



Michel & Associates, P.C. | 180 East Ocean Blvd., Suite 200 | Long Beach, CA 90802

FAQ on the amendments to the Law Enforcement Officers Safety Act

1. Does the agency who qualifies me need to make a record of the make, model, caliber, or serial number of the firearm I qualify with?

No. LEOSA does not require the agency to maintain this information. This is a frequent concern given the statute's use of the term "type of firearm." LEOSA authorizes the carrying of a "concealed firearm" of the same "type" the individual receives certification for. As there is no case law interpreting this wording, the word "type" should be read to conform with the dictionary definition; something distinguishable as a variety. Accordingly, "type" of firearm should be read to mean either long gun or hand gun, which would permit you to carry any type of legal long gun or hand gun based on your qualification and not one particular make, model, or caliber. As an action outside of LEOSA requirements, the creation and maintenance of a database may expose the agency to liability, as discussed below.

2. The agency who qualifies me wants me to shoot their uniformed officer course of fire, rather than an off-duty or back-up course of fire. What does the law require?

The law is not clear, and only requires an individual to meet the active duty standards for qualification. An individual exercising their rights under LEOSA is not provided with the authority to act as a law enforcement officer, and is simply authorized to carry a concealed firearm based on their status. Accordingly, it would be advisable for agencies to use the off-duty or back-up course of fire. Mandating the use of uniformed standards requires an individual to meet standards designed for law enforcement purposes, while an individual carrying a firearm under LEOSA is not acting as a law enforcement officer, as they are either retired, or out of their jurisdiction.

3. Do I have to prove each year that I am still eligible to qualify by submitting to a background check, or is the identification card I was provided at separation sufficient?

No. The identification card is sufficient. As addressed below, some departments are now requiring background checks before issuing identification cards. Such unwarranted overregulation exposes that department to liability. The statute does not require a background check, and when issuing an identification card the agency is only providing certification with regard to one's past employment status; a statement of fact. Any department that requires a background check is creating more than just a statement of one's employment status which may expose the requesting agency to liability.



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4. Does the agency I retired from, or the agency that qualifies me, have any liability or concerns for qualifying me?

No, LEOSA places the liability on the individual; however, many agencies are trying to impose unjustified requirements before issuing identification cards or training certification, such as background checks. Identification cards are simply a statement of fact by the agency that the individual is either an active duty or retired law enforcement officer. Requiring additional information to obtain an identification card makes it something more, and by doing so exposes the agency to liability. The same is true for agencies which perform the firearms qualification certification. Any additional procedures required by the agency other than simply meeting their active duty standards creates a situation where the agency is certifying more than the statute requires, and in some cases, the uniformed standards qualification course/test may be seen as providing training in the use of a firearm in a law enforcement role, which may expose them to liability. Remember, LEOSA is a program for CIVILIANS who used to be cops, or cops out of their jurisdiction. LEOSA should be administered like driver's licenses issued by your state; you are just certifying that a standard was met. Your state does the same with a driver's license, showing you met their standard. If you are in a wreck while driving, your state motor vehicle department isn't liable for your actions because you have their driver's license.

5. The department I retired from will not give me retirement credentials, what can I do?

This is a question we are encountering far too frequently, and regrettably there is no clear guidance that can be provided. LEOSA does not bestow either an explicit right to obtain the required identification or a federal remedy for a state agency's failure to issue one. Such refusal is foolish policy but it is a political issue, not a legal one.

6. I am active duty or retired military/DoD police. Does LEOSA apply to me?

Yes. On January 2nd, 2013 LEOSA was amended to specifically allow for active and "retired" (as defined by LEOSA) military and DoD police and law enforcement officers with UCMJ apprehension authority to qualify for the statute; however, the DoD has not amended its own policy on LEOSA, DODI 5525.12, resulting in an inability for many that are now able to qualify to obtain the requisite photographic identification card. A standard CAC or blue retiree card will not work for LEOSA purposes as the photographic ID must identify the individual as either being actively or having once been *employed* as a police or law enforcement officer of the agency.



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7. I have a Concealed Carry Permit/License issued by my state. I am also active/retired law enforcement. Am I allowed to carry in all states?

No. A state issued concealed carry permit or license is entirely different from the ability to carry a concealed weapon under LEOSA and has no relation to your service as a law enforcement officer. Your state's permit may qualify for reciprocity with other states, but it does not qualify you to carry in all states. Check with the State Police or the State's Attorney General's Office before carrying a concealed firearm in any state exercising reciprocity with the state of your permit/license, as laws change frequently and a state which previously recognized your permit may have changed its law.

8. I left my agency after serving 11 years and did not retire. Do I qualify for LEOSA?

Yes. LEOSA previously required retirement after an aggregate of 15 years service as a law enforcement officer. The October, 2010 amendments to the statute changed the requirement for a qualified law enforcement officer to an individual that separated (not necessarily retired) from service as a law enforcement officer after serving an aggregate of 10 years or more. For medical separation/retirement, see below.

9. I completed my probationary period as a law enforcement officer, but was injured shortly thereafter and separated from the agency due to a service-connected disability. Do I qualify under LEOSA?

Yes, if your agency determined that you had a service-connected disability and you were separated after completing any applicable probationary period. You must also meet the additional requirements contained in the statute.

10. I served three years at one agency and seven at another before separating. Do I qualify under LEOSA?

Yes. As long as your service at both agencies meets the requirements contained within the statute, you will have served an aggregate of 10 years and are considered a qualified retired law enforcement officer under the statute. The problem for you will be obtaining a retired identification card, as your current agency will likely require proof of service from your first agency which they may or may not recognize. See question 4 above regarding the issuance of identification.

11. My agency will not provide me with the required firearm certification. What can I do?



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You do not need to obtain the certification from your agency. Often, it is far easier to obtain the certification from another agency in the state or a qualified firearms instructor. LEOSA requires that you have, not less than one year before the date you are carrying a 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 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. If your state has not established standards, standards set by any law enforcement agency within your state to carry a firearm of the same type as the concealed firearm may be used. For "type," see question #1 above.

12. I meet all of the requirements contained in the statute, but I am a reserve officer. Do I qualify?

There are two sections of LEOSA which provide for the ability of Qualified Law Enforcement Officers and Qualified Retired Law Enforcement Officers to carry a concealed weapon in all 50 states. The first section deals with current law enforcement officers, and the second deals with retirees. Neither section draws a distinction between active duty and reserve officers. In October of this year, the language for the "retired" section was changed to allow for individuals that meet all of the requirements of the statute and who separated after 10 years of aggregate service as a law enforcement officer (or who separated after any applicable probationary period due to a service-connected disability, as determined by the agency) but who did not formally "retire" to be "qualified retired law enforcement officers" under the statute. Accordingly, as long as an individual meets all of the requirements of the statute it makes no difference if they are active or reserve, and they would be qualified to carry under LEOSA.

Questions can be directed to ILALEGAL@nrahq.org.

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