

HR 218 - LAW ENFORCEMENT OFFICERS SAFETY ACT (LEOSA) OF 2000 - - ISSUES

1. Does this Act trump state law, local ordinances, and local policy restricting carrying off-duty?
Yes, as it relates to an officer's ability to carry a concealed weapon off-duty. However, an officer is still subject to his/her employing agency's policies and conditions of employment.

The agency can develop a policy to dictate what the standards are for employees of that agency to carry firearms - such as qualification standards and frequency. An agency, it appears, is not free to develop a policy about how it will implement the provisions of this Act relative to other law enforcement officers.

Per the author's website, peace officer ID is sufficient evidence that the officer qualifies to carry under this Act

On-duty restrictions placed by the department appear to be permissible. Off-duty restrictions appear to be superceded by this Act.
2. Does this Act allow retired and/or active peace officers with limited authority to carry?
Yes, if they meet the criteria of this Act.
3. Are all active reserve officers authorized to carry?
Yes, if they meet the criteria of the Act (active). Retired reserves are not likely to qualify - they need to have non-forfeitable retirement rights. Most don't.
4. Under Section 926B(c)(2) in the LEOSA, what does "authorized by the agency to carry a firearm" mean (active only - not retired)?
If California statute allows an officer to carry off-duty, then the officer is authorized to carry. State correctional officers and Medical Technical Assistants, for example, typically are rarely issued duty weapons and most aren't armed when conducting job duties. However, these officers are all authorized by statute to carry off-duty as long as they are range-qualified.

This Act doesn't specify that the officer must carry in the line of duty. The officer can be in violation of policy, but can lawfully carry under this Act.

- 5a. What is a disciplinary action (active officers)?
The HR 218 Advisory Group is leaning toward interpreting "disciplinary action" to mean that it applies to an officer who is suspended and had his ID taken pursuant to suspension. Question remains for other forms of reprimand, such as pay reductions, demotions, etc.
- 5b. Under Section 926(c)(3) of the LEOSA, does a disciplinary action have to be current (active officers)?
This is unclear. Presumably they intended for it to mean active disciplinary action.
6. Can an active officer carry "any" firearm/assault weapon off-duty? How about a retired law enforcement officer?
Yes(active) - unless it is a machinegun or destructive device. An active officer can qualify with a pistol and carry an assault weapon. Doing so may violate departmental policy, though. Technically, a retired officer may carry anything that he can lawfully possess that is of a type of firearm with which he can qualify (other than a machinegun or destructive device).
7. Does a retired officer have to qualify with the firearm that will be carried concealed?
A retired officer has to qualify yearly with a firearm of the same type that is being carried. It is unclear what the bill means by "type." We will likely broadly interpret "type." References in the Penal Code tend to apply to general "type", such as revolver, semi-auto pistol, derringer (12078(a), 12077(a)(8)(C), 12129).
8. What changes should be made to peace officer identification cards?
Recommendation: All current peace officer IDs could state "authorized to carry." - Retired peace officer LEOSA IDs could say that the LEOSA requirement has been met. DOJ is working with the Peace Officers Research Association of California (PORAC), the Commission on Peace Officers Standards and Training (POST), California Police Chiefs Association, and the California State Sheriffs Association in an effort to explore legislation to standardize active/retired peace officer identification/credentials.
9. Does this Act broaden the ability to carry on a plane?
No. The LEOSA exempts active/retired law enforcement officers from state and local carrying laws. It does not exempt them from federal laws, which regulate firearms on aircraft and federal property.

10. What is the definition of “concealed vehicle/person?”
Undetermined at this time.

11. Are retired officers who did not carry firearms as part of their regular duties authorized to carry firearms under the LEOSA?
Yes, if they meet the LEOSA requirements.

12. What level of physical disabilities would prohibit a retired officer from carrying?
No level of physical disabilities would prohibit a retired officer from carrying unless he or she is too disabled to meet the state or agency qualification standard, in which case he or she can't carry.

13. Should California Seek legislative authority for state standards of firearms qualification? Does this only affect California officers?
California DOJ is recommending a proposal that would afford a retiree who meets the firearm qualification requirement and course of fire requirement for active duty officers for any local or state agency the ability to carry under the LEOSA.

We are considering developing a certification questionnaire and form for agencies to download and issue.

14. Is the term “mental instability” essentially the same as “psychological disability” under Penal Code Section 12027.1?
It would appear so. California DOJ is attempting to clarify through the author's office.

15. Can a retired law enforcement officer who after retirement became a Welfare and Institutions Code (WIC) section 5150 (involuntary admission into a mental facility as a danger to self or others) carry concealed? Can he/she possess?
It is possible that the California five-year firearm prohibition for individuals who have been involuntarily admitted into a mental institution as a danger to self or others does not apply under the LEOSA. Under this Act, individuals who are not federally prohibited may still be able to carry - even if they are prohibited from possessing firearms under California law. This answer is not limited just to WIC 5150s. It also applies to other persons who are prohibited under California law but not under federal law, such as persons with prohibiting misdemeanors and persons with firearm conditions of probation.

16. Can active and retired officers carry concave (hollow point) bullets in states like New Jersey that restrict such bullets?
Nothing in this Act restricts the state ability to limit bullets. Officers who carry restricted bullets do so at their own risk. Such officers may benefit from info being posted on websites identifying such states of caution.
17. Can active/retired officers carry large capacity magazines in states that restrict large capacity magazines? PC 12020(b) exceptions?
It appears that under California law (12020(a)(2) PC), nobody may import large capacity magazines into California. There does not appear to be an exemption for law enforcement officers from other states. This may all lead somebody to ask whether federal law enforcement officers moving or being relocated into this state are in violation of California law if they bring their large capacity magazines with them, since such officers are in violation of California law and there is no exemption for them.
18. What preemption language/authority is there for federal law enforcement officers to carry off-duty in each state? How does that language/authority compare to the LEOSA?
This could be pertinent to the LEOSA. U.S. DOJ is researching.
19. What if a California peace officer retires with less than 15 years aggregate experience? He can carry in California with agency approval but not in other states. Would such an officer be issued a different CCW ID than officers with the 15 years experience?
It appears that there would need to be a distinction based on whether the officer meets the LEOSA criteria.
20. If there is no uniform state standard for training and qualification, does that mean that the LEOSA is not applicable in / relative to that state?
No - this Act assumes the state has a standard. Likely legislation will establish such a standard in California. Such a legislative proposal might set a standard where a retired officer is considered to have met the state standard if the retiree passes any state or local agency's firing qualification standard.

21. California law prescribes the revocation of a retired officer's privilege to carry if he/she breaks a law or departmental policy that would result in his/her being arrested, suspended, or fired from the agency. However, none of these reasons necessarily disallow a retired officer's carrying of a firearm under the LEOSA. Does California law conflict with federal law? (12027.1(a)(2)).
- Assuming the standard for active peace officers sets the floor under the LEOSA relative to the term "under disciplinary action," a retired officer who has lost his privileges to carry due to revocation based on policy/breaking the law would not necessarily lose his/her carrying privileges permanently. The agency may conduct a hearing for the purposes of restoring these individuals' rights and may do so as long as the retired officer does not fall under any other disability.*