

TML Risk Management Pool  
Loss Control Department

**LOSS CONTROL GUIDELINES**

Law Enforcement

**OFF-DUTY EMPLOYMENT, or "MOONLIGHTING"**

Off-Duty Employment is defined as "any activity a police officer engages in while in an off-duty status, where the officer is supervised, directed, and compensated by a third party, and the off-duty employment tasks are primarily associated with the special police powers granted the officer by the city."

The nature of law enforcement work requires police officers to work irregular duty schedules that are subject to change in order to meet the demands of the department and the community they are sworn to serve. It is necessary that police officers have adequate rest to be alert during their normal tour of duty. For these reasons and because certain off-duty employment opportunities conflict with an employee's primary job responsibilities, the city may impose restrictive conditions, or prohibit off-duty employment by its police officers.

The TML Pool recommends that the degree of limitation on off-duty employment be determined in the interest of the city in furthering professionalism in the police department, reducing the risk exposures to the individual officers and the city, and ensuring the department and the city receive full and faithful service in return for the expenditure of resources.

Therefore, restrictions and guidelines should be provided for in the department's policy manual, certificates of insurance coverage should be required of the third-party employer, and the officer needs to be aware that the city is not providing workers' compensation coverage for any injury which might occur while the officer is within the course of his/her employment by the third-party employer.

The TML Pool recommends controls be exercised and those may include the following:

1. The city shall establish a written policy covering off-duty employment ("moonlighting").
2. The city shall require all requests for off-duty employment to be routed through the Police Chief, and prior approval shall be required by the city manager, Police Chief, or other designated person before entering into an agreement for, or engaging in, off-duty employment.
3. No officer may work in police/security-related off-duty employment prior to completion of Basic Training Course required by the state of Tennessee, and completed any required basic training required by the department (for example, a required FTO program).

4. The city shall maintain a roster of any officer desiring off-duty employment, and authorized by the department for off-duty employment assignments. The Police Chief, or his/her designee, shall make the assignments for off-duty employment.
5. The city shall require the police officer to provide the city with a written description of the tasks that will be performed during the off-duty employment activities.
6. The department shall maintain a current list of the off-duty employers which are utilizing officers from the department. The list shall include the business or other name of the employer, the location, the officer(s) involved in the employment at that location, and the hours the officer(s) will be employed by the off-duty employer.
7. The department shall establish a list of occupations that employees are prohibited from engaging in during off-duty employment activities. Examples might include:
 

<ol style="list-style-type: none"> <li>a. Bartending</li> <li>b. Taxi Drivers</li> <li>c. Bouncers</li> <li>d. Private Investigators</li> <li>e. Body Guards</li> <li>f. Polygraph Examiners</li> </ol>	<ol style="list-style-type: none"> <li>g. Emergency Medical Provider</li> <li>h. Private Fire or Codes Inspector</li> <li>i. Male or Female Dancer</li> <li>j. Hired to Repossess Property</li> <li>k. Security Guards</li> </ol>
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8. The city shall require the police officer (employee) and off-duty employer to both sign legal statements agreeing to indemnify and hold the city harmless for all claims and damages (see attached).
9. The city shall require the off-duty employer to provide the city with a certificate of insurance for liability coverage for police/security-related exposures in the minimum amount of \$500,000. The off-duty employer shall also be required to provide a certificate of insurance showing proof of workers' compensation coverage.
10. The city shall establish a maximum number of hours per week police officers can engage in off-duty employment activities.
11. To place the city in the best liability loss control position, the city should prohibit the police officer from wearing the department uniform, or using the department weapon, badge, vehicle, or any other items or equipment issued the officer by the department. Also, the city should prohibit the officer from exercising any official police powers concurrent with the off-duty activities. However, this is a local decision and it is understood that there are both advantages and disadvantages to both sides of this issue.
12. All authorization to work off-duty employment is immediately and automatically suspended whenever the employee is:
  - a. Placed on light duty.
  - b. Relieved of duty.
  - c. Injured such that it has become impracticable or dangerous to engage in off-duty employment.

- d. On military leave.
  - e. Scheduled for any official activity such as court, training, special events, etc.
  - f. Unable to report for regular duty or court due to illness, or illness in the family, until they have subsequently completed a full tour of regular duty or a time period of 24 hours has elapsed since the scheduled reporting time.
  - g. Involved in a conflict or apparent conflict of interest between on-duty and off-duty responsibilities.
13. A complete incident report must be filed by the off-duty officer following any accident or injury to the officer or a member of the general public occurring during the course of, and within the scope of, their off-duty employment. This documentation should include: (1) the date of accident/injury; (2) the time of day; (3) the injured person's name, address, and phone number(s); (4) the name of the injured person's parent or guardian, if a minor child; (5) the names of phone number(s) of any witnesses; and (6) a complete description of the events and circumstances surrounding the accident or injury. Note: Injury means bodily injury and/or property damage. These incident reports should be retained on file.

Any additional requirements made by federal, state, and/or local regulations which place further restrictions or guidelines upon off-duty employment of police officers must be followed. While there may be an increased risk exposure associated with off-duty employment, much of the risk can be reduced through proper supervision, documentation, and control.

The TML Risk Management Pool does not represent that these recommendations identify and address all of the unsafe or hazardous conditions associated with police off-duty employment, nor do we represent that implementing our recommendations is the best possible solution and that no injury or financial loss will occur if they are followed. It is our opinion that implementing the recommendations should reduce the potential for accidents and/or financial loss.

(rev 9/97)

**OFF-DUTY EMPLOYER'S FORM**

**Off-duty Employment**

I, \_\_\_\_\_ (name of employer), acknowledge that \_\_\_\_\_ (name of employee) is also an employee of the City of \_\_\_\_\_ and therefore may be subject to certain laws or regulations of the City of \_\_\_\_\_, that would affect his/her performance of any employment by \_\_\_\_\_ (name of employer).

I, \_\_\_\_\_ (name of employer), nonetheless hereby knowingly and voluntarily, permanently give up, waive, and release any and all rights or claims I might have, or that I might later acquire, against the City of \_\_\_\_\_, or its officers, employees, or insurance policies, arising out of or relating to the course of my employment of \_\_\_\_\_ (name of employee).

I agree to defend the City of \_\_\_\_\_ and/or its officers and employees against all such claims made against them and to indemnify and hold them harmless from all damages resulting from any such claim. I further agree that I shall not rely on or make a claim upon any insurance, workers' compensation coverage or liability coverage held by the City of \_\_\_\_\_.

I agree to provide liability coverage for police/security-related exposures in an amount not less than \$500,000 and will provide a certificate of liability insurance to the city stating such coverage. I also agree to have the city named as an additional insured on that policy. I further agree to provide a certificate of insurance showing proof of workers' compensation coverage for the officer.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
Name of Employer

\_\_\_\_\_  
Signature of Employer

\_\_\_\_\_  
Name of Employee

**EMPLOYEE'S FORM**

**Off-duty Employment**

I, \_\_\_\_\_ (name of employee), hereby knowingly and voluntarily permanently give up, waive, and release any and all rights I might have, or might later acquire, against the City of \_\_\_\_\_, or any of its officers or employees for any personal injuries, physical or non-physical, or for property damage that I have, or that I may in the future experience, as a result of my self-employment, my employment by \_\_\_\_\_ (name of employer), or my employment by anyone other than the City of \_\_\_\_\_.

I recognize that, in the course of my employment, compensation, or direction by anyone other than the City of \_\_\_\_\_, I will not be covered under the city's workers' compensation coverage and that I will not be covered by the city's liability coverage except in those cases in which I am acting under color of law. My waiver and release of these rights includes, but is not limited to, any right of mine to representation by an attorney, or to indemnification by the City, or to coverage under any workers' compensation or liability policies held by the City, except as provided in the preceding sentence.

I agree that I shall not make any claims nor file any lawsuits against the City of \_\_\_\_\_, its officers, employees, or the TML Risk Management Pool for any such injuries or damages, except to enforce any lawful coverage I might be afforded under the city's liability coverage. Should a lawsuit be filed against the City of \_\_\_\_\_, its officers, employees or the TML Risk Management Pool as a result of my employment, compensation, and/or direction by anyone other than the City of \_\_\_\_\_, except as otherwise provided in this waiver, I agree to defend such lawsuit, and to indemnify and hold them harmless from any damages.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
Signature of Employee

\_\_\_\_\_  
Name of Employee

January 31, 1992

Chief Fred Wisdom  
Franklin Police Department  
P.O. Box 421  
Franklin, TN 37065-0421

Dear Chief Wisdom,

Thank you for your letter stating your concerns over the liability and officer safety risk exposures regarding off-duty employment by police officers. Obviously, this is a considerable concern throughout the law enforcement profession. We have attached the TML Pool Loss Control Guidelines for police off-duty employment and we believe them to be consistent with Terry Delgado's recommendation in his November 26, 1991, letter to the city.

Chief, we certainly understand your concerns stated in your letter. The reason the TML Pool recommends against utilizing the uniform, the city-issued firearm, and/or the badge provided by the city is the liberal application of the "color of law" standard typically applied by the courts. We simply recommend this measure as an additional loss control tool the city may utilize to reduce this exposure. We also realize that a number of departments throughout the state continue to allow the use of city-issued equipment as a matter of internal policy. The TML Pool Loss Control Department simply wants all departments to realize that this practice is one additional ingredient the plaintiff can use (citing "color of law") to bring the city into a lawsuit resulting from off-duty employment. And, as stated in the attached guidelines, this is an exposure for which the officer and the city has no coverage from the TML Pool.

In examining the other suggestion regarding the additional language for the "Off Duty Employer's Form," it is recommended that this language not be added. Reference the last paragraph of the employer's form, the language is not necessary due to the fact that the city and department are accountable for the actions of an officer acting in the course of, and within the scope of, his/her employment by the city, and the city should not legally relieve the off-duty employer of responsibility in those situations and incidents where a court may deem that both parties share in the responsibility for an incident. These "gray-area" circumstances make the language unnecessary.

We hope these recommendations assist with your decisions for revising your internal SOP regarding off-duty employment. If you have any additional concerns or questions, please do not hesitate to contact me. Thanks again for your concerns.

Sincerely,

Michael G. Fann, ARM  
Manager of Loss Control Services

cc: Jim Richardson, Director of Loss Control  
Terry Delgado, Loss Control Consultant  
TML Pool Underwriting  
Dennis Huffer, Director of Legal Services  
Doug Berry, City Attorney

Guy Carden, Safety Director

May 7, 1992

Mr. Lynn Wampler  
City Administrator  
P.O. Box 13  
Fayetteville, TN 37334

Dear Lynn,

Thanks for your call concerning the city's liability exposures from police off-duty employment. Attached are the Loss Control Guidelines for off-duty employment of officers, and model waivers are also included. As we discussed on the phone, the liability exclusion stated on the first page is currently being reviewed by the Pool's Board of Directors and the city may receive coverage for these exposures. Certainly, the officer and the off-duty employer would not be covered.

If the city chooses to require the off-duty employers to pay the city and the city, in turn, compensate the officer, many of these guidelines may not apply. The department should then simply follow the provisions of its S.O.P. Manual regarding procedures, supervision, communication, and other policies.

Once you've had an opportunity to review the attached guidelines, please give me a call if you have questions or suggestions. Thanks again for your concern.

Sincerely,

Michael G. Fann, ARM  
Manager of Loss Control Services

cc: TML Pool Underwriting