

OFF DUTY EMPLOYMENT

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I. GENERAL CONSIDERATIONS AND GUIDELINES

It is important that police department employees are able to provide for themselves and their families and meet their financial obligations. Employees often work overtime and paid details or obtain or continue employment outside of the department. However, police department employees must hold the trust and confidence of the public in order to do their jobs effectively. Therefore, it is important to avoid secondary employment that over-taxes the employee, damages public confidence, creates real or perceived allegiances to individuals or organizations, or creates a conflict of interest. Employees must not engage in any off-duty employment that creates or is likely to result in these conditions.

Employees must avoid working in areas that are heavily regulated by criminal statutes or set up excessive risk of conflicts of interest, such as the distribution or sale of alcoholic beverages, bail bond services, investigative work for insurance companies, private guard services, collection agencies or private attorneys. Obviously, police department employees must avoid involvement in unlawful activities for financial gain.

All personnel engaging in outside employment should clearly understand that their primary obligation is to the police department and the community they serve. Employees must not perform work that will make them unavailable in emergencies, exhaust them, require special scheduling or excessive shift swapping, or either bring the department into disrepute or impair its operation or efficiency.

II. POLICY

- A. Employees may not engage in secondary employment without first obtaining authorization of the Chief of Police. [22.3.4(a)]
- B. Employees may not engage in secondary employment that creates an unreasonable risk of conflict of interest, or that will damage public confidence.
- C. The employee's primary employment obligation is to this Police Department.

III. DEFINITIONS

- A. *Administrative Surcharge*: A percentage paid for a detail by a contractor to the municipality, in addition to the officer's pay, for assigning, billing, and processing the detail.
- B. *Employment*: The provision of a service, whether or not in exchange for a fee or other service. Uncompensated work for a charitable organization is not considered employment under this definition.
- C. *Paid Detail*: An assignment to provide police services, which is paid for by another municipal department, government entity, private company or organization, or an individual.
- D. *Second ary Employment*: Employment where the actual or potential use of police powers is not a condition of employment.
- E. *Second ary Police Employment*: Employment to provide police services under appointment as a police officer by another appointing authority.

IV. PROCEDURES

A. *Paid Detai ls*

- 1. AVAILABILITY:
 - a. Only sworn police officers may work paid details.
 - b. All officers are authorized to work details unless specifically restricted.
 - c. Officers shall be assigned paid details by seniority and the use of a department maintained "hours worked" rotation.
- 2. ASSIGNMENT
 - a. The Sergeant in charge of details shall oversee adherence to the policies and processes governing paid details. [22.3.4(d)]

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- b. Detail assignments shall be posted on the detail assignment sheet. Such posting shall include:
 - 1) Officer assigned;
 - 2) Location of the detail;
 - 3) Start time of the detail;
 - 4) Anticipated end time of the detail; and
 - 5) Company or person to be billed.
3. DRESS
- a. Uniform:
 - 1) Officers working details will generally wear the uniform of the day as prescribed in the department policy on *Uniforms and Equipment*.
 - 2) Officers working traffic details, including road construction or supervising vehicle and pedestrian traffic movement, may wear a pancake or molded plastic holster attached to the uniform garrison belt. Officers must carry, at a minimum, a firearm, portable radio, and handcuffs either with the officer or in his/ her vehicle in a place where they are accessible. An approved, high visibility traffic vest or jacket must be worn on traffic details. Also approved for summer is the Blauer Hi Viz shirt with an approved baseball hat. High visibility gloves or mittens are recommended in cold weather.
 - b. Plain Clothing: Officers may work a paid detail in civilian clothing if directed to do so by a competent authority.
4. CONDUCT [22.3.4(B)]
- a. Officers working paid details shall act in a professional manner at all times and obey all departmental rules, regulations, policies and procedures.
 - b. Regular patrol and detail officers are indistinguishable to the public. Therefore, detail officers shall be considered to be "on-duty." As such, detail officers are required to respond:
 - 1) When serious violations of traffic or criminal law are committed in their presence, such as operating under the influence, assaults, domestic violence, robberies, and leaving the scene of an accident;
 - 2) To incidents which require an immediate police response to protect life and safety;
 - 3) To assist another officer; and

4) When instructed to do so by a supervisor.

5. SUPERVISION

- a. Although detail officers are paid by a source other than the police department, they remain employees of the department and are not employees of the person or entity paying for the service.
- b. No employee of any company or organization, whether paying for police services or not, is authorized to direct the actions of officers assigned to a detail or to issue any order to police officers. Company's hiring paid details of course will be able to assign officers to specific locations and advise officers what the work of the day is in order to have the job site working at maximum efficiency.
- c. Detail officers work under the supervision of the shift supervisor or a police supervisor assigned to the detail and are normally considered under the chain of command of patrol operations while so assigned. All supervisors within this chain of command shall oversee compliance to department rules, regulations, policies and processes relating to details. [22.3.4(d)]
- d. Officers should attempt to satisfy the person who hired the detail. However, officers should use their discretion and best police practices in performing their duties. If a dispute arises over how to deliver a police service, the officer should advise the individual of the best practice. If the issue is not resolved, the intervention of a supervisor should be requested.

6. COMPENSATION

- a. Officers will be compensated at the rate specified in the employees' collective bargaining agreement.
- b. Officers should submit requests for payment for details as soon as the detail is concluded. If an officer can not return to the station to do this in a timely manner, they shall call the OIC of the on duty tour and instruct him/ her to mark the detail board with the hours worked by the officer.
- c. If a contractor requires an invoice or work slip, officers shall provide the contractor with a detail slip. The slip should include the officer's name, hours worked, rate, administrative surcharge, and total amount owed.
- d. Contractors shall make payment directly to the police department. Officers will receive pay for details in their regular police department pay. Officers shall not be paid directly by contractors and officers shall never accept cash as compensation for hours worked.

7. INDEMNIFICATION

- a. Officers working details are considered on-duty.¹
- b. Officers traveling to or from a detail are not considered to be on-duty during that commute period.²
- c. If an officer is injured while assigned to work, paid details are covered under M.G.L. c. 41, §111 F.
- d. Officers working a detail to which they are not assigned are not considered to be on-duty and will not be covered under IOD.³

B. Secondary Police Employment

1. AUTHORIZATION: An employee wishing to work part time as a sworn officer for another police department must first obtain authorization from the Chief of Police.
2. USE OF DEPARTMENT EQUIPMENT: Employees may use issued department personal equipment while working as a sworn officer for another police department. This includes but is not limited to duty gear, flashlights, service weapon, Hi Viz clothing. All officers of this department must comply with the detail specifications of the hosting community in order to work for that agency. Never under any circumstance shall a Lancaster Cruiser be used on a paid detail outside of the jurisdiction of Lancaster. Use of any and all police vehicles for paid details shall be approved by a Supervisor and documented. Any requested use of a police vehicle by a hiring company will be documented on the detail slip of the officer and billed to the hiring company.
3. POLICE AUTHORITY
 - a. Officers working as police officers for another community maintain their police authority in this municipality for the purpose of jurisdictional authority.
 - b. Officers are not authorized to use police powers granted by this municipality in another jurisdiction while employed by another police department.
 - c. This department will not be responsible for compensating or indemnifying employees for actions arising from their employment by another police department.
 - d. This policy does not apply to officers assigned to work as members of this department in another community under mutual aid or another agreement.

C. Secondary Employment [22.3.3]

1. CONFLICTS OF INTEREST

a. Conduct of public employees is regulated under M.G.L. c. 286A, the state's Conflict of Interest Law (COIL). In some cases, this department's policies are more restrictive than those of the COIL. Therefore, officers should be aware that even because something is not prohibited by state law, it may still not be in conformity with department rules or policy.

- 1) Under the COIL a public employee may not:
- 2) Accept other employment involving compensation of substantial value, the responsibilities of which are inherently incompatible with the responsibilities of his/her public office;⁴
- 3) Use or attempt to use his/her official position to secure for him/herself or others unwarranted privileges or exemptions which are of substantial value and which are not properly available to similarly situated individuals;⁵
- 4) Act in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to include:
 - a) That any person can improperly influence or unduly enjoy his/her favor in the performance of his/her official duties; or
 - b) That [s]he is likely to act or fail to act as a result of kinship, rank, position or undue influence of any party or person;⁶

NOTE: An employee may be able to insulate him/herself by disclosing the appearance of a conflict of interest to the appointing authority.⁷

- 5) Accept employment or engage in any business or professional activity which will require him/her to disclose confidential information which [s]he has gained by reason of his/her official position or authority; ⁸ and
- 6) Improperly disclose material or data within the exemptions to the definition of public records, which were acquired in the course of his/her official duties nor use such information to further his/her personal interest.⁹

2. PROHIBITED EMPLOYMENT

a. Employees may not accept any outside employment where the use of law enforcement powers given by this appointing authority are a condition of employment, likely to be used or anticipated. Entities or persons wishing such services must hire a police detail.

[22.3.4(b)]

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- b. Supervisors may not solicit subordinates for secondary employment or to perform services, even if compensated at fair market value.
 - c. Employees may not knowingly work for an employer who is known as a convicted felon, or who openly associates with convicted criminals.
 - d. Officers may not accept employment involving work as a security guard or security officer within the jurisdiction of this department. (Note: While the COIL does not prohibit such action by reserve officers, this department does.) ¹¹
 - e. Investigative work is prohibited which includes, but is not limited to:
 - 1) Private detective work;
 - 2) Insurance company investigations;
 - 3) Collection or credit agency services; and
 - 4) Investigative work for a private attorney or bail bond agency.
 - f. Work that constitutes a threat to the status or dignity of law enforcement as a professional occupation is prohibited, including:
 - 1) Nude dancing establishments;
 - 2) Pornographic books, magazines, videos, implements, etc., as a principal business;
 - 3) Sale, manufacture, or transportation of alcoholic beverages as a principal business; and
 - 4) Gaming establishments.
3. **PROHIBITED CONTRACTS:** Police employees shall generally be excluded from entering into private business contracts with the municipality to perform additional services, i.e., snow plowing, cleaning, etc. Some exemptions may apply. ¹²
4. **PROHIBITED INTERESTS**
- a. Employees may not acquire or retain financial interests in any business involving investigatory work outside of the department.
 - b. Employees may not acquire or retain financial interests in any business with a person who is known as a convicted felon, or who openly associates with convicted criminals.

5. OBTAINING AUTHORIZATION [22.3.4(C)]
 - a. Employees must submit a written request to the Chief of Police before commencing any outside employment. The request must include the following information:
 - 1) Name and address of prospective employer;
 - 2) Name of principal and/ or part owners;
 - 3) A description of prospective employment duties; and
 - 4) Numbers of hours per week to be worked.
 - b. The Chief of Police will review the request and consider:
 - 1) Potential for conflict of interest;
 - 2) Any impact upon the image of the police department or municipality;
 - 3) Potential for impact on on-duty performance; and
 - 4) Issues regarding availability in the event of an emergency.
 - c. An employee may be required to submit an Ethics Commission Disclosure of Appearance of Conflict of Interest form to comply with M.G.L. c 268A, §23(b)(3).
 - d. A letter of authorization and a copy of any Disclosure of Appearance of Conflict of Interest forms shall be filed in the employee's personnel file.
6. CONDITIONS OF AUTHORIZATION: The Chief of Police may approve secondary employment subject to such conditions or restriction, as (s)he deems necessary.
7. DURATION OF AUTHORIZATION
 - a. Secondary employment authorization is for a particular employee to perform a particular job function for a particular employer.
 - b. Authorization for secondary employment
 - 1) ...is valid until such authorization is suspended or revoked or the employment ceases.
8. REVOCATION
 - a. Authorization for off-duty employment may be revoked at the discretion of the Chief of Police.
 - b. Upon revocation, the employee will be notified in writing as to the reason for such revocation.

D. National Guard and Reserve

1. RESPONSIBILITY OF MEMBER

- a. Employees do not need authorization of the Chief of Police to join the National Guard or Reserve.
- b. The employee or a military officer representing the employee must give verbal or written notice of military duty and is encouraged to give notice well in advance, if possible, to minimize affecting other employees. Notice may be waived for military necessity . 13
- c. Employees must provide the department with a copy of military orders in order to receive pay under sections 5 and 6 of this policy .

2. RESPONSIBILITY OF MUNICIPALITY

- a. Employers may not discriminate against employees because of their membership in the National Guard or Reserve. To do so is a violation of criminal law.14
- b. Employers must afford members all rights under statutes adopted by the municipality and other applicable statutes under Chapters 32 and 33 of the Massachusetts General Laws. Statutes adopted by this municipality are:
 - 1) Chapter 32B: Section 91. Employees on military leave of absence for active service; payment of premiums; acceptance of section;
 - 2) Chapter 32B: Section 10. Acceptance of chapter by county, city, town, municipality or district;
 - 3) Chapter 33: Section 59. Effect of military service on salary or vacation allowance of public employees; and
 - 4) Chapter 33: Section 59A. Military service of public employees; work release for drills.
- c. Employers must afford members all rights under the Uniformed Services Employment and Reemployment Rights Act of 1994, (USERRA.) Title 38 of the U.S. Code 4301- 4334.

3. MONTHLY TRAINING ATTENDANCE

- a. An employee shall be released from his/ her tour of work, without compensation, to attend assigned weekly or weekend drills which require absence from the normally scheduled work tour without effect to leaves of absence or vacation with pay. 15
- b. Employees are encouraged to schedule training to avoid conflicts with the delivery of police services. The Chief of Police may contact the employee's military commander if a conflict arises. 16

¹ *Politano v. Board of Selectmen*, 1981 Adv. Sheets 2009, Mass. App., 429 N.E.2d 31 (1981).

² *Domingo v. Town of Wellesley*, 44 Mass. App. Ct. 793, 694 N.E. 2d 43 (1998).

³ M.G.L. c. 41, §111F.

⁴ M.G.L. c. 268A, §23(b)(1).

⁵ M.G.L. c. 268A, §23(b)(2).

⁶ M.G.L. c. 268A, §23 (b)(3).

⁷ M.G.L. c. 268A, §23 (b)(3).

⁸ M.G.L. c. 268A, §23 (c)(1).

⁹ M.G.L. c. 268A, §23 (c)(2).

¹⁰ M.G.L. c. 268A, § 23(b)(2).

¹¹ Full time sworn officer employed as a security guard is used as an example of prohibited employment in the State Ethics Commission Ethics Primer, Codes of Conduct, published Spring 2003, Incompatible Employment. Ethics Commission Advisory Opinion EC-COI-97-1 states that this prohibition does not hold for a part time sworn officer.

¹² M.G.L. c. 268A, §20(a).

¹³Sec. 1002.85; The Department of Defense USERRA regulations at 32 CFR 104.3 provide that an "appropriate officer" can give notice on the employee's behalf. An "appropriate officer" is a commissioned, warrant, or non-commissioned officer authorized to give such notice by the military service concerned; 38 U.S. Code 4312(b)

¹⁴ M.G.L. c. 33, §13.

¹⁵ M.G.L. c. 33, §59A. Section 59 of this chapter must be adopted by the municipality for this benefit to apply.

¹⁶ Regulations issued by the Department of Defense at 32 CFR 104.4 direct military authorities to provide assistance to an employer in addressing these types of employment issues. The military authorities are required to consider requests from employers of National Guard and Reserve members to adjust scheduled absences from civilian employment to perform service. Reference: Sec. 1002.104.