

# LEOSA state by state: Why are retired police officers having problems?

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The Law Enforcement Officer Safety Act, which is also known as HR 218 (hereinafter “LEOSA”) was enacted on July 22, 2004 to extend active law enforcement officers and retired law enforcement officers the opportunity of carrying a concealed firearm in all 50 states, the District of Columbia, and all U.S. territories (hereinafter collectively called “states”) as long as they meet certain requirements. Since the law was enacted, it has been amended in 2010 and 2013. The intention of the amendments was:

1. To extend the benefits to persons who separated after serving an aggregate of 10 years or more as active, reserve, auxiliary or volunteer law enforcement officers.
2. To extend the benefits to all active or retired military personnel, law enforcement officers from the Department of Defense, and all law enforcement officers from the executive branch of the federal government, Amtrak, and the Federal Reserve.
3. To mandate that all active and retired law enforcement officers must carry a photograph ID that identifies the person as authorized to carry a concealed firearm under LEOSA.

In order to qualify to receive this privilege, the active or retired law enforcement officer (“LEOs”) must meet LEOSA’s requirements and those requirements established by the states. LEOSA’s requirements for active LEOs are the following:

1. 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. Authorized by the agency to carry a firearm;
3. Not to be subject of any disciplinary action by the agency which could result in suspension or loss of police powers;
4. Meets the standards established by the employer agency to regularly qualify and train 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 State or Federal law from carrying or receiving a firearm.

LEOSA’s requirements for retired LEOs are the following:

1. Separated from service in good standing from a government agency as a law enforcement officer for reasons other than mental instability;

2. 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;
3. Had statutory powers of arrest or apprehension immediately before retirement;
4. Was separated from service in good standing with a government agency as an LEO for an aggregate of 10 years or more, or separated from such an agency due to a service-connected disability after completing any applicable probationary period of such service;
5. During the past 12 months has met, at his/her own expense, the standards for qualification for active law enforcement officers to carry firearms of his/her former employer agency or of those established by the state;
6. Cannot be under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and
7. Is not prohibited by State or Federal law from carrying or receiving a firearm.

### **So, what's the problem?**

LEOSA requirements may seem pretty straightforward. However, the amendments and the language of the law have caused many problems to LEOs, some of which have been arrested and indicted. In addition to the ambiguity of LEOSA's language, the implementation of the law varies by state.

In this article, we will provide LEOs with an overview of how LEOSA is being applied in each state. The information contained in this article does not include all of the requirements or precautions that LEOs need to take. We strongly advise seeking legal advice or consult with a local law enforcement agency if you are planning to move or visit another state and intend to bring your firearm.

#### **1. First Problem: Definition of firearm in LEOSA**

LEOSA's legislative history, as well as in some cases addressing the intention of the law as to the definition of firearm, may demonstrate that LEOSA applies to all firearms except those specifically exempted in the law. However, LEOs must be aware of the current laws of their state on which firearms are permitted to be carried concealed. Although LEOSA is a federal law and as such preempts any state law, LEOs should avoid getting themselves in a criminal prosecution that may or may not end up being dismissed.

Solution: Be familiar with your state requirements to carry a concealed firearm.

#### **2. Second Problem: Gun Free Zones**

LEOSA and state laws have some exceptions where carrying a concealed firearm is prohibited. LEOSA states that carrying a concealed firearm into private property, where the possession of a firearm is not permitted is a violation of the law. LEOSA also prohibits the possession of any firearm in property owned or leased by state or federal governments. LEOs also need to be aware of additional locations, if any, where their state does not allow firearm possession.

It seems clear and logical enough. But it is not. There are exceptions in which individuals are permitted to carry concealed firearms in federal park lands with a state-issued permit. At the same time, there are areas marked as Gun Free School Zones in which, if an individual is caught with a concealed weapon and possess a permit not issued by the state, he/she can get in trouble in that state. Gun Free School Zones could be big and you might pass by it inadvertently. It is important for LEOs to get familiar with the firearms laws of the state they are in and if they don't have a state-issued permit to carry a concealed firearm, they should be familiar with the Gun Free School Zones and avoid them.

3. Third Problem: Some states or agencies are not issuing LEOSA identifications to qualified LEOs.

When LEOSA was amended to require an identification card, the Department of Defense did not amend their policy. Qualified LEOs who worked with the Department of Defense do not have a LEOSA identification, which could get them in trouble in their own states or if they travel to a state that requires it.

Additionally, there are some states that allow LEOs to carry concealed firearms without an identification. There are other states who have made a different interpretation of LEOSA and are refusing to grant the privilege to qualified individuals. Others are refusing to issue identifications for lack of funds or are issuing identifications to local LEOs and not to those LEOs from out of state. All those states that have these problems are listed below.

4. Fourth Problem: Issues with the annual Firearm certification required by LEOSA.

Qualification training as required by LEOSA is definitely not consistent within the states. There are states that do not require qualification training at all after you retire. In those states that the qualification training is not regulated by the state, some individuals calling themselves certified instructors, are providing "qualification training" that does not necessarily meet the standards of the state or of the local law enforcement agencies. A qualified LEO might take that training and have a certification issued on that training that might not be recognized by the state, causing the LEO to get in trouble for carrying a concealed firearm without a permit. LEOs need to be extra cautious when enrolling in a qualification training in a state that does not have a list of certified instructors. Those states that do have a list, make it available online on their official webpage or on the webpage of the local law enforcement agencies.

Some states have both state qualification training and the training that each law enforcement agency provides to their own LEOs. Those states that have both, allow out of state LEOs to take the state qualification training if they need their LEOSA identification. Information about which states have problems with the qualification training is provided below.

Finally, if a LEO wants to have more than one concealed firearm, not all states require qualification training on each firearm he/she intends to carry. LEOSA is not clear on this regard and defers the decision to the states causing more inconsistency. For example, if a LEO is trained to carry one concealed firearm and is caught in another state that is more restrictive with a different one could get prosecuted.

5. Fifth Problem: Inconsistencies in the application of LEOSA requirements to apply for the privilege.

The next section will provide an insight on which states are LEOSA friendly and which states have requirements or lack thereof that could cause legal problems to qualified LEOs.

### **LEOSA in the states**

The following states have requirements that are very similar to LEOSA and are issuing the identifications to LEOs to carry concealed firearms in accordance with the law:

- |                  |                    |                         |
|------------------|--------------------|-------------------------|
| 1. Arkansas      | 2. California*     | 3. Colorado             |
| 4. Connecticut*  | 5. Delaware        | 6. District of Columbia |
| 7. Florida       | 8. Georgia         | 9. Idaho                |
| 10. Illinois     | 11. Iowa           | 12. Kansas              |
| 13. Kentucky     | 14. Louisiana      | 15. Maine               |
| 16. Maryland     | 17. Massachusetts  | 18. Michigan            |
| 19. Minnesota    | 20. Mississippi    | 21. Nebraska            |
| 22. Nevada       | 23. New Hampshire  | 24. New Mexico          |
| 25. New York*    | 26. North Carolina | 27. North Dakota        |
| 28. Oregon       | 29. Pennsylvania   | 30. South Carolina      |
| 31. South Dakota | 32. Tennessee      | 33. Texas               |
| 34. Utah         | 35. Virginia       | 36. Wisconsin           |
| 37. Wyoming      |                    |                         |

\* These states ban magazines that hold more than 10 rounds.

The following states have requirements that makes carrying a concealed weapon more difficult or are in some way in conflict with LEOSA. Ignorance is not bliss in these states and getting caught breaking their laws could cause serious legal problems to qualified LEOs:

1. Alabama: This state does not require annual re-qualification for the concealed firearms. The identification issued by this state will only be valid in that state and on those states that have reciprocity with Alabama. The Firearms scorecard signed by a firearms instructor serves as proof of qualification. We strongly recommend that LEOs from this state should familiarize with the states that have reciprocity with Alabama or should not carry their concealed firearm out of state. If a LEO moves out of this state, he/she should qualify for a LEOSA identification in the state he/she is moving to.
2. Alaska: This state is not issuing identifications allowing LEOs to carry concealed firearms because carrying a concealed firearm in this state is allowed. Additionally,

this state does not require annual firearm re-qualification. LEOs from this state should not carry their concealed firearm out of state. If a LEO moves out of this state, he/she should apply and qualify for a LEOSA identification in the state they are moving to.

3. Arizona: This state has a law that seems to be equivalent to LEOSA. However it is not extending the LEOSA privilege to campus or university police officers when they retire because the state does not consider them qualified under their law to carry a concealed weapon.
4. Hawaii: If you are visiting, you have to register at the local police department, regardless of how long you are staying. You also have to provide the address of where you are staying, bring your weapon for inspection, and pay a nominal fee. The process can take from 1-3 hours.
5. Indiana: Each Indiana law enforcement agency/department handles its own retirees in accordance with their agency/department guidelines and standards. Some agencies/departments may qualify retirees from Federal and/or out of state agencies/departments. The Indiana State Police only issue retired credentials to their retirees after 25 years of service and will only qualify their own retirees in good standing.
6. Missouri: Only the law enforcement agencies where the LEOs are from, can offer him/her the qualification training and issue a LEOSA identification to their own LEOs. If a law enforcement agency from that state does not have the program available, those LEOs that are or were from that agency would not be able to have a concealed weapon under LEOSA. Out of state LEOs moving to this state must verify if they have reciprocity with their state of residence or corroborate if any of Missouri's law enforcement agencies will qualify them and issue them a LEOSA identification.
7. Montana: Since there was no federal funding to implement LEOSA in the states, there are only a few local agencies that offer the qualification training and the LEOSA identification.
8. New Jersey: This state has its own law equivalent to LEOSA with the same limitations as Arizona. Also, this state requires semiannual qualification in order to be able to carry, bans magazines that hold more than 10 rounds and carrying hollow point bullets.
9. Ohio: The state of Ohio does not issue LEOSA identification cards. This state left the decision of the issuance of LEOSA identification cards to the local police departments and sheriffs' offices. Retired LEOs can qualify and re-qualify with their concealed firearms in the law enforcement agency they retired from but they will have no identification to prove it out of state. The only document that shows whether an active duty officer has qualified with a firearm is an Ohio Peace Officer Training Academy (OPOTA) score sheet. Out of state LEOs may request to qualify under Ohio standards for LEOSA to an Ohio Peace Officer Training Commission approved instructor. This represents a risk to LEOs if they decide to carry their concealed firearm out of state.
10. Oklahoma: Currently, Oklahoma has not designated any state agency to be responsible for LEOSA. CLEET sets standards for Law Enforcement Education and Training. Approved CLEET Firearms instructors can conduct annual LEOSA

qualifications. CLEET suggested language for annual LEOSA qualification cards issued by CLEET approved firearms instructors. Even though Oklahoma does not have a designated agency for the LEOSA identifications, they issue concealed weapons permits to retired full-time or reserve peace officers Oklahoma state, county, or municipal law enforcement agencies, or federal law enforcement agencies. Oklahoma permits may not be valid in other states.

11. Puerto Rico: This territory of the United States has confusing requirements. Active LEOs are only allowed to carry their regulation firearm or the firearm issued to them by the Puerto Rico Police Department after being qualified. They are allowed to carry that firearm concealed. LEOs who retired in good standing can apply for a license to carry a firearm and they are allowed to carry it concealed. Out of state LEOs are required to register or notify their firearm to the Puerto Rico Police Department regardless if they are only visiting. LEOSA identification or their active LEO identification is essential for the notification/registration process. It is strongly recommended to learn about their notification/registration process before coming to this territory.
12. Rhode Island: The only certify their own law enforcement officers and they do not honor any other state permits or identifications under LEOSA. The only solution for out of state LEOs is to apply for a concealed firearm permit like any other citizen of Rhode Island in accordance with their requirements.
13. U.S. Virgin Islands: This territory of the United States does not recognize or accept any identification issued by another state. LEOs should not bring their concealed firearms with them if they visit this island. They have their own system to issue firearms licenses. They do issue permits to carry firearms to retired or active LEOs but all LEOs must meet their own requirements.
14. Vermont: Any Vermont Criminal Justice Training Council certified firearms instructor can conduct qualifications shoots for retired LEOs. Each department/agency is responsible for issuing the appropriate documentation as evidence of annual qualification.
15. Washington: This state does not require a permit, certification, or identification to LEOs to carry a concealed firearm. Retired LEOs are allowed to carry concealed weapons as long as they retired in good standing from their law enforcement agency. We strongly recommend that LEOs from this state should familiarize with the states that have reciprocity with Washington or should not carry their concealed firearm out of state. If a LEO moves out of this state, he/she should qualify for a LEOSA identification in the state he/she is moving to.
16. West Virginia: Although this state is “LEOSA friendly”, effective in May 2016, this state would not require an identification to retired LEOs that qualify under LEOSA. West Virginia law enforcement agencies, to include West Virginia State Police, can qualify their own retired officers. On an individual basis, some retired officers from out of state and federal agencies have been qualified by West Virginia State Police or by local law enforcement agencies/departments. We strongly recommend that LEOs from this state should familiarize with the states that have reciprocity with

West Virginia or should not carry their concealed firearm out of state. If a LEO moves out of this state, he/she should qualify for a LEOSA identification in the state he/she is moving to.

### **Significant cases**

1. Duberry v. District of Columbia, 824 F.3d 1046 (D.C. Cir. 2016): This case decided three important things:
  - a. The U.S. Court of Appeals for the Washington D.C. Circuit extended the right of retired law enforcement officers to carry concealed weapons under LEOSA to retired corrections officers.
  - b. LEOSA “does not afford discretion” to state or local authorities to decide who is and who is not a qualified LEO or RLEO (Retired Law Enforcement Officer).
  - c. LEOSA is fully enforceable under the civil rights statute 42 U.S.C. § 1983 (“Section 1983”). That is, officers may bring a lawsuit under Section 1983 to challenge any acts by state or local authorities (or “under color” of any such authority) that in any way deprive them or “cause” them to be deprived of their LEOSA right to carry.
2. Thorne v. United States, Nos. 11–CF–492, 11–CF–730 (D.C. Cir. 2012): The Court declared private security guards are not protected by LEOSA.
3. LEOSA does not bestow either an explicit right to obtain the required photographic ID or a federal remedy when a state agency refuses to issue one. See: McKinley v. City of Topeka, Case No. 06-C-376; Moore, et. al. v. Trent, et.al., 2010 U.S. Dist. LEXIS 133038 (E.D. Illinois 2010); and Johnson v. NY State Dept. of Corrections, 709 F. Supp. 2d 178 (N.D.N.Y. 2010).

### **Concluding Remarks**

LEOs need to be familiar with the firearm laws of their state or of the state they intend to visit. If LEOs need to travel to another state because of an emergency or an unplanned vacation they should consult with an attorney with knowledge of the laws of that state, call a local law enforcement agency or they should leave their firearms behind in accordance with the laws of their state. When there are work related assignments, the district/city attorney of the LEO’s law enforcement agency, should find out the necessary requirements and provide the information to the LEO. If a LEO is stopped in another state by another LEO, he/she should notify that officer that he/she is carrying a concealed weapon immediately. The LEO should also provide the officer with the identification that authorizes him/her carrying the concealed weapon. Having said that, a LEO should not assume the risk, hoping he/she would not get caught or that he/she would receive professional courtesy from another LEO. Prevention is key, so LEOs must learn the laws of the state they will visit or move into before taking bringing their weapons.

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