA Case Law

i. The *Booth* Case

The court’s holding in *The People of the State of New York v. Booth*, 2008 NY Slip Op 28206; 20 Misc. 3d 549; 862 N.Y.S.2d 767; 2008 N.Y. Misc. LEXIS 3137; 239 N.Y.L.J. 111, is one of the few cases concerning LEOSA and the definition of “qualified law enforcement officer.” It is directly on point with the specific issue whether off-duty law enforcement authority is a requirement of LEOSA. *Booth* involved a Coast Guard reserve officer who was arrested when he was off-duty in Newburgh, New York (his home State). Booth was prosecuted for carrying a concealed firearm in violation of applicable local law and asserted a LEOSA defense claiming that he was a “qualified law enforcement officer” under LEOSA. All parties stipulated to the fact that the Coast Guard prohibited off-duty firearms carry as a matter of policy and Booth himself was not acting within the scope of his employment nor imbued with law enforcement authority at the time of his arrest.

The key issue in *Booth* was whether the LEOSA requirement that a person be “authorized by the agency to carry a firearm” referred only to on-duty peace officer authorization or whether it also required off-duty peace officer authorization. If, as the prosecution asserted, LEOSA required authorization for both, Booth would not fall within the definition of “qualified law enforcement officer.” The court specifically found that LEOSA does not include off-duty carry authorization as a prerequisite to a finding that he was “authorized by his agency to carry a firearm” under LEOSA. According to the court, the fact that the Coast Guard reservist had no

law enforcement authority off-duty at the time he carried a firearm did not deprive him of his status as a “qualified law enforcement officer” under LEOSA.

A closer analysis of the authority of a U.S. Coast Guard reserve officer under federal law reveals that such officers have no law enforcement authority when they are off-duty (yet their agency, the U.S. Coast Guard, recognizes they are LEOSA-eligible as set forth below). The authority of a U.S. Coast Guard officer to take law enforcement action only arises in connection with on-duty assignments “upon the high seas” as provided at 14 U.S. Code § 89. In its guidance on this topic relative to LEOSA, the U.S. Coast Guard promulgated the LEOSA advisement to its personnel in which it noted that Coast Guard personnel who are considered “qualified law enforcement officers” under LEOSA are boarding officers, including reservists, whose authority is limited not only as to time but as to a specific place, namely when taking enforcement action on vessels:

“C. Provided they meet all the conditions in paragraph 5.a. at the time of firearm concealed carriage, the USCG considers the below described uniformed USCG personnel to fall within the LEOSA of “qualified law enforcement officer”: (1) commissioned, warrant, and petty officers, including reservists covered by chapter 3.c.1.b.3 of reference (c), who hold a current, effective, and properly issued command designation letter as a boarding officer or boarding team member in accordance with chapter 3.c.1.b.1 of reference (c).

USCG law enforcement powers ashore are limited and, in some circumstances, non-existent. Activity involving use of concealed firearms while not in the performance of official duties will likely be outside the members scope of employment (a decision made by the U.S. Department of Justice (DOJ), not the USCG) thereby placing the costs of legal defense solely on the member. Additionally, neither the USCG nor DOJ will normally provide representation in state court for criminal charges.” United States Coast Guard Alcoast #549/10 [emphasis added]

In January 2011, in another case involving a U.S. Coast Guard reserve officer, the City of San Fernando, California, paid \$44,000 to settle a civil lawsuit brought by former Coast Guard Reserve maritime law enforcement officer Jose Diaz, who was arrested for a concealed firearms violation. Diaz claimed he was entitled to rely on LEOSA to carry his firearm and brought a lawsuit for battery, false arrest and Federal civil rights violations. Rather than litigate the issue, the City of San Fernando settled the case on terms including payment to Diaz, an undertaking by the San Fernando Police Department to educate its officers on LEOSA through enhanced training, and adoption of policies consistent with the Diaz case and LEOSA in general.

The court's holding in *Booth*, the U.S. Coast Guard's policy on LEOSA and the settlement of the Diaz lawsuit confirm that off-duty Coast Guard reserve officers have no law enforcement authority off-duty but are "qualified law enforcement officers" under LEOSA. There is no reported case or authority holding that such off-duty law enforcement authority is required by LEOSA.

ii. The Barbusin Case

In 2011, a "special police officer" of the District of Columbia Protective Services Police Department, Sgt. John Barbusin, was arrested and charged with various firearms violations. Barbusin asserted, among other defenses, a LEOSA defense on the basis that he is a "qualified law enforcement officer" under LEOSA. PSPD officers have the following limited on-duty authority pursuant to District of Columbia Municipal Regulations, Chapter 6A, Section 1103:

- A PSPD officer only has law enforcement authority for the duration of the officer's specific assignment.
- A PSPD officer's authority is limited to the specific physical property the officer is protecting.
- A PSPD officer is not authorized by law to exercise any law enforcement authority outside the property to which the officer is assigned.
- A PSPD officer shall not identify him/herself as a law enforcement officer when outside the property the officer is protecting and in all cases never off-duty.
- A PSPD officer must leave the officer's firearm at the place of work when that officer goes off-duty.
- A PSPD officer is not authorized by law or agency to carry a firearm off-duty.

The United States Attorney for the District of Columbia filed an amicus brief and addressed various LEOSA issues, including whether the Federal government viewed Barbusin as a "qualified law enforcement officer" under LEOSA. The U.S. Attorney concluded that a PSPD officer is a "qualified law enforcement officer" if the officer meets the "on-duty" requirements of LEOSA's definition of a "qualified law enforcement officer." Below are excerpts of the U.S. Attorney's brief of particular note:

- "LEOSA's legislative history reflects that this definition was intended to be construed broadly." (page 3)
- "LEOSA is to be interpreted according to its plain meaning without producing a result that would be absurd, unreasonable or contrary to the clear purpose of the legislation." (page 2-3)

- “Congress also expressed LEOSA’s purpose more broadly to implement ‘national measures of uniformity and consistency’ and allow officers to carry a concealed firearm ‘anywhere within the United States.’” (page 10)
- “Congress also rejected efforts to allow jurisdictions to opt-out of, or restrict, LEOSA.” (page 10)
- “PSPD officers are special police officers who have limited arrest authority.” (page 4)
- In discussing the District’s assertion that the PSPD is “nothing more than a security agency,” the U.S. Attorney notes that if PSPD officers engage in the type of on-duty activities falling within LEOSA (without any regard whatsoever to their off-duty authority), then “PSPD officers would appear to satisfy LEOSA’s broad definition of a ‘qualified law enforcement officer.’” (page 4)
- “Congress intended to permit qualified officers to carry a concealed firearm in their home jurisdictions, as well as in any other jurisdiction.” (page 10)
- With regard to arguments that have been made that LEOSA only applies to officers outside their home states, the U.S. Attorney notes that the text refers to the preemption of concealed carry laws of “any” State, and concludes that “the plain language of the statute exempts a qualified officer from any laws that would preclude the officer from carrying a firearm in his home jurisdiction.” (page 9)

Following the filing of the U.S. Attorney’s brief, the court conducted a hearing on the issue which reveals that the judge in the case had concluded that Barbusin is a qualified law enforcement officer under LEOSA and the prosecution ultimately conceded that point. See Transcript of Proceedings, *Barbusin* hearing July 27, 2012, at pp. 6 and 45. In 2013, all charges against Barbusin were dismissed.

e. LEOSA Legislative History

In the U.S. House of Representatives Report on LEOSA (H.R. Rep. No. 108-560, 108th Cong., 2nd Sess. 2004, at p. 60), House members discussed the many types of law enforcement officers whose authority was limited to on-duty time and was non-existent off-duty. In discussing an amendment which would have given law enforcement agencies the discretion to adopt policies overriding LEOSA, in part due to the large population of peace officers who would be entitled to LEOSA protection in spite of the fact they are not “24-hour a day beat cops,” House members opposed to LEOSA expressed concern that peace officers with substantially limited peace officer powers would be LEOSA-eligible. One member, Zoe Lofgren, a California representative, noted the following:

“Ms. LOFGREN: We have over a thousand correctional officers that run the county jail system. They are authorized to use firearms, but they do not actually have them. The firearms are actually stored at the facilities. They are trained to use them, the firearms, at the correctional facility should an emergency occur. They are not authorized to carry firearms at home or off duty, nor are they trained to do that. They are trained for the correctional system only.... [I]n California, as the other Members from California will know, you become a law enforcement officer when you are accepted for peace officer standards and training, if you are POST certified. That includes weights and measure inspectors, it includes zoning administrators. It is very, very broad, and only some of those people actually get training. I mean, real cops obviously do, but there are a lot of people with POST training who are legally police officers, who are qualified under law, but who don’t ever use a gun—museum guards.”

In his dissent to the passage of LEOSA, Representative James Sensenbrenner echoed the concern that law enforcement officers with limited authority are entitled to rely on LEOSA:

“The definition of law enforcement officer in this legislation is also cause for concern. Several Members and two witnesses at the hearing on this legislation also raised this issue. Generally, we think of a law enforcement officer as someone who is actively engaged in making arrests; however, this legislation uses an expanded definition which includes those who “engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and has statutory powers of arrest.” This broad definition could encompass different individuals in different States including probation and parole officers and jail or prison guards. These officers, while performing an admirable service, will not necessarily have the experience of the beat police officer, yet, this legislation insists we allow them the same authority to carry concealed weapons anywhere in the country.”

In describing the broad categories of law enforcement officers who fall within the definition of “qualified law enforcement officers” under LEOSA, House member Bobby Scott noted:

“[LEOSA] includes not only police and sheriffs and other[s]...we would think of as law enforcement..., but also includes corrections, probation, and parole judicial officers and just about anyone who has statutory power of arrest and who are engaged by their employment by a Government entity in the prevention, detection, investigation,

supervision, prosecution or incarceration of law violators.” H.R. Rep. No. 108-560, 108th Cong., 2nd Sess. 2004 at 23, 54, 55.

Most corrections officers do not have law enforcement authority off-duty (see discussion below regarding federal Bureau of Prisons corrections officers), yet Representative Scott identifies them as LEOSA-eligible. The United States Department of Justice, Bureau of Prisons, issued a LEOSA policy recognizing that BOP correctional officers are LEOSA-eligible even though they have no off-duty law enforcement authority. That policy is discussed in greater detail below.

The foregoing authorities confirm that on-duty status is the determinative factor in assessing LEOSA-eligibility. Our research indicates there is no relevant authority for a different conclusion.

f. Federal, State and Local Law Enforcement LEOSA Policies and Practices

This article does not attempt to survey the thousands of Federal, State and local law enforcement agencies nationally who have recognized that LEOSA applies to law enforcement personnel meeting the on-duty requirements of LEOSA notwithstanding that many of them have limited law enforcement powers on-duty, and in many instances no law enforcement authority off-duty. Approximately 250 law enforcement agencies have received LEOSA training through a law enforcement training provider, The Sheepdog Academy (www.hr218leosa.com), which prepared a table of agencies it has trained and a compilation of corresponding statutory provisions by which the officers of those agencies are granted law enforcement authority. The Table of Authorities is attached as Exhibit B hereto.

A review of those authorities reveals a significant number of the officers of these agencies do not have “24 hour a day” law enforcement authority, but rather may exercise the powers of a law enforcement officer only in specific locations or within the scope of their on-duty employment. Additionally, many of these agencies recognize their officers’ LEOSA eligibility. In the interest of providing a few illustrative examples, the following are noteworthy:

U.S. Military Police and Civilian Department of Defense Enforcement Officers.

The statement of Sen. Patrick Leahy, the sponsor of LEOSA, when the 2013 Act was adopted is instructive of the broad reach of LEOSA. Recall that the 2013 Act added apprehension authority as the legal equivalent of “statutory powers of arrest” in that prong of LEOSA. All other requirements of LEOSA were left unchanged, *e.g.*, authorization to carry a firearm and law enforcement-type duties, all of which relate to on-duty law enforcement activities. Sen. Leahy notes the purpose of the amendment is to put “military police and civilian police officers within the

Department of Defense on equal footing with their law enforcement counterparts across the country when it comes to coverage under LEOSA.”

Military police and civilian DoD police officers do not have law enforcement authority off-duty in the civilian world yet they are still “qualified law enforcement officers” under LEOSA. These persons’ authority as law enforcement officers does not extend to any time or place outside the authority provided in the UCMJ. That authority is explained in detail in the law review article, Opening the Gate?: An Analysis of Military Law Enforcement Authority Over Civilian Law Breakers On and Off the Military Installation, 161 Mil. L. Rev. 1 (September 1999):

“The military lacks statutory formal arrest authority over civilians. “Formal arrest” means the authority to take a lawbreaker into physical custody for the purpose of exercising criminal jurisdiction over him. For federal officials, the authority to conduct a formal arrest requires an affirmative statutory grant of power by Congress. Arrests that are conducted without such authority are unlawful and invalid, unless they are upheld under common law doctrines or other authority. Several federal agencies, such as the Federal Bureau of Investigation, the U.S. Marshals and the Secret Service have broad statutory authority to arrest persons for violations of federal law. **Military law enforcement authorities, however, do not possess statutory arrest authority over civilians.**” 161 Mil. L. Rev. at page 6-7.

Note the reference to the common law doctrines above. One of those is rooted in the concept of off-duty military personnel taking off-duty action as private citizens. See 161 Mil. L. Rev. at page 34 with respect to military law enforcement response to an “off-post emergency,” in which it is clear under relevant law that military law enforcement personnel who take law enforcement action which occurs outside the military installation do so as private citizens: “[T]he only legitimate legal justification for a response in this scenario is the common law doctrine of ‘citizens arrest.’” In other words, even though military personnel have “qualified law enforcement officer” status on-duty (as provided in the 2013 Act which clarifies that apprehension authority and arrest authority are synonymous), military and civilian Department of Defense law enforcement officers clearly do not have any law enforcement power off-duty.

U.S. Department of Justice, Bureau of Prisons (BOP). Pursuant to a memorandum on LEOSA issued by the chief of the U.S. Department of Justice, Bureau of Prisons, BOP correctional officers when on-duty meet the definition of “qualified law enforcement officers.” Off-duty, they have no law enforcement authority. The BOP advises its staff in its LEOSA policy (by which the U.S. DOJ recognizes that LEOSA applies to BOP correctional officers) that all actions BOP officers take off-duty have nothing to do with their status as BOP employees or any purported law enforcement authority they might assert were they on-duty:

“The carrying of concealed personal firearms by off-duty staff pursuant to LEOSA is not an extension of official Bureau duties. **Any actions taken by off-duty staff involving personal firearms will not be considered actions within the scope of Bureau employment, but rather will be considered actions taken as private citizens.** Off-duty staff will be individually and personally responsible for any event that may relate to the carrying or use of a concealed personal firearm under LEOSA.”

“It is important that off-duty staff not misrepresent that they are acting in furtherance of their official Bureau duties. **There should never be a time when off-duty staff claim to be carrying a concealed personal firearm as part of their Bureau employment or in furtherance of their official Bureau duties.**” U.S. Department of Justice, Bureau of Prisons, Memorandum of Director Harley G. Lappin dated February 27, 2006.

Director Lappin explained that the authority of Bureau of Prisons staff under applicable Federal law does not extend to times when such staff are off-duty: “These [law enforcement] authorities may be exercised only in furtherance of official Bureau duties as explained in the statute, regulations, and program statements.” Thus, when off-duty, no such authority exists. Yet the U.S. Department of Justice takes the position, and advises its staff accordingly, that LEOSA applies to them and that any actions they take off-duty is strictly as private citizens, not as law enforcement officers.

U.S. Department of Homeland Security. Pursuant to 40 U.S. Code § 1315, the Secretary of the U.S. Department of Homeland Security is given authority to designate law enforcement officers to protect Federal government property. Such officers’ authority is found in subsection (b)(2), which limits such officers’ law enforcement powers to situations in which they are “engaged in the performance of official duties.” While not engaged in such official duties, they have no such law enforcement authority. DHS nevertheless recognizes that such officers are covered under LEOSA. U.S. Department of Homeland Security, Directive Number 257-01, October 10, 2008. See also *The Federal Law Enforcement Informer*, Department of Homeland Security, Federal Law Enforcement Training Center, Legal Training Division, July 2009.

Virginia Regional Jailers. In 2005, the Virginia Attorney General opined that regional jailers in the State of Virginia, notwithstanding that their authority is extremely limited when they are on-duty (within one mile of their assigned workplace and only as to persons they are supervising in custody) and is non-existent off-duty, nevertheless are considered “qualified law enforcement officers.” Those officers have authority only “during the term of their appointment” (a time-based restriction) and may only carry a firearm “in the course of their assigned duties.” Nevertheless,

according to the Virginia Attorney General, they are LEOSA-eligible. Virginia Attorney General Opinion No. 05-026, June 21, 2005.

New Jersey Reserve Peace Officers. New Jersey courts routinely recognize that its reserve peace officers are “qualified law enforcement officers” under LEOSA as noted by The Sheepdog Academy in the attached Table of Authorities and which is described in its training materials. This includes New Jersey courts’ determinations that LEOSA applies to New Jersey reserve police officers.

3. Must have “statutory powers of arrest” – 18 U.S. Code §926B(c)(1)

Penal Code § 836 confers statutory powers of arrest upon all California peace officers (which includes reserve peace officers pursuant to California Penal Code § 830.6). There is no requirement that statutory powers of arrest be present when off-duty (see analysis above).

4. Must be “authorized by the agency to carry a firearm”– 18 U.S. Code §926B(c)(2)

This is a department by department fact-based test. Most reserve peace officers in California meet this test because they are authorized to carry a firearm on-duty. The *Booth* case discussed above upheld LEOSA status where off-duty carry was not authorized by law or the employing agency.

5. Not be “the subject of any disciplinary action by the agency that could result in the suspension or loss of police powers” – 18 U.S. Code §926B(c)(3)

This is also a fact-based test based on the particular circumstances of the officer. Some LEOSA commentators have debated the meaning of a “disciplinary action” and what would constitute an investigation which “could result” in the suspension or termination of the officer, but to date there is no authority or published court case analyzing that issue.

6. Must meet “standards, if any, established by the agency which require the employee to regularly qualify in the use of a firearm” – 18 U.S. Code §926B(c)(4)

This also depends on the particular circumstances of the officer.

7. Must not be “under the influence of alcohol or another intoxicating or hallucinatory drug or substance” – 18 U.S. Code §926B(c)(5)

Again, this is a fact-based test.

8. Must not be “prohibited by Federal law from receiving a firearm” – 18 U.S. Code §926B(c)(6)

This is determined on a case by case basis.

PART II – CALIFORNIA ASSEMBLY BILL 703

I. Background

California Penal Code § 26300 provides a mechanism by which honorably retired peace officers may receive an endorsement (commonly referred to as a “CCW endorsement”) on their retirement identification cards pursuant to which such officers are exempt from California concealed carry laws. These provisions are prescribed under California State law and provide an exemption under California law in addition to the preemptive provisions set forth in LEOSA and discussed in Part I of this article. The CCW endorsement, unlike LEOSA, requires an agency to take various affirmative administrative steps (in essence, an approval and issuance process). If a retired officer receives a CCW endorsement, the officer now has two separate statutory exemptions from California concealed carry laws, one under federal law (LEOSA), which applies in all States, and one under California Penal Code § 26300 and its related statutes, which applies only in California (and such other States which grant reciprocity to California CCWs).

II. Retired Reserve Peace Officers and CCW Endorsements

In light of prior court decisions and interpretations of the California Penal Code, the weight of opinion in California was that there was no statutory basis to issue a retired reserve peace officer a CCW endorsement upon retirement (and California law enforcement agencies generally followed that protocol). On September 9, 2013, Assembly Bill 703 was signed into law and will become effective on January 1, 2014. AB 703 amends various provisions of the Penal Code to allow for retired Level I reserve peace officers to be treated on the same basis as their full-time retired colleagues with regard to receiving a CCW endorsement upon retirement (subject to the requirements of this legislation).

As noted in the bill:

“This bill would make [CCW endorsement] provisions applicable to a retired reserve officer if the retired reserve officer carried a firearm during the course and scope of his or her appointment, was a level I reserve officer, and served in the aggregate the minimum amount of time as specified by the retiree’s agency’s policy as a level I reserve peace officer. The bill would prohibit the policy from setting an aggregate term requirement that is less than 10 years or more than 20 years. The bill would prohibit service as a reserve officer, other than a level I reserve officer prior to January 1, 1997, from counting toward that aggregate term requirement. The bill would authorize a law enforcement agency to revoke or deny an endorsement issued to a retired reserve peace officer.”

III. Provisions of AB 703

AB 703 provides retired Level I reserve peace officers an exemption from the prohibitions on carrying a concealed firearm set forth in Penal Code § 25400 principally through the amendment of Penal Code § 26300. That amendment changed Penal Code § 26300(c) to include within its provisions retired Level I reserve peace officers as follows:

“(c) (1) Any peace officer who was authorized to, and did, carry a firearm during the course and scope of his or her appointment as a peace officer shall have an endorsement on the officer’s identification certificate stating that the issuing agency approves the officer’s carrying of a concealed and loaded firearm.

(2) This subdivision applies to a retired reserve officer if the retired reserve officer satisfies the requirements of paragraph (1), was a level I reserve officer as described in paragraph (1) of subdivision (a) of Section 832.6, and he or she served in the aggregate the minimum amount of time as specified by the retiree’s agency’s policy as a level I reserve officer, provided that the policy shall not set an aggregate term requirement that is less than 10 years or more than 20 years. Service as a reserve officer, other than a level I reserve officer prior to January 1, 1997, shall not count toward the accrual of time required by this section. A law enforcement agency shall have the discretion to revoke or deny an endorsement issued under this subdivision pursuant to Section 26305.”

California law enforcement agencies that employ Level I reserve peace officers are now beginning to undertake administrative actions to comply with AB 703 and are focusing on the following key issues:

A. CCW Endorsement Issuance Mandatory: The issuance of an endorsement to a retired Level I reserve peace officer who qualifies is mandatory and shall occur in the same manner as CCW endorsements are issued to full-time retired peace officers. Provisions concerning eligibility, renewal and revocation remain unchanged.

B. Retroactivity: Questions have arisen as to whether a retired Level I reserve peace officer who meets the requirements of AB 703 but retired prior to its effectiveness (January 1, 2014) can obtain a CCW endorsement. AB 703 is silent on that issue. Pursuant to rules of statutory construction, absent specific language to the effect that AB 703 only applies to Level I reserve peace officers who retire on or after a certain date, AB 703 on its face would require the issuance of a CCW endorsement to any retired Level I reserve peace officer

who meets the years of service and other requirements relative to issuance of a CCW endorsement.

C. Years of Service: Agencies have the discretion to designate the years of service requirement. Such designation can be no fewer than 10 years of service as a Level I reserve officer but no more than 20 years. With regard to years of service, any years spent prior to January 1, 1997, in any reserve officer capacity other than as a Level I reserve peace officer cannot be included in the calculation. After January 1, 1997, all time spent as a reserve peace officer is included in the years of service calculation (including those spent as a Level III or Level II reserve peace officer) as long as the person served as a Level I reserve officer for a number of years within the 10-20 year range as set by agency policy.

CONCLUSION

This article has analyzed in detail the critical legal issues underlying LEOSA and AB 703 without advocating CRPOA's policy views. Based on that analysis, CRPOA concludes those California reserve peace officers who are and were authorized to carry a firearm on-duty meet the legal requirements of LEOSA and are entitled to its protections. That being said, CRPOA also believes these laws are good policy.

California reserve peace officers are professional, trained law enforcement officers with the legal status of "peace officers" under the California Penal Code. Most reserve peace officers receive more hours of training on their road to becoming a law enforcement officer than a significant number of classes of other peace officers designated under the Penal Code. They are required to meet ongoing agency and POST Continuing Professional Training requirements, including firearms training. They are deployed by law enforcement agencies to perform the same functions as their full-time law enforcement colleagues. With LEOSA and now with AB 703, both Federal and State legislators recognize the risks faced by law enforcement officers, including reserve peace officers, when they do their jobs and have provided a basis for them to protect themselves off-duty by operation of law.

The legal authority to carry a firearm off-duty under these laws is a matter of personal protection which comes with the job of a law enforcement officer and in that sense is not a perquisite but a serious matter entailing a great degree of responsibility. Law enforcement trainers and subject matter experts have long advocated (in some cases required) that law enforcement officers carry a firearm off-duty and these laws now codify that policy by statute.

Some agencies still believe they need to "approve" LEOSA, or that they have the discretion to "confer" LEOSA privileges on their law enforcement officers. LEOSA operates by its terms and thus agencies do not confer or grant those rights to their law enforcement officers. However, policies and practices which take the position that LEOSA does not apply, whether to full-time, part-time or reserve peace officers, are certainly unhelpful and we believe ultimately unenforceable. CRPOA reiterates its view that full-time and reserve California peace officers' identification cards should contain a reference to LEOSA appearing on the cards (to facilitate identification when they are out-of-State) which would appear as follows:

"The person identified on the front of this card is a ["qualified law enforcement officer"] ["qualified retired law enforcement officer"] as defined in the Law Enforcement Officers Safety Act of 2004 (18 U.S. Code Section [926B][926C]), subject to the conditions and restrictions thereof."

Furthermore, retired reserve peace officers meeting LEOSA's requirements should be entitled to qualify with their firearms on agency firearms ranges to the same extent as retired full-time officers. Additionally, AB 703 mandates that agencies adopt administrative processes for issuance of retirement ID cards with CCW endorsements to their retired Level I reserve officers, and CRPOA remains committed to facilitating that process with any agency that desires CRPOA's assistance. These practices will ensure that the provisions of LEOSA and AB 703 are adopted consistently and in a manner the framers of this legislation intended.

CRPOA believes that law enforcement agencies that continue to resist these laws are thwarting the letter and spirit of LEOSA and ultimately do the law enforcement community a disservice. To those law enforcement agencies that have welcomed the changes brought by LEOSA and AB 703, CRPOA is grateful. To those agencies which continue to follow policies and practices inimical to those laws, we encourage them to re-evaluate their positions. While clearly a personal choice, a law enforcement officer's ability to carry a firearm off-duty fundamentally enhances officer safety and is a law enforcement best practice which agencies should implement consistently for their full-time and reserve peace officers alike.

EXHIBIT A

THE LAW ENFORCEMENT OFFICERS SAFETY ACT OF 2004, AS AMENDED BY THE LAW ENFORCEMENT OFFICERS SAFETY ACT IMPROVEMENTS ACT OF 2010 AND THE NATIONAL DEFENSE AUTHORIZATION ACT OF 2013²

§ 926B. Carrying of concealed firearms by qualified law enforcement officers

(a) Notwithstanding any other provision of the law of any State or any political subdivision thereof, an individual who is a qualified law enforcement officer and who is carrying the identification required by subsection (d) may carry a concealed firearm that has been shipped or transported in interstate or foreign commerce, subject to subsection (b).

(b) This section shall not be construed to supersede or limit the laws of any State that

(1) permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property; or

(2) prohibit or restrict the possession of firearms on any State or local government property, installation, building, base, or park.

I As used in this section, the term “qualified law enforcement officer” means an employee of a governmental agency who—

(1) is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and has statutory powers of arrest or apprehension under section 807(b) of title 10, United States Code (article 7(b) of the Uniform Code of Military Justice);

(2) is authorized by the agency to carry a firearm;

(3) is not the subject of any disciplinary action by the agency which could result in suspension or loss of police powers;

(4) meets standards, if any, established by the agency which require the employee to regularly qualify in the use of a firearm;

(5) is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and

² Includes all operative statutory language and omits certain ministerial (e.g., numbering) provisions.

(6) is not prohibited by Federal law from receiving a firearm.

(d) The identification required by this subsection is the photographic identification issued by the governmental agency for which the individual is employed that identifies the employee as a police officer or law enforcement officer of the agency.

(e) As used in this section, the term “firearm”—

(1) except as provided in this subsection, has the same meaning as in section 921 of this title;

(2) includes ammunition not expressly prohibited by Federal law or subject to the provisions of the National Firearms Act; and

(3) does not include--

(A) any machinegun (as defined in section 5845 of the National Firearms Act);

(B) any firearm silencer (as defined in section 921 of this title); and

(C) any destructive device (as defined in section 921 of this title).

(f) For the purposes of this section, a law enforcement officer of the Amtrak Police Department, a law enforcement officer of the Federal Reserve, or a law enforcement or police officer of the executive branch of the Federal Government qualifies as an employee of a governmental agency who is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and has statutory powers of arrest or apprehension under section 807(b) of title 10, United States Code (article 7(b) of the Uniform Code of Military Justice).”

§ 926C. Carrying of concealed firearms by qualified retired law enforcement officers

(a) Notwithstanding any other provision of the law of any State or any political subdivision thereof, an individual who is a qualified retired law enforcement officer and who is carrying the identification required by subsection (d) may carry a concealed firearm that has been shipped or transported in interstate or foreign commerce, subject to subsection (b).

(b) This section shall not be construed to supersede or limit the laws of any State that

(1) permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property; or

(2) prohibit or restrict the possession of firearms on any State or local government property, installation, building, base, or park.

I As used in this section, the term “qualified retired law enforcement officer” means an individual who—

(1) separated from service in good standing from service with a public agency as a law enforcement officer;

(2) before such separation, was authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and had statutory powers of arrest or apprehension under section 807(b) of title 10, United States Code (article 7(b) of the Uniform Code of Military Justice);

(3)(A) before such separation, served as a law enforcement officer for an aggregate of 10 years or more; or

(B) separated from service with such agency, after completing any applicable probationary period of such service, due to a service-connected disability, as determined by such agency;

(4) during the most recent 12-month period, has met, at the expense of the individual, the standards for qualification in firearms training for active law enforcement officers, as determined by the former agency of the individual, the State in which the individual resides or, if the State has not established such standards, either a law enforcement agency within the State in which the individual resides or the standards used by a certified firearms instructor that is qualified to conduct a firearms qualification test for active duty officers within that State;

(5)(A) has not been officially found by a qualified medical professional employed by the agency to be unqualified for reasons relating to mental health and as a result of this finding will not be issued the photographic identification as described in subsection (d)(1); or

(B) has not entered into an agreement with the agency from which the individual is separating from service in which that individual acknowledges he or she is not qualified under this section for reasons relating to mental health and for those reasons will not receive or accept the photographic identification as described in subsection (d)(1);

(6) is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and

(7) is not prohibited by Federal law from receiving a firearm.

(d) The identification required by this subsection is—

(1) a photographic identification issued by the agency from which the individual separated from service as a law enforcement officer that identifies the person as having been employed as a police officer or law enforcement officer and indicates that the individual has, not less recently than one year before the date the individual is carrying the concealed firearm, been tested or otherwise found by the agency to meet the active duty standards for qualification in firearms training as established by the agency to carry a firearm of the same type as the concealed firearm; or

(2)(A) a photographic identification issued by the agency from which the individual separated from service as a law enforcement officer that indicates the person as having been employed as a police officer or law enforcement officer; and

(B) a certification issued by the State in which the individual resides or by a certified firearms instructor that is qualified to conduct a firearms qualification test for active duty officers within that State that indicates that the individual has, not less than 1 year before the date the individual is carrying the concealed firearm, been tested or otherwise found by the State or a certified firearms instructor that is qualified to conduct a firearms qualification test for active duty officers within that State to have met--

(I) the active duty standards for qualification in firearms training, as established by the State, to carry a firearm of the same type as the concealed firearm; or

(II) if the State has not established such standards, standards set by any law enforcement agency within that State to carry a firearm of the same type as the concealed firearm.

(e) As used in this section—

(1) the term “firearm”--

(A) except as provided in this paragraph, has the same meaning as in section 921 of this title;

(B) includes ammunition not expressly prohibited by Federal law or subject to the provisions of the National Firearms Act; and

(C) does not include--

(i) any machinegun (as defined in section 5845 of the National Firearms Act);

(ii) any firearm silencer (as defined in section 921 of this title); and

(iii) any destructive device (as defined in section 921 of this title); and

(2) the term ‘service with a public agency as a law enforcement officer’ includes service as a law enforcement officer of the Amtrak Police Department, service as a law enforcement officer of the Federal Reserve, or service as a law enforcement or police officer of the executive branch of the Federal Government.

EXHIBIT B

TABLE OF AUTHORITIES

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The Sheepdog Academy (www.hr218leosa.com)

See attached

Agency or Government Category	Title	Arrest Authority	LE Authority	Carry Authority	Quald LEO	Note
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U.S. Capitol Police	Police Officer	2 USC 1961	2 USC 1961	2 USC 1941	Yes	
U.S. Courts, Probation	Probation Officer	18 USC 3606	18 USC 3606	18 USC 3603(9), 18 USC 3154(13)	Yes	
	Criminal Investigator	18 USC 3063	18 USC 3063	18 USC 3063	Yes	
U.S. Environmental Protection Agency, CID	Criminal Investigator	21 USC 372(e)(2)	21 USC 372(e)	21 USC 372(e)(1)	Yes	
U.S., Food and Drug Administration, OCI	Law Enforcement Officer	16 USC 559	16 USC 551	16 USC 559	Yes	
U.S. Dpt of Agriculture, Forest Service	Special Agent	10 USC 1585a	10 USC 1585a	18 USC 925(a)(1)	Yes	
U.S. Dpt of Defense, DCIS	Special Agent	10 USC 9027; 10 USC 1585a	10 USC 9027; 10 USC 1585a	18 USC 925(a)(1)	Yes	
U.S. Dpt of Defense, Air Force OSI	Civilian Police	10 USC 807 (See 18 USC 926B(f)(exempt)	10 USC 1585; 18 USC 1382	10 USC 1585	Yes	
U.S. Dpt of Defense, Army Civilian Police	Special Agent	10 USC 4027; 10 USC 1585a	10 USC 1585a	18 USC 925(a)(1)	Yes	
U.S. Dpt of Defense, Army CID	Civilian Police	10 USC 807 (See 18 USC 926B(f)(exempt)	10 USC 1585; 18 USC 1382	10 USC 1585	Yes	
U.S. Dpt of Defense, Navy Civilian Police	Special Agent	10 USC 7480; 10 USC 1585a	10 USC 7480	18 USC 925(a)(1)	Yes	
U.S. Dpt of Defense, NCIS	MAA, Investigator	10 USC 807 (See 18 USC 926B(f)(exempt)	10 USC 331, etc; 18 USC 1382	18 USC 925(a)(1)	Yes	
U.S. Dpt of Defense, NCIS	Police Officer	10 USC 2674(b)(1)(B)	10 USC 2674(b)(1)(B)	10 USC 2674(b)(1)(A)	Yes	
U.S. Dpt of Defense, Pentagon Force Protection						
U.S. Dept of Educ, OIG	Special Agent	5 USC App Sec (6)(e)	5 USC App Sec (4)(a)(1)	5 USC App Sec (6)(e)	Yes	
U.S. Dpt of Homeland, Border Patrol	Patrol Agent / Patrol Officer	8 USC 1357; 19 USC 1581, 1589a, etc	8 USC 1357; 19 USC 1581, 1589a, etc	19 USC 1589a	Yes	
U.S. Dpt of Homeland, Coast Guard	Boarding Officer or Boarding Team Mbr	14 USC 89; 19 USC 1401; 46 USC 70117; 10 USC 807 (See 18 USC 926B(f)(exempt)	14 USC 2, 89, 143; 19 USC 1401; 18 USC 1382	14 USC 99; 19 USC 1401; 46 USC 70117	Yes	People of NY v. Booth (2008)(Boarding officers are qualified LEOs under LEOSA)
U.S. Dpt of Health & Human Services, OIG	Special Agent	5 USC 812	5 USC 812	5 USC 812	Yes	
	Special Agent	5 USC 812	5 USC 812	5 USC 812	Yes	
U.S. Dpt of Housing & Urban Develpt.-OIG	Criminal Investigator	14 USC 89, 95; 46 USC 70117; 10 USC 807 (See	14 USC 95; 10 USC 832	14 USC 95	Yes	http://www.gao.gov/special.pubs/gao-07-
U.S. Dpt of Homeland, Coast Guard	Security or Police Officer	14 USC 89; 19 USC 1401; 46	14 USC 2, 89, 143; 19 USC 1401; 18	14 USC 99; 19 USC 1401;	Yes	
U.S. Dpt of Homeland, Coast Guard Police						
U.S. Dpt of Homeland, Customs & Border Protection	Officer	8 USC 1357; 19 USC 1581, 1589a, etc	8 USC 1357; 19 USC 1581, 1589a, etc	19 USC 1589a	Yes	State v. Smith (2008)(CPB officers are qualified LEOs under LEOSA)
	Federal Air Marshal	49 USC 114q; 49 USC 44903(d)	49 USC 114q	49 USC 114q; 49 USC 44903(d)	Yes	
U.S. Dpt of Homeland, FAMS						
	Immigration Enforce Agent	8 USC 1357	8 USC 1103	8 USC 1357	Yes	
U.S. Dpt of Homeland, ICE						
	Special Agent & Police Officer	18 USC 3056	18 USC 3056	18 USC 3056	Yes	
U.S. Dpt of Homeland, Secret Service						

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U.S. Dpt of Interior, Bureau of Land Management	Special Agent	43 USC 1733(c); 16 USC 1338, 6811	43 USC 1733(c); 16 USC 1338	43 USC 1733(c)	Yes	
U.S. Dpt of Interior, Fish & Wildlife Service	Criminal Investigator	16 USC 4224(e)	16 USC 4224(e)	16 USC 3375(b)	Yes	
U.S. Dpt of Interior, National Park Service	Police Officer	16 USC 1a-6(b)	16 USC 1a-6(b)	16 USC 1a-6(b)	Yes	
U.S. Dpt of Interior, Park Police	Police Officer	16 USC 1a-6(b)	16 USC 1a-6(b)	16 USC 1a-6(b)	Yes	
U.S. Dpt of Justice, Bureau of ATF & E	Criminal Investigator	18 USC 3051	18 USC 3051	18 USC 3051	Yes	
U.S. Dpt of Justice, DEA	Special Agent	21 USC 878(a)(3)	21 USC 878(a)(5)	21 USC 878(a)(1)	Yes	
U.S. Dpt of Justice, FBI	Special Agent	18 USC 3052; 40 USC 1315	28 USC 533; 40 USC 1315	18 USC 3052	Yes	
	Corrections Officer	18 USC 3050	28 C.F.R. 511.10 - 511.16	18 USC 3050	Yes	
U.S. Dpt of Justice, Fed Bureau of Prisons						
U.S. Dpt of Justice, Marshals Service	Deputy Marshal	28 USC 561; 18 USC 3053, etc	18 USC 371; 28 USC 566, etc.	18 USC 3053	Yes	
U.S. Dpt of Labor, OIG	Special Agent	5 USC App 3 Sec (6)(e)	5 USC App Sec (4)(a)(1)	5 USC App Sec (6)(e)	Yes	
U.S. Dpt of State, Diplomatic Security Serv.	Special Agent	22 USC 2709(a)(2)	22 USC 2709, 4802, 3927	22 USC 2709(b)(3)	Yes	
	Criminal Investigator	5 USC App 3 Sec (6)(e)	5 USC App Sec (4)(a)(1)	5 USC App Sec (6)(e)	Yes	
U.S. Dpt of Transportation, Fed Aviation Adm						
U.S. Dpt of Treasury, Bureau of Engraving & Printing	Police Officer	31 USC 321	31 USC 321	31 USC 321	Yes	
U.S. Dept of Treasury, Tax Admin Inspector General	Criminal Investigator	5 USC App Sec (6)(e)	5 USC App Sec (4)(a)(1)	5 USC App Sec (6)(e)	Yes	
U.S. Dept of Treasury, Mint Police	Police Officer	40 USC 1315(b)(2)(C)	40 USC 1315(b)(2)(A)	40 USC 1315(b)(2)(B)	Yes	
U.S. Government Printing Office Police	Police Officer	44 USC 317	44 USC 317	44 USC 317	Yes	
U.S. Government Services Admin, OIG	Special Agent	5 USC 812	5 USC 812	5 USC 812	Yes	
U.S. Internal Revenue Service, Criminal Investigations	Criminal Investigator	26 USC 7608	26 USC 7608	26 USC 7608	Yes	
U.S. Postal Service Police	Police Officer	40 USC 1315(b)(2)	40 USC 1315(b)(2); 39 CFR 232.1(q)	40 USC 1315(b)(2)(B)	Yes	
U.S. Postal Service Police, OIG	Postal Inspector	40 USC 1315(b)(2)	40 USC 1315(b)(2); 39 CFR 232.1(q)	40 USC 1315(b)(2)(B)	Yes	
U.S. Dept of Veterans Affairs Police	Security or Police Officer	38 USC 902(a)(3)	38 USC 902(a)	38 USC 904	Yes	
U.S. Dept of Veterans Affairs, OIG	Criminal Investigator	5 USC App Sec (6)(e)	5 USC App Sec (4)(a)(1)	5 USC App Sec (6)(e)	Yes	
Amtrak Police	Police Officer	See 18 USC 926B(f)(exempt)	49 USC 24305	49 USC 24305	Yes	
Federal Reserve System	Police Officer	12 USC 248(q)(3)	12 USC 248(q)(3)	12 USC 248(q)(3)	Yes	
CSX Rail Road	Special Agent	49 USC 28101	49 USC 28101	NJSA 48:3-38	Pending	Trangone (RR police are state agents). Must get LEO Photo ID from NJ.

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California	Police Officer	Awaiting Research	Awaiting Research	Awaiting Research	Pending	
Delaware municipal	Police Officer	11 Del. C. 1911(b)(3)	11 Del. C. 1902, 1903	Del. Constitution Sec. 20	Yes	http://delcode.delaware.gov/title11/c019/sc01/index.shtml
Delaware municipal	Fire Investigator	16 Del. C. 6611(f); 11 Del. C. 1911	16 Del. C. 6607; 11 Del. C. 8401(5)	Del. Constitution Sec. 20	Yes	http://delcode.delaware.gov/title11/c084/index.shtml
Delaware State University	Police Officer	11 Del. C. 1911(b)(11)	11 Del. C. 1902, 1903	Del. Constitution Sec. 20	Yes	
District of Columbia	Police Officer	Awaiting Research	Awaiting Research	Awaiting Research	Pending	
District of Columbia	Campus Police Officer	Awaiting Research	Awaiting Research	Awaiting Research	Pending	
District of Columbia	Special Police Officer	Awaiting Research	Awaiting Research	Awaiting Research	Pending	
Georgia municipal	Reserve police officer	OCGA 17-4-20(a)	OCGA 17-4-20(a)	OCGA 16-11-124	Yes	
Georgia municipal	Police Officer	Awaiting Research	Awaiting Research	Awaiting Research	Pending	
Iowa	Police Officer	Awaiting Research	Awaiting Research	Awaiting Research	Pending	
Illinois municipal	Police Officer	65 ILCS 5/3.1 - 15-25	720 ILCS 5/24-2	720 ILCS 5/24-2	Yes	
Illinois State Police	State Police Officer	20 ILCS 2610/16	20 ILCS 2610/16	720 ILCS 5/24-2	Yes	
Illinois Secretary of State Police	Police Officer	625 ILCS 5/2 - 115	625 ILCS 5/2 - 116	720 ILCS 5/24-2	Yes	
Indiana	Campus Police Officer	Awaiting Research	Awaiting Research	Awaiting Research	Pending	
Maryland	Police Officer	Awaiting Research	Awaiting Research	Awaiting Research	Pending	
Maryland	Campus Police Officer	Awaiting Research	Awaiting Research	Awaiting Research	Pending	
Massachusetts	Police Officer	Awaiting Research	Awaiting Research	Awaiting Research	Pending	
Nevada county	Juvenile Detention Officer	Awaiting Research	Awaiting Research	Awaiting Research	Pending	
Nevada county	Sheriff's Officer	Awaiting Research	Awaiting Research	Awaiting Research	Pending	
Nevada municipal	Police Officer	Awaiting Research	Awaiting Research	Awaiting Research	Pending	
New Jersey county	County Investigator	NJSA 2A:157-10	NJSA 2A:157-10	NJSA 2C:39-6(a)(4)	Yes	
New Jersey county	Park Police Officer	NJSA 40:37-95.41	NJSA 40:37-95.41	NJSA 2C:39-6(a)(7)	Yes	
New Jersey county	Deputy Sheriff	NJSA 40A:9-117.3	NJSA 40A:9-117.3	NJSA 40A:9-117.3	Yes	
New Jersey county	Corrections Officer	NJSA 2A:154-3	NJSA 2A:154-3	NJSA 2C:39-6(a)(5)	Yes	
New Jersey county	Assistant Prosecutor	NJSA 2A:158-18; NJSA 2A:158-5	NJSA 2A:158-18; NJSA 2A:158-5	NJSA 2C:39-6	Yes	
New Jersey county	Police Officer	NJSA 40A:14-107	NJSA 40A:14-107	NJSA 2C:39-6(a)(7)	Yes	
New Jersey county	Sheriff's Officer	NJSA 2A:154-3	NJSA 2A:154-3	NJSA 2C:39-6(a)(4)	Yes	
New Jersey municipal	Arson Investigator	NJSA 40A:14-7.1d; NJSA 40A:14-54	NJSA 40A:14-7.1d; NJSA 40A:14-54	NJSA 2C:39-6(a)(8)	Yes	
New Jersey municipal	Auxiliary Police Officer	Gov's Exec. Order	Governor's Executive Order	Gov. Exec. Order	No	
New Jersey municipal	Fire Fighter	NJSA 40A:14-54	NJSA 40A:14-54	None	No	
New Jersey municipal	Police Officer	NJSA 40A:14-152.1	NJSA 40A:14-152	NJSA 2C:39-6(a)(7)	Yes	In re Andros (2008)(Court revoked HR 218 permit for retired municipal officer)
New Jersey municipal	Special LEO Class II	NJSA 40A:14-146.15	NJSA 40A:14-146.15	NJSA 2C:39-6(a)(7)(b)	Yes	
New Jersey Rutgers Univ. Police	Campus Police Officer	NJSA 18A:6-4.5	NJSA 18A:6-4.5	NJSA 2C:39-6(c)(10)	Yes	
New Jersey State Dept of Corrections	Corrections Officer	NJSA 2A:154-4	NJSA 2A:154-4	NJSA 2C:39-6(a)(5)	Yes	

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New Jersey State Div. of Criminal Justice	Investigator	NJSA	NJSA	NJSA 2C:39-6	Pending	
New Jersey State Division of Parole	Parole Officer	NJSA 2A:154-4	NJSA 2A:154-4	NJSA 2C:39-6(c)(12)		
New Jersey State Guard/Militia	Guardsmen	NJSA 38A:14-6; NJSA 38A:20-2	None found	NJSA 2C:39-6(c)(6)	No	
New Jersey State Park Police	Ranger or Police Officer	NJSA 13:1L-21	NJSA 13:1L-21	NJSA 2C:39-6(a)(4)	Yes	
New Jersey State Juvenile Justice Cmm'n	Juvenile Corrections Officer	NJSA 52:17B-174d	NJSA 52:17B-174d	NJSA 2C:39-6(a)(9)	Yes	
New Jersey State Police	Trooper	NJSA 53:2-1	NJSA 53:2-1	NJSA 2C:39-6(a)(3)	Yes	
New Jersey Transit	Police Officer	NJSA 27:25-15.1a	NJSA 27:25-15.1a	NJSA 2C:39-6(c)(12)	Yes	
NJ / Rail Road Police	Special Agent	49 USC 28101; NJSA 48:3-38	49 USC 28101; NJSA 48:3-38	NJSA 48:3-38	Pending	Trangone (RR police are state agents). Must get LEO Photo ID from NJ.
New York City: Co-Op City	Peace Officer	NYCrim.P.L. 1.20, and 140.25	NYCrim.P.L. 2.10.27	NYCrim.P.L. 265.20	Unsure	http://law.onecle.com/new-york/criminal-procedure/CPL02.10_2.10.html
New York City	Police Officer	NYCrim.P.L. 120(34)(e)	NYCrim.P.L. 2.10	NYCrim.P.L. 265.20	Yes	
New York City	Deputy Fire Marshal	NYCrim.P.L. 120(34)(i)	NYCrim.P.L. 2.10	NYCrim.P.L. 265.20	Yes	
New York County District Attorney's Office	Investigator	NYCrim.P.L. 120(34)(g)	NYCrim.P.L. 2.10	NYCrim.P.L. 265.20	Yes	
New York County Corrections	Corrections Officer	NYCrim.P.L. 2.10(25)	NYCrim.P.L. 2.10(25)	NYCrim.P.L. 265.20	Yes	
New York City University	Awaiting Research	Awaiting Research	Awaiting Research	Awaiting Research	Unsure	
New York municipal	Peace Officer	NYCrim.P.L. 140.25, 2.10, 2.20	NYCrim.P.L. 2.10, 2.20	NYCrim.P.L. 265.20	Yes	
New York municipal	Police Officer	NYCrim.P.L. 1.20(34)(d); 140.25, 2.10, 2.20	NYCrim.P.L. 2.20, 35.30	NYCrim.P.L. 265.20	Yes	http://law.onecle.com/new-york/criminal-procedure/CPL01.20_1.20.html
NY Triborough Bridge & Tunnel Auth.	Awaiting Research	Awaiting Research	Awaiting Research	Awaiting Research	Unsure	
New York State Dept of Corrections	Corrections Officer	NYCrim.P.L. 140.25, 2.10(25), 2.20	NYCrim.P.L. 2.10, 2.20	NYCrim.P.L. 265.20	Yes	
New York State Park Police	Police Officer	NYCrim.P.L. 120	NYCrim.P.L. 120	NYCrim.P.L. 265.20	Yes	
New York Mass Transit Admin	Police Officer	Awaiting Research	Awaiting Research	Awaiting Research	Pending	
New York State Div. of Parole	Parole Officer	NYCrim.P.L. 2.10(23)	NYCrim.P.L. 2.10(23)	NYCrim.P.L. 265.20	Yes	
NY-NJ Port Authority Police	Police Officer	NJSA 32:2-25; NYCrim.P.L. 1.20(34)(k)	NJSA 32:2-25; NYCrim.P.L. 1.20(34)(k)	NYCrim.P.L. 265.20	Yes	
NY-NJ Port Authority, OIG	Investigator	NJSA 32:2-25;	NJSA 32:2-25;	NYCrim.P.L. 265.20	Yes	
NY-NJ Waterfront Commission Police	Police Officer	NJSA 32:23-86(4); NYCrim.P.L. 1.20 sub 34(h);	NJSA 32:23-86(4); NY Crim.P.L. 1.20 sub 34(h);	NYCrim.P.L. 265.20	Yes	
Ohio, county	Sheriff's Officer	Awaiting Research	Awaiting Research	Awaiting Research	Pending	
Pennsylvania state	State Trooper	75 Pa Con St 6304(a)	75 Pa Con St 6109	Awaiting Research	Pending	
Pennsylvania municipal	Police Officer	42 Pa Con St 8953(b)	42 Pa Con St 8953	Awaiting Research	Pending	
Pennsylvania public university	Police Officer	Awaiting Research	Awaiting Research	Awaiting Research	Pending	
Virginia, county	Sheriff's Officer	75 Pa Con St 6304(a)	75 Pa Con St 6304(a)	Awaiting Research	Pending	
Virginia, county	Police Officer	Awaiting Research	Awaiting Research	Awaiting Research	Pending	

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Virginia	Special Conservator of the Peace	VA Code 19.2-18; VA Code 19.2-19	VA Code 19.2-13	VA Code 19.2-13F	* Yes	If employed by gov't agency. See Ord v. D.C., Slip Op 08-704 (D.C. Cir. 2011).
VA / Rail Road Police	Police Agent	49 USC 28101; VA Code 56-353	49 USC 28101; VA Code 56-353	VA Code 56-353	* Yes	Yes if has LEO Photo ID issued by Virginia court

ANNEX B



OFFICE OF THE SHERIFF

COUNTY OF LOS ANGELES

HALL OF JUSTICE

JIM McDONNELL, SHERIFF



August 15, 2018

To my partners in the Reserve Forces:

CARRY CONCEALED WEAPON WHILE OFF-DUTY

On multiple occasions, I have written to all of you to recognize the great work that you do and express my appreciation for your dedicated service, reiterate my full support for our reserve program, and keep you informed about some of the changes and improvements that we have made or are considering. I am pleased to once again write to you about a topic that is of great importance to all of us; Carrying a Concealed Weapon while off-duty.

After meaningful dialogue with representatives of the Reserve Leadership Team, I convened a stakeholders working group to actively re-evaluate the authority and process by which our reserve deputy sheriffs carry concealed weapons off-duty. Participants at various phases of this work included personnel from Reserve Forces Detail, Special Operations Division, County Counsel, Los Angeles County Sheriff's Department (LASD) Executive Team and the Reserve Leadership Team. Because this topic is of such high importance to me, I personally attended two formal meetings of the working group and was also kept informed throughout the process.

Our starting point in examining this topic was the Law Enforcement Officers Safety Act ("LEOSA") of 2004, as amended, which is a federal law that provides for the off-duty carry of a concealed weapon by active and retired law enforcement officers who meet the statutory definition and requirements. After a careful review, it is our belief that the definition of a "qualified law enforcement officer" and a "qualified retired law enforcement officer" under LEOSA applies to both full-time and reserve law enforcement officers (whether Level ID, IND, II or III) who meet the statutory definition and requirements. A copy of this important federal law is attached for your use.

While a qualified law enforcement officer is granted significant rights under LEOSA, it is important to note that this statute does have limitations and restrictions. In order to provide active duty reserve deputy sheriffs with more comprehensive authority than just the rights granted under LEOSA, we

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determined that the best practice is to also obtain a Carry Concealed Weapon's License.

I encourage you to reach out to your reserve coordinator if you are considering applying for a license. Beginning this week, the reserve coordinators will be provided briefings by Reserve Forces Detail on the topics addressed in this letter. I am confident you will find that the combination of LEOSA and a Carry Concealed Weapon's License will result in a more expeditious and efficient process.

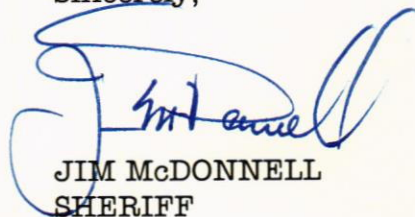
In recognition of the rights granted to individuals who meet the LEOSA definition and standards as either a qualified law enforcement officer or a qualified retired law enforcement officer, we have already begun the process of reviewing the language contained on LASD identification (ID) cards in light of LEOSA. While specifically including this information on your ID card is not required under LEOSA, we believe that doing so is important to minimize the possibility of any issues if you have contact with outside law enforcement agencies.

I am confident that the changes announced in this letter truly represent the best practice in California law enforcement for carrying weapons off-duty by active duty or retired reserve law enforcement officers. These changes recognize the rights granted by federal law to active duty and retired reserve deputy sheriffs who meet the statutory definition and requirements of LEOSA, and also provide active duty reserve deputies with additional rights and protections through the issuance of a Carry Concealed Weapon's License.

I want to again thank you for your commitment to the LASD and public safety in Los Angeles County. Your service truly makes a difference, and is greatly appreciated. Please be assured that I and others in LASD leadership positions will continue to seek ways to strengthen our reserve program, enhance your safety, and recognize your service.

I would also like to give special thanks to the members of the Reserve Leadership Team for their dedication to the betterment of all reserves, as well as their diligence in bringing important matters to our attention and working with us to arrive at the best possible solutions.

Sincerely,



JIM McDONNELL
SHERIFF