**Off-Duty Employment Information:**

* **Selected Reading including SAMPLE resolution/policy,**
* **Code of Alabama,**
* **AMIC/MWCF Loss Control Recommendations,**
* **SAMPLE Policy,**
* **Off-Duty Employment Request & Authorization Form**
* **Notice of Off-Duty Employer Liability**

**Alabama League of Municipalities Selected Readings: The Ethics Law**

The rest of this article is devoted to an examination of the ethical issues that surround a police officer’s acceptance of off-duty employment and the use of public equipment in the course of that employment, specifically pursuant to Section 36-25-5(c), Code of Alabama 1975. The hope is that other officers may avoid ethical problems in the future.

Generally speaking, the Alabama Ethics Law prohibits public officials and employees from using their official position or any public equipment to benefit themselves financially. However, Section 36-25-5(c), Code of Alabama 1975, provides:

“(c) No public official or public employee shall use or cause to be used equipment, facilities, time, materials, human labor, or other public property under his or her discretion or control for the private benefit or business benefit of the public official, public employee, any other person, or principal campaign committee as defined in Section 17-22A-2, which would materially affect his or her financial interest, except as otherwise provided by law or as provided pursuant to a lawful employment agreement regulated by agency policy. Provided, however, nothing in this subsection shall be deemed to limit or otherwise prohibit communication between public officials or public employees and eleemosynary or membership organizations or such organizations communicating with public officials or public employees.”

Thus, Section 36-25-5(c) prohibits the use of public equipment or facilities unless another law provides otherwise, or unless an employment agreement or policy permits the use of the equipment. This means that the first step in allowing the off-duty use of public equipment by police officers is the enactment by the municipal governing body of a policy permitting that use. Without a specific policy in place, Section 36-25-5(c) seems to be an absolute prohibition against the use of public equipment during off-duty employment.

Although this section does not prohibit an officer from taking off-duty employment, officials should be aware that the municipality may have a policy in place that prohibits officers from taking off-duty jobs. This would be perfectly valid. This is a policy issue that the municipality must weigh before deciding to allow off-duty employment.

Even where the municipality decides that the positive effects of having officers work off-duty jobs outweigh the potential liability, the municipality must then decide whether to allow the use of public equipment and, if so, should retain some control over what municipal equipment may be used during the off-duty employment.

Although the municipality will want to address the issue of off-duty employment in more detail than can be done in this article, to allow officers to work off-duty jobs the policy should at a minimum state something similar to the following:

***Police officer outside employment Sample resolution/policy.***

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*(a) The city council finds and declares all the following:*

*(1) The city is desirous of providing for the general public's safety and welfare while aiding its officers with the necessary equipment to perform their lawful duties;*

*(2) State law implicitly recognizes the need for officers to accept off-duty employment in Code of Ala. 1975, §§ 6-5-338 and 36-25-5(c);*

*(3) There is a distinct and recognized advantage to the general public's safety by the presence of uniformed off-duty officers working off-duty jobs at various business premises; and*

*(4) The city will benefit greatly by having trained police officers available and visible in the private employer's premises.*

*(b) Notwithstanding any provision of law, and except as otherwise provided in this section, police officers of the city may accept off-duty employment, subject to the restrictions and guidelines set out herein. Any officer seeking to accept outside employment must file, with the chief of police, a request for approval of outside employment. This request shall include:*

*(1) The location and nature of the outside employment;*

*(2) The date and hours to be worked;*

*(3) The name of the outside employer;*

*(4) The duties of the outside employment;*

*(5) Whether the job is a one-time event or is continuous;*

*(6) Whether the job is to be worked in uniform;*

*(7) A list of any public equipment that may be used during the job; and*

*(8) Any other information required by the chief of police.*

*The chief of police shall approve or disapprove the outside employment in writing. The chief of police may place conditions not inconsistent with this policy upon the acceptance of any outside employment. Public equipment may be used only as approved by the chief of police.*

This policy should be adapted to meet local needs and requirements. To avoid ethical problems under Section 36-25-5(c), the policy must include a statement permitting the use of public equipment during the off-duty employment. The municipality may want to specifically list the types of equipment that an off-duty officer may use. The municipality should retain a written copy of the approval or disapproval of outside employment, which should include a list of equipment that the officer has been authorized to use on the off-duty job.

Additional issues to consider included in the policy are a definition of off-duty employment; requiring the private employer to sign a hold-harmless agreement; whether all officers will be allowed to work off-duty jobs (for instance, the municipality may want to restrict some supervisors from accepting off-duty jobs due to the hours they will be expected to be on-duty); the type employment that will be allowed; the number of off-duty hours an officer may work; whether the officer should file a statement following the employment as to the duties he or she performed; and how far outside the municipality the officer may work, among other issues.

In conclusion, the municipal governing body has the power to decide whether municipal police officers may work off-duty jobs. If the council elects to allow this type work, it must establish a written policy to this effect. The League encourages municipalities to work closely with the municipal attorney, police chief and liability insurance carrier in the drafting and implementation of a policy on off-duty employment. If public equipment will be used on the off-duty job, this must be spelled out in the policy pursuant to Section 36-25-5(c).

#### CODE of Alabama §36-25-5(c) Use of official position or office for personal gain.

(c) No public official or public employee shall use or cause to be used equipment, facilities, time, materials, human labor, or other public property under his or her discretion or control for the private benefit or business benefit of the public official, public employee, any other person, or principal campaign committee as defined in Section 17-22A-2, which would materially affect his or her financial interest, except as otherwise provided by law or as provided pursuant to a lawful employment agreement regulated by agency policy. Provided, however, nothing in this subsection shall be deemed to limit or otherwise prohibit communication between public officials or public employees and eleemosynary or membership organizations or such

#### CODE of Alabama §6-5-338.4(d): Certain employers of off-duty officers to maintain liability coverage.

(d) Every private, non-governmental person or entity who hires a law enforcement officer during that law enforcement officer’s off-duty hours to perform any type of security work or to work while in the uniform of a law enforcement officer shall have in force at least five hundred thousand dollars ($500,000) of liability insurance, which insurance must indemnify for acts the off-duty law enforcement officer takes within the line and scope of the private employment or contract. The failure to have in force the insurance required by this subsection shall make every individual employer, every general partner of a partnership employer, and every member of an unincorporated association employer individually liable for all acts taken by the off-duty law enforcement officer within the line and scope of the private employment or contract.

**AMIC/MWCF Loss Control Recommendations:**

Below are standard recommendations concerning the off-duty employment of police officers provided to member police departments during loss control visits or follow-up:

**Do you have a written policy regulating off-duty uniform and equipment use?**

LE- Uniforms & Equipment: Off-Duty Employment: SOP

It is recommended that your procedures manual include a written policy that addresses the conditions, rules, and allowance of secondary or off-duty employment by any employee, including employment at another law enforcement agency or government facility. Additional issues to consider including in the policy are a definition of off-duty employment; providing the private employer of their requirements to provide insurance or provide proof of liability insurance; the type employment that will be allowed; the number of off-duty hours an officer may work; whether the officer should file a statement as to the duties they are expected to perform; how far outside the municipality the officer may work, and if the use of municipality owned or issued equipment may be used; among other issues. A well written policy on off-duty employment will reduce exposure to lawsuits as well as employee workers’ compensation claims. The AMIC/MWCF Loss Control Division has an Off-Duty Employment Information Packet, which includes a sample policy and other reference documents that can be downloaded at [www.losscontrol.org](http://www.losscontrol.org), under Reference Documents, by keyword search **Employment** or resource **PSOP-018**.

**Is there a City Resolution authorizing off-duty uniform and equipment use?**

LE- Uniforms & Equipment: Off-Duty Employment: Resolution

It is recommended that the municipality pass a resolution/policy that authorizes police officers to work secondary or off-duty employment utilizing municipality owned and issued equipment in accordance with the CODE of Alabama §36-25-5, including employment at another law enforcement agency or government facility. The municipality should consider specifically listing the types of equipment that an off-duty officer may use. The municipality should also retain a written copy of the approval or disapproval of off-duty employment, which should include a list of equipment that has been authorized to use by the officer. If the municipality does not have a resolution in place, the AMIC/MWCF Loss Control Division has an Off-Duty Employment Information Packet, which includes a sample resolution/policy and other reference documents that can be downloaded at [www.losscontrol.org](http://www.losscontrol.org), under Reference Documents, by keyword search **Employment** or resource **PSOP-018**.

**Is a written Approval Form required?**

LE- Uniforms & Equipment: Off-Duty Employment: Written Approval

It is recommended that your written secondary or off-duty employment policy include a requirement to complete a request form submitted for approval by the Chief of Police prior to participating in any off-duty employment. This requirement may apply to all off-duty employment, but at a minimum should apply to any employment that is conditioned upon the actual or potential use of law enforcement powers by the employee including employment by another law enforcement agency. This approval process will ensure employment does not present any potential conflict of interest nor threaten the status or dignity of the law enforcement profession, nor involve an unacceptable risk of injury that would limit the employees return to regular duty, or otherwise interfere with the employee’s primary duties. The AMIC/MWCF Loss Control Division has an Off-Duty Employment Information Packet, which includes an Off-duty Employment Request and Authorization form along with other reference documents that can be downloaded at [www.losscontrol.org](http://www.losscontrol.org), under Reference Documents, by keyword search **Employment** or resource **PSOP-018**.

**Is a Notice or Proof of Insurance required?**

LE- Uniforms & Equipment: Off-Duty Employment: Liability Insurance Notice

It is recommended that any employer of an officer working secondary or off-duty employment that is conditioned upon the actual or potential use of law enforcement powers be required to provide proof of liability insurance of at least five-hundred thousand dollars ($500,000) as provided in the CODE of Alabama §6-5-338.4(d). This insurance must indemnify for acts the off-duty police officer takes within the line and scope of the private employment. The failure to have the required insurance shall make every individual employer, every general partner of a partnership employer, every member of an unincorporated association employer and every officer of a corporate employer individually liable for all acts taken by an off-duty police officer within the line and scope of the private employment. At a minimum, all potential employers should be provided with a copy of CODE of Alabama §6-5-338.4(d) and require their signature acknowledgement of the copy and their responsibilities. Actions taken as a part of off-duty employment may not be covered under the department’s liability insurance, and employees that become injured or otherwise unable to work as a result of off-duty employment may not be covered under the municipality’s worker’s compensation insurance. The AMIC/MWCF Loss Control Division has an Off-Duty Employment Information Packet, which includes a Notice of Employer Liability along with other reference documents that can be downloaded at www.losscontrol.org, under Reference Documents, by keyword search **Employment** or resource **PSOP-01**8.

**Do you require officers working off-duty employment to utilize in-car and/or body-worn cameras as if on-duty?**

LE- Uniforms & Equipment: Off-Duty Employment: Use of In-Car & Body-Worn Camera

It is recommended that you require officers working off-duty employment to utilize in-car and/or body-worn cameras if available, as if on-duty. There are numerous instances where officers working off-duty may be taking reports, affecting arrests, and/or involved in some other law enforcement activity. Recording these incidents the same as when on-duty is crucial for prosecution, transparency, and justification of their actions. The AMIC/MWCF Loss Control Division has model In-Car and Body-Worn Camera policies which includes this requirement, that can be downloaded at [www.losscontrol.org](https://nam11.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.losscontrol.org%2F&data=05%7C01%7CTSanders%40almonline.org%7Cad44cea737bb429e20c808dab2a02d0b%7Cc02e04404d0a4fb3939ad198d43a8a6d%7C0%7C0%7C638018698541308201%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=OLFFfEfELVGDaa9uV4bbQVlIk9u4HuzUcm5T0ylZeb0%3D&reserved=0), under Reference Documents, by keyword search **Camera** or resource **PSOP**.

NOTE: Prior to implementing any off-duty employment conditioned upon the use of any public equipment or property (uniform, vehicle, weapons, etc.), the municipal governing body must adopt a resolution / policy permitting that use. Without a specific policy in place, the CODE of Alabama §36-25-5(c) prohibits the use of public equipment during off-duty employment.

**SAMPLE POLICE DEPARTMENT**

**Off-Duty Employment**

NOTE: The following guidelines address both safety and policy and are for internal use only. This document does not nor is intended to enlarge an employee’s civil or criminal liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense with respect to third-party claims. Violations of these guidelines if proven, can only form the basis of a complaint by this department and then only in a non-judicial administrative setting.

1. **PURPOSE AND SCOPE**

To provide employees with general guidelines regarding off-duty employment including types, request and approval, restrictions and limitations, and required liability coverage. This policy is applicable to all full-time employees, as well as any part-time employees performing off-duty employment utilizing public equipment or property belonging to this department.

1. **POLICY**
2. It is the SAMPLE Police Department’s policy that a full-time employee’s primary duty is to the department, and any off-duty employment shall not interfere with the employee’s primary duties. As such, this department shall provide guidelines to inform employees of the types of off-duty employment that are appropriate and establish procedures to maintain accountability for the welfare of the department. These procedures are essential for the efficient operation of the department and the protection of employees, the department, and the community.
3. Employees of this department may accept off-duty employment subject to the restrictions and guidelines set out herein. Any employee seeking to accept off-duty employment must be familiar with and abide by this policy. The Chief of Police may place conditions not inconsistent with this policy upon the acceptance and performance of any off-duty employment. Public equipment or property may be used in the performance of off-duty employment pursuant to a resolution/policy of the City/Town Council and as approved by the Chief of Police.
4. **DEFINITIONS**
5. Off-Duty Employment: Any employment not performed directly for the primary employer, in this instance the SAMPLE Police Department. Employment is the provision of a service, whether in exchange for a fee or other compensation, and includes self-employment, part-time, temporary, or other employment, and includes any volunteer or charity work performed by the off-duty employee in uniform and/or conditioned upon the actual or potential use of law enforcement powers or authority.
6. **PROCEDURE**
7. General
   1. In order to be eligible for off-duty employment, an employee must be in good standing with the department. Continued department approval of an employee’s off-duty employment is contingent on such good standing.
      1. Employees who have not completed their probationary period, are the subject of ongoing disciplinary action that could result in suspension or more severe action, or who are on medical or other leave due to sickness, temporary disability, or an on-duty injury may not be eligible to engage in off-duty employment.
   2. Prior to obtaining any off-duty employment, an employee shall comply with department procedures for registration and approval of off-duty employment.
   3. An employee engaged in any off-duty employment is subject to recall and may be expected to leave their off-duty employment in such situations.
      1. The primary duty, obligation, and responsibility of an employee are at all times to the department.
   4. Work hours for all off-duty employment must be scheduled in a manner that does not conflict or interfere with the employee’s department work schedule.
   5. An employee may not work an amount of time in their off-duty employment as to interfere or hinder their ability to satisfactorily perform their duties with the department.
      1. Except in an emergency or under exigent circumstances and with the approval of the Chief of Police, an employee may not work any off-duty employment that will cause them to work more than eighteen (18) hours in a twenty-four (24) hour period, including on- or off-duty or other work.
      2. If an officer is permitted to work more than eighteen (18) hours in a twenty-four (24) hour period, the officer must have a minimum of twelve (12) hours of rest before working either on-duty or additional off-duty employment.
   6. Permission for employees to engage in off-duty employment may be denied or revoked when it is determined pursuant to department policy that such employment is not in the best interest of the department.
   7. Pay received for work done during off-duty employment shall be appropriate.
   8. Off-duty employment is performed solely at the employee’s option. If the department requires the employee to perform any extra-duty, special details, or extended assignments, this is not considered to be off-duty employment.
8. Types of Off-duty Employment
9. Regular off-duty employment: Employment of a non-law enforcement nature in which the vested law enforcement powers and authority are not a condition of employment, the work provides no real or implied law enforcement service to the employer and is not performed during assigned hours of duty.
   * 1. This includes, but is not limited to, employees who are self-employed, work on commission, or who receive compensation in any form for the performance of non-law enforcement services.
   1. Extra-duty employment: Any employment that is conditioned upon the actual or potential use of law enforcement powers and authority by sworn law enforcement employees and includes employment at or by another law enforcement agency. *(Departments may wish to establish restrictions or prohibitions of extra-duty employment occurring outside the municipal limits or police jurisdiction.)*
      1. Types of extra-duty services that may be considered are as follows:
         1. Traffic control and pedestrian safety.
         2. Crowd control.
         3. Security and protection of life and/or property.
         4. Plainclothes assignments.
      2. Any use of City/Town or department property during extra-duty employment must be approved by the Chief of Police.
      3. If a sworn employee is engaged in extra-duty employment and they are “on the scene” of threatened or actual criminal conduct or acts of violence, they must exercise their law enforcement authority in a reasonable manner to the same and like extent as if they were “on-duty,” to protect the public health, safety, and welfare. When a sworn employee engaged in extra-duty employment elects to use their law enforcement authority, they must do so in strict conformity with all applicable rules and policies of the municipality and orders and policies of the department, as well as the federal, state, and local law.
      4. Any employee having been approved for extra-duty employment shall notify the on-duty supervisor prior to the starting time of such employment and advise them of the place and hours of such employment.
         1. The supervisor will inform appropriate on-duty and communications personnel of the time and location of employees performing extra-duty employment.
      5. Section d. above does not apply to employment at or by another law enforcement agency.
10. Approval
    1. All off-duty employment whether law enforcement related or not must be approved by the department.
    2. Each employee who seeks off-duty employment shall complete the proper request form and submit it for approval to the Chief of Police through the chain of command, prior to participating in any off-duty employment. See Off-Duty Employment Request & Authorization Form
    3. Requests shall contain the following information: date of request, location of employment or event, employer information, description of duty, name of person in charge, dates and times of employment, public equipment to be used if any, name, and current assignment of requesting employee.
    4. Off-duty employment approval is granted for a period of not more than one (1) year.
       1. At the expiration of the one (1) year period or other designated time-period, a new request form must be completed if the employee wishes to continue their off-duty employment.
    5. Employees shall not engage in any off-duty employment without the permission of the Chief of Police.
       1. When an off-duty employment opportunity occurs on short notice, and it would be impossible for an employee to request prior approval:
          1. The employee will not accept any employment that conflicts with this policy, and
          2. The employee will complete the proper request and authorization forms on their next scheduled workday.
    6. The approval authorizes only such off-duty employment that is specifically designated.
       1. Any other or non-approved off-duty employment will result in disciplinary action as well as revocation of all other off-duty employment approval.
    7. Any material changes in the nature of the off-duty employment shall be reported in writing within three (3) days.
11. Restrictions and Limitations:
    1. The request for off-duty employment may be denied, suspended, or revoked for any employee receiving disciplinary action, or whose performance or attendance record is failing to meet standards and the off-duty employment may be related to the deficient performance, or other circumstances deemed necessary by the department.
    2. Off-duty employment must not present any potential conflict of interest with duties as a member of the law enforcement profession, nor threaten the status or dignity of the law enforcement profession, nor involve an unacceptable risk of injury that would limit the employees return to regular duty. Some examples of employment representing a conflict of interest include, but are not limited to the following:
       1. Process server, repossessor, or bill collector; bail bondsman; towing of vehicles, or any other employment in which law enforcement authority might be used to collect money or merchandise for private purposes.
       2. Work involving personal investigations for the private sector or any employment that might require the employee to have access to law enforcement information, files, records, or services as a condition of employment.
       3. Employment that assists in any manner the case preparation for the defense in any criminal action or for either side in any civil action or proceeding.
       4. Occupations that are regulated by, or that must be licensed by or through the department.
       5. Establishments that sell pornographic books or magazines, sexual devices or videos, or that otherwise provide entertainment or services of a sexual nature.
       6. Any employment involving the sale, manufacturer, or transport of alcoholic beverages as the principal business.
       7. Where the employer has previously been convicted of a felony or where obvious potential for illegal activity exists.
       8. Any employment that would interfere with an employee being called for emergency duty or otherwise interferes with their department responsibilities.
       9. In a law enforcement uniform in the performance of tasks other than that of a law enforcement nature.
       10. Any gambling establishment not exempted by law.
    3. Employees will not engage in any off-duty employment that requires them to sign a release or hold harmless agreement with the off-duty employer.
    4. Off-duty employment can only occur when the employee is not on-duty. Employee may not use on-duty time for purposes related to off-duty employment.
       1. An employee may not receive pay from both a private employer and the department at the same time.
       2. With approval, employees may use personal leave to engage in off-duty employment, if all other conditions of performing off-duty employment and leave scheduling have been met.
12. Insurance Coverage
13. Actions taken as a part of off-duty employment may not be covered under the department’s liability insurance.
    * + - 1. If the off-duty employment is ongoing or recurring, the employer shall provide the department with an insurance certificate which conforms to the provisions of the CODE of Alabama §6-5-338.4(d).
          2. If the off-duty law enforcement employment is isolated, proof of insurance is not required but the employee shall provide an Employer Notice of Liability which informs the employer of the requirements of the CODE of Alabama §6-5-338.4(d).
        1. Any employee that becomes injured or otherwise unable to work as a result of off-duty employment, said injury may not be covered under the municipalities worker’s compensation insurance.

APPROVED: CHIEF OF POLICE DATE

I HAVE READ AND UNDERSTAND THIS ORDER

SIGNATURE OF OFFICER DATE

***DISCLAIMER***

***NOTE****: These documents are being provided to you from the AMIC/MWCF Loss Control Division and are not intended to be legal advice. They do not identify all the issues surrounding a particular topic. Laws and “Best Practices” change and policies must be continually reviewed and updated as needed. Public agencies are encouraged to review their procedures with an expert or an attorney who is knowledgeable about the topic. Reliance on this information is at the sole risk of the user.*

**SAMPLE Police Department**

**OFF-DUTY EMPLOYMENT**

**REQUEST & AUTHORIZATION FORM**

**Employee’s Name: Date of Request:**

**Present Assignment /Shift:**

**Prospective Off-Duty Employer:**

**Address:**

**Phone Number: Prospective Supervisor:**

**Type of Employment: ⁭ Regular Off-duty ⁭ Extra-duty ⁭ Other**

**Starting Date: Ending Date (maximum one year):**

**Nature of Work Performed:**

**Is the purpose of your prospective off-duty employment to utilize your law enforcement skills, expertise, or equipment? ⁭ Yes ⁭ No**

**Equipment Utilized: ⁭ Uniform ⁭ Firearms ⁭ Vehicle ⁭ Other**

**I fully understand that if I become injured or otherwise unable to work as a result of off-duty employment that said injury may not be covered under the department’s workers compensation insurance, and that actions taken as a part of any off-duty employment may not be covered under the department’s liability insurance.**

**I have also reviewed the policies and procedures established by the City/Town of SAMPLE and the SAMPLE Police Department that regulates off-duty employment and agree to abide by them.**

**Employee’s Signature: Date:**

**Supervisor Recommendation:**

**Supervisor: Date:**

**Request is: ⁭ Approved ⁭ Denied**

**Comments:**

**Chief of Police: Date:**

**NOTICE OF EMPLOYER LIABILITY**

TO: ALL PROSPECTIVE EMPLOYERS OF OFF-DUTY POLICE OFFICERS

FM: Chief , SAMPLE Police Department

Before employing any off-duty police officer, you should be aware of the following state code:

**CODE OF ALABAMA Section 6-5-338(c): Certain employers of off-duty officers to maintain liability coverage; penalty for failure to maintain.**

(d) Every private, non-governmental person or entity who hires a law enforcement officer during that law enforcement officer’s off-duty hours to perform any type of security work or to work while in the uniform of a law enforcement officer shall have in force at least five hundred thousand dollars ($500,000) of liability insurance, which insurance must indemnify for acts the off-duty law enforcement officer takes within the line and scope of the private employment or contract. The failure to have in force the insurance required by this subsection shall make every individual employer, every general partner of a partnership employer, and every member of an unincorporated association employer individually liable for all acts taken by the off-duty law enforcement officer within the line and scope of the private employment or contract.

**I have received a copy of the above Code and understand my responsibilities set out therein.**

**Business Representative / Employer Signature Date**

**⁭ Certificate of Insurance Required**

**⁭ Certificate of Insurance Attached**

\*Provide one (1) copy of this notice to the employer and return a signed copy to the Chief of Police.