

**The Bill Blackwood
Law Enforcement Management Institute of Texas**

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Secondary Employment Liability

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ABSTRACT

Secondary employment liability is relevant to contemporary law enforcement because the liability of peace officers working security jobs is ever increasing. With many peace officers across the country working second jobs for added income to support their family, peace officers are at a higher risk of getting injured while working for private companies in addition to their regular police jobs. Therefore, it is important that police agencies consider having clear policies covering secondary employment in place.

The purpose of this research is to identify some areas a police administrator needs to consider when developing a policy for secondary employment. This may include workers compensation coverage, working secondary employment outside an officer's jurisdiction, limiting the number of hours an officer may work at secondary employment, as well as other areas.

The method of inquiry used by this researcher included a review of literature from publications pertaining to the subject of secondary employment. Students from this researcher's L.E.M.I.T. Module I and Module II classes were taken which resulted in 40 different Texas law enforcement agencies being surveyed.

The information gathered from the surveys demonstrated that the majority of Texas law enforcement agencies permitted their peace officers to work secondary employment. It was concluded that among the different sized departments, the policies on secondary employment varied dramatically. It was concluded that no matter the manpower or size of the department, all law enforcement agencies should have clear policies with regard to peace officer's working secondary employment.

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INTRODUCTION

With the many liability issues a police chief is faced with, one such issue is that of “Secondary Employment”. This may also be referred to as “an extra job” or “extra duty” employment. Secondary employment is best described as when a private business wants to hire off-duty, uniformed or non-uniformed, peace officers for such jobs as security or traffic control. Most police departments have some type of policy in place. However, those policies may vary dramatically and most have some type of limitation on where an officer may work. The limitations may include locations where alcohol is served or a place where the job reflects negatively on the department. Some limitations may even prohibit the number of hours an officer may work at a secondary job. Although there are numerous restrictions that need to be taken into consideration when developing a policy this research will identify major ones to consider.

Most often these secondary jobs only require that there be an officer presence to be used as a deterrent to prevent a crime from occurring. The officer rarely is required to make an arrest and therefore most secondary jobs are considered as an easy way to earn extra money. These second jobs are mostly worked in order to supplement the officer’s income. There are many other issues that need to be identified and explored that are of great concern to the police agency. One example is insurance coverage on a peace officer in the event they get injured while working for a private company. Who is responsible for the medical coverage, the private employer or the police agency? Other issues will be examined throughout the research paper such as peace officers working where alcohol is served, as well as should there be a limit to the number of hours a peace officer should work each week or day to prevent fatigue due to working an

unlimited number of hours in addition to the peace officer regular duties. Also to be examined is whether peace officers should be allowed to work outside the police agencies jurisdiction. A peace officer that may own a private business is another concern a police agency must consider. However, this research project will only identify secondary employment where the peace officer may have to use their authority. The purpose of this research is to identify liabilities a police department must consider when determining a policy for secondary employment.

The intended method of inquiry will include a survey of random Texas police departments to be administered to determine if that agency's policy covers topics as previously mentioned. The author will also review any court cases that cite a police agency was held liable when an officer acted improperly while working a security job. Also to be considered will be law enforcement publications where it is recommended or not that policy makers have strict limits on secondary employment. This research will also cover Texas State law pertaining to the authority of peace officers in Texas and the private security act. By identifying the major liabilities a police agency has to consider, police administrators will be able to use those expressed in this research to better their own police agencies.

The anticipated finding is that a vast majority of police departments in the State of Texas have vast differences in their policies when compared. Any case law relating to the question will indicate that the liability to the department is great and that many agencies could be held liable if clear and concise policies aren't implemented. Any publications relating to the question of liability would only be recommendations for

agencies to consider. By identifying liabilities a police agency may face, this research will not only help protect a police agency, but better protect the peace officer as well.

REVIEW OF LITERATURE

When determining a police agencies policy, administrators need to find a balance between allowing peace officers to perform their duties while at the same time protecting the department against unnecessary liabilities. Most policies cover the peace officers and departments when peace officers are on duty and working for their agency. Numerous agencies do not take the same consideration when developing policy for secondary employment where private companies employ off duty peace officers for security or other functions such as traffic control. What procedures need to be followed to protect both the officer and the department? According to the League of Minnesota Cities (2005), unregulated, off-duty employment can harm the department's reputation and affect the public's perception of law enforcement. Procedures have to be in place and have restrictions on the type of secondary work officers can perform. Due to the need for private companies to hire professional peace officers, rather than a private security company, administrators typically will allow their peace officers to work for companies and private citizens in order for the peace officer to earn extra income. That is until a peace officer gets involved in a serious incident or is seriously injured when having to react to an illegal act. Then the question arises should police be allowed to work secondary jobs? The pros and cons of this issue were discussed in depth and strong cases are made on both sides according to J. J. Keely and J. H. Ryan (Security Management, 1983). Unless the agency has taken time to consider all liability aspects and covered those in their policies then a typical "knee jerk reaction" takes place and

suddenly strict orders are implemented which sometimes include secondary employment being prohibited entirely.

Why should police administrators pay close attention to the liabilities related to secondary employment? According to the Alabama League of Municipalities (1999) an Alabama City received a \$1.6 million dollar judgment against the city for actions taken by an off-duty officer. Although this case occurred in Alabama and the details of the judgment will not be mentioned, it does point out the need that policies for secondary employment do need to be closely looked at to cover the police agency liability to try and prevent judgments of this magnitude.

Another concern that needs to be considered when developing policy for secondary employment is the issue of injuries to a peace officer while working for another company in the event the peace officer is injured while on secondary employment. The policy should include what entity is going to provide the workers compensation medical coverage. If the officer is injured while enforcing the law, a policy should clearly define where the officer is to turn for workers compensation. Unless this is identified in policy it can turn into a battle between the police agency and the private company as to whose insurance is going to handle the claim. While this battle is going on unnecessary stress is added onto the officer's life. If the officer has personal medical coverage through his agency it will not cover him because he was working at the time he was injured. However, there is one solution to this problem that is one of the peace officer creating a story that his injury occurred while on duty or was hurt while at home. In this case the peace officer has to lie about how he received his

injury in order to make sure he or she is covered by medical insurance whether it be his personal insurance or by workers compensation.

Before a policy can be written an administrator must be familiar with Texas Law and see what restrictions there are on peace officer working security. The Texas Private Security Bureau (formerly known as the Texas Commission for Private Security) has specific restrictions on peace officers in that they must work 32 hours a week at their appointed duties as a peace officer, can only provide services on a “individual contractor” or “employer – employee” basis, must not be in the employment of another peace officer and not be a reserve peace officer or a full-time non-paid regular peace officer (Section 3(a)(3) Article 4412 (29bb) V.A.C.S.). Another topic that needs consideration is a peace officers jurisdiction. Because most police agencies have limited authority beyond their jurisdiction it raises the issue of command authority (Reiss, 1988). In Texas, peace officers are permitted to make lawful arrests outside their jurisdiction without a warrant, a person who commits an offense within the peace officer’s presence or view, if it is a felony, a violation of Chapter 42 or 49 of the Penal Code or a breach of the peace (Texas Code of Criminal Procedure Chapter 14 Art.14.03, 2006).

Another liability that needs to be considered is what happens when a peace officer has to take enforcement action and someone is injured? A Court of Appeals in Maryland reversed a Circuit Court for Baltimore County after it ruled that a police officer negligently injured an innocent bystander while acting to prevent a robbery at a Days Inn. The Circuit Court ruled that a police officer while acting in the scope of their

employment for a private employer will not be entitled to any form of public official immunity (Law Enforcement Bulletin, 2001).

When policies regarding secondary employment are developed the administrator must also consider making sure the officers receive training in the policy and the chief's professional standards office complete inspections and audits on the policy. Additionally officers working second jobs who use force to affect an arrest during an incident should be treated as if it were an on-duty incident (Gallagher's Liability Beat, 1999).

METHODOLOGY

The purpose of this research is to identify liabilities a police department must consider when determining a policy for secondary employment. It is the author's hypothesis that with the vast number of police agencies in the State of Texas and the man power size of those agencies, that the policies, when compared, will be widely different.

A survey of several Texas police agencies will be conducted and will be used as the measurement instrument for this research. The survey was handed out to students participating in the April 2005 Module I class of LEMIT and to the students participating in the July 2006 Module II class of LEMIT. There were 42 surveys handed out and a total of 42 surveys completed. There were 40 surveys from different law enforcement agencies through out Texas. There were two agencies surveyed twice and the duplicates were discarded.

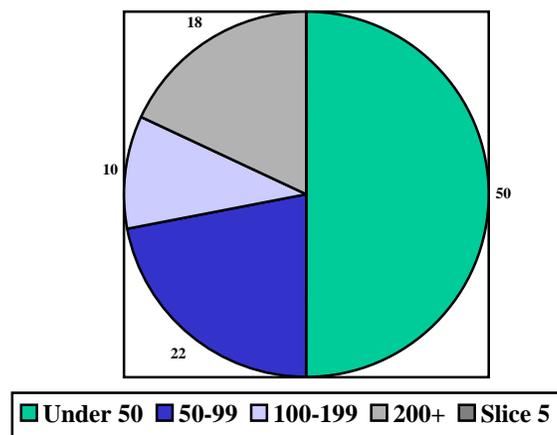
The information collected will be analyzed by comparing the responses of the questions asked in the survey to identify what percentage of departments have a policy covering the specific question asked. The data collected will show what percentage of

police agencies have policies in place that cover liabilities mentioned in this research. Although the results will not be specific to that particular agency as to the effectiveness of their policy, it will show that the policies of Texas police agencies may not be comprehensive enough to keep the agency or peace officer from being liable.

FINDINGS

The survey instruments were analyzed and broken down into four categories based on the number of officers within the particular agency. As can be seen in figure one, the four categories were broken down as police agencies under 50 sworn peace officers, 50-99 sworn peace officers, 100-199 sworn peace officers and 200 and over sworn peace officers. Of the 40 surveys completed fifty percent were from agencies with fewer than 50 sworn peace officers. Twenty-two percent represented agencies 50-99 sworn peace officers, ten percent represented agencies having 100-199 sworn peace officers and eighteen percent were from agencies with over 200 sworn officers.

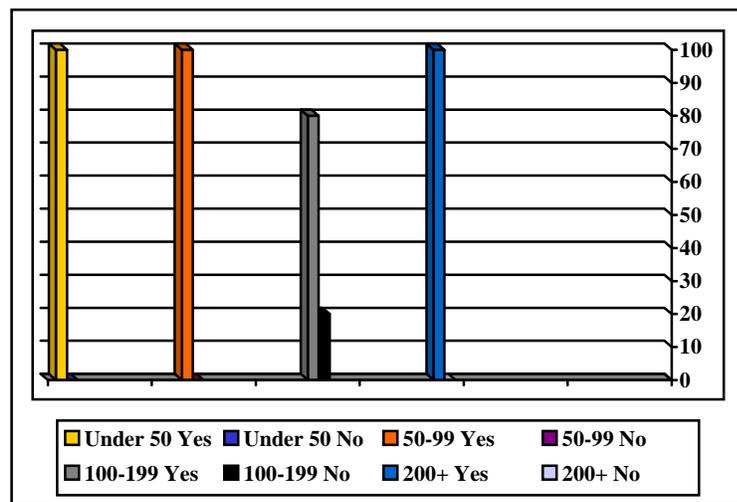
Figure 1



Percentage breakdown of agencies surveyed

There were five yes or no questions asked pertaining to the agencies secondary employment policies. As shown in figure two, the first question asked if the officers within the department were allowed to work secondary employment. All responses were yes with the exception of one agency that did not allow its officers to work extra jobs.

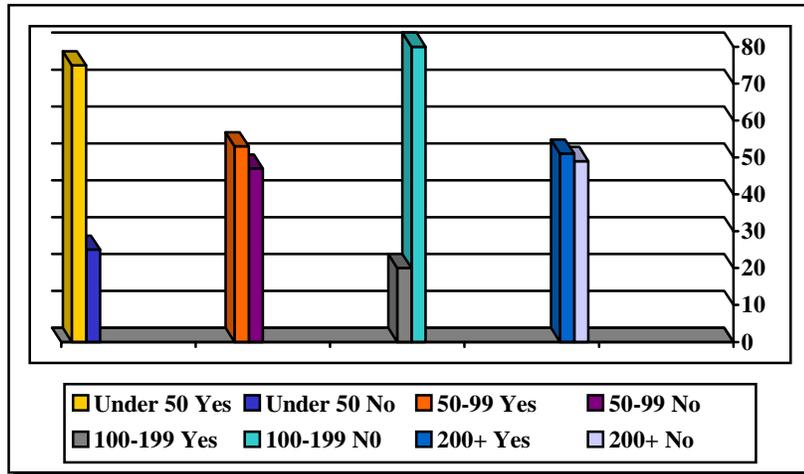
Figure 2



Percentage of agencies permitted to work extra jobs

The second question asked if the agency allowed its officers to work extra jobs outside the agencies jurisdiction. As shown in figure three, the majority of the agencies permitted its officers to work outside their respective jurisdictions with the exception of those agencies having between 100-199 sworn officers. In that case only 1 in 5 permitted the officers to work outside their jurisdiction.

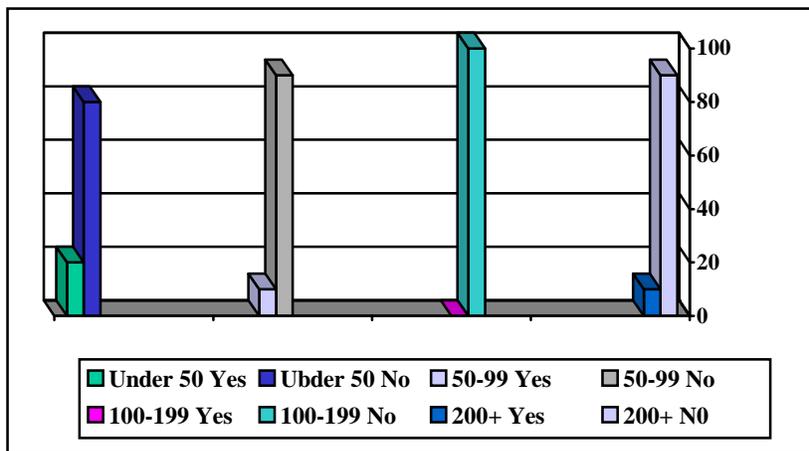
Figure 3



Percentage of agencies that allow officers to work outside their jurisdiction

The third question asked officers if their departments limited the number of hours per week or day an officer might work at a secondary job. As represented in figure four, the results were mixed with the smallest agencies not having limits while the majority of the large department seeing a need to limit extra job hours.

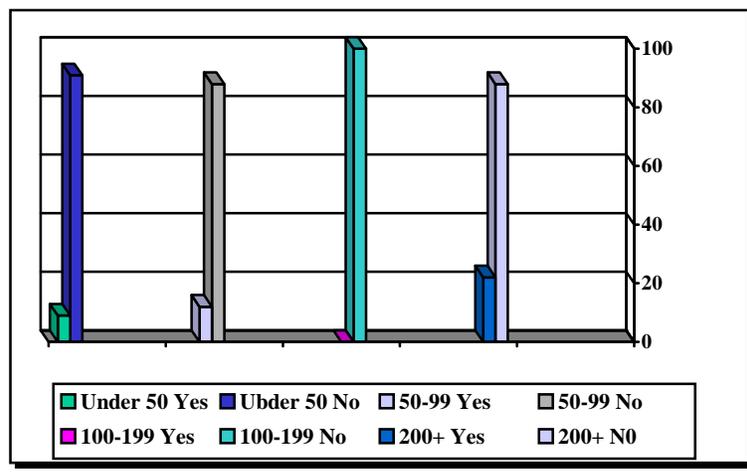
Figure 4



Percentage of limited hours per day or week on working extra jobs

The fourth question that was asked in the survey was if officers are permitted to work secondary jobs where 50% or more of the business' income is as a result of alcohol sale. As shown in figure five, an over whelming majority of the departments did not allow their officers to work at these type of establishments.

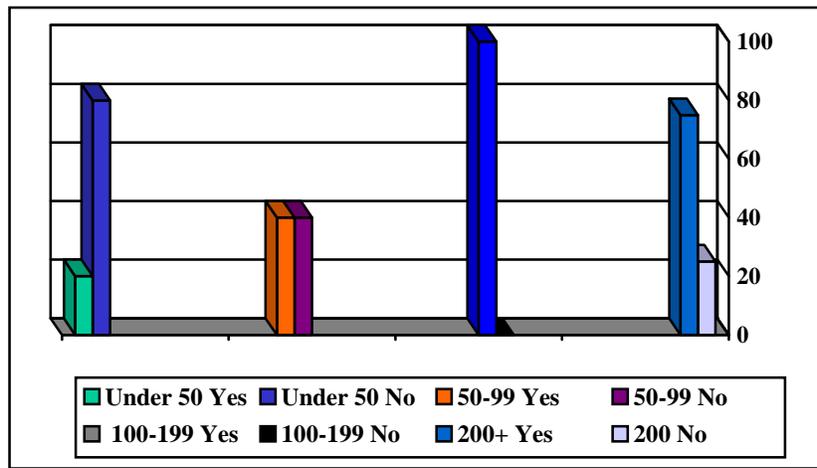
Figure 5



Percentage of officers permitted to work where alcohol is served

The last question asked was whether the peace officer's department had in their policy any reference to liability, compensation or indemnification. As seen in figure six, the larger agencies did have policy that covered this question while most of the smaller agencies did not.

Figure 6



Percentage of agencies policy covers compensation and indemnification.

CONCLUSIONS

The purpose of this research was to identify liabilities a police agency must consider when determining a policy for secondary employment in order to protect both the agency and the officer. It was hypothesized that there would be vast differences in policy pertaining to the issue of secondary employment in Texas police agencies.

The author mentioned a few concerns that should be considered when writing policy on secondary employment. Those concerns were, permitting officers to work secondary jobs, permitting officers to work secondary jobs outside the agencies jurisdiction, should officers be prohibited from working secondary jobs at a business

where sales from alcohol amounts to more than 50% of the businesses income and should agencies have in their policy reference to liability, compensation and indemnification in the event the officer is injured while working a secondary job.

After a review of the literature it was found that although there were few publications on this subject. For the most part those mentioned were only guidelines to be considered. The Texas Code of Criminal Procedure and Private Security Bureau were both found to be very specific as to a Texas Peace Officers authority. The Private Security Bureau even has a specific section that addresses conditions for peace officers working as private security officers.

As anticipated the surveys taken from random Texas police agencies varied in their consistency. When the results were broken down into four categories based on the number of sworn officers within the agencies, it was found that 39 of the 40 agencies surveyed allowed their officers to work secondary jobs. Although the question was not posed, all 40 agencies apparently do have a policy that addresses secondary employment. When it came to the officers being limited to the number of hours they could work a week at an extra job 21 out of the 40 surveys did have limits to the number of hours that could be worked in a particular day or week. When the issue came to working at businesses that serve alcohol, the survey supported that the majority of agencies prohibited their officers from working at these types of establishments. The final survey question addressed the issue of liability, compensation and indemnification. The larger agencies did address this in their policies by fifty percent while the majority of smaller departments did not.

It was hypothesized that there would be vast differences between Texas police agencies regarding their policy on secondary employment. The data collected from the survey supported the author hypothesis in all categories. The survey instrument could have been expanded to include areas of policy not mentioned and further research could be done.

There are several limitations that hindered this study. One limitation is that there is a limited amount of information on the subject. The author believes that demographics, policy maker's opinions and demands for private companies wanting to hire peace officers for security, all play a role in developing policy. Since smaller departments make up the majority of police agencies in Texas and that nearly all agencies surveyed allow their officers to work extra jobs. The author believes that the frequency of incidents that occurred while officers are working security are small therefore not all possible issues are considered by the smaller departments.

When reviewed, this research will aid policy makers in considering what should be addressed when developing policy for secondary employment. By having specific and detailed policy on secondary employment, the police agency can limit it's liability and at the same time protect it's peace officers when having to use police authority while working for a private employer.

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