

SECONDARY EMPLOYMENT

FC No.: 355

Date: 01-18-02

Contents:

- I. Policy
- II. Definitions
- III. Employee Responsibilities
- IV. Request Procedure
- V. General Secondary Employment Restrictions
- VI. Security-Related Secondary Employment Restrictions
- VII. Uniformed Security-Related Secondary Employment Restrictions
- VIII. Cancellation of Employment
- IX. Compliance**
- X. Proponent Unit
- XI. Cancellation

Appendix A: MCP 307, "Secondary Employment Request"

Appendix B: MCP 309, "Secondary Employer Agreement for Security-Related Work"

I. Policy

This directive sets forth the department's rules regarding secondary employment as contained in Montgomery County Executive Regulation 8-00, adopted May 16, 2000. All employees who desire secondary employment must comply with the procedures established in this directive and will not engage in any employment outside the department without the written permission of the Chief of Police and approval from the County Ethics Commission, except while in the approval process.

Note: Employees in the police bargaining unit will comply with the secondary employment provisions in Article 27 of the current Collective Bargaining Agreement between FOP Lodge 35 and Montgomery County, Maryland. (CALEA 22.3.3, 22.3.4a)

II. Definitions

- A. Employment: Any work, occupation, labor, or profession that results in compensation to the employee.
- B. Secondary Employment: Any employment not required by the Montgomery County Department of Police.
- C. Security-Related Secondary Employment: Any employment where the employee is hired for the express purpose of protecting the proprietary interests of the employer.
- D. Uniformed Security-Related Secondary Employment: Any employment where the employee is hired for the express purpose of protecting the proprietary interests of the employer and the employee wears a Montgomery County Police uniform.
- E. Officer: ***(For purposes of this directive only)*** Refers to a commissioned (sworn) police officer employed by the Department of Police who is not in the police bargaining unit.
- F. Employee: ***(For purposes of this directive only)*** Refers to all personnel, sworn and non-sworn, who are not members of the police bargaining unit.

III. Employee Responsibilities

- A. The primary duty, obligation, and responsibility of every employee is to the Department of Police. Employees who are directed to work overtime, or are directed to report to work on their days off, will do so regardless of the fact that outside employment is approved. Outside employment should not become additional full-time employment.
- B. If a department employee owns a business or is in charge of hiring personnel, including department employees and officers of any rank, the employee must disclose this information when application is made for secondary employment.

IV. Request Procedure
(CALEA 22.3.4.c, 22.3.4.d, 22.3.4.e)

- A. Approval from the Chief of Police, or designee, via an MCP 307, "Secondary Employment Request," must be obtained by an employee prior to engaging in any outside employment. If the employment is security-related, the employee will also submit an MCP 309, "Secondary Employer Agreement for Security-Related Work," **prior to engaging in secondary employment.**
- B. Approval of both security-related and non-security-related secondary employment of a short, spontaneous, temporary duration that requires immediate acceptance by an employee may initially be granted by the employee's district or unit commander within not more than one business day. The MCP 309 must be completed prior to the employee working any security-related secondary employment. In every instance, the MCP 307 must be submitted **as indicated in section IV.A, above.**
- C. An approval request authorizes only such work **and conditions as are specifically designated** on the request form. Approval or denial will be determined in accordance with this directive. In those instances where approval is granted, the employee may begin work. Approval will be granted as follows:
 - 1. Indefinite Approval - Remains in effect until the work is completed or the employee or employer changes the status or nature of the work.
 - 2. Twelve-Month Approval - Remains in effect for 12 months from the date of the Chief of Police's approval. Each employee will be notified, via memorandum, prior to the end of the 12-month approval period. To continue the secondary employment, the employee must submit a new request.
 - 3. Limited Approval - Remains in effect until the employment is completed. This is used for short term, temporary employment (i.e., one-day event).
- D. Denial will be determined initially by the Chief of Police or designee.
- E. The Chief of Police, or designee, will submit all requests to the Ethics Commission for approval. The Ethics Commission can approve or deny the request and will notify the applicant directly of its action. **An officer may not work the secondary employment in question if denied by the Ethics Commission.**
- F. All approved secondary employment request form(s) submitted prior to the effective date of this directive will remain in effect until their normal expiration unless rescinded for other cause or prohibited by this directive or by law. Questions regarding secondary employment, approval status, or compliance with this directive or the law may be directed to the Chief, Management Services Bureau.

V. General Secondary Employment Restrictions (CALEA 22.3.3, 22.3.4.b)

- A. Employees shall not engage in any secondary employment which is in conflict with the Montgomery County Government and Department of Police.
- B. Employees shall not engage in any outside employment which will adversely affect their ability to perform their duties.
- C. Employees shall not engage in any outside employment which presents an unacceptable risk of disabling injury that would limit an employee's return to regular duty. "Unacceptable risk" means any risk that is greater than that required of a sworn/non-sworn employee generally.
- D. Employees will not engage in secondary employment during the actual hours for which they are scheduled to work for the county, while on approved sick leave, FMLA, parental leave, disability leave, administrative leave, or professional improvement leave. Employees may not engage in secondary employment during any period while on sick leave, disability leave, and FMLA if the employment can be reasonably construed to delay or preclude full recovery and return to work.
- E. Officers will not use any police equipment or exercise any police authority while engaged in secondary employment while their police powers are suspended.
- F. Officers will not engage in secondary employment in any capacity for any business that sells, dispenses, or handles alcoholic beverages with the following exceptions: an officer may work for a store, motel, hotel, restaurant, country club, or similar establishment as a security person, desk clerk, or similar capacity, provided no part of the officer's specific duties are related to or involve the bar area where alcoholic beverages are sold or dispensed, the employment does not require "bouncer" duties, and the sale, dispensing, or handling of alcoholic beverages is not the primary business of the establishment.
- G. No employee shall engage in business with the Montgomery County Government without first revealing their employment status with the county.
- H. Except for uniformed *security-related* secondary employment, employees will not engage in secondary employment if the authority vested in them as a county employee is a requirement for obtaining or holding employment.
- I. Employees will not divulge their association with the department in the course of their employment as a salesperson.
- J. Except as provided in this directive, employees may not be employed by, or have any ownership interest in, any business subject to the authority of, or doing business with, the police department.
- K. No towing service owned and/or operated by off-duty Montgomery County Police *officers, of any rank, or* employees shall be used for towing of vehicles at the request of on-duty Montgomery County Police *officers, of any rank,* unless specifically requested by the owner or operator of the vehicle involved.
- L. No officer of the department shall operate a school *bus within six hours of completing a midnight shift.* No employee of the department shall operate a school bus immediately after working a midnight shift.

- M. Employees, in the performance of their secondary employment, will not take advantage of any services provided by the department of police unless in the performance of legitimate police action. Under the provisions of the CJIS Law, it is a violation to disseminate criminal record information to non-criminal justice agencies or to anyone when not in the scope of official business. Further, obtaining any information, criminal or non-criminal, can only be done in the same capacity as a private citizen when not for official police activity. Any deviation from this can subject the employee to liability.
- N. Employees may not use confidential information gained in county employment for outside financial gain or for any purpose other than use in county employment.
- O. Employees, while on duty, may not accept or solicit referrals for their secondary employment.
- P. *Officers will not distract or coerce other county employees during their scheduled work hours to buy or use products or services sold or offered as part of their secondary employment.*** Employees, in the performance of their secondary employment, will not interfere with the conduct of normal county business and other county employees' work.
- Q. Officers, in the performance of their secondary employment, are permitted to carry/utilize the following county equipment:
1. Weapons/Protective Instruments (carried in an inconspicuous manner unless uniformed):
 - a. Handgun,
 - b. OC spray,
 - c. ASP baton, and
 - d. Maglight flashlight.
 2. Other:
 - a. Portable radio,
 - b. Ballistic vest,
 - c. Handcuffs,
 - d. MCP badge and credentials,
 - e. PPV (to drive to job site), and
 - f. Baseball cap (uniformed only).
 3. Officers, except those prohibited from working uniformed security-related secondary employment in Section **VII.D**, may wear the brown patrol uniform and authorized issued equipment while engaged in uniformed **security-related** secondary employment and while going to and from the secondary employment site. If the uniform is worn, the entire uniform along with the Sam Browne belt, pistol, handcuffs, ASP, and portable radio must be worn by the officer.
- R. Employees are prohibited from working for any person(s) or any entity owned (at least 5% ownership) by a person, or persons, they supervise or who supervises them as part of their county employment.

VI. Security-Related Secondary Employment Restrictions (CALEA 22.3.3, 22.3.4.b)

In addition to the restrictions listed in **sections IV and V** of this directive, the following restrictions apply to security-related secondary employment:

- A. No employee shall work in security-related secondary employment unless the employee has been employed by the Montgomery County Department of Police for at least one year.
- B. When the employee determines that an offense report should be initiated, the employee will call an on-duty officer, ***of any rank***, to take the report and initiate an investigation to the same extent as if a private citizen had called the police. This policy is not intended to prohibit an officer witnessing the commission of a crime from taking immediate and appropriate police action. However, once the situation is under control, the officer will call on-duty officers, ***as described above***.
- C. The employee will work only as a surveillance guard and, if the employee anticipates a situation where the presence of on-duty uniformed officers, ***of any rank***, would have a calming or deterrent effect, they will be requested.
- D. Security-related secondary employment shall be limited to duties customarily associated with those performed by a watchman or guard and shall not include background investigations or any form of investigative surveillance work related to any divorce, separation, or other domestic situation ***within Montgomery County***.
- E. No follow-up investigations of previously reported offenses will be handled by off-duty officers, and all information coming to their attention relating to such incidents will be reported to investigating officers, ***of any rank***.
- F. While on-duty with the department, the employee will show no preferential coverage to the place of the employee's secondary employment nor, while employed there off-duty, will the employee encourage visitation by on-duty officers ***and employees, of any rank***.
- G. Under no circumstances will an employee act as an intermediary between a particular employer and a group of employees employed as watchmen/security guards for the purpose of scheduling, coordinating, or any other similar activity unless the employee has first obtained the appropriate license from the Superintendent of the Maryland State Police, if such license is required.
- H. **Secondary Employer's Responsibilities**
Employees will not be permitted to work security-related secondary employment unless the secondary employer agrees to:
 - 1. Pay employees appearing in court on their day off or during non-regular scheduled working hours for civil incidents arising from off-duty employment activity.
 - 2. Pay the employee by check showing proper deduction for Social Security, if required by law.
 - 3. Provide Worker's Compensation Insurance coverage for the employee, if required by law.
 - 4. Except for non-regular, occasional, or sporadic employment for a private individual, the secondary employer agrees to maintain a comprehensive general public liability insurance policy in a minimum amount of \$500,000, which will cover the employee against any and all claims and/or liability resulting from such employment.
 - 5. Make no attempts to exert any influence regarding a police decision involving whether an arrest should be made.
 - 6. Initiate all formal charges for trespassing and not let the employee initiate such charges.

7. Keep the agreement between the secondary employer and the county in force for the duration of the period specified in the agreement.

VII. Uniformed Security-Related Secondary Employment Restrictions (CALEA 22.3.4.b)

In addition to the restrictions listed in sections **IV**, **V**, and **VI** of this directive, the following restrictions apply to uniformed security-related secondary employment:

- A. Officers are authorized to work uniformed secondary employment only within the boundaries of Montgomery County, Maryland, where the police department normally provides police service. Uniformed secondary employment is prohibited within the City of Takoma Park.
- B. Officers may work secondary employment in uniform only as a watchman or surveillance guard, **or as provided in paragraph F of this section.**
- C. Officers will not engage in secondary employment where there is a potential conflict of interest between the officer's duties as a police officer and duties for the officer's outside employer.
- D. Uniformed secondary employment is prohibited if the officer's police powers are suspended or revoked.
- E. Uniformed secondary employment is prohibited in the following circumstances:
 1. An officer is under the influence of alcohol or drugs.
 2. It is probable that on-duty officers, **of any rank**, would respond as a result of a demonstration, protest march, sit-in, labor/management dispute, or mass arrest situation.
 3. The officer is on leave status identified in section V.D or in a leave without pay status.
 4. **The secondary employment establishment sells, distributes, or serves alcoholic beverages.**
 5. Gambling is occurring in the secondary employment establishment (other than the sale of state lottery tickets by the secondary employer).
 6. Uniformed secondary employment must be terminated immediately upon notice to the officer by an appropriate supervisor, that the secondary employer, official of the employing company, or an employer's supervisor becomes the subject of a law enforcement investigation or enforcement action other than a petty offense or traffic charge.
 7. Officers may only work uniformed secondary employment on the premises of their secondary employer or on property immediately adjacent to the secondary employer's property.
 8. Officers are only authorized to work secondary employment in uniform a maximum of 16 hours in a 40-hour workweek. Days off are excluded.
 9. Officers are prohibited from working uniformed secondary employment for debt collectors, private process servers, skip tracers, employers engaged in repossessing property, employers doing pre-employment investigations, bail bonding agencies, employers engaging in the towing of vehicles, and employers engaged in the security guard, private investigator, or private detective business.
- F. **Officers may work, in a uniformed secondary employment capacity, as a traffic control officer on private property as long as their actions do not take**

place on, or interfere with, public right-of-ways. Exceptions to this restriction are secondary employment situations where a permit has been issued by the Department of Public Works and Transportation that allows for traffic control on public right-of-ways.

- G. In the event the department develops the capability to retain and monitor such information, officers engaging in uniformed security-related **secondary** employment may be required to immediately notify the Emergency Communications Center at the beginning and end of the work period indicating the employer and the duty location.

VIII. Cancellation of Employment

- A. Any employee who ceases or cancels secondary employment will forward an MCP 307 to the **Assistant** Chief, Management Services Bureau, if the approval was for an indefinite period of time or if approval was for 12 months and it has not expired. Only Part IV, "Cancellation," of the MCP 307 should be completed. (CALEA 22.3.4.c)
- B. **Employees who wish to work secondary employment must comply with this policy.** The Chief of Police has the authority to cancel permission, temporarily or permanently, of any employee engaged in secondary employment **who violates this directive. Employees may not work any secondary employment without the required approvals.**

IX. Compliance

All employees who wish to work secondary employment must comply with this policy and the Chief of Police may discipline any employee who fails to comply with this directive.

- X. **Proponent Unit:** Management Services Bureau

XI. Cancellation

This directive cancels Function Code 355, dated 07-16-98.

Charles A. Moose, Ph.D.
Chief of Police