



INFORMATION BULLETIN:

LAW ENFORCEMENT OFFICERS SAFETY ACT (“LEOSA”) AND CA DOJ’S INACCURATE AND OUTDATED POLICY

October 25, 2018

California generally restricts the public carrying of firearms whether carried openly or concealed, loaded or unloaded.¹ While current and honorably retired California peace officers are usually exempt from these restrictions, peace officers from out-of-state are usually not. But, with Congress’s enactment of the Law Enforcement Officers Safety Act (“LEOSA”) in 2004, both current and retired qualified law enforcement officers from anywhere in the country are exempt from California’s carry restrictions provided they possess the proper identification and meet the statute’s other requirements.²

Since its enactment in 2004, LEOSA has been amended twice—first in 2010 and again in 2013—to clarify the requirements qualified law enforcement officers must satisfy to be exempt from carry restrictions in states they visit—like California’s. But the California Department of Justice (“Cal-DOJ”) currently maintains a LEOSA policy based on outdated provisions of federal law. As a result, Cal-DOJ’s interpretation of LEOSA improperly limits its application.

We at the California Rifle & Pistol Association, Incorporated, are providing this information bulletin to help clarify LEOSA’s requirements, highlight the inconsistencies with Cal-DOJ’s interpretation of LEOSA, and assist local law enforcement and prosecutors on the subject so that current and retired law enforcement officers visiting California who are legally carrying a firearm under LEOSA do not face wrongful prosecution.

¹ See Pen. Code §§ 25400, 25850, 26350, 26400. Law enforcement should be aware that a recent decision from the Ninth Circuit court of appeals calls into question California’s laws prohibiting the open carry of firearms. But that lawsuit, titled *Young v. Hawaii*, is still being litigated and is not yet final. For the time being, California’s restrictions against open carry remain in effect. For more information about the *Young* case, visit <https://www.nraila.org/articles/20180724/california-federal-court-confirms-second-amendment-protects-right-to-carry-in-public>

² See 18. U.S.C. §§ 926B, 926C.

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I. WHAT IS THE LAW ENFORCEMENT OFFICERS SAFETY ACT?

Also known as “H.R. 218,” LEOSA amended federal law to exempt qualified law enforcement officers (“QLEO”) and qualified retired law enforcement officers (“QRLEO”) from most state and local laws prohibiting the carrying of concealed firearms, provided certain requirements are met. But there are limitations.

LEOSA does not exempt such officers from state laws restricting firearm possession on state or local government property, installations, buildings, bases, or parks, as well as federal laws restricting firearm possession in areas like airports, federal courthouses, and post offices.³ And LEOSA does not supersede or limit a state’s laws that allow persons or entities to prohibit or restrict the possession of concealed firearms on their private property.⁴ What’s more, LEOSA has limits on the types of firearms that may be carried and does not specifically exempt QLEOs and QRLEOs from state restrictions on a firearm’s magazine capacity.⁵ As a result, QLEOs and QRLEOs must meet an exception to these state restrictions provided by a law other than LEOSA, in order to lawfully engage in the restricted activity; LEOSA is not enough.

a. Qualified Law Enforcement Officers (QLEOs)

For a person to be a QLEO under LEOSA, the person must be an employee of a government 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);
- Is authorized by the agency to carry a firearm;
- Is not the subject of any disciplinary action by the agency which could result in suspension or loss of police powers;
- Meets standards, if any, established by the agency which require the employee to regularly qualify in the use of a firearm;
- Is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and,
- Is not prohibited by Federal law from receiving a firearm.

18 U.S.C. § 926B(c).

³ 18 U.S.C. §§ 926B(b), 926C(b).

⁴ *Id.*

⁵ 18 U.S.C. §§ 926B(e)(1). There appears to be no exemption from restrictions relating to magazine capacity in LEOSA. Consequently, restrictions on magazine capacity would apply unless the officer meets an exception to those restrictions pursuant to that state’s laws. Given the ambiguity, officers wishing to carry pursuant to LEOSA should familiarize themselves with California’s restrictions on “large-capacity” magazines before bringing and possessing the magazines in California. See, generally, Pen. Code §§ 32310-32455.

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It is not enough to just be a QLEO, however. A QLEO seeking to carry a firearm under LEOSA must also carry photographic identification issued by the governmental agency employing the QLEO that identifies the individual as a law enforcement officer of the agency.⁶

b. Qualified Retired Law Enforcement Officers (QRLEOs)

The standards for a QRLEO to qualify under LEOSA are somewhat more complex than the standards for a QLEO. To be a QRLEO under LEOSA, an individual must be separated from service in good standing from service with a public agency as a law enforcement officer and:

- 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);
- Before such separation, either-
 - Served as a law enforcement officer for an aggregate of 10 years or more; or,
 - 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;
- 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 formed 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;
- Has neither-
 - 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 required photographic identification; or,
 - 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 required photographic identification;
- Is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and,
- Is not prohibited by Federal law from receiving a firearm.

18 U.S.C. § 926C(c).

As with a QLEO, it is not enough to just be a QRLEO to carry under LEOSA. Any QRLEO carrying must also possess the appropriate photographic identification, the requirements for which are more stringent than those for QLEOs. To meet the photographic identification requirements for QRLEOs, the identification:

⁶ 18 U.S.C. § 926B(d)

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- Must be issued by the agency from which the individual separated from service as a law enforcement officer and identify the individual as having been employed as a police officer or law enforcement officer, **and** either-
 - The identification indicates that the individual has, **not less recently than 1 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,
 - The individual has a certification issued by a 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 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 either-
 - 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,
 - 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.

18 U.S.C. § 926C(d).

II. LIMITATIONS OF LEOSA

As a threshold matter, QLEOs and QRLEOs should understand that LEOSA does **not** create a “right” to carry a concealed firearm or entitle such individuals to be issued the photographic identification or certification required to qualify for LEOSA protections. Federal law does **not** require law enforcement agencies to issue such photographic identification or certification.⁷ For this reason, each local law enforcement agency has its own policies and procedures regarding the issuance of the required photographic identification.

Given such identification is often necessary for the performance of their duties, QLEOs do not typically have issues in obtaining the photographic identification necessary under LEOSA. But this is not always the case for a QRLEO. And even if a QRLEO can obtain the required photographic identification, there is still the issue of the required certification. There is no clear answer as to what form the certification must be in, and most states do not issue such certifications. However, the certification can be issued by a certified firearms instructor who is qualified to conduct a firearms qualification test for active duty officers within the state.⁸ But as with the certification requirement itself, LEOSA lacks specific guidance on what the required qualifications for a certified firearms instructor are.

In California, there are no established **state** qualification standards for an active duty law enforcement officer. Instead, each department generally sets its own standards for both active and retired law enforcement

⁷ See, e.g., *Johnson v. New York State Dept. of Correctional Servs.*, 709 F.Supp. 2d 178 (N.D.N.Y. 2010).

⁸ 18 U.S.C. § 926C(d)(2)(B).

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officers. As a result, an individual who otherwise satisfies the requirements of LEOSA as a QRLEO can obtain the necessary certification from *any* law enforcement agency in the state.⁹

III. WHAT IS THE CALIFORNIA DEPARTMENT OF JUSTICE’S CURRENT INTERPRETATION OF LEOSA?

Despite LEOSA having been amended on two separate occasions following its introduction in 2004, Cal-DOJ appears to maintain the position that retired federal law enforcement officers cannot carry a concealed firearm in California without a license to carry a concealed firearm issued by a California Sheriff or Chief of Police. Cal-DOJ’s position appears to be a result of California lacking a state standard for “active duty law enforcement.” As currently stated by Cal-DOJ regarding LEOSA:

Both “qualified law enforcement officers” and “qualified retired law enforcement officers” are required to meet the state’s standards for the “training and qualification for active law enforcement officers to carry firearms” under the LEOSA. Penal Code section 832.3 sets forth the initial and continuing training and testing requirements for peace officers in California. The specific curriculum for the training of peace officers is established by the California Commission on Peace Officer Standards and Training (P.O.S.T.). However, current California law does not set a statewide standard for the training and qualification of active law enforcement officers after graduation from the academy. Standards are established by individual law enforcement agencies for both active and retired officers in those agencies

SUMMARY of The Law Enforcement Officers Safety Act (LEOSA) of 2004, California Department of Justice, Bureau of Firearms, <https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/forms/leosasummary.pdf> (last visited Aug. 13, 2018).

Under its current form, a QRLEO can obtain the necessary certification according to standards from *any* law enforcement agency within California. Cal-DOJ’s position is, therefore, based on a version of LEOSA that is no longer in effect. To make matters worse, Cal-DOJ’s webpage regarding LEOSA links to information that is out of date, and in some cases, no longer present.¹⁰ In sum, if a QLEO or QRLEO from outside of California meets the requirements of LEOSA (which clearly recognize that the out of State officer or retired officer may meet the firearms qualification requirements of that State in order to satisfy LEOSA), federal law allows that officer to carry a firearm in California.

⁹ Frequently asked questions regarding LEOSA can be found on the NRA’s website at <http://le.nra.org/leosa/frequently-asked-questions.aspx> (last visited August 6, 2018).

¹⁰ See <https://oag.ca.gov/firearms/leosanew>. As recently as August 3, 2018, the links on this page to both ATF’s website and the Florida Department of Public Safety returns a error or can no longer be found. And the link to the text of LEOSA itself only links to the legislation as introduced in 2004, without any information regarding the amendments made in 2010 and 2013.

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We are sorry, but the page you requested wasn't found at this location.

One of two links on Cal-DOJ's webpage for "Other sites with Information" on LEOSA

IV. LEOSA AS APPLIED TO RESERVE PEACE OFFICERS (ACTIVE AND RETIRED) IN CALIFORNIA

Reserve peace officers are sworn peace officers appointed under Penal Code section 832.6 and thus meet the definitional predicates of LEOSA (both active and retired). Certain law enforcement agencies in California have incorrectly taken the position that reserve peace officers may not carry a firearm under LEOSA as a matter of policy despite the fact they meet the criteria discussed above and have been issued an appropriate ID (which is effectively no different than IDs issued to active duty officers). In any event, law enforcement and prosecutors should be aware that LEOSA does not distinguish between "full-time" and "reserve" peace officers, distinctions which relate to their employment status and have no bearing on the applicability of the "categorical" exemption provided by LEOSA to peace officers irrespective of such employment status. For that reason, if a reserve officer can satisfy all the requirements under LEOSA applicable to either QLEOs or QRLEOs, they may carry a concealed, loaded firearm in accordance with LEOSA's protections.

V. CONCLUSION

Cal-DOJ's current policies concerning LEOSA are just one example of a disturbing trend with California's top law enforcement agency to disregard the plain language of a statute to advance a political end. Cal-DOJ is routinely failing to provide clear and concise guidance to local law enforcement—especially on matters concerning California's firearm laws. What's more, what little guidance is provided is often based on inaccurate, outdated, or politically-based information. To the extent an agency relies on Cal-DOJ's interpretation of LEOSA and incorrectly takes enforcement action against an out of state officer, that agency subjects itself to significant civil liability for false arrest, false imprisonment, deprivation of civil rights and similar claims. It is our hope that this information bulletin will better assist local law enforcement and prosecutors and guide local agencies in adopting lawful policies concerning the issuance of the required identification and certification under LEOSA and avoid making a critical mistake in the field by arresting an out of state law enforcement officer in reliance on Cal-DOJ's misguided views of LEOSA.

Should you have any questions concerning any of the information contained in this memorandum, please do not hesitate in contacting CRPA's attorneys at Michel & Associates, P.C., by calling (562) 216-4444 or emailing helpdesk@michellawyers.com.

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