



U.S. Department of Justice

Federal Bureau of Prisons

Office of General Counsel

Washington, DC 20534

MEMORANDUM FOR ALL STAFF

FROM: Ken Hyle
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SUBJECT: Guidance Regarding the Law Enforcement Officers
Safety Act (LEOSA)

This memorandum addresses the Law Enforcement Officers Safety Act (LEOSA) as it pertains to Bureau of Prisons ("Bureau") staff and supersedes the memorandum dated February 27, 2006, to all staff titled "Guidance Regarding the Law Enforcement Officers Safety Act (LEOSA)."

LEOSA exempts qualified law enforcement officers and qualified retired and separated law enforcement officers from state and local laws that prohibit carrying concealed firearms. Employees are strongly encouraged to read this memorandum and 18 U.S.C. §§ 926B and 926C to become familiar with individual requirements and responsibilities under LEOSA. A copy of LEOSA and the Department of Justice LEOSA guidance dated January 31, 2005, are available on Sallyport.

LEOSA Background and Overview

LEOSA exempts qualified law enforcement officers and qualified retired and separated law enforcement officers from state and local laws that prohibit carrying concealed firearms. The Act defines a qualified current law enforcement officer as an employee 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; (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 (6) is not prohibited by Federal law from receiving a firearm.

As part of their official duties, law enforcement staff of the Bureau of Prisons may make arrests pursuant to 18 U.S.C. § 3050, i.e.:

make arrests on or off of Bureau of Prisons property without warrant for violations of the following provisions regardless of where the violation may occur: sections 111 (assaulting officers), 751 (escape), and 752 (assisting escape) of title 18, United States Code, and section 1826(c) (escape) of title 28, United States Code;

make arrests on Bureau of Prisons premises or reservation land of a penal, detention, or correctional facility without warrant for violations occurring thereon of the following provisions: sections 661 (theft), 1361 (degradation of property), 1363 (destruction of property), 1791 (contraband), 1792 (mutiny and riot), and 1793 (trespass) of title 18, United States Code; and

arrest without warrant for any other offense described in title 18 or 21 of the United States Code, if committed on the premises or reservation of a penal or correctional facility of the Bureau of Prisons if necessary to safeguard security, good order, or government property.

Such arrest authority can be exercised as part of officially assigned duties of the Bureau, and with firearms or other equipment issued by the Bureau, if such officer or employee has probable cause to believe that the arrested person is guilty of such offense, and if there is likelihood of such person's escaping before an arrest warrant can be obtained.

Therefore, consistent with 18 U.S.C. § 3050, most Bureau staff members who have primary or secondary law enforcement status meet the criteria required by LEOSA because they are authorized "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" and are "authorized by the agency to carry a firearm," as required by the law (see 18 U.S.C. § 926B(c)(2)). A staff member's retirement status (i.e., law enforcement status) is a necessary condition, but alone is not all that is needed to determine eligibility under LEOSA.¹

Any request to verify the law enforcement status of a Bureau of Prisons staff member in an outside legal proceeding (e.g., a state or local criminal investigation or prosecution), should be referred to the Office of Internal Affairs (OIA) or the Office of General Counsel (OGC), in order to provide that information for the proceeding. Local institution staff should not provide this information to the outside entity prior to consulting with OIA or OGC.

This memorandum should not be construed as the Bureau encouraging any staff member to take any particular action with regard to LEOSA. Staff must continue to abide by Bureau policies and/or procedures regarding personal firearms that:

- (1) prohibit staff from carrying or using a personal firearm while on duty;
- (2) prohibit personal firearms from being brought into the secure confines of an institution;

¹ LEOSA should not be interpreted as granting any benefits other than the exemption from state and local prohibitions on the carrying of a concealed firearm. State and local jurisdictions regulate an individual's ability to obtain a firearms license or purchase a firearm in a variety of ways. For example, at least one jurisdiction has imposed a requirement that for an individual to obtain a license, the employer verify the individual's need to carry a firearm off duty as a condition of his or her employment. Bureau staff members are not required to carry a firearm off duty as a condition of employment, and, therefore, the Bureau is not responsible for providing a letter of necessity or statement to this effect.

- (3) permit storing one personally owned handgun at Bureau facilities that have gun lockers for staff or in a secured container in a locked private vehicle parked on Bureau property consistent with the Lieutenant Osvaldo Albarati Correctional Officer Self-Protection Act of 2018; and
- (4) permit staff who live in reservation housing to store one personally owned handgun in a hard-sided gun case and permit staff in reservation housing to store personal firearms in the institution armory.

Personal Responsibility of Off-Duty Employees for Carrying/Using Concealed Personal Firearms Pursuant to LEOSA

LEOSA permits the carrying of personal firearms in an individual capacity. The use of personal firearms is not authorized for any official duties assigned by the Bureau. Specifically, 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.

Arrest and law enforcement authorities for Bureau employees are governed by statute (18 U.S.C. § 3050), Federal regulations (28 C.F.R. §§ 511.10-511.16), the Department of Justice Policy Statement on the Use of Deadly Force, and Bureau policies (i.e., Staff Entrance and Search Procedures, Searching, Detaining, or Arresting Persons Other than Inmates; and the chapter on "Firearms and Badges" in the Correctional Services Procedures Manual). These authorities may be exercised only in furtherance of official Bureau duties as explained in the statute, regulations, and program statements. LEOSA does not, within the Act itself, give off-duty staff any arrest authority or law enforcement authority.

Additionally, LEOSA exempts qualified current law enforcement officers, and individuals separated from service, from state and local laws that prohibit *carrying* concealed firearms. It is, therefore, incumbent upon off-duty staff to be aware of the laws, ordinances, regulations, etc., within their state and local jurisdictions that may impact any aspect of their ability to obtain, carry, or use a personal firearm under LEOSA.

Use of Bureau of Prisons Identification for LEOSA Purposes

Bureau identification cards or credentials may always be used by staff to verify Bureau employment to any entity. This includes, but is not limited to, presenting your Bureau identification card or credentials, when necessary, to another federal, state, or local law enforcement officer for purposes of explaining your eligibility to carry a concealed personal firearm under LEOSA. This situation could arise during a routine traffic stop, while shopping in public, or in other situations.

In these types of situations, 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 members claim to be carrying a concealed personal firearm as part of their Bureau employment or in furtherance of their official Bureau duties. Doing so could subject employees to disciplinary action.

Outside Employment

In the LEOSA memorandum dated February 27, 2006, the Bureau rescinded its categorical prohibition on outside employment which requires the use of a firearm (see Program Statement regarding Standards of Employee Conduct, Section 14.)

Employees are reminded that they are prohibited from engaging in outside employment involving criminal matters. See 5 C.F.R. § 3801.106(b)(ii). Criminal matters for these purposes, include involvement with a federal, state, or local law enforcement agency, or with inmates as defined in the Standards of Employee Conduct, or with state and local inmates. In addition, the prohibition covers outside employment that requires being deputized, granted police powers or arrest authority, or involvement with the courts. All requests for outside employment that require the carrying of a firearm must be reviewed and approved by the staff member's immediate supervisor, CEO, and the Ethics Office prior to beginning the outside employment.

Specific examples of prohibited outside employment may include, but are not limited to: auxiliary, reserve, or regular police

officers; sheriffs or deputy sheriffs; and other positions that provide police or arrest powers to enforce criminal laws.

Specific examples of permissible outside employment may include, but are not limited to: a property re-possessor charged with recovering property on behalf of a financial institution, a store security guard, positions involving search and rescue operations, and other positions that do not require the use of police powers or arrest authority, but may allow the carrying of a firearm.

Disciplinary Action

The LEOSA Improvements Act amended LEOSA to require that an employee must not be the subject of any disciplinary action by the agency *which could result in suspension or loss of police powers.*² For this purpose, the Bureau interprets LEOSA to mean that an employee is the subject of any disciplinary action which could result in suspension or loss of police powers when he or she:

- Has received a proposal notice of action (except letters of reprimand) and where suspension of duties is an available sanction; or
- Has been suspended from Bureau service.

For this purpose, a "disciplinary action" does not include **decisions** to demote or letters of reprimand since these sanctions are considered completed on the date the letter rendering the demotion or reprimand is issued.

² Employees who have lost their police powers under 18 U.S.C. § 3050 for any reason, including, but not limited to, suspension, are not "authorized by the agency to carry a firearm." Thus, they do not meet one of the necessary criteria to be a qualified law enforcement officer for LEOSA purposes, and do not qualify to carry a concealed personal firearm pursuant to LEOSA.

Possession of Concealed Firearms on Commercial Airlines

LEOSA does not exempt Bureau staff members who travel on a commercial airline in their personal capacity from laws and regulations that prohibit carrying firearms onboard an aircraft. Federal law and the Transportation Security Administration's (TSA) regulations prohibit the possession of a firearm at a security checkpoint and on or about an individual in flight. See 49 U.S.C. § 46505 and 49 C.F.R. § 1544.111.3 Violations are subject to civil penalties and prosecution.

As a reminder, Bureau credentials may be used to verify Bureau employment to an entity for purposes of explaining eligibility to carry a Bureau-issued firearm. However, credentials may not be used in an attempt to carry a personal firearm on a commercial airline by circumventing TSA regulations that apply to the public.⁴

Employees For Whom Firearms Qualification is Optional

Employees in non-institution, secondary law enforcement status (e.g., Central Office and Regional staff), may choose to complete the Bureau's firearms qualification program in order to remain authorized to be issued a firearm as part of official Bureau duties. Such staff should consult with their Human Resources Department to determine the most appropriate method for qualifying.

Law Enforcement Officers "Separated from Service"

The LEOSA Improvements Act replaced the term "retired" with "separated from service" within 18 U.S.C. § 924C(c) and throughout its subsections. Additionally, LEOSA now only requires that a person serve an aggregate of 10 years or more of agency service as a law enforcement officer before qualification under the Act. See 18 U.S.C. § 924C(c)(3). Human Resources

³ For guidance on transporting firearms and ammunition on a commercial airline, see the TSA website at:

<https://www.tsa.gov/travel/transporting-firearms-and-ammunition>

⁴ Guidance for carrying weapons in performance of official duties on commercial aircraft is outlined in the Correctional Services Procedures Manual, Sec. 703.

staff should assist individuals that are separated from Bureau service that have contacted the agency for assistance in obtaining law enforcement credentials.

The Bureau will not be responsible for training or qualifying individuals separated from service to carry a concealed personal firearm under LEOSA. In order to be authorized under LEOSA to carry a firearm, a former employee must qualify in accordance with individual State standards for active law enforcement officers. If a State has not established such qualification standards, a former employee must qualify with either 1) a law enforcement agency within the State in which they reside or 2) a certified firearms instructor that is eligible to conduct a firearms qualification test for active duty officers within that State. See 18 U.S.C. § 926C(c)(4).