

July 18, 2013

To: Law Enforcement Agencies – Washington State

RE: Off-duty Private Security Agency Work in Washington

From: Washington State Criminal Justice Training Commission – Private Security Firearms Certification Program  
Washington Department of Licensing – Public Protection Services Section

The Washington State Criminal Justice Training Commission (WSCJTC) and the Washington Department of Licensing (DOL) have been certifying and licensing armed private security in our state since the early 1990's. In recent years we have noticed a shift in employment that more private security companies are taking on off-duty assignments or positions formerly covered by law enforcement agencies.

As a result of some recent investigations, the WSCJTC and DOL want to educate law enforcement agencies on the laws pertaining to off-duty employment with armed private security agencies, to assure that officers avoid violating DOL's rules – which carries criminal penalties - and take proper advantage of the sworn peace officer exemption.

The WAC's and RCW's pertaining to private security guards and agencies are as follows:

- RCW 18.170
- RCW 18.235
- WAC 308-18
- WAC 139-35

Each RCW and WAC has clearly stated requirements for law enforcement agencies allowing for off-duty work by their personnel and a few of the specific RCW's are:

- RCW 18.170.010 (21) Definitions
- RCW 18.170.020 Exemptions
- RCW 18.170.160 (6-8) Licenses Required – Use of public law enforcement insignia prohibited-Penalties-Enforcement.

On the following pages the WSCJTC and DOL have provided a Question & Answer section to explain the rules. Failure to comply with the law may result in fines, or penalties, and/or criminal prosecution against the law enforcement personnel involved and may ultimately result in initiating proceedings to revoke Peace Officer Certification.

Please read through the following pages carefully and submit questions or concerns to the WSCJTC to Greg Baxter, Public Disclosure Officer, at [gbaxter@cjtc.state.wa.us](mailto:gbaxter@cjtc.state.wa.us). Or to the DOL to Mary Haglund, Assistant Administrator, Public Protection Services Section, at [mhaglund@dol.wa.gov](mailto:mhaglund@dol.wa.gov).

## **Sworn Peace Officers Employed as Armed Private Security**

Hundreds, perhaps thousands, of Washington law enforcement officers work off-duty as part-time employees of armed private security companies. That type of employment is heavily regulated, but compliance with the regulations exempts sworn peace officers from training and licensing requirements and restrictions imposed on other armed private security guards. The “sworn peace officer exemption” avoids delays in obtaining licenses and certifications, avoids several restrictions on security guard uniform and equipment, and avoids substantial fees.

This notice is a joint production of the Washington Department of Licensing (DOL), and the Washington State Criminal Justice Training Commission (WSCJTC).

RCW’s and WAC’s pertaining to this Q&A are: RCW’s 18.170 and 18.235 and WAC’s 308-18 and 139-35.

### **Q. Are all law enforcement officers exempt from DOL’s rules on armed private security guards?**

A. No. The statute exempts “sworn peace officers” under specific conditions. “Sworn peace officers” are not defined the same as “certified” or “commissioned peace officer” in other statutes. A “sworn peace officer” is a current “employee of the federal government, the state, a political subdivision, agency, or department branch of a municipality, or other unit of local government, and *has law enforcement powers*” (RCW 18.170.010(21)). This definition does not include tribal officers, volunteer reserve officers and officers not currently employed in law enforcement, even if still certified. Those not exempt follow the normal training and licensing rules, and are subject to RCW 18.170’s restrictions.

### **Q. Under what conditions is a sworn peace officer exempt from DOL’s training and licensing requirements?**

A. A sworn peace officer is exempt from DOL’s training and licensing requirements when:

- Engaged in the performance of the officer’s official duties; or
- The officer’s off-duty employment as armed private security (a) is approved by the “chief law enforcement officer of the jurisdiction where the employment takes place,” and (b) the officer does not employ or contract with any other person to assist him/her in armed security duties (which requires a security company license). (RCW 18.170.020(3)).

### **Q. Do I need my chief’s or sheriff’s approval for off-duty employment as an armed security guard?**

A. You must, of course, comply with the off-duty employment rules of your law enforcement agency and your collective bargaining agreement. However, to qualify for the “sworn officer exemption,” you must also comply with DOL’s rules.

**Q. I have my chief's or sheriff's approval for off-duty employment as an armed security guard. Does that meet DOL's requirement for exemption?**

A. If the security company that employs you off-duty assigns you to work only in the law enforcement jurisdiction that employs you, then yes. However, the approval of your chief or sheriff does not qualify you for the sworn officer exemption outside your chief's or sheriff's jurisdiction. If you are, for example, a Seattle PD officer employed off-duty to provide armed security in Kent you need approval from the Chief of the Kent PD to be exempt from RCW 18.170. Kent is the "jurisdiction where the employment (as armed security) takes place" (RCW 18.170.020(3)).

In this case, without the Kent Chief's approval, you do not have a sworn peace officer exemption in Kent, and are therefore unlicensed in Kent. Acting as an unlicensed armed private security guard is a gross misdemeanor.

**Q. If I qualify for the sworn peace officer exemption, may I wear my law enforcement uniform and badge during my off-duty employment?**

A. If you qualify for the sworn peace officer exemption, you are exempt from the prohibition on wearing any law enforcement insignia. Still, you must comply with your employing law enforcement agency's restrictions on off-duty uniform wear.

**Q. If I do not qualify for the sworn peace officer exemption, may I wear my law enforcement uniform and badge during my off-duty employment?**

A. No. Armed private security guards may not wear any insignia of a public law enforcement agency, nor portray themselves as public law enforcement officers. [RCW 18.170.160 (6) and (7)]

**Q. If I qualify for the sworn peace officer exemption, may I carry my agency-issued weapon or my personal weapon during my off-duty employment?**

A. If you qualify for the sworn peace officer exemption, you are exempt from the requirement that you carry only firearms owned or leased by the security company. Still, you must comply with your employing law enforcement agency's policies on being armed off-duty.

**Q. If I do not qualify for the sworn peace officer exemption, may I carry my agency-issued weapon or my personal weapon during my off-duty employment?**

A. No. Armed private security guards may only carry firearms owned or leased by the licensed security guard company that employs them. [RCW 18.170.050(2)]

**Q. If I do not qualify for the sworn peace officer exemption, what are DOL's requirements for an armed private security license?**

A:

- At least age 21;

- US citizen or resident alien;
- Not have been convicted of a crime in any jurisdiction, if the director of DOL determines that the applicant's particular crime directly relates to his or her capacity to perform the duties of a private security guard, and the director determines that the license should be withheld to protect the citizens of Washington State. The director shall make her or his determination to withhold a license because of previous convictions notwithstanding the restoration of employment rights act, chapter 9.96A RCW;
- Employed by or have employment offer from licensed private security company, or be licensed as a private security company;
- Obtain a current firearms certificate from WSCJTC;
- Complete pre-assignment training, unless waived; and
- Submit to DOL the completed license application, the fee, and a set of fingerprints; however, if an applicant has been issued a license as a private investigator under chapter 18.165 RCW within the last twelve months, the applicant is not required to undergo a separate background check to become licensed.

**Q. What is the pre-assignment training and the waiver requirement?**

A. At least eight hours of training prior to assignment as a security guard: at least four hours of classroom instruction plus four more training hours that are any combination of classroom and individual instruction, and an exam.

The pre-assignment training may be waived if the license applicant was a full-time sworn peace officer at some time within five years prior to submitting the license application, and he/she passes the same exam administered to those who complete pre-assignment training.

**Q. If I do not qualify for the sworn peace officer exemption, how do I obtain WSCJTC's firearms certificate?**

A. You obtain a DOL private security guard license and then apply to DOL for an armed private security guard license. Then promptly contact a Private Security Certified Firearms Instructor certified by WSCJTC, and attend the training class. You must qualify on each firearm you will use as an armed private security guard (handgun, shotgun, and/or rifle). The Instructor will sign firearms qualification forms you will submit to WSCJTC with your Armed Certification Application Form (signed by the owner or company designee of the licensed security guard company) and the fee. WSCJTC issues your Armed Certification and notifies DOL of your certification. DOL will then issue your armed private security guard license.

**Q. If I do not qualify for the sworn peace officer exemption, can I work as armed private security while DOL is processing my license application?**

A. No. Although you cannot work as armed security until DOL issues your license, if you have completed preassignment training and submitted a full and complete application for a private security guard license to DOL, your company can issue you a temporary registration as an unarmed private security guard for up to sixty days. The temporary registration card does not authorize you to carry firearms during the performance of your duties as a private security guard.

**Q. What is the statutory penalty for acting as an unlicensed armed private security guard without meeting the sworn peace officer exemption?**

A. Any person who performs the functions and duties of a private security guard in this state without being licensed in accordance with chapter 18.170 RCW is guilty of a gross misdemeanor.

The owner or qualifying agent of a private security company is guilty of a gross misdemeanor if he or she employs an unlicensed person to perform the duties of a private security guard without issuing the employee a valid temporary registration card if the employee does not have in his or her possession a permanent private security guard license issued by DOL.

It is a gross misdemeanor for a private security company to hire, contract with, or otherwise engage the services of an unlicensed armed private security guard knowing that he or she does not have a valid armed private security guard license issued by DOL.

**Q. Are there other possible penalties, fines, and legal issues that sworn peace officers should know about?**

A. Failure to comply with the RCW's and WAC's pertaining to Private Security Guard Licensing and Armed Private Security Licensing may result in civil penalties and fines, in addition to criminal charges, and could result in proceedings to revoke a sworn officer's Peace Officer Certification by the WSCJTC. Officers may also be subject to discipline by their law enforcement employers.

**Q. Are there legal issues that law enforcement agencies should consider regarding off-duty employment as security guards?**

A. Per RCW 18.170.160(8), "It is the duty of all officers of the state and political subdivisions thereof to enforce the provisions of this chapter." It is prudent for law enforcement agencies to educate their officers on properly engaging in off-duty employment as private security guards. The Attorney General is the legal advisor for the WSCJTC and DOL and will render legal assistance as necessary to ensure compliance with RCW's 18.170 and 18.235 and the WACs associated with them.