



Membership Matters

Texas Municipal League Intergovernmental Risk Pool Quarterly Newsletter

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Legal and Coverage Considerations for Law Enforcement "Off Duty" Employment

The Risk Pool occasionally receives inquiries from city officials, asking if coverage extends to police officers that work "off duty" as security guards. Allowing police officers to moonlight as security guards has both benefits and risks for cities. The primary benefit to the city is the increased police presence throughout the community – at no expense to the city. The down side is that allowing officers to engage in security work increases the likelihood that they will be required to respond to a crime while off duty, potentially increasing the number of claims and lawsuits against the city. Expenses arising from defending the individual officers are subject to the city's deductible (if applicable) and included in the city's loss experience.

The Risk Pool has no official position regarding whether a Member should allow off duty employment or not; the purpose of this article is to explain what coverage is available through the Risk Pool for Members and their officers if they are involved in off duty incidents.

Law Enforcement Liability Coverage

In order to be covered under the terms of the Risk Pool's Law Enforcement Liability Coverage, the officer must qualify as a "Covered Party." Covered Party is defined below, and the applicable provision states as follows:

PART VI LAW ENFORCEMENT LIABILITY COVERAGE

II. COVERED PARTIES

Each of the following is a **Covered Party** under this Part of the Liability Coverage Document to the extent set forth below:

...

- D. Any employee of the **Member** or authorized volunteer, but only while carrying out their duties related to the **Member's law enforcement activities.**

from the 2009 TMLIRP [Liability Coverage Document](#), page 24

Although police officers often say they are on duty 24 hours a day, it is more accurate to say that their commission as peace officers imposes duties and grants authority to them to respond to certain criminal acts regardless of whether or not they are "on duty." Police officers have a duty to "preserve the peace" within their jurisdiction as authorized by law ([Texas Code of Criminal Procedure §2.13](#)). That duty is not limited to their assigned shift during which they are paid by the city. Within their jurisdiction, officers have the authority and obligation to make arrests without warrants for various offenses enumerated in [Texas Code of Criminal Procedure §14.03 \(a\) 1-6](#). An officer's authority to make arrests without warrants outside of his or her jurisdiction is limited to felonies, assault, disorderly conduct or public intoxication that takes place in his or her presence [Texas Code of Criminal Procedure §14.03 \(d\)](#).

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In short, although an officer may be off duty and working as a security guard, certain crimes committed in his or her presence trigger the officer's duty to act as a police officer in the furtherance of his or her official duties. In those circumstances, the officer acts as a police officer and must comply with the policies established by the police department, not the policies of the private employer.

Look at it this way: Clark Kent enters a phone booth and becomes Superman when Lois Lane is threatened. Police officers are transformed from security guards to police officers ("off duty" to "on duty") when crimes are committed in their presence.

Off duty police officers who respond to a felony or breach of peace in their presence would be acting as police officers and would qualify as a "Covered Party" if sued for false arrest or for use of excessive force because of their response to that crime. The same off duty police officer who, while working as a security guard, enforces a rule or regulation of the private employer (such as a dress code), would be acting for the benefit of the private employer rather than the city, and would not be considered a "Covered Party" for any resulting claims.

The above scenarios assume that the officer is within the city's jurisdiction. It is questionable whether an off duty officer responding to crime outside of the city limits would be considered a "Covered Party." Protecting persons and property outside the city limits is of no



benefit to the city through which officers are commissioned, and not part of that city's law enforcement activities.

If the city is sued because of an officer's off duty activity, it will be covered (subject to the coverage provided and the provisions therein), regardless of where the incident takes place.

Welcome New Members!

April 1, 2013, through June 30, 2013

Bee CAD

Cinco MUD #12

Collin County MUD #1

Denton County FWSD #6

Denton County FWSD #7

Hungerford MUD

Mobile City

**Near Northwest
Management District**

**Providence Village WCID
of Denton County District**

**Southwest Area Regional
Transit District**



Workers' Compensation Coverage

Under the terms of the Workers' Compensation Interlocal Agreement, the Risk Pool provides workers' compensation benefits as prescribed by the [Texas Labor Code 504.001](#). In order to be entitled to workers' compensation benefits, a police officer would have to be injured in the course and scope of his or her job duties on behalf of the Member. In determining course and scope of employment, the Risk Pool would use the same analysis as previously indicated for liability coverage. For example, if a police officer who is privately employed as a security guard at a high school football game is injured while responding to a brawl, he would be entitled to workers' compensation benefits through the Risk Pool. The breach of the peace triggered the officer's statutory obligation to preserve the peace. If the same officer simply slipped and fell on the stadium steps while patrolling the stadium, he or she would not receive workers' compensation benefits from the Risk Pool because the officer was off duty and was not responding to a crime.

If an off duty officer is injured while responding to a crime outside of their jurisdiction, as authorized by [Texas Code of Criminal Procedure 14.03 \(d\)](#), the officer would not be covered for workers' compensation benefits through the Risk Pool. The officer would not be considered a city employee because their actions are not for the benefit of the city for which they are regularly employed. Therefore, they would not be eligible for the city's workers' compensation benefits

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➡ “Off Duty” continued from page 2

through the Risk Pool. Instead, they would be considered employees of the State of Texas, and thus, they would receive workers’ compensation benefits from the state [Texas Labor Code §501.001 5 \(c\)](#). Incidentally, there is no equivalent state statute providing liability coverage for officers sued for their actions while responding to crime outside of their jurisdiction.

Conclusion

Ultimately, coverage is determined based on the facts of each specific incident, analyzed in light of the applicable

state law that defines the duties of a police officer. The Risk Pool routinely responds to members’ questions regarding coverage for off duty officers engaged in secondary employment. The standard response includes citations to the Texas cases upon which the Risk Pool bases its coverage determinations. If you have questions concerning the applicable state laws regarding off duty police officers’ working second jobs, please contact Ms. Myra Antell at 800-537-6655, extension 464.



Board of Trustees Update

At the July Board of Trustees meeting, the Board took action on several notable items, including:

- Adoption of the 2013-14 Budget;
- Merging of the Lifetime Benefits Fund into the Workers’ Compensation Fund; and
- Approval of a three-year contract with a Workers’ Compensation Payroll Auditing Firm.



In addition, the Board heard an update on the implementation of the Pool’s new claims system, received a report on the final property reinsurance placement, and received an update on a request for proposals for Property Reinsurance Intermediary Services.

2013-14 TMLIRP Budget Adoption

Three core objectives provide the foundation for the 2013-14 budget:

1. Retention of existing membership;
2. Growth in membership (not only by gaining new members, but also by adding or expanding coverage to meet the evolving needs of current members); and,
3. Identification of process improvements, leading to more efficient operations that become the basis for overall rate stability and service improvements for the membership.

The budget, as adopted, supports all of these objectives, with a major focus on enhancing the use of technology for both Pool Staff and Members. Carol Loughlin, Executive Director, stated, “This budget increases the Pool’s investment in technology, while working to keep other expenses in check. The investment in technology will take some time to implement and for the benefits to be seen, but that investment provides the infrastructure to support the budget’s core objectives.”

The budget is available online at <http://www.tmlirp.org/about/finance>.

Merging of the Lifetime Benefits Fund into the Workers’ Compensation Fund

The Lifetime Benefits Fund (LBF) was originally created to provide the option for the Pool to create an annuity for death claims outside of the Workers’ Compensation Fund. The Board voted to merge the operations of the LBF into the Workers’ Compensation Fund to reduce administrative complexity, and to provide members with a clearer picture of the overall costs associated with death claims.

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