

# OFF DUTY EMPLOYMENT

POLICY & PROCEDURE NO. <b>4.26</b>	ISSUE DATE: 07/01/14
	EFFECTIVE DATE:07/01/14
MASSACHUSETTS POLICE ACCREDITATION STANDARDS REFERENCED: <b>22.3.3; 22.3.4</b>	REVISION DATE: _____

## 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. *Secondary Employment*: Employment where the actual or potential use of police powers is not a condition of employment.
- E. *Secondary Police Employment*: Employment to provide police services under appointment as a police officer by another appointing authority.

## IV. PROCEDURES

### A. Paid Details

- 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 indicate their availability to work paid details by annotating the paid detail availability sheet.
  - d. Officers are limited to working no more than sixteen (16) hours in any twenty-four hour period.

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## 2. ASSIGNMENT

- a. The Chief of Police shall oversee adherence to the policies and processes governing paid details. [22.3.4(d)]
- 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***. The uniform includes a department hat and complete duty belt.
  - 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 with one spare magazine, portable radio, and handcuffs. An approved, high visibility traffic vest, straps, or jacket must be worn on traffic details. 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 dispatcher or 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 activities of officers assigned to a detail or to issue any order to police officers.
- c. Detail officers work under the supervision of the shift supervisor or a police supervisor assigned to the detail and is 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. Special police officers will be compensated at the patrolman rate.
- b. Officers should submit requests for payment for details as soon as possible after the detail is completed and prior to the end of the pay period.
- 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. Any payment from a contractor to a police officer shall be turned in to the Administrative Officer for deposit in the police department detail account. Officers shall not be paid directly by contractors.

- e. Officers who submit detail slips for payment prior to the end of the pay period will be paid for the detail during the payroll for that pay period.
- f. Special officers will be paid for details when the municipality receives payment from the contracting party.
- g. At the end of the municipal fiscal year (June 30<sup>th</sup>), municipal accounts must be balanced. During this time, the department may withhold pay for details for which the municipality has not been paid, at the discretion of the Chief of Police. Payment for outstanding details shall be made within the first two weeks of the new fiscal year (beginning July 1<sup>st</sup>).

#### 7. INDEMNIFICATION

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

### ***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. Permission need not be granted. See Section C.7 of this policy.
- 2. USE OF DEPARTMENT EQUIPMENT: Employees may use issued department equipment while working as a sworn officer for another police department.
- 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 must be appointed by the municipality for which they are working. 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;<sup>4</sup>
- 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;<sup>5</sup>
- 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;<sup>6</sup>

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

- 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;<sup>8</sup> 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.<sup>9</sup>

#### **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)]

- b. Supervisors may not solicit subordinates for secondary employment or to perform services, even if compensated at fair market value<sup>10</sup>.
  - 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.)<sup>11</sup>
  - 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.<sup>12</sup>
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. WORKING AS AN ATTORNEY

- a. No municipal employee shall, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly receive or request compensation from anyone other than the city or town or municipal agency in relation to any particular matter in which the same city or town is a party or has a direct and substantial interest.<sup>13</sup>
- b. No municipal employee shall, otherwise than in the proper discharge of his official duties, act as agent or attorney for anyone other than the city or town or municipal agency in prosecuting any claim against the same city or town, or as agent or attorney for anyone in connection with any particular matter in which the same city or town is a party or has a direct and substantial interest.<sup>14</sup>
- c. A municipal employee may take uncompensated action, not inconsistent with the faithful performance of his duties, to aid or assist any person who is the subject of disciplinary or other personnel administration proceedings with respect to those proceedings.
- d. Employees who are attorneys may not:
  - 1) Engage in any criminal law practice, including:
    - a) Acting as a criminal attorney or paralegal;
    - b) Consulting or offering advice to other attorneys in criminal cases; and
    - c) Engaging in any civil matters involving this municipality or in front of any boards or commissions in this community.
  - 2) This is not applicable to National Guard or Reserve military attorneys in the performance of their military duties.
- e. No supervisor may act as an attorney on behalf of or represent any member of this department.

## 6. PROBATIONARY EMPLOYEES

- a. Sworn Police Officers
  - 1) During Full Time Basic Recruit Police Academy: Employees must comply with academy rules and guidelines regarding secondary employment while attending a basic recruit academy. Such persons will not ordinarily be allowed to work paid details.
  - 2) Post Police Academy
    - a) Field Training:



- i. Non-police secondary employment is prohibited during the field training phase as probationary officers obtain experience and on the job training.
  - ii. Officers may work details during this time.
- b) Post Field Training
  - i. Details: Probationary officers that have completed field training may work details without restriction during their probationary period.
  - ii. Secondary Employment: Probationary officers may obtain conditional permission to work a non-police job during the probationary period. Permission may be revoked at the discretion of the Chief of Police to ensure that probationary employees obtain experience and on the job training.
- b. Non-Sworn Employees: Non-sworn employees have no additional restrictions on secondary employment during the probationary period.

#### 7. 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.

8. CONDITIONS OF AUTHORIZATION: The Chief of Police may approve secondary employment subject to such conditions or restriction, as (s)he deems necessary.
9. 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.
10. 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. APPLICATION OF POLICY
  - a. This policy applies to members of the Massachusetts National Guard and Air National Guard, and Armed Forces Reserve. The policy will be applicable to members of a National Guard Unit of another state during federal mobilization. State mobilization and training are regulated by the state to which the unit belongs.<sup>15</sup>
  - b. Activities of the Commissioned Corps of the National Oceanic and Atmospheric Administration (NOAA), Civil Air Patrol and Coast Guard Auxiliary are not covered under this section.<sup>16</sup>
2. 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.<sup>17</sup>
  - 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.
3. 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.<sup>18</sup>

- 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 9I. Employees on military leave of absence for active service; payment of premiums; acceptance of section;
  - 2) C 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.

#### 4. 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.<sup>19</sup>
- 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.<sup>20</sup>

#### 5. ANNUAL TOUR FOR TRAINING

- a. Continuance of Pay While on Active Duty
- b. Members of the Massachusetts National Guard are required to attend 15 days per year of training under MGL c. 33, s. 60. If the municipality has adopted MGL c. 33, s. 59, an employee on active duty as a member of the Massachusetts National Guard or Armed Forces Reserve will receive the difference of his/her regular pay and their military pay (excluding travel allowance). Benefits, such as sick and vacation time will continue to accrue as long as they are on annual training duty <sup>21</sup>

**Note:** since the state's fiscal year runs from July 1<sup>st</sup> through June 30<sup>th</sup>, and the Federal Government's fiscal year runs from October 1 to September 31<sup>st</sup>, in some "Years" an officer may be assigned to "summer camp-like" annual training for up to 34 days in some cases.

#### 6. MOBILIZATION FOR ACTIVE DUTY OTHER THAN TRAINING

- a. Employee Benefits

- b. Active Duty for State Mobilization: An employee on active duty as a member of the Massachusetts National Guard Mobilized by the Commonwealth will receive the difference in his/her regular pay and their military pay (except travel allowance) Benefits, such as sick and vacation time will continue to accrue as long as they are on duty.<sup>22</sup>
  - 1) and benefits provided that the period of active duty is for:<sup>23</sup>
    - a) Annual training;<sup>24</sup>
    - b) Riots, public catastrophe, natural disaster, to augment civilian police in suppressing riots, preserving order, affording protection and supporting the law;<sup>25</sup>
    - c) Escort and other duties including special duty and emergency assistance to state and civil authorities in the preservation of life and property;<sup>26</sup> or
    - d) To repel an invasion or to suppress an insurrection made or threatened.<sup>27</sup>
  - 2) Active Duty for Federal Mobilization
    - a) Employees will not continue to receive pay while under federal mobilization for other than annual training.
    - b) Employees may elect to use accrued vacation, compensatory time during mobilization.
    - c) Continuance of Insurance While on Active Duty:
      - i. Employees called to active duty in the service of the National Guard or Reserve is deemed to be granted leave without pay. Employees may continue to receive life and health insurance benefits, provided they pay their portion of the premium that would normally be deducted had they not been mobilized.<sup>28</sup>
    - d) Vacation Time: Employees do not accrue vacation time while on active duty.
    - e) Sick Time: Employees do not accrue sick time while on active duty.
- c. Employment upon Return from Mobilization
  - 1) Active duty may be either voluntary or involuntary.
  - 2) The employee is obligated to provide the department advanced notice, have received an honorable or general discharge, not have been gone for more than five years, and return to work promptly upon discharge.<sup>29</sup>

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- 3) Reemployment rights are terminated if the employee is: <sup>30</sup>
- a) Separated from uniformed service with a dishonorable or bad conduct discharge;
  - b) Separated from uniformed service under other than honorable conditions, as characterized by regulations of the uniformed service;
  - c) c)A commissioned officer dismissed as permitted under 10 U.S.C. 1161(a) by sentence of a general court-martial; in commutation of a sentence of a general court-martial; or, in time of war, by order of the President; or,
  - d) A commissioned officer dropped from the rolls under 10 U.S.C. 1161(b) due to absence without authority for at least three months; separation by reason of a sentence to confinement adjudged by a court-martial; or, a sentence to confinement in a federal or state penitentiary or correctional institution.
  - e) A military review board has the authority to prospectively or retroactively upgrade a disqualifying discharge or release. A retroactive upgrade may restore reemployment rights.
- 4) Seniority: A returning member is entitled to seniority and other rights and benefits determined by seniority as if (s)he had not been mobilized. This includes but is not limited to:<sup>31</sup>
- a) Vacation time;
  - b) Longevity; and
  - c) Shift bidding.
- 5) Pension: During the time of active military service, an employee shall be treated as if no break in service occurred. The municipality shall make contributions to the employees pension plan.<sup>32</sup>

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

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

<sup>3</sup> M.G.L. c. 41, §111F.

<sup>4</sup> M.G.L. c. 268A, §23(b)(1).

<sup>5</sup> M.G.L. c. 268A, §23(b)(2).

<sup>6</sup> M.G.L. c. 268A, §23 (b)(3).

<sup>7</sup> M.G.L. c. 268A, §23 (b)(3).

<sup>8</sup> M.G.L. c. 268A, §23 (c)(1).

<sup>9</sup> M.G.L. c. 268A, §23 (c)(2).

<sup>10</sup> M.G.L. c. 268A, § 23(b)(2).

<sup>11</sup> 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.

<sup>12</sup> M.G.L. c. 268A, §20(a).

<sup>13</sup> M.G.L. c. 268A, §17(a).

<sup>14</sup> M.G.L. c. 268A, §17(c).

<sup>15</sup> 38 U.S.C. 4303(16).

<sup>16</sup> Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA") 38 U.S.C. 4301 - 4334.

<sup>17</sup>Sec. 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)

<sup>18</sup> M.G.L. c. 33, §13.

<sup>19</sup> M.G.L. c. 33, §59A. Section 59 of this chapter must be adopted by the municipality for this benefit to apply.

<sup>20</sup> 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.

<sup>21</sup> M.G.L. c. 33, §59. This section must be adopted by the municipality for this benefit to apply.

<sup>22</sup> M.G.L. c. 33, §59. This section must be adopted by the municipality for this benefit to apply.

<sup>23</sup> M.G.L. c. 33, §59. This section must be adopted by the municipality for this benefit to apply.

<sup>24</sup> M.G.L. c. 33, §60.

<sup>25</sup> M.G.L. c. 33, §41.

<sup>26</sup> M.G.L. c. 33, §38.

<sup>27</sup> M.G.L. c. 33, §40.

<sup>28</sup> M.G.L. c. 32B, §9I. Section 9I and 10 must be adopted by the municipality for this benefit to apply.

<sup>29</sup> Uniformed Services Employment and Reemployment Rights Act of 1994, ([USERRA](#)), Title 38 of the U.S. Code 4301.

<sup>30</sup> 38 U.S. Code 4304.

<sup>31</sup> 38 U.S. Code 4316(a).

<sup>32</sup> 38 U.S. Code 4318.