

# Is Cal. Top Cop Misleading Retired Feds About Their Gun Rights?

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## California DOJ Provides Incorrect LEOSA Info to Federal LEOs

Based on recent pronouncements, you might think the California Attorney General doesn't like retired federal cops having guns.

The federal [Law Enforcement Officers Safety Act](#) (“LEOSA”) allows current and retired qualifying state and federal law enforcement officers to carry concealed firearms throughout the country as part of a broader homeland security initiative. Yet certain representatives of the California Department of Justice (“DOJ”), under Attorney General Kamala Harris, are claiming that to carry a concealed firearm qualified, retired law enforcement officers from federal law enforcement agencies who fall under LEOSA must first have a valid California license to carry a concealed firearm issued by local police.

DOJ is wrong about this.

LEOSA (aka H.R. 218; 18 U.S.C. §§ 926B, 926C) provides an *exemption*, under federal law, for current and Qualified Retired Law Enforcement Officers (“QRLEO”) from most state and local laws prohibiting the carrying of concealed firearms. LEOSA generally allows qualified law enforcement officers to carry a concealed firearm in states other than their state of residency, regardless of whether the respective state laws allow for such, as long as the qualified persons possess proper photographic identification while carrying the concealed firearm. 18 U.S.C. §§ 926B, 926C.

Because most of the recent confusion at the DOJ involves *retired federal law enforcement officers*, this article focuses on that.

The LEOSA requirement that seems to be causing the confusion is 18 U.S.C. section 926C(c)(4). It states that a QRLEO must:

[D]uring the most recent 12-month period, have met, at the expense of the individual, the standards for qualification in firearms training for active law enforcement officers, as determined by the former agency of the individual, the State in which the individual resides or, if the State has not established such standards, either a law enforcement agency within the State in which the individual resides or the standards used by a certified firearms instructor that is qualified to conduct a firearms qualification test for active duty officers within that State...

18 U.S.C. § 926C(c)(4).

To summarize the above language (and other requirements under LEOSA not needing to be copied in full here), former *federal* law enforcement officers have three ways to meet prerequisite qualification standards in firearms training:

1. By meeting the requirements set forth by the individual's former agency; *or*
2. By meeting the requirements of the state in which they reside; *or*
3. If there are no standards in the state, by meeting the standards for qualifications for active officers of a law enforcement agency in the state, or the standards used by a certified firearms instructor qualified to conduct firearms qualifications tests for active duty officers in the state.

As for option 2, there is currently *California* standard for training and qualification for active or retired law enforcement officers (qualification standards vary from California agency to agency). Option 2 was part of the *original* LEOSA bill in 2004, meaning this option has been available for the last nine years. Regardless, and, prior to the change in LEOSA in 2010, it was the only acceptable way to qualify under LEOSA California has done *nothing* to implement a statewide policy in which retired officers (federal or state) can qualify under a standard *state* requirement.

Thankfully, QRLEOs are *not* stuck trying to meet a nonexistent state requirement. Since Option (2) is unavailable in California for retired federal officers, the retired officer must meet the qualification requirements set forth by his or her former agency, *or* meet the standards for qualifications for active officers of a law enforcement agency in the State *or* the standards used by a certified firearms instructor qualified to conduct firearms qualifications tests for active duty officers in the state.

A QRLEO must also carry identification which notes that he or she meets one of the standards discussed above. 18 U.S.C. § 926C(d). This identification can be either of the following:

- (1) photographic identification issued by the agency from which the individual separated from service as a law enforcement officer that identifies the person as having been employed as a police officer or law enforcement officer and indicates that the individual has, not less recently than one year before the date the individual is carrying the concealed firearm, been tested or otherwise found by the agency to meet the active duty standards for qualification in firearms training as established by the agency to carry a firearm of the same type as the concealed firearm;

*OR*

- (2) photographic identification issued by the agency from which the individual separated from service as a law enforcement officer that identifies the person as having been employed as a police officer or law enforcement officer;

*AND*

a certification issued by the State in which the individual resides or by a certified firearms instructor that is qualified to conduct a firearms qualification test for active duty officers within that State that indicates that the individual has, not less than 1 year before the date the individual is carrying the 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 either:

- (a) 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; *OR*

- (b) if the State has not established such standards, standards set by any law enforcement agency within that State to carry a firearm of the same type as the concealed firearm.

California DOJ seems confused by these rather straightforward requirements. DOJ apparently believes that because retired federal officers cannot meet the non-existent California firearms training standards, they *must* possess a California CCW in order to carry a concealed firearm in the state. But this is incorrect.

It appears that the DOJ representatives obtained their opinion from an outdated LEOSA information page on DOJ's own website (<http://oag.ca.gov/firearms/leosanew>), specifically the LEOSA summary found at

<http://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/forms/leosasummary.pdf>.

Originally passed in 2004, LEOSA provided that a retired officer must meet the "State's standards for training and qualification for active law enforcement officers to carry firearms." (<http://www.gpo.gov/fdsys/pkg/BILLS-108hr218enr/pdf/BILLS-108hr218enr.pdf>). But in 2010, LEOSA was amended to include *all three* of the options discussed above, rather than the one requirement of meeting the state's standards (as quoted on the DOJ website). So it seems that DOJ is using documents that are nine years out of date, and consequently giving law enforcement officers bad advice.

The same can be said for the identification requirements. According to DOJ's website, only the following are acceptable forms of identification for retired officers:

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.”

This is obviously incorrect and based on old information. The second option for the *current* identification requirement under LEOSA requires retired officers to have identification which states they were found by the State or certified instructor to have met *state standards* of qualification for active duty officers (though, as discussed above, there are no statewide standards in California) *or standards set by a law enforcement agency within the state*.

According to the out-of-date information on DOJ’s website, qualifying according to standards set by a law enforcement agency isn’t an option under LEOSA. This is clearly incorrect.

That said, LEOSA isn’t without limits. The DOJ website is correct in saying that:

The LEOSA states that it “shall not be construed to supersede 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.

(<http://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/forms/leosasummary.pdf>). California DOJ is also correct that LEOSA does not allow for the carry of firearms prohibited under federal law (machineguns, silencers, and destructive devices). But there is no basis for California to prohibit the concealed carry of common firearms if the individual otherwise qualifies under LEOSA *and* possesses the proper credential.

Please also note that the California DOJ website does not have the most current information available on gun laws in general. The most recent version of “California Firearm Laws” posted there is from 2007. See

<http://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/forms/Cf12007.pdf>). Similarly, their FAQ section still references old code section numbers, even though the Penal Code was renumbered in 2012. See <http://oag.ca.gov/firearms/dlrfaqs>). So the information you find on the DOJ website may not be current or reliable.

We have notified DOJ that it is publishing outdated information pertaining to LEOSA and have offered to help correct the problem. Pay close attention to updates on [www.CalGunLaws.com](http://www.CalGunLaws.com) about this issue of great importance to our friends and clients in law enforcement. For free wallet cards about LEOSA, click [here](#).

And for the most updated firearms law information, purchase [[California Gun Laws: A Guide to State and Federal Firearm Regulations](#) by C.D. Michel] and check [www.calgunlaws.com](http://www.calgunlaws.com) for updates and alerts on California's ever-changing firearm laws.