

## SUMMARY of The Law Enforcement Officers Safety Act (LEOSA) of 2004

On July 22, 2004, the Law Enforcement Officers Safety Act (LEOSA) of 2004, also commonly called "HR 218," became law. (18 U.S.C. §§, 926B, 926C.) This federal law allows "a qualified law enforcement officer" or "a qualified retired law enforcement officer" with identification that meets specified criteria to carry a concealed firearm anywhere in the nation, notwithstanding most other state and local laws which restrict the possession of concealed weapons.

In order to be "a qualified law enforcement officer" under the LEOSA, a person must meet the following requirements:

1. Be an employee of a governmental 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;
2. Have the statutory powers of arrest;
3. Be authorized by the agency to carry a firearm;
4. Not be the subject of any disciplinary action by the agency;
5. Meet the standards, if any, established by the agency that require employees to regularly qualify in the use of a firearm;
6. Not be under the influence of alcohol or any intoxicating or hallucinatory drug;
7. Not be prohibited by federal law from possessing firearms;
8. Be carrying photographic identification issued by the governmental agency identifying the individual as a law enforcement officer.

Regarding the requirement that the individual have the statutory power of arrest to be a "qualified law enforcement officer," California law allows "a peace officer" to make an arrest. (Pen. Code, § 834.) Penal Code sections 830.1 through 832.6 specify the persons who are peace officers and when and where they may use their authority. No one else is considered a peace officer under California law. (Pen. Code, § 830.)

In order to be "a qualified retired law enforcement officer" under the LEOSA, a person must meet the following criteria:

1. Be retired in good standing from service with a public agency as a law enforcement officer for reasons other than mental instability;
2. Prior to retirement, 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;
3. Prior to retirement, had the statutory powers of arrest;
4. Prior to retirement, was either
  - (1) regularly employed as a law enforcement officer for an aggregate of 15 years or more; or

- (2) retired from service after completing any applicable probationary period of such service, due to a service-connected disability, as determined by the agency;
5. Has a nonforfeitable right to benefits under the retirement plan of the agency;
6. Has met, within the past 12 months, the state's standards for training and qualification for active law enforcement officers to carry firearms;
7. Not be prohibited by federal law from possessing firearms;
8. Be carrying identification that meets specified criteria (see below).

In order to qualify as "identification" under the LEOSA, a credential that is carried by a *retired* law enforcement officer must meet one of the following criteria:

1. A photographic identification issued by the agency from which the law enforcement officer retired that indicates the retired law enforcement officer has, not less recently than one year prior, been tested or otherwise found by the agency to meet the standards established by the agency for training and qualification for active law enforcement officers to carry a firearm;

OR

2. A photographic identification issued by the agency from which the law enforcement officer retired;

AND

A "certification issued by the State in which the individual resides that indicates that the individual has, not less than one year [prior] . . . been tested or otherwise found by the State to meet the standards established by the State for training and qualification for active law enforcement officers to carry a firearm of the same type as the concealed firearm."

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.

The LEOSA has limits and exceptions. It does not apply to all firearms and weapons. For example, it does not authorize either qualified law enforcement officers, or qualified retired law enforcement officers, to carry any of the following: machineguns, silencers, or destructive

devices. Likewise, the LEOSA does not supercede all state laws regarding the possession of concealed firearms. The LEOSA states that it “shall not be construed to supercede or limit the laws of any State that (1) allow private persons . . . to prohibit or restrict the possession of concealed firearms on their property; or (2) prohibit or restrict the possession of firearms on any State or local government property, installation, building, base or park.”

An individual who would like to know whether he or she qualifies as either a “qualified law enforcement officer,” or a “qualified retired law enforcement officer,” should consult with his or her employing agency and its legal counsel and may wish to obtain legal advice from an attorney licensed to practice law in the state of California.

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