

INFORMATION MEMO

Police Department Management and Liability Issues

Understand special management challenges for city police department personnel. Reviews hiring, discipline, and termination considerations. Discusses special working condition considerations such as scheduling, physical fitness standards, working with unions, and fitness-for-duty examinations. Lists concerns in regulating off-duty conduct and off-duty employment (moonlighting). Find information on selected police liability issues.

RELEVANT LINKS:

[Minn. Stat. § 412.221, subd. 32.](#)

Handbook, [Public Safety and Emergency Management](#).

I. Law enforcement in Minnesota

Cities have authority to provide for law enforcement, including police services, under state law. A city police department may be created through ordinances and policies, but cities may also contract with other cities or counties, form joint departments, or have no department or contract but instead rely on basic county services.

This discussion of police management and liability issues is not comprehensive. Rather, it focuses on common questions about police departments and their work, especially pointing out areas where police officers must be treated differently than other employees because of specific laws or rules that address unique aspects of working in law enforcement. You can find general information on police departments including 911 emergency systems, public safety radio communication, community policing, and other topics in the League's Handbook for Minnesota Cities.

II. Managing police department employees

A. Authority

In general, there are three places where the authority to hire, fire, or discipline a police department employee may rest in a city:

- The city council as a whole (statutory Plan A and standard cities; charter cities whose charter provides for this).
- The city manager (statutory Plan B cities; charter cities where the charter provides for this power).
- The police civil service commission (any city, regardless of organizational form).

It is critical that the entity with legal authority take the hiring or firing action on the record (i.e., at a city council meeting or a civil service commission meeting or, in the case of a city manager, in some other documented fashion, such as a letter to the employee).

This material is provided as general information and is not a substitute for legal advice. Consult your attorney for advice concerning specific situations.

RELEVANT LINKS:

[Minn. Stat. § 419.05.](#)

See Section II-C-3, *Police civil service commissions*, for details on termination procedures.

[Minn. Stat. § 419.07.](#)

[HR Reference Manual, Chapter 2, Hiring](#), and [HR Reference Manual, Chapter 1, City Employment Basics](#).
[LMC Information Memo, Veterans Preference in Hiring.](#)

[Minn. Stat. § 626.8468, subd. 1.](#)

This doesn't mean police chiefs and city administrators have no role to play in hiring or firing police department employees. The recommendations of the chief or administrator still usually weigh very heavily in decisions made by others. The discretion given to police chiefs and city administrators in hiring recommendations or imposing lesser forms of discipline will vary depending on a city's own procedures and contracts. It is essential to pay particular attention to policies and procedures agreed to in an applicable collective bargaining agreement.

For cities that have created a police civil service commission under state law, the commission has the "absolute control and supervision over the employment, promotion, discharge, and suspension of all officers and employees of the police department." A police civil service commission consists of three appointed members who are residents of the city. Members serve staggered three-year terms. However, even under a civil service commission, an officer may be suspended by city staff other than the commission for a reasonable period, not exceeding 60 days, for the purpose of discipline or pending investigation of charges. Additionally, the commission can delegate supervisory duties, such as performance evaluation to the city staff.

B. Hiring

Cities should follow sound hiring practices for police officers, as they do with all city employees, including provisions of the Veterans Preference laws.

In addition, hiring police officers in Minnesota is a detailed process containing many other mandatory procedures and multiple agencies. A city, as the licensing agency, is responsible for following these procedures and certifying a candidate meets all criteria necessary for state licensure.

1. Licensure

Police officers must be licensed by the Peace Officer Standards and Training (POST) Board, a state agency, before they are eligible to be employed in a city police department. Many police-related activities may only be performed by licensed officers. The state licenses only full-time officers. Part-time peace officer licenses are no longer available for new hires and existing part-time licenses are being phased out.

A city that employed a licensed part-time peace officer on or before June 30, 2014, may continue to employ that part-time peace officer indefinitely. Any part-time peace officer who leaves city employment after June 30, 2014, will have his or her license canceled by the state (or POST).

RELEVANT LINKS:

[Minn. R. 6700.0700.](#)

[POST Board Summary of Minimum Standards.](#)

[POST Board sample, Background Investigation and Hiring Checklist form.](#)

[Minn. R. 6700.0700.](#)

[Minn. R. 6700.0700, subp. 1 C.](#)

To become a full-time licensed peace officer in the state of Minnesota, the minimum selection standards provide an individual must meet the following criteria:

- Be a citizen of the United States or eligible to work in U.S. under federal requirements.
- Possess a valid Minnesota driver's license (or a driver's license from a contiguous state when not a Minnesota resident).
- Complete a two- or four-year post-secondary degree program certified by POST (other programs, including certain military service and out-of-state educational programs may also be deemed eligible by POST).
- Have no history of a felony conviction or other serious misconduct as listed in 6700.0700, subp. D.
- Complete the eligibility procedures mandated by the POST Board for licensing.

POST eligibility procedures provide that in order to be eligible for a peace officer license, an applicant for a peace officer position must pass a series of tests and evaluations. First, the applicant must complete a comprehensive written application and then submit to a thorough background search. Next, the applicant must be examined by a medical doctor and a licensed psychologist to make sure he or she is free from any physical, emotional, or mental condition which might adversely affect the performance of peace officer duties. In addition to the medical and psychological evaluations, the applicant must pass a job-related strength and agility test. Finally, the applicant must complete an oral examination that typically consists of an oral interview or interviews with the hiring agency. Questions or difficulties can arise in any of these mandated procedures. The following are some ground rules to follow to avoid the most common pitfalls.

2. Selection standards

The Board of Peace Officer Standards and Training (POST) sets the minimum selection standards for state licensing of police officers. In addition, because of the unique position and responsibilities held by law enforcement officers, other laws often spell out exceptions or special requirements for police hires. Cities are wise to review hiring policies and practices to be sure they are fulfilling all legal requirements.

a. Written application

A written application is created by the hiring agency, usually the city. The application may or may not be the standard application form used by the city in hiring other positions, and POST rules simply require the application to be in writing and to be "comprehensive."

RELEVANT LINKS:

[Minn. Stat. § 363A.08.](#)

[Minn. Stat. § 626.87.](#)

[6700.0700 subpart 1 C](#)

[Minn. Stat. § 363A.08 subd. 4\(1\).](#)
[Minn. Stat. § 363A.20 subd. 7.](#)

[Minn. Stat. § 363A.08 subd. 4\(1\).](#)

A city should request enough information on the application to determine if the applicant meets the minimum selection criteria, which may include information on things such as the applicant’s citizenship, valid driver’s license, and educational requirements. Remember that the Minnesota Human Rights Act (MHRA) prohibits employers from requesting an applicant furnish information that pertains to the applicant’s race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, familial status, disability, sexual orientation, or age.

b. Background investigation

The applicant must submit to, and the city must conduct, a thorough background search on applicants for jobs as licensed peace officers or for positions leading to a job as a licensed peace officer (e.g., reserve and community service officers).

Unlike at the application stage, the Minnesota Human Rights Act allows a city to ask for certain protected class information at the background investigation stage. Upon notifying the candidate that a background investigation will be performed, the city may request the applicant’s date of birth, gender, and race on a separate form for the sole and exclusive purpose of conducting a criminal history check, a driver’s license check, and a fingerprint criminal history inquiry. The form must include information on why the data are being collected, as well as describe the limited use of the data.

Only the background investigator is entitled to documentation that contains the applicant’s date of birth, gender, or race information. Because others involved in the selection process are not entitled to this information, the background investigation report should not include this protected data, either directly or indirectly. The importance of this is underscored by the fact the Minnesota Human Rights Act prohibits anyone involved in the selection of an employee from also being the background investigator.

The chief law enforcement officer (CLEO) or his or her designee (such as a background investigator) is required to notify POST when the investigation begins and must disclose the candidate’s name, date of birth, and peace officer license number.

The background must include searches by local, state, and federal agencies to disclose the existence of any criminal record or conduct that would adversely affect the performance by the applicant of peace officer duties. The Bureau of Criminal Apprehension (BCA) establishes security standards, which include verification of employment application information and a criminal history check.

RELEVANT LINKS:

[Minn. R. 6700.0701.](#)

[Minn. Stat. § 13.43 subd. 12.](#)

[Summary of New POST Background Investigation Requirements.](#)

[42 U.S.C. § 12112\(d\)\(2\). 29 C.F.R. § 1630.13. C.F.R. § 1630.14\(a\), \(b\).](#)

[Minn. Stat. § 363A.20, subd 8\(a\).](#)

An investigation must determine, at a minimum, whether the candidate meets the standards established by the POST Board and established security standards for access to state and national computerized record and communication systems such as the National Crime Information Center (NCIC) and the Minnesota Criminal Justice Information Systems (CJIS). These requirements do not prevent a law enforcement agency from establishing higher standards for law enforcement employees if those standards are not contrary to applicable law.

Certain criminal convictions are completely disqualifying, including all felonies and all convictions for domestic assault, mistreatment of residents or patients, criminal abuse, criminal neglect, failure to report, prostitution crimes, false claims to police, medical assistance fraud, theft, disorderly conduct, and narcotics or controlled substance crimes. The CLEO has an affirmative duty to notify the POST Board if a felony conviction or conviction under the special crime categories listed in the statute is discovered on an applicant. In addition, anyone required to register as a predatory offender under Minn. Stat. §243.166 or Minn. Stat. §243.167, or in any other state, is ineligible for licensure.

Finally, background investigations must be shared with other law enforcement agencies. The city is legally required to disclose background information upon request, as long as the request is in writing and signed by the applicant and the authorized representative of the requesting agency.

c. Medical examination

This activity must only be done after making a conditional job offer.

A licensed physician is needed to conduct a thorough medical examination of an applicant for a licensed police officer position. A city cannot require pre-offer medical examinations of any employee, including police officers. Federal and state laws permit employers to gather and use medical information on job applicants only after a conditional job offer is made.

For example, the Minnesota Human Rights Act allows a city to require an applicant to undergo a physical examination, including medical history, only if the examination tests for essential job-related abilities and an offer of employment has been made on the condition the applicant meets the physical or mental requirements of the job.

Federal law under the Genetic Information Nondiscrimination Act (GINA) prohibits employers from requesting or requiring that employees provide genetic information.

RELEVANT LINKS:

[42 U.S.C. § 2000ff\(4\).](#)
[29 C.F.R. § 1635.3.](#)

[Minn. Stat. § 363A.20, subd 8\(a\)\(1\)\(iv\).](#)
[LMC information memo, Management of Personnel Files.](#)

[POST Board NEW Requirements for Psychological Screenings.](#)

[Minn. R. 6700.0675](#)

A city cannot ask an employee as part of medical examination process to provide genetic information, such as family medical history. When requesting medical information from an employee, the city should tell the employee and/or the health care provider from whom it is requesting information not to provide genetic information. When a city requests medical information on an employee, the Equal Employment Opportunity Commission (EEOC) recommends the following language be included in the employee’s written authorization:

“The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law. To comply with this law, we are asking that you not provide any genetic information when responding to this request for medical information. “Genetic information,” as defined by GINA, includes an individual’s family medical history, the results of an individual’s or family member’s genetic tests, the fact that an individual or an individual’s family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual’s family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.”

Prior to requiring a medical examination, the city must obtain the written consent of the applicant. In addition, the medical information obtained by the city should be maintained in a separate medical file and treated as a confidential medical record.

d. Psychological examination

This screening must only be done after the city makes a written and signed conditional job offer.

A licensed psychologist is needed to conduct an evaluation, including an oral interview, of the candidate to determine the person is free from any emotional or mental condition that might adversely affect the performance of peace officer duties.

Because this evaluation is deemed medical in nature for police officers, the rules that apply to medical examinations must be followed (i.e., job relatedness, only completed post-offer, and separate file for medical/psychological information obtained).

RELEVANT LINKS:

LMC information memo,
Physical Ability Tests for City Employees.

Minn. R. 6700.0700 subp. J.

LMC information, *Police Officer Physical Abilities Test.*

Minn. R. 6700.0700 subp. K.

Minn. R. 6700.0700.

e. Physical ability testing

Police officer positions are more likely than others in the city to be subject to physical ability testing. Cities should be aware of discrimination and liability issues when conducting these tests. A best practice in strength and physical agility testing requires the test be validated in accordance with EEOC guidelines.

The city should consider having the applicant complete a physical strength and agility test to demonstrate the applicant's possession of physical skills necessary to accomplish the duties and functions of a peace officer. Many certified law enforcement educational programs include this skills testing, and the city has the option to use this testing to fulfill the POST requirement. However, a city may also design additional, more rigid standards for strength and physical agility, but should make sure this testing does not have an adverse impact on a protected group or, if required pre-offer, it should not include any medical component. An exam likely will be considered medical in nature if it is invasive, measures physiological responses to performing various tasks, is given in a medical setting, or requires the use of medical equipment.

f. Oral examination

The city should consider having the applicant complete an oral examination conducted by or for the hiring agency. This is usually accomplished by an oral interview or series of interviews. POST rules simply require that this process be designed to evaluate the applicant's "possession of communication skills necessary to the accomplishment of the duties and functions of a peace officer." It is important to follow legitimate procedures for employment interviews, including asking only questions that are job-related. Questions should be about an applicant's ability to perform specific job functions and may inquire into an applicant's non-medical qualifications and skills. Do not ask medically related questions or questions that could elicit information about candidate's protected class status. Questions should be consistent from candidate to candidate; however, follow-up questions to elicit additional information from a candidate or to clarify his or her responses are appropriate and recommended.

g. Other selection standards

The POST selection standards are "minimum standards."

A city can establish higher and/or additional standards for law enforcement hires if those standards are not contrary to applicable law. Most cities also include credit and reference checks.

RELEVANT LINKS:

See Section II-B-2-b,
Background investigations.

[Minn. Stat. § 626.87, subd. 5.](#)

[Minn. R. 6700.0701.](#)

[Minn. R. 6700.0700, subp. 2.](#)

[Minn. Stat. 626.8478](#)

[Minn. R. 6700.0700, subp. 2.](#)

LMC information memo,
*Data Practices: Analyze,
Classify and Respond.*
Section VIII-A, Human
Resources.

Internet and press searches and confirmation of education (degrees and licenses) should be included in a thorough background check. Any information obtained as a result of the background investigation, however, should be treated as personnel data on the applicant, with much of the information designated as “private.”

Any private data obtained during the background investigation should not be shared with the individuals making the decision to hire or not hire a particular candidate unless there is some link between the data and the person’s eligibility for the position. When this is the case, the background investigator should consult with an attorney about what and how to share that information.

The use of social media as part of the background investigation should be carefully considered by the city. While social media may contain helpful information about the candidate, it is also likely to reveal any protected status of the applicant which must not be revealed to the hiring decision-makers. Additionally, courts have ruled against compelling applicants to provide their social media passwords, and the League also recommends against the practice of standing behind an applicant’s shoulder while asking him or her to log in to their social media sites.

3. Chief law enforcement officer responsibilities

POST places specific obligations on the chief law enforcement officer of a city with respect to creating and maintaining documentation on a city’s selection process. The CLEO is responsible for the following:

- Notifying the POST Board when a background investigation is being conducted.
- Reporting any felony or other disqualifying convictions discovered on applicants.
- Providing in-service wellness training to every officer that complies with the POST Board learning objectives and maintain records showing compliance.
- Maintaining documentation necessary to show an applicant’s completion of the POST criteria for license eligibility.

The documentation is subject to periodic review by the POST Board and must be made available to the Board “upon request.” The POST requirements are not discretionary with the hiring authority but are mandated by state law.

The city can maintain this documentation within the police department or the city’s administration department. Either way, all of the private data resulting from the selection process must be locked and access to these files must be limited to those with a business reason for the access.

RELEVANT LINKS:

[Minn. Stat. § 626.89.](#)

The city can designate the CLEO as the “Responsible Authority” under the Minnesota Government Data Practices Act for these records, or the city can maintain a “Responsible Authority” within the city’s central administration.

C. Discipline and termination

Unlike hiring and firing authority, the authority to discipline a police department employee can probably be delegated to city staff. However, it is a good idea to take official action to delegate that authority by council resolution, commission action, or in a policy manual adopted and approved by the entity with official hiring and firing authority. The two primary categories in which disciplinary actions arise for police employees are employee misconduct and poor employee performance. The procedures for dealing with both may vary.

1. Peace Officer Discipline Procedures Act

The Peace Officer Discipline Procedures Act (PODPA) requires cities follow certain procedures when, during the course of investigating allegations against a licensed peace officer, it is necessary to take a formal statement of that officer. A formal statement is defined as the questioning of an officer in the course of obtaining a recorded, stenographic, or signed statement to be used as evidence in a disciplinary proceeding. The Peace Officer Discipline Procedures Act does not apply to investigations of criminal charges against the officer.

The POPDA mandates the manner and circumstances by which a city can obtain a formal statement from a police officer. The manner and circumstances of the formal statement mandated by PODPA include the following:

- The city must take the statement at a city facility or another agreed-upon location.
- A written complaint has been filed.
- A list of witnesses and witness statements be shared between the parties.
- The formal statement be taken in sessions of reasonable duration.
- There is an electronic recording of the statement and that a transcript be made available to the officer.
- The employee has the right to have an attorney present, a union representative, or both.
- The officer be advised that any admissions can be used as evidence of misconduct.
- The city to obtain a valid search warrant or subpoena in order to see the personal financial records of an officer.

RELEVANT LINKS:

[Minn. Stat. § 626.8457, subd. 2.](#)
[Minn. R. 6700.2200.](#)

Minnesota Peace Officers
Standards and Training Board
[Allegations of Misconduct
Model Policy](#), Jan. 2011.

[Minn. Stat. § 626.8475.](#)

[Minn. Stat. § 419.07.](#)

- The city to obtain written permission of the officer before releasing photographs of the officer.
- The city to give the officer a copy of any disciplinary letter/reprimand before placing it in the officer's file.
- The officer cannot be disciplined for invoking the rights of this statute.
- The rights established by this statute do not diminish any other rights under a collective bargaining agreement or other applicable law.
- Violation of this statute subjects the city to liability for actual damages plus costs and reasonable attorney fees.

Cities that are involved with an investigation that may be subject to the procedures included under the PODPA should work closely with an attorney to ensure that all applicable procedures and steps have been followed.

2. Internal misconduct and complaint policies

The POST Board requires every chief law enforcement officer (CLEO) to establish written procedures for investigation and resolution of allegations of misconduct against licensed police officers employed by their city. At a minimum these procedures must include the following:

- The misconduct which may result in disciplinary action.
- The process by which complaints will be investigated.
- The sanctions which may be imposed if a complaint is sustained.
- The appeal process for the officer.
- The process which will be used to notify the complainant of the investigation and disposition.
- The effective date of the procedures or subsequent modifications of the procedures.

In addition, the CLEO is required to report annually to the POST Board cases involving alleged misconduct of officers under his or her supervision. A report with summary data including the number of investigations conducted and disposition of complaints must be filed with POST.

The 2020 Police Accountability Act requires peace officers to intercede when another officer is using excessive force and report incidents of excessive force to supervisors. Failure of a peace officer to intercede or report excessive force subjects the officer to POST Board discipline. Internal complaint policies should establish procedures for compliance.

3. Police civil service commissions

The police civil service statute provides that “any officer may suspend a subordinate for a reasonable period not exceeding 60 days for the purpose of discipline or pending investigation of charges when the officer deems such suspension advisable.”

RELEVANT LINKS:

[Minn. Stat. § 419.12.](#)

[In re Enterprise Wire Co. and Enterprise Independent Union](#), 46 LA 359 (1966) (Daughtery, Arb.).

[Minn. Stat. § 197.46.](#)

LMC information memo, [Veterans Preference in Hiring](#).

Cities with a police civil service commission must provide a public hearing before a police employee can be removed or discharged from employment. In particular, any police officer who has been employed for at least 12 months can be removed or discharged only for cause upon written charges and “after an opportunity to be heard in defense of the charges.” The discharge proceedings should comply with both state law and due-process requirements. A city must be careful to follow all procedural requirements, and the decision of the commission can be appealed to the court of appeals.

4. Unions

A “just cause” standard must be met before a union employee can be fired. The standard is difficult but not impossible to meet with documentation and attention to detail. In general, to meet the just cause standard, the city should consider the following factors: (Note: While this list is not exhaustive, the more factors a city is able to show as being met, the more likely that just cause will be found to exist).

- The rule, regulation, or standard allegedly violated was made known to the employee or was one that the employee should have known, and the employee was given advance notice that violation of the rule, regulation, or standard would result in disciplinary action.
- The rule, regulation, or standard that was allegedly violated by the employee was reasonable and job-related.
- The evidence indicates the employee did in fact violate the rule, regulation, or standard.
- The employer conducted a fair and objective investigation, including providing the employee with due process (notice of allegations and opportunity to respond).
- Discipline for violation of the rule, regulation, or standard has been enforced equally without discrimination to all employees.
- The degree of discipline imposed logically follows from the nature of the offense committed (e.g., the punishment fits the crime) and the record of the employee’s service with the city.

5. Veterans preference

An honorably discharged veteran of the military services employed by a city cannot be terminated except for incompetence or misconduct.

Effective July 1, 2016, a city may require employees, including veterans, to complete an initial probationary period as defined under Minn. Stat. § 43A.16 (defined to be no less than 30 days but not exceed two years of fulltime equivalent service).

RELEVANT LINKS:

LMC information memo,
*Veterans Preference in
Discipline, Discharge or Job
Elimination.*

[Minn. Stat. § 13.43.](#)
LMC information memo,
*Data Practices: Analyze,
Classify, Respond*, see
Section VIII-A Human
Resources.

[Minn. Stat. § 13.04, subd. 2.](#)

*See also Section II-C-7-b
Garrity warning.*

Kobluk v. Univ. of Minn., 613
N.W. 2d 425 (2000).

However, after serving an initial probationary period for a city, a veteran would not be subject to additional probationary periods such as for a promotion or new assignment. Thus, once the initial probationary period expires, a veteran may not be removed unless incompetency or misconduct is shown through a removal hearing.

The law has many specific provisions for notice, hearing, and suspensions with or without pay. Veterans who are subject to a grievance procedure under a collective bargaining agreement must choose whether to use it or the veterans’ preference procedures; they may not use both.

Cities are strongly encouraged to work closely with their attorneys in discipline and terminations situations, especially before denying any veteran his or her right to a grievance procedure.

6. Discipline and the Minnesota Government Data Practices Act

The Minnesota Government Data Practices Act (MGDPA) applies to personnel data created and maintained by a city. In the case of disciplinary documentation, a police officer— as with any city employee— has certain protections of privacy in information created and maintained due to the employment relationship.

The MGDPA governs when information on a personnel action becomes public and when it remains private. A city may be required to release data regarding discipline due to employee misconduct and performance issues if the conditions requiring the release of data are met.

The MGDPA requires a “Tennessen Warning” when an officer is asked by his or her employer to supply private or confidential data concerning the officer. This is a standard tool used by city employers in discipline investigations and proceedings. This notice requirement comes from the MGDPA and has a specific application and purpose.

A Tennessen Warning requires the officer be informed of the following:

- The purpose and intended use of the requested data.
- Whether the officer may refuse or is legally required to supply the data.
- Any known consequences from supplying or refusing to supply private or confidential data.
- The identity of other persons or entities authorized to receive the data.

Minnesota courts have held that a public employer is not required to give an employee a Tennessen Warning before obtaining information from the employee about incidents that occur within the course and scope of employment.

RELEVANT LINKS:

[U.S. Const. amend. XIV, § 1.](#)

[Cleveland Bd. of Educ. V. Loudermill, 470 U.S. 532 \(1985\).](#)

[Hammer v. City of Osage Beach, 318 F.3d 832 \(8th Cir. 2003\).](#)

Requesting information on facts of an incident under investigation is not the same as requesting private or confidential data on a police officer. A safe practice to protect the city, however, is to provide a Tennessee Warning when a formal statement is being taken, in the event private or confidential information is volunteered by the officer or if the questioning leads to discussion of private or confidential matters about the officer.

7. Constitutional issues

a. Due process

The 14th Amendment to the United States Constitution prohibits public employers, such as cities, from taking any action that deprives an individual of a protected property or liberty interest without first providing due process of law.

Certain disciplinary actions, such as terminations and demotions, require a city to provide “due process” before a decision becomes final.

Due process in the case of employment discipline consists of providing the employee notice of the allegations against him or her and an opportunity to respond prior to final action on the discipline.

Not every city employee is entitled to due process. Only those employees with a property interest in continued employment have this constitutional protection. Employees covered by a civil service commission or collective bargaining agreements generally have a property interest. At-will employees or those considered probationary do not have a property interest. Any employee who cannot be removed except for cause, however, would be entitled to due process. Oftentimes these “for cause” provisions are found in written personnel policies, labor contracts, and statutes such as the Veterans Preference Act.

In some limited situations, some employees will have entitlement to constitutional due process after a discipline decision has been reached. In these cases, an employee’s liberty interest in his or her good name is implicated by the public statements made about the employer in connection with a discipline decision.

An employee must show that untrue statements were made public and these statements were so stigmatizing as to seriously damage his or her standing in the community or foreclose the freedom to take advantage of other employment opportunities.

The requisite stigma usually comes from accusations such as dishonesty, immorality, criminality, racism, and the like. Unsatisfactory performance or general misconduct is insufficient.

RELEVANT LINKS:

[Winskowski v. City of Stephen](#), 1442 F.3d 1107 (8th Cir. 2006).

[Garrity v. New Jersey](#), 385 U.S. 493, 875 ct. 616 (1966).

Where an employee has been sufficiently stigmatized, the employee's due process rights are vindicated by a "name-clearing hearing at a meaningful time" during which the employee can respond to the employer's accusations. Failure to provide a name-clearing hearing upon an employee's request in this situation may be a constitutional violation by the employer.

b. Garrity Warning

The Garrity Warning comes from a United States Supreme Court case involving police officers who were under investigation for allegedly fixing traffic tickets. The officers were given a choice of either providing a statement to their employers (which may have subjected them to criminal prosecution) or forfeiting their jobs. The Supreme Court held that any employee statements made to the public employer under these circumstances were coerced, and the Constitution prohibited their use in a subsequent criminal proceeding.

The Garrity Warning was thus established: An employee statement obtained under threat of removal from office cannot be used in subsequent criminal proceedings. Therefore, before compelling a statement, a public employer should provide the employee notice and take steps ensuring the exclusion of the statement in subsequent criminal proceedings.

In practice, a city should carefully consider whether or not to compel a statement from an employee. Giving the employee a choice of making no statement and having potential discipline based on other evidence or making a voluntary statement which could be used against the employee in a subsequent criminal prosecution are options which would not trigger a Garrity Warning.

III. Managing city police department working conditions

Police departments have some unique characteristics that create special employment issues. Some of these characteristics include round-the-clock scheduling, the unpredictability of patrol work, high standards of conduct (both on- and off-duty) for sworn officers, and the special legal requirements associated with hiring and disciplining sworn officers. Below are highlights of some of the more common employment issues.

RELEVANT LINKS:

LMC information memo,
[FLSA for Police and Fire Employees.](#)

HR Reference Manual,
[Chapter 6, Labor Relations.](#)

LMC information memo,
[FLSA: Compensation for Lectures, Meetings, and Training Programs.](#)

LMC information memo,
[FLSA for Police and Fire Employees.](#)

[Minn. Stat. § 626.8434.](#)

A. Hours

The Federal Fair Labor Standards Act has special provisions for many aspects of police officer employment to account for some of these unique characteristics. It addresses extended workweek periods, higher limits for compensatory time in lieu of overtime pay, what pre-shift and post-shift activities can be included in the calculation of hours that they have worked, and more.

B. Unions

Police department employees in Minnesota are often represented by a union. A discussion of union organizing, contracts, topics of bargaining, negotiation of wages and benefits, and other union concerns are found in the League's Human Resources Reference Manual.

C. Canine officers

Canine training for police officers may be outside regular work hours and may even be voluntary, but most likely the city must pay an officer for attending this type of training as it is directly related to the employee's job.

With some exceptions, time spent caring for a police canine is generally considered "hours worked."

D. Warrior style training prohibited

Chief law enforcement officers are prohibited from providing warrior training to peace officers. "Warrior-style training" defined as:

- training for peace officers that dehumanizes people; or
- encourages aggressive conduct by peace officers during encounters with others in a manner that deemphasizes the value of human life or constitutional rights; and
- which increases a peace officer's likelihood or willingness to use deadly force."

E. Safety training safety and resources

League of Minnesota Cities Insurance Trust (LMCIT) data show that approximately significant percent of police officer workers' compensation injuries occur during training. The police training environment, unlike use of force incidents, foot pursuits, vehicle pursuits, and emergency driving in the field, is different from all other types of injuries in that the physical environment and human actions can be controlled. We also know this statistic does not truly indicate the full impact of training injuries.

RELEVANT LINKS:

LMC website: [Training Safety Officer \(TSO\) Program](#).

LMC website: [PATROL program](#).

[On the Line: Public Safety Risk Management Blog](#).

Injured employees experience pain, worry about re-injury, and have repetitive injury concerns. They may need medical appointments and, in some cases, may have to make lifestyle changes or work through depression and disconnect. Indirect costs for police management are shift coverage, schedule changes, light-duty assignments, and management time.

For these reasons, LMCIT recommends that member police departments implement a safety officer assignment when the department is engaged in active police training, such as use of force, active scenario-based training, and firearms training or qualifications.

The goal of using a training safety officer is to reduce injuries by increasing the amount of risk analysis and control, participant oversight, and safety awareness during the training.

Safety officer positions have been used sporadically by police trainers, but a major fault has been the lack of guidance and authority given to the officer. Officers were unsure of their roles and, at times, reluctant to act or intervene. To assist cities, the League developed a Training Safety Officer Program to provide a framework for police departments to build on as they plan their active training sessions.

The League has other police training resources of interest to cities. The PATROL (Peace Officer Accredited Training Online) program gives law enforcement agencies easy access to extensive web-based courses and allows law enforcement professionals to earn POST credits that meet continuing education requirements and both Occupational Safety and Health Administration (OSHA) and POST mandates.

The League's public safety project coordinator writes a blog focused on public safety workers, sharing insights and industry knowledge on a regular basis.

F. Physical fitness standards

Sometimes police departments that are experiencing substantial workers' compensation claims or missed time due to non-work-related injuries or illness pin their hopes on developing a physical fitness program for their sworn officers. These standards are only legal to the extent that they are a reliable and valid measure of an employee's ability to do his or her job duties. In developing physical fitness standards, cities must consider the following:

- Whether the standards can be defended as nondiscriminatory.
- Whether the testing could be considered a medical exam (both the Minnesota Human Rights Act and the Americans with Disabilities Act allow employers to obtain medical information or require a physical examination only under certain conditions).

RELEVANT LINKS:

[PTSD and Mental Health Toolkit.](#)

[EEOC Facts About Pregnancy Discrimination.](#)

LMC website: [Paid Family and Medical Leave Law.](#)

HR Reference Manual, [Chapter 5, Benefits.](#) See Section II-Q through T.

LMC information memo, [Family and Medical Leave Act.](#)

- Liability issues if the employee gets hurt during physical fitness testing or while engaging in physical fitness activities related to the testing.
- The expense associated with physical fitness testing.
- Which aspects of the testing must be negotiated with the union.
- The use of medical professionals and how to ensure the professionals have a complete understanding of the job and its physical requirements.
- The additional health insurance and pension benefits available to police officers and firefighters who are injured “in the line of duty.”

The mental health of police officers is just as important as physical fitness. Some cities are investing in the mental health of their officers by offering mental health check-ups and other resources. The League has developed a PTSD and Mental Health Toolkit to help guide cities through implementing a mentally healthy work culture.

G. Pregnancy and parental leave

The Pregnancy Discrimination Act requires that the city treat pregnancy the same as it would other temporary disabilities. When a police officer notifies the city that she is pregnant, the city should do the following:

- Talk to the employee periodically throughout the pregnancy to find out what her doctor has told her about her job duties. Do not ask for more information than is actually needed in order to make decisions about job duties.
- Rely on the doctor’s advice to make any restrictions on job duties.
- Seek clarification from the doctor (through the employee) whenever it is needed.
- Treat any leave associated with the pregnancy the same as any other temporary disability.
- Grant leaves as appropriate under the Family and Medical Leave Act (FMLA), the Minnesota statutes on parenting leave, city personnel policies, civil service rules, and union contracts.

Cities must also comply with additional protections for nursing mothers and requirements for making reasonable accommodations to an employee for health conditions related to pregnancy or childbirth that apply to all employees, including law enforcement officers.

Both the FMLA and the Minnesota Parental Leave Law do not distinguish between men and women with regard to parental leave. Increasingly, men take advantage of these laws and take time off at the birth or adoption of a child or take time off to attend school conferences or stay home with a sick child. While this may not be convenient for the employer, especially in a 24-7 scheduling situation like a police department, it is the law.

RELEVANT LINKS:

LMC information memo,
[Physical Ability Tests for City Employees.](#)

42 U.S.C. § 12112(d).
29 C.F.R. § 1630(13).
29 C.F.R. § 1630.14(c). U.S.
EEOC: Enforcement
Guidance: Disability Related
Inquiries and Medical
Examinations of Employees
under the ADA.

It's important for managers and supervisors to understand the rights and obligations of employees in this situation and not to discriminate against employees who exercise their rights under the law. At the same time, these rights are not unlimited and the employees exercising the rights have certain obligations as well. For example, the city usually can require medical documentation showing the need for sick leave in order to use paid time off, even if the time off is required by state or federal law. It's important that both men and women are treated similarly with respect to medical documentation.

H. Fitness for duty

From time to time an officer may have an illness or injury, or there may be some kind of incident, that calls into question whether the officer is able to safely and effectively perform his or her job functions. The issue may involve the employee's own safety, the safety of the public, or both.

A fitness-for-duty examination is used to determine whether the officer may safely and effectively perform the job functions. The examination, by its very nature, involves medical or psychological testing and evaluation or both. These examinations present difficult situations for the employer and the employee.

A good practice tip is to keep open the lines of communication with the employee and his/her union representative, if applicable. Make sure the officer is aware of why the city is asking for the exam, how the exam process will proceed, the steps the city will take to protect the confidentiality of the information obtained, and the reasons for any adverse employment action taken as a result.

When an employee is kept in the dark, particularly in a situation in which the employee feels vulnerable, suspicions increase and fuel desires to challenge a city's decision making.

1. Legal restrictions on medical exams

Federal and state law restricts when, and under what conditions, an employer can require an employee to provide medical information and/or submit to medical examinations.

a. Americans with Disabilities Act

The Americans with Disabilities Act (ADA) mandates that medical examinations of employees must be job-related and consistent with business necessity. A city must have a reasonable belief an employee's medical or psychological condition is currently hampering the ability to execute required job duties or that the employee is posing a direct threat.

RELEVANT LINKS:

[Minn. Stat. § 363A.20, subd. 8\(a\)\(2\).](#)

[Informed Consent for Release of Information, LMC Model Form.](#)

A direct threat is defined as a significant risk of substantial harm to the health or safety of the employee or others. Broad assumptions or evidence that is less than reliable (i.e., hearsay and speculation) will not be enough; the employer will be violating the ADA if it gathers medical information or requires fitness-for-duty examinations on this basis.

A good practice tip for cities is to gather all information on the employee in one place and review it as a whole. Objective evidence, such as firsthand accounts of on-the-job behaviors, the employee’s own statements, some of which may be against self-interest, and available medical documentation regarding the employee’s current medical/physical restrictions and condition, will weigh in favor of scheduling a fitness-for-duty examination.

Secondhand comments, unsupported assumptions about labeled medical impairments or diagnosis, and premature conclusions about what an employee can and cannot do should be recognized for what they are and not used to support a fitness-for-duty examination request. If, upon review, the city finds it does not have enough objective information, it should wait to act until when, and if, the evidence supporting such an examination rises to the level of a business necessity.

b. Minnesota Human Rights Act

The Minnesota Human Rights Act allows medical inquiries, including fitness-for-duty examinations, of current employees, but only “with the consent of the employee, after employment has commenced, to obtain additional medical information for the purposes of assessing continuing ability to perform the job.”

Not only must the employee agree to the fitness-for-duty examination, but the employee must give informed consent. This means the employee needs to sign a written authorization releasing the examiner’s findings to the employer after being told of the nature, purpose, and scope of the examination. So, even if the city has ample objective evidence to support the fitness-for-duty examination request, the employee can still refuse to be evaluated. The city should then act based on the safety situation created by lack of medical confirmation, but not because of the employee’s refusal to consent to the exam. The city should also work closely with its legal counsel in this situation.

The city should also evaluate whether the safety concerns established by the objective evidence support removing or modifying the employee’s job duties, pending results of a fitness-for-duty examination.

RELEVANT LINKS:

See Section II-B-2-c, *Hiring, medical examination.*

LMC information memo, *Family and Medical Leave Act.*

U.S. Dep't of Labor, Wage & Hour Div., *Fact Sheet #28G: Certification for a Serious Health Condition under the Family and Medical Leave Act.*

Minn. Stat. § 13.43, subd. 4.

42 U.S.C. § 12112(d).
29 C.F.R. § 1635.9.

LMC information memo, *Management of Personnel Files.*

29 C.F.R. § 1602.14.

c. Genetic Information Nondiscrimination Act (GINA)

Remember that federal law under GINA prohibits employers from requesting or requiring that employees provide genetic information. They may not ask for this information in hiring medical exams nor in the fitness-for-duty examination process.

2. Related legal requirements

a. Family and Medical Leave Act

It is very important to coordinate requests for medical information where a protected leave status is involved. For example, the FMLA may be invoked as a defense to a fitness-for-duty examination upon returning to work from a leave of absence protected by the FMLA.

The FMLA does not allow an employer to make its own determination regarding whether an employee is fit to return to work following recovery from a serious health condition. An employer can only require an employee provide a fitness-for-duty certification from the employee's own medical provider. There are some exceptions to this in limited circumstances where the employee returning from an FMLA leave also has a disability that may need to be accommodated. In this situation the employer may be able to obtain more medical information including a fitness-for-duty exam. However, because the laws and regulations are very complicated to apply, it is highly recommended that a city consult with legal counsel when considering a fitness-for-duty examination of an employee returning from FMLA or other leave.

b. Privacy and data protection

Privacy and data protection risks are created by the nature of the data generated from a fitness-for-duty examination.

The examination report and data related to it are classified as private personnel data on the evaluated employee under the Minnesota Government Data Practices Act. Only the employee and those within the city whose official job duties truly require having knowledge of fitness-for-duty examination results should have access to this information.

In addition, the ADA requires employers to treat any medical information obtained from a medical examination as confidential medical records. Thus, the fitness-for-duty examination report should be filed separate from official personnel records and steps should be taken to maintain its confidentiality. A city should also be sure to follow its record-retention schedule while noting that at a minimum, the ADA requires all employment records, including medical records, be kept for at least one year.

RELEVANT LINKS:

[Minn. Stat. § 363A.20, subd. 8 \(c\).](#)

Finally, the MHRA requires that if any medical information adversely affects an employee with respect to hiring, firing, or promotion, the employee must be told about that information within 10 days of the employment decision.

3. Determination examinations

Under the ADA, a medical examination means a test or procedure seeking information about an employee's mental or physical health or disability. When deciding if something is considered a medical examination subject to ADA and Minnesota Human Rights Act limitations, factors a city should consider include the following:

- Whether the test is given or deciphered by a health care professional.
- Whether medical equipment is used.
- Whether the procedures used are considered invasive.

Fitness-for-duty examinations almost always meet this definition. Indeed, if a city is trying to determine whether a police officer can competently perform public safety duties, it is extremely important to have specific medical tests and results given by a competent medical professional. Consequently, fitness-for-duty examinations should be conducted only by a qualified, licensed medical or mental health professional. The examiner should also possess training and experience in the evaluation of law enforcement personnel.

When referring a determination examination to a qualified examiner, the city should, at a minimum, provide a copy of the job description, an accounting of the objective evidence gathered giving rise to concerns about the employee's fitness for duty, and any particular questions the city needs addressed. The examination itself should be structured to test only job-related skills and capabilities.

The central question the city needs answered is whether the employee is presently fit or unfit for unrestricted duty. If the employee is found unfit, the examiner should be asked to provide an opinion on the employee's job-relevant limitations and an estimate of the likelihood of, and time frame for, a return to unrestricted duty.

Because the sole purpose of a fitness-for-duty examination is to determine fitness for duty, questions of job accommodations are usually not addressed. In practice, where the examination does not result in a return to unrestricted duty but does identify an employee's specific limitations or restrictions, the city should review the findings for purposes of potential accommodations that would return the employee to work and allow the officer to perform the essential functions of the position.

RELEVANT LINKS:

Hill v. City of Winona, 454 N.W.2d 659 (Minn. Ct. App. 1990).

While oftentimes reasonable accommodations are simply not possible due to the nature of law enforcement duties, documenting this process and decision making will help protect the city from failure to accommodate claims.

4. Defending the decision

Some unions and labor attorneys will fight fitness-for-duty examinations, especially mental health exams of police officers, regardless of the strength of evidence presented by the employer. The concern is medical and psychological opinions related to an officer's capabilities can follow and potentially derail a law enforcement career. Employees subject to collective bargaining agreements have access to the full grievance process, including the right to binding arbitration, to determine whether the employer had a reasonable basis to require the examination.

Minnesota courts have also applied the grievance process to challenge the selection of the fitness-for-duty examiner. Even in the non-union environment, an employee has the ability to question when and how the examination is or will be conducted by invoking his or her rights under the ADA or Minnesota Human Rights Act.

Because of the potential for challenge, it is very important for cities to develop a solid record of evidence supporting the decision to request a fitness-for-duty examination and the examiner selected. The stronger the objective evidence showing business necessity, including the safety risks created by an employee's continued functioning in a position, the better chance of winning a challenge to an examination.

For example, if the city is wondering about the physical ability of a police officer to chase suspects or use force to arrest an individual, it's important to provide the behavioral clues that led to this questioning. Did the officer exhibit heavy breathing after climbing only a few stairs? Has he or she been observed having difficulty getting out of a squad car?

In order to eliminate grievances on the selection of the evaluator, some cities have provided the employee and the employee's representatives with a list of three examiners from which to select for purposes of conducting the examination.

IV. Managing off-duty restrictions

A. Conduct

1. In general

Peace officers must conduct themselves, whether on or off duty, in accordance with the Constitution of the United States, the Minnesota

RELEVANT LINKS:

[Minn. R. 6700.2200.](#)

[Minn. Stat. § 626.8457, subd. 2.](#)

POST Board model,
Allegations of Misconduct
(#3).

Constitution, and all applicable laws, ordinances, and rules enacted or established pursuant to legal authority. The POST Board requires each agency to have a written policy defining unprofessional conduct and governing the investigation and disposition of cases of misconduct. These policies must be identical or substantially similar to the model policy developed by POST.

2. Policies on conduct

Sometimes both the police department and the city have policies governing conduct and other employment issues. Ideally, the city should consider the following:

- Adopt a policy based on POST model.
- Address as many employment matters as possible through the city's general policies but include additional comments about how the policy might apply differently in the police department.
- Address issues that are entirely unique to the police department (e.g., police pursuit policies, use of force, etc.) in the police department's policies.
- Clarify which policies apply to whom and when.
- Clarify how any union contracts interact with both city and department policies.

3. Off-duty conduct

Cities can develop policies regulating certain types of off-duty conduct. In the law enforcement setting, policies against conduct unbecoming an officer and restricting off-duty employment are common. Police officers, because they are sworn to uphold and enforce the law, can generally be held to a higher standard of conduct in their personal lives.

Any regulation, however, is subject to constitutional and statutory restraints.

To do this a city must first identify the fundamental requirements of a position and evaluate the effect of the off-duty conduct, keeping in mind whether the conduct itself is protected and what standard of evidence is needed to sustain the discipline. Arbitration and court decisions may apply in this situation, and the city should consult with an attorney before proceeding with discipline for off-duty conduct of a police officer. The city should begin by evaluating the conduct in the following way.

a. Job requirements

The city should identify the fundamental requirements of a position, particularly those involving the character of the officer and the individual employee's qualifications to perform the duties of a public servant.

RELEVANT LINKS:

[Minn. R. 6700.1600](#),
“Violation of Standards of
Conduct”.

[U.S. Const. amend. I.](#)

[Minn. Stat. § 363A.08.](#)

The requirements of the job often go beyond ministerial skills and abilities. Look to the following:

- Written job descriptions
- Department policies
- Professional requirements such as licensing standards

b. Effect of the off-duty conduct

Next, evaluate the effect of the conduct on the employee’s ability to perform his or her job, and the impact the conduct has on the employer’s operations. For example, consider whether the conduct does any of the following:

- Qualifies as illegal.
- Creates a danger to the employee, co-workers, or the public at large.
- Reduces the employee’s credibility or reputation in the community to the extent that job performance is negatively impacted.
- Harms the employer’s operations, such as the safe and efficient provision of public services.

c. Protected conduct

Consider whether the conduct itself is protected. Public employees have constitutional and common law rights to free speech, free association, and privacy. Employees also have the statutory right not to be discriminated against because of their marital or familial status. Before disciplining an employee for conduct that touches on any of these rights, make a specific determination that the city’s interests in promoting efficiency or other operational concerns are greater than the employee’s interests in expressing him- or herself or in his or her personal relationships and associations. Factors to review before making this determination include:

- Does the employee’s speech or conduct involve a matter of public concern (i.e., does it touch on political, social, or community issues)?
- Is there a real and significant harm to the city’s operation because of this speech or conduct, and what is it?
- How and when did the conduct occur (i.e., the time, manner, and place of the speech or conduct)?
- What degree of public interest is involved?

d. Standard of evidence

Be aware of the standard of evidence needed to sustain the discipline. The level of support needed to discipline an at-will employee, or even a non-union employee with a property right to employment, is substantially less than that needed to discipline a union employee who is entitled to binding

RELEVANT LINKS:

“The Common Law of the Workplace: The Views of Arbitrators”, Second Edition, National Academy of Arbitrators, Theodore J. St. Antoine, Ed. (2005), pp. 180-181

[Minn. Stat. 629.34, subd. 1.](#)

[Fahrendorff v. North Homes, Inc.](#), 597 N.W.2d 905 (Minn. 1999).

arbitration. Arbitrators often look at discipline based on off-duty conduct with skepticism. As a general rule, arbitrators consider the following factors when deciding cases involving off-duty conduct:

- The relationship of the conduct to the employee’s ability to do the job.
- Whether the conduct involves harm or threat to supervisors, co-workers, customers, or others with an actual or potential business relationship with the employer.
- Whether the conduct makes it difficult or impossible for supervisors, co-workers, customers, or others to deal with the employee.
- Whether the conduct involves public attacks by the employee on the employer, supervisors, co-workers, or the employer’s products or services.

4. City liability for off-duty conduct

Cities may be liable for seemingly “private” conduct of employees if there is a finding that the conduct arose as a result of the employment relationship. This is particularly a risk when the employee is a licensed peace officer, because the license itself provides the officer full authority, 24 hours a day, within his or her employing jurisdiction.

a. Scope of employment

Whether an employer will be liable for acts of employees depends on whether the acts occurred within the scope of employment. Conduct occurring when the employee was thought to be off duty may still meet the “scope of employment” test. An employer may be liable for an employee’s conduct if the following factors are present:

- The conduct was foreseeable.
- The conduct was related to, and connected with, duties of the employee.
- The acts were committed during work-related limits of time and place.

b. Work environment

Today, the work environment is being defined more broadly than ever before. In the sexual harassment context, the work environment has been extended to include business dinners, business trips, company parties, and company-sponsored Internet sites. As a result, cities are advised to instruct employees that they are expected to conduct themselves in a manner consistent with the employer’s policies whenever they are interacting with others, even in social settings.

RELEVANT LINKS:

[Minn. Stat. § 466.07.](#)

[Minn. Stat. § 626.8457.](#)

POST Board model,
Professional Conduct of
Peace Officers Policy.

[Minn. Stat. § 626.8457, subd.
2.](#)

[Minn. Stat. § 181.938 subd.
2.](#)

c. Duty to defend and indemnify

Be aware the city is obligated by law to defend and, in some cases, indemnify employees who are sued for actions taken “in performance of official duties.” Understanding where official duties end and private actions begin is often very difficult. The final answer will be dependent on the particular circumstances of a given incident and the public position involved.

5. Conduct unbecoming policies

Policies on conduct unbecoming an officer should include the following:

- The specific types of prohibited off-duty conduct.
- Statement of purpose or principle relating the prohibited off-duty conduct to a significant public interest (i.e., community respect and confidence in law enforcement activities).
- Scope of policy (policy applies to all employees engaged in official duties, whether within or outside of the territorial jurisdiction of agency, and, unless otherwise noted, policy also applies to off duty as well).
- For cities with a police department, there is a legal requirement to establish and implement a written policy defining unprofessional conduct and governing the investigation and disposition of cases against licensed police officers. This policy must be identical or substantially similar to the model policy developed by the POST Board.

6. Other conduct

Policies regulating other types of conduct may be legal but should be viewed with caution. Although private employers are specifically prohibited by statute from taking employment action based on an employee’s use of “food, alcoholic or nonalcoholic beverages, [or] tobacco” off duty, this restriction does not apply to governmental employers.

However, public employers may open themselves up to constitutional and privacy challenges if similar prohibitions cannot be shown to serve a significant public interest. Also, arbitrators often borrow standards from the private sector when considering the reasonableness of restrictions by public employers.

B. Off-duty employment (moonlighting)

“Moonlighting” refers to working at an additional job after one’s regular, full-time employment. This term is commonly used to describe off-duty employment for any employee, including police officers.

RELEVANT LINKS:

See LMC information memo, *Park and Recreation Loss Control Guide*, Section VIII, for special loss control recommendations for events.

LMC information memo, *Providing Assistance in Emergencies*, Section V – Responding to emergencies while off-duty.

Moonlighting creates some unique challenges for police departments. Police departments have a legitimate interest in preserving the integrity, reputation, and good name of their department. When people see a police officer, they assume the officer is on duty and that the officer will act in conformance with established policies and procedures. Unregulated, off-duty employment can harm the department's reputation and affect the general public's perception of law enforcement.

There are often competing interests for and against off-duty employment. Sometimes, overall public safety can be enhanced by having off-duty police officers work at certain events. The cost of providing extra police service for these special events can be passed on to those sponsoring the event, rather than being borne by the general public. There is also some benefit to the city in the coordination of law enforcement efforts and assurance of high-quality work by moonlighting officers.

Finally, the availability of off-duty or extra-duty employment may affect the department's ability to hire and retain experienced police officers.

1. Off-duty employment procedures

Allowing police officers to moonlight is not without some risk, particularly if actions or inactions of the moonlighting officer result in injury to either the officer him- or herself or to others. Questions abound regarding whether the city employer or the outside moonlighting employer is liable for these injuries. Developing and following employment procedures covering off-duty work is essential to address these risks.

Off-duty employment policies are often used to reduce the possible liabilities associated with employee's working in private jobs where they may be required to perform official duties; this is most common in the police setting. In addition, when city employees perform work with a private employer similar to their public job, special conflicts of interest can arise. A private employer's policies on how to handle certain situations may vary from the city's policies and procedures. Workers' compensation issues may also arise when an injury occurs.

Cities may consider completely restricting outside employment of its employees for these reasons. Those that allow it should have specific written procedures that include the following areas.

a. Define permissible work

Most cities that allow moonlighting have specific restrictions on the type of moonlighting work a police officer can perform. Some restrictions are related to public safety, some are designed to prevent conflicts of interest and enhance the quality of extra-duty services provided, and some are aimed

RELEVANT LINKS:

Dep't of Labor, Wage & Hour Div., [Admin. Ltr. Rul. \(Dec. 31, 2007\)](#).
29 U.S.C. § 207(p)(1).

See [LMC Contract Review Service](#).

LMC information memo, [FLSA for Police and Fire Employees](#).

at preserving the image and integrity of the department and its officers. Moonlighting work that blurs the line between an officer working as a police officer or working to serve a more private interest may be detrimental to the department's image and effectiveness. It can also result in placing police officers in off-duty situations in which the city may be sued and found liable, such as when the off-duty officer acts "under color of law" (i.e., with apparent authority of the law, but actually in conflict with the law).

b. Set hiring procedures

After it has defined the type of work an off-duty police officer may or may not perform, the department needs to establish its off-duty hiring procedures. The following questions should be addressed:

- Who makes the arrangements?
- What forms or applications are used?
- Is the police officer working extra duty as a city employee or off duty as an independent contractor?
- Are there any overtime pay obligations for either the city or contract employer?

Many departments restrict off-duty use of the department's uniform, weapons, and equipment. This can create a potential conflict since those who want to, or are required by permit or ordinance, to hire a police officer for their event will likely want the officer's uniform and the equipment.

2. Extra-duty employment

When extra-duty assignments are made through the city employer, the police department can exercise greater control, but also may incur some additional risks. A police officer working an extra-duty assignment is a city employee. If something goes wrong and the police officer or others are injured, the city likely will have responsibility for the following:

- Workers' compensation claims, if any.
- Liability insurance loss claims, if any.
- Compensation for overtime or compensatory time under the Federal Fair Labor Standards Act, as required.

The department can refuse to provide extra-duty services as long as its refusal is nondiscriminatory. In addition, the department can more closely control the type of events or venues at which its police officers are providing police-related services and ensure proper supervision and training.

RELEVANT LINKS:

[City of San Diego v. Roe](#), 543 U.S. 77, 125 S. Ct. 521 (2004).

[Minn. Stat. § 466.07](#).

3. Non-police-related off-duty employment

Some non-police-related off-duty work may be restricted as “detrimental to the missions and functions” of the police department. Such employment may include being a bouncer at a strip club, a bartender, or a taxi or limousine driver. It will probably be up to the department to define why the outside employment is detrimental to its mission and functions, or a conflict of interest, and be prepared to defend that decision if challenged.

In one case, an off-duty police officer produced and sold online a videotape of himself stripping off a generic police uniform and engaging in legal, sexually explicit acts. The officer claimed the department was infringing on his First Amendment rights when they ordered him to “cease displaying, manufacturing, distributing, or selling any sexually explicit materials.”

In upholding the department’s dismissal of the police officer after his refusal to stop selling videotapes of himself online, the U.S. Supreme Court noted that although the officer’s activities took place outside the workplace, the police department “demonstrated legitimate and substantial interests of its own that were compromised by his speech” and that were “injurious to his employer.”

4. Legal risks

Just because arrangements for hiring a police officer are made directly with the police officer does not mean the city does not have liability exposure for that police officer’s moonlighting activities. If an off-duty officer working private security is sued by a third party for injuries, including for alleged violations of civil rights, is the officer liable in his or her capacity as a private security guard or as a licensed police officer? Under civil rights laws, in order to be liable in his or her official capacity, the officer must be acting under “color of law.” The fact that the officer is on or off duty, or in or out of uniform, is not controlling. Rather, the nature of the act that caused the injury will determine liability. Generally, the following factors will be used in determining whether the officer acted under color of law:

- Did the officer display a police badge?
- Did the officer identify him- or herself as a police officer?
- Did the officer use a department-issued weapon or other police-related equipment?
- Did the officer detain or arrest the individual?

If the off-duty officer him- or herself is injured, or makes a claim for unpaid wages, additional liability questions are raised. Factors that will be considered in determining whether the moonlighting police officer is or is not a city employee for workers’ compensation and FLSA purposes include these:

RELEVANT LINKS:

LMC information, [Public Purposes Expenditures](#).

[Reetz v. City of St. Paul](#), 956 N.W.2d 238 (Minn. 2021).

[Minn. Stat. § 415.16](#), [Minn Stat § 626.84 subd. 1\(c\)](#).

- Who is paying the officer?
- Who is supervising the officer’s off-duty work activities?
- Who made arrangements for those work activities?
- Whose uniform or equipment is being used at the time of the off-duty employment?

Police officers are more likely to be independent contractors rather than city employees when they do the following:

- Make arrangements with others.
- Work outside their jurisdiction.
- Do not wear the police uniform or otherwise identify themselves as police officers for a particular department.

Injuries sustained by an off-duty police officer while moonlighting may affect the police officer’s ability to perform on-duty job requirements. There are some common requirements and restrictions for departments that allow outside independent contractor employment. Among those are the following:

- Disclosure via written application to the police chief.
- Renewal or review of the application on a yearly or frequent basis.
- Prohibitions or restrictions on the use of the uniform.
- Identification of oneself as an officer with the department while working off duty.
- Restrictions on police-type or police-related work.

5. Best practices

Police departments can, and probably should, place restrictions on outside employment that involves the use of police department uniforms and/or equipment. Police departments can also require those hiring police officers for off-duty or extra-duty employment to meet departmental requirements that include reasonable business-related restrictions on the events and venues at which the police officer may work and restrictions on the number of off-duty hours a police officer may work within any pay period.

Police departments can place restrictions on outside employment when such employment would be “detrimental to the mission and functions of the employer,” including restrictions on the use of department-issued IDs and handguns, even though the Law Enforcement Safety Act of 2004 allows retired or active police officers carrying valid department issued IDs to carry concealed weapons in other jurisdictions.

C. Residency

State law generally prohibits making residency in the city a condition of employment.

RELEVANT LINKS:

[Minn. Stat. § 363A.08.](#)

Handbook, [Liability](#).

However, a city may offer incentives to encourage a person hired as a peace officer to be a resident of the city. In addition, there are exceptions where the duties of the job require the employee to live on the premises of their employment. Outside the seven-county metropolitan area a city may impose a reasonable or area response time residency requirement if there is a demonstrated, job-related necessity.

D. Anti-nepotism policies

Some cities also have anti-nepotism policies that touch on an employee's right to free association. Anti-nepotism policies should be carefully drafted so as not to violate the prohibition against marital status discrimination. Policies that completely prohibit employment of spouses by the same agency likely violate the Minnesota Human Rights Act.

However, a policy that prohibits an employee from being directly supervised by a spouse or immediate family member should withstand challenge if the employer can show the marriage relationship, especially one involving a supervisor and subordinate, interferes with job performance. Areas where interference could occur may include these:

- Job-performance appraisals, job assignments, training opportunities, and discipline.
- Administration of employee benefits, such as leave requests.
- Judgment affected by an intimate relationship.
- Hiring of candidates.
- Morale of others.

V. Police departments and liability issues

Cities are often parties to court actions because of their wide range of activities and the litigious nature of our society. Lawsuits against cities and city officials are common. Successful lawsuits, however, are rare. A city's liability will decrease if city councils adopt and follow proper procedures, act within the scope of their authority, and promote training and risk-management programs for themselves and for their employees and agents.

The League has an overview of city liability, immunities and exceptions, and special causes of action in the Handbook for Minnesota Cities.

A. Police policies and official immunity

“Official immunity” is a common law doctrine (i.e., developed from court decisions) that protects individual city officers or employees from personal liability for their discretionary actions taken in the course of their official duties as long as their conduct was not malicious.

RELEVANT LINKS:

Thompson v. City of Minneapolis, 707 N.W. 2nd 669 (Minn. 2006).
Mumm v. Mornson, 708 N.W. 2nd 475 (Minn. 2006).

The purpose of official immunity is to protect the public official or employee from the fear of personal liability that might deter independent action and impair effective performance of their duties.

Official immunity is an important tool in the governmental defense arsenal, especially in police cases. It is a defense to many claims brought under state law, including allegations of negligent driving, pursuit, trespassing, and state law excessive force claims. When applicable, it shields both officers and their employing agencies from liability, as well as the need to stand trial.

Generally, in situations where officers exercise discretion—that is, use their professional judgment to choose from alternative courses of action—there is no liability unless the evidence indicates the officer is guilty of a willful or malicious wrong. Conversely, when there is no discretion, there is no immunity.

When officers are faced with a duty that is fixed, certain, and imperative, there is no discretionary decision for the doctrine to protect and the defense does not apply.

In two important court cases, plaintiffs relied on “shall” and “shall not” language from the city’s pursuit policy to claim that the officers had no discretion. The arguments were successful. These cases are important because they crystallize the alternatives for police managers.

The more that policies leave decisions to the discretion of individual officers, the more readily that claims can be defended based on official immunity. But, while leaving everything to individual discretion may help insulate you from civil liability, it may fall far short of meeting your community’s expectations for police conduct and behavior. Police managers might very well decide that it is far more important to their community to have a restrictive pursuit policy (and restrictive policies in other areas as well) than it is to steer widely around liability concerns.

The proper response to these cases is not to decide that your agency is better off without policies or to have policies that simply encourage officers to do what they think is right. Rather, the task at hand is to thoughtfully re-examine policies and determine when decisions should be dictated, when decisions should be committed to officer discretion, and what guidance should be given on how to exercise that discretion.

No matter which way you’re inclined to strike that balance, here are some concerns to keep in mind going forward:

- Imperative language in a policy like “shall” and “shall not” strips officers of discretion.

RELEVANT LINKS:

[18 U.S.C. §§ 926B, 926C.](#)

[Printz v. United States](#), 521 U.S. 898 (1997). (Striking down requirements that local police help conduct federal firearms background checks).

- When writing a policy, it is difficult to anticipate every circumstance that might come up in real life. Comments and “what if” questions from officers reviewing draft policy language can help to make sure the policy doesn’t end up creating unintended consequences.
- As you craft policy language, make sure you’re leaving room for officers to make the kinds of responsible decisions you would like to see them make.

The ultimate goal is to field a team of officers who make good decisions in the community interest. Policy is just one of the tools at your disposal to guide those decisions. One school of thought adheres to the view that policy should be used to establish the outer boundaries on permissible police decisions, and training is the forum to discuss optimal outcomes. It is perfectly permissible to have a pursuit policy that lists factors for officers to consider and to then use training to discuss how officers should optimally exercise their discretion.

B. Law Enforcement Officers Safety Act of 2010

The Law Enforcement Officers Safety Act of 2010 preempts state and local regulations that would restrict a “qualified,” actively employed or retired peace officer’s right to carry handguns anywhere in the United States. Police department restrictions on the use of department-issued uniforms, badges, Tasers[®], police cars, handcuffs, and other equipment are not affected in any way by this act.

There are some prerequisites and conditions for the peace officer to retain the right to carry a handgun, and some procedures and restrictions the police department may put in place to decrease its liability exposure. While there are a number of requirements, they can be boiled down into these three basic requirements:

- The police officer must meet regular administered qualification standards (POST Board license).
- The police officer must not be subject to disciplinary action.
- The police officer must carry photographic identification issued by the city, identifying the officer as a police officer or retired police officer.

1. City obligations under the Law Enforcement Officers Safety Act

One frequently asked question is whether cities are legally obligated to help employees and retirees achieve “qualified” status. LMCIT believes the act imposes no such obligation. This conclusion is based on the statutory language and is supported by broader constitutional principles of federalism.

RELEVANT LINKS:

[*Printz v. United States*, 521 U.S. 898 \(1997\)](#). (Striking down requirements that local police help conduct federal firearms background checks).

The act essentially treats agency-issued photographic identification cards as proof that an individual is qualified to carry a handgun throughout the United States. Key points cities should understand are these:

- They are not required by federal law to issue photo credentials so officers can prove they are qualified.
- They are not required to provide training to retired officers.
- Federal law does not prevent cities from exercising control over the use of agency-issued credentials.

The language of the act does not command local law enforcement agencies to issue identification cards to officers. The act assumes these credentials will be routinely issued as a matter of course. But Congress cannot issue any kind of federal command, or insist through an unstated assumption, that local government agencies issue identification cards to their employees. Thus, there is no enforceable federal requirement that cities allow officers to keep agency-issued credentials in their possession. Identification cards belong to the issuing governmental body, not the individual officer.

Likewise, neither the language of the act nor any kind of assumed congressional intent requires local governments to provide training courses for retired law enforcement officers.

2. Helping officers achieve “qualified” status

Whether or not to aid active and retired officers to achieve “qualified” status to carry nationwide is a discretionary call for each city. Cities should consider the following issues in making their decision.

a. Liability concerns

The prospect of off-duty active and retired officers carrying handguns in other states gives rise to a number of potential liability scenarios.

(1) Personal injury and wrongful death

An officer may have individual liability for personal injury and wrongful death. An officer visiting another state is the legal equivalent of a gun-carrying citizen. Police immunities against civil and criminal liability for using deadly force will probably not be available.

Standards for civilian use of deadly force are generally more restrictive, will vary from state to state, and would be very difficult to incorporate into typical police training.

RELEVANT LINKS:

Printz v. United States, 521 U.S. 898 (1997). (Striking down requirements that local police help conduct federal firearms background checks.)

(2) Failure to train

The city may have liability for failure to train officers. A plaintiff in another state may assert that Minnesota agencies should have trained their police officers to the “armed citizen” standard for use of deadly force. A defense would be that the home agency has provided the training specified by federal law. There is no good way to predict how courts will rule on those issues.

(3) Failure to supervise

Likewise, the city may have liability for failure to supervise officers. An officer who is unfit to carry a firearm (due to a mental or physical disability) could use his or her credentials despite this to carry a handgun in another state. A plaintiff would likely assert that the agency should have revoked the credentials once it was on notice that the officer was unfit.

(4) More imposing laws

Unlike Minnesota, not all states have liability caps for public officials, and other states may not offer immunities to protect police in discretionary situations.

Even if there are, they may not apply to visiting officers from other states. In this situation both the officer and the city may be exposed to liability.

b. Financial concerns

Concern for the safety of off-duty and retired officers might be a good reason to help them obtain “qualified” status to carry handguns in other states. But the financial and legal risks of helping them do so are much greater than the risks of saying “no.”

(1) Lawsuit defense

Case law substantially undermines any legal claim that local agencies are obligated to provide credentials and training so officers can carry nationwide. Comparatively, the outcome of personal injury or wrongful death claims based on handgun use in other states is far less predictable. The outcome will depend on the facts of the case and the laws in force where the incident occurred. Issues may also arise concerning the officer’s fitness and training.

The cost of defending against a lawsuit by an aggrieved employee or retiree who wants to carry a gun will likely be several orders of magnitude less than the damages recoverable in a suit alleging personal injury or wrongful death.

RELEVANT LINKS:

LMC information memo,
[LMCIT Liability Coverage Guide](#). See Section III-N,
Police.

(2) Insurance coverage

If the message sent to officers is “stop the felony wherever it happens,” then an off-duty officer who does so in another state would be acting in the course and scope of employment.

Most cities carry a reasonable amount of coverage, but this coverage amount may not be adequate to protect against the risks of higher defense costs and uncapped damage awards in other states. Reasonable expenses, like travel and lodging for court appearances, are covered by liability insurance.

The city’s LMCIT liability coverage protects officers for liability claims that arise in the course and scope of their duties. The availability of coverage depends on whether the employee was doing something the employer asked for or tacitly approved and not necessarily on whether the employee had legal status as a police officer during the incident.

3. Policy recommendations

Nothing in the Law Enforcement Safety Act of 2004 requires police departments to issue photo IDs, nor does it require police departments to allow officers to carry department-issued firearms for off-duty employment or when traveling outside the jurisdiction.

While the police officer would not be violating the law by carrying a firearm, he or she would be subject to discipline for violating department policy. The Law Enforcement Safety Act of 2004 allows qualified officers to carry a concealed handgun nationwide. It does not create a right to carry city-owned weapons without restriction.

LMCIT recommends that members carefully consider the extent to which they become involved in enabling active and retired officers to carry handguns in foreign jurisdictions. Consider the following policy recommendations.

a. Currently employed officers

For currently employed officers, cities should do the following:

- Have a written policy defining the course and scope of duties for city police officers. All officers should receive documented training on the policy.
- Have a written policy about ID cards. It should clearly spell out that the cards belong to the issuing agency, not the individual employee, and must be immediately surrendered to the agency upon demand.
- Demand the immediate surrender of identification cards if circumstances arise that warrant disarming an officer.

RELEVANT LINKS:

[Minn. Stat. Ch. 13.](#)

[Minn. Stat. § 13.02 subd. 7.](#)
See Section II-B-3, Chief law enforcement officer responsibilities.

[DPO 99-032.](#)

See LMC information memo, *Data Practices: Analyze, Classify, Respond* for an in-depth discussion of this law, including police data in Section VIII-C, Law enforcement data.

b. Retired officers

Cities should think even more carefully about whether to help retired officers achieve qualified status. The risks, which are more difficult to manage, include the following:

- Retired officers are not subject to the same daily monitoring that goes on with current employees.
- Impairments or disabilities that would warrant disarming a retiree will develop largely outside of the agency's knowledge, and there will be no opportunity to respond.
- As with active officers, standard police training does not necessarily prepare them to make legally defensible "citizen" shooting decisions either in Minnesota or elsewhere.

A bottom-line consideration for policymakers is whether there is a sufficient public benefit from arming retired officers to offset these risks to your city.

If cities decide to take on these risks, there may be a minor risk management benefit in requiring retirees to obtain a state permit to carry before issuing credentials. The permitting process will help identify any legal restrictions against firearms possession. This step will not, however, address the broader spectrum of risks discussed above.

If identification cards are issued to retirees, the cards should disclaim that the retiree has any official status with the agency. Cities should consider language such as: "This card identifies the individual as a retired police officer of the City of _____. The bearer is not an officer or agent of the city. This identification card does not give the bearer any authority to act on the city's behalf or to exercise law enforcement authority."

C. Safeguarding law enforcement data

The Minnesota Government Data Practices Act is a series of state laws that attempt to balance the public's right to know what their government is doing, individuals' right to privacy in government data created and maintained about them, and the government's need to function responsibly and efficiently. The city safeguards police personnel data as discussed above and must also ensure proper protection and release of data created, collected, received, maintained, and disseminated by law enforcement regardless of its physical form, storage media, or conditions of use.

It can be difficult to determine proper classification of law enforcement data and it often needs to be decided on a case-by-case basis. Generally, the following data is public:

RELEVANT LINKS:

- Arrest data
- Request for service data
- Response or incident data
- Booking photographs
- Missing children bulletins

In contrast, this type of data is generally private:

- Child abuse data
- Vulnerable adult data
- Property data
- Reward program data

There are also data that have mixed public and not-public data, depending on various factors considered in conjunction with the provisions of the MGDPA:

- Criminal investigative data
- 911 calls
- Domestic abuse data
- Arrest warrant indices
- Registered criminal predatory offenders
- Pawnshops and scrap metal dealers
- Deliberative processes
- Body-camera data

LMC information memo, [Use of Body-Worn Cameras](#).

[Personnel Policy Template](#), LMC model policy.

LMC information memo, [Computer and Network Loss Control](#), including a link to a model computer use policy.

[Minn. R. 1205.0400 subp. 3](#).

D. Ethical use of computers and databases

Many types of computer and database misuse can be issues for all city employees and should be addressed in an overall city personnel policy. Examples include using computers at work for personal tasks, using employer-provided email service for personal emails, or using social networking sites. These policies vary by city. Officers should become familiar with their employer's specific policy. If personal use is completely prohibited, any use of a work computer that is not directly related to government business could be a violation of these policies and cause for discipline.

Law enforcement personnel, perhaps more than most city employees, deal with private and confidential information. Minnesota law allows those employees whose work assignments reasonably require access to this data to see it. However, such information should be accessed only to conduct official law enforcement business, and officers must not release or disclose the information unless it is necessary to conduct official law enforcement business. Failure to follow such guidelines can result in disciplinary action, termination, civil liability, or criminal liability.

RELEVANT LINKS:

[LMC information memo, Data Practices: Analyze, Classify and Respond.](#)

[Minn. Stat. § 609.891.](#)

[18 U.S.C. §§ 2721-2725.](#)

[18 U.S.C. § 2721\(a\)-\(b\).](#)

[18 U.S.C. § 2721\(b\)\(1\).](#)

[Minn. Stat. § 171.12, subd. 7\(a\).](#)

Other League resources contain a discussion of law enforcement data under privacy laws, but the following areas have been particularly problematic in terms of city liability.

1. Overreaching during investigation

It is a crime to gain access to a computer system without authorization. This includes email accounts, bank accounts, or any account that is on the Internet and password protected. For example, if an officer, during the course of an investigation, comes across or guesses a suspect’s email password and uses it to gain access to an account, that officer may have violated the law. Instead, officers should obtain a court order before accessing an account.

2. MDC/MDT (Mobile Computer Terminal/Mobile Data Terminal) messages

MDC/MDT messages (i.e., those on a closed, departmental computer system) can be the subject of a data practices request or subject to discovery in civil litigation. Officers should refrain from sending inappropriate MDC/MDT messages.

Like government-owned email used for personal tasks, officers often do not realize the permanency of MDC/MDT messages and that they have no expectation of privacy in the messages they send and receive.

3. Driver’s Privacy and Protection Act

The Driver’s Privacy and Protection Act (DPPA) is a set of federal statutes that applies to law enforcement and limits when an officer is permitted to access or disclose personal information contained in motor vehicle records.

The act establishes that it is “unlawful for any person” to knowingly “obtain or disclose personal information, from a motor vehicle record,” unless the information is obtained for one of the listed permissible purposes. The act includes 14 permissible reasons to obtain personal information—including that these databases can be accessed by police officers for the purpose of carrying out official government functions. Officers should use particular caution when obtaining or disclosing personal information for a third party. This is permitted under the act only if that third party intends to use the information for one of the permissible purposes.

4. Minnesota driver privacy laws

Minnesota officials with access to driver’s license and identification card data can only obtain, disclose, and use that data in ways that comply with the DPPA.

RELEVANT LINKS:

[Minn. Stat. § 609.43.](#)

Human Resources and
Benefits Department.
800.925.1122
651.281.1200
HRbenefits@lmc.org
Tracy Stille
Public Safety Project
Coordinator
800.925.1122
651.281.4051
tstille@lmc.org

The statute simply serves as a reminder that the DPPA governs how this data can be used and when it can be disclosed.

Improper use of law enforcement databases can also subject an officer to criminal charges under Minnesota law. A public officer can be imprisoned for up to a year, ordered to pay a fine of up to \$3,000, or both if the individual “does an act knowing it is in excess of lawful authority or knowing it is forbidden by law to be done in that capacity.” The statute is quite broad and covers all unlawful conduct—including unlawful use of law enforcement databases.

VI. Further assistance

Contact the League’s Human Resources and Benefits Department for help with your questions on police employment, benefits, and discipline. LMCIT’s Loss Control Public Safety Field Specialist is available to answer questions on public safety law, policy, and procedure.