

# Extra, Extra!

By Tanya Crites

It is not uncommon for police officers to work overtime for their City/Town or to be solicited by others to provide temporary “extra-duty” police-type work for an event or on-going extra-duty police-type work for another entity (security for hospital or professional sports complex, traffic control for a construction contractor, etc.). When working on-duty overtime for the City/Town, the employer retains complete control over the training, supervision and actions of the officer. The employer is totally responsible for wages, overtime, benefits, FLSA requirements, union bargaining agreement compliance and the welfare of its police employees.

The lines get blurred when an officer performs police-type extra-duty work for another entity, wearing the City/Town uniform, using City/Town resources and equipment, but gets direction, supervision and pay from another hiring source. This arrangement may or may not include a hiring agreement between the officer and the hiring source, specifying what roles and responsibilities the extra-duty police officer is expected to fill (i.e. security, crowd control, traffic control, police presence, making arrests, when to call 911) or what authority the hiring source has over the officer. It is possible under some scenarios that the other hiring source is required to provide sick leave benefits under the new sick leave laws. If the extra-duty officer is injured, does the hiring source have Worker’s Compensation benefits for the injured officer? It might not be clear if an officer wearing a City/Town uniform for extra-duty police-type work falls under the Fair Labor Standards Act (FLSA) requirements of the City/Town employer.

If something should go wrong during an officer’s extra-duty police-type work, and the officer is accused of negligence, it may be unclear which entity (City/Town employer or other hiring source) is responsible for defending the officer’s actions. If the officer is individually named in a lawsuit related to his/her extra-duty police-type work, which entity, if any, will provide the officer a defense?

The recommended way to eliminate these blurred lines is to create a formal written contract between the City/Town employer and the other hiring source. The contract should clearly state that officers performing services under the agreement are only to provide general law enforcement/peacekeeping functions and that no special relationship or duty is created to protect any specific individuals or contracting party. It should also state that officers performing services are at all times subject to City/Town police department policies and command only and not the direction of the contracting party. Payment by the hiring source should be made to the City/Town, which then pays each police officer. The City/Town is then responsible to follow FLSA requirements for the hours worked.

The reality is, whenever an officer is wearing the City/Town uniform, the officer has a primary duty to the City/Town employer.

This article is narrowly focused to address risk mitigation for Cities/Towns that allow officers to perform extra-duty police-type work wearing City/Town uniforms and/or using City/Town equipment or resources. The article does not address the distinction between off-duty, non-police related jobs (real estate agent, painter, landscaper, etc.) and extra-duty police-type work.

For information on the distinction between off-duty and extra-duty work, please refer to the WCIA Liability Resource Manual guideline and sample, POL.12 Police Off-Duty vs. Extra-Duty Employment and POL 12.01 Sample Extra-Duty Police Service Contract. The Liability Resource Manual is available through the Member Resources page on the WCIA website: <http://www.wciapool.org/member-resources>. You may also contact your WCIA Risk Management Representative with any questions.