

THE LAW AND THE LEOSA CARRY RIGHT

THE LAW ENFORCEMENT OFFICER SAFETY ACT SAYS THAT OFFICERS AND RETIRED OFFICERS CAN CARRY CONCEALED IN ALL AREAS OF THE UNITED STATES. BUT IT'S NOT THAT SIMPLE.

Eric Daigle

The information contained in this article does not include all of the requirements or precautions that officers need to take in order to carry a concealed firearm in another state or jurisdiction. I strongly advise that you seek legal advice or consult with a local law enforcement agency if you are planning to move to or visit another state and carry while in that area.

→ THE LAW ENFORCEMENT OFFICER SAFETY ACT (LEOSA) was enacted in 2004, and then amended in 2010 and 2013, to extend active and retired law enforcement officers the opportunity to carry a concealed firearm in all 50 states, the District of Columbia, and all U.S. territories as long as they meet certain requirements. It was designed to make both the officers and the public safer. Unfortunately, despite what the law was intended to do, it's never been that simple.

QUALIFYING FOR LEOSA

In order to qualify to receive this privilege, you must meet LEOSA's requirements and those requirements established by the states. LEOSA's requirements for active LEOs are the following:

1. Authorized by law to engage in, or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for any violation of law, and has statutory powers of arrest;
2. Authorized by the agency to carry a firearm;
3. Not to be subject of any disciplinary action by the agency that could result in suspension or loss of police powers;
4. Meets the standards established by the employer agency to regularly qualify and train in the use of a firearm;
5. Is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and
6. Is not prohibited by state or federal law from carrying or receiving a firearm.

LEOSA's requirements for retired LEOs are the following:

1. Separated from service in good standing from a government agency as a law enforcement officer for reasons other than mental instability;
2. Authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incar-

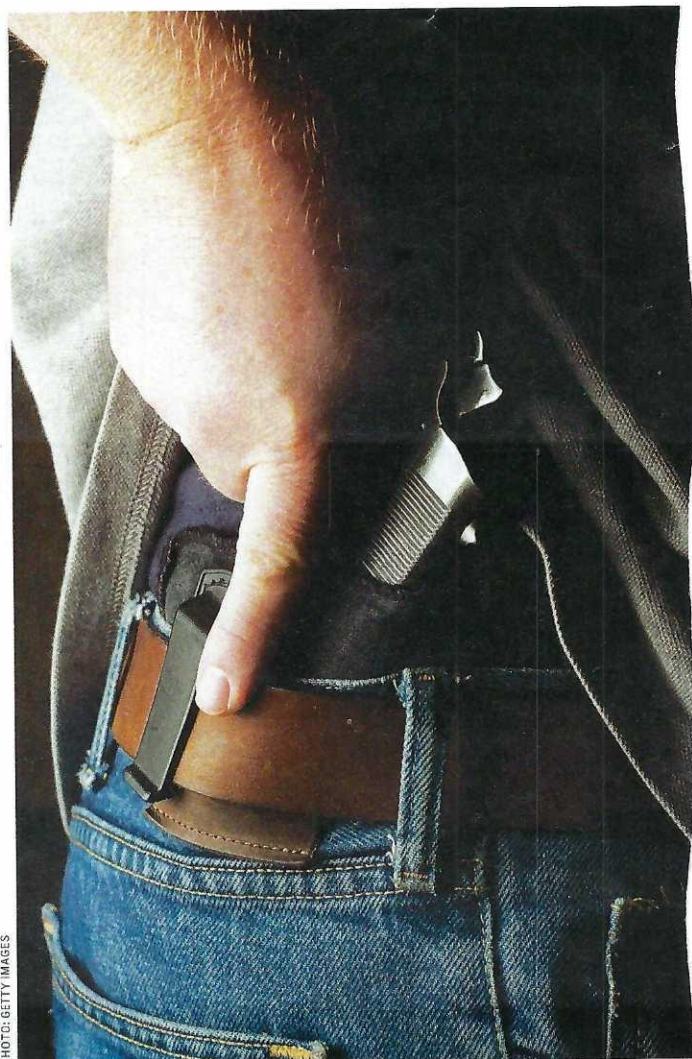


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The Law Enforcement Officer Safety Act (LEOSA) was designed to make it easy for off-duty and retired officers to carry nationwide. However, implementation of the law has been inconsistent.



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ceration of any person for any violation of law;

3. Had statutory powers of arrest or apprehension immediately before retirement;

4. Was separated from service in good standing with a government agency as a LEO for an aggregate of 10 years or more, or separated from such an agency due to a service-connected disability after completing any applicable probationary period of such service;

5. During the past 12 months has met, at his/her own expense, the standards for qualification for active law enforcement officers to carry firearms of his/her former employer agency or of those established by the state;

6. Cannot be under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and

7. Is not prohibited by state or federal law from carrying or receiving a firearm.

COMMON PROBLEMS

LEOSA requirements may seem pretty straightforward. However, the amendments and the language of the law have caused many problems for officers and retired officers, some of whom have been arrested and indicted. In addition to the ambiguity of LEOSA's language, the implementation of the law varies by state. And although LEOSA is a federal law and as such preempts any state law, you should avoid getting yourself into a criminal prosecution that may or may not end up being dismissed.

Let's look at some common problems officers have experienced with LEOSA.

Definition of Firearm: LEOSA's legislative history, as well as in some cases addressing the intention of the law as to the definition of firearm, may demonstrate that LEOSA applies to all firearms except those specifically exempted in the law. However, you must be aware of the current laws of your state and states you plan to visit on which firearms are permitted to be carried concealed.

Gun Free Zones: LEOSA and state laws have some location exceptions where carrying a concealed firearm is prohibited. LEOSA states that carrying a concealed firearm into private property, where the possession of a firearm is not permitted is a violation of the law. LEOSA also prohibits the possession of any firearm in property owned or leased by state or federal governments. You need to be aware of additional locations, if any, that do not allow firearm possession.

It seems clear and logical enough. But it is not. There are exceptions in which individuals are permitted to carry concealed firearms in federal park lands with a state-issued permit. At the same time, there are areas marked as "Gun Free School Zones" in which, if an individual is caught with a concealed weapon and possesses a permit not issued by the state, he/she can get in trouble in that state.

Some States or Agencies are Not Issuing LEOSA Identifications to Qualified LEOs: When LEOSA was amended to require an identification card, the Department of Defense did not amend its policy. Qualified LEOs who worked with the Department of Defense do not have a LEOSA identification, which could get them in trouble in their own states or if they travel to a state that requires it.

Additionally, there are some states that allow LEOs to carry concealed firearms without an identification. There are other

states that have made a different interpretation of LEOSA and are refusing to grant the privilege to qualified individuals. And still some other states are refusing to issue identifications for lack of funds or are issuing identifications to local LEOs and not to those LEOs from out of state.

Issues with the Annual Firearm Certification Required by LEOSA: Qualification training as required by LEOSA is definitely not consistent within the states. There are states that do not require qualification training at all after you retire.

In states in which the qualification training is not regulated by the state, some individuals calling themselves certified instructors, are providing "qualification training" that does not necessarily meet the standards of the state or of the local law enforcement agencies. A qualified LEO might take that training and have a certification issued that might not be recognized by the state, causing the LEO to get in trouble for carrying a concealed firearm without a permit.

You need to be extra cautious when enrolling in qualification training in a state that does not have a list of certified instructors. Those states that do have a list, make it available online on their official web pages or on the web pages of the local law enforcement agencies.

Some states have both state qualification training and the training that each law enforcement agency provides to their

FEDERAL LAW PREEMPTS ANY STATE LAW, BUT YOU SHOULD AVOID GETTING YOURSELF INTO A CRIMINAL PROSECUTION THAT MAY OR MAY NOT END UP BEING DISMISSED.

own LEOs. Those states that have both, allow out of state LEOs to take the state qualification training if they need their LEOSA identification.

Finally, if a LEO wants to have more than one concealed firearm, not all states require qualification training on each firearm he/she intends to carry. LEOSA is not clear on this regard and defers the decision to the states causing more inconsistency. For example, if a LEO is trained to carry one concealed firearm and is caught in another state that is more restrictive with a different gun, he/she could get prosecuted.

LEOSA COMPLIANT STATES

The following states have requirements that are very similar to LEOSA and are issuing the identifications to LEOs to carry concealed firearms in accordance with the law: California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Wisconsin, and Wyoming.

NON-COMPLIANT STATES AND TERRITORIES

A number of states are in some way in conflict with LEOSA. Some have requirements that make carrying a concealed weapon under LEOSA more difficult. Ignorance is not bliss in

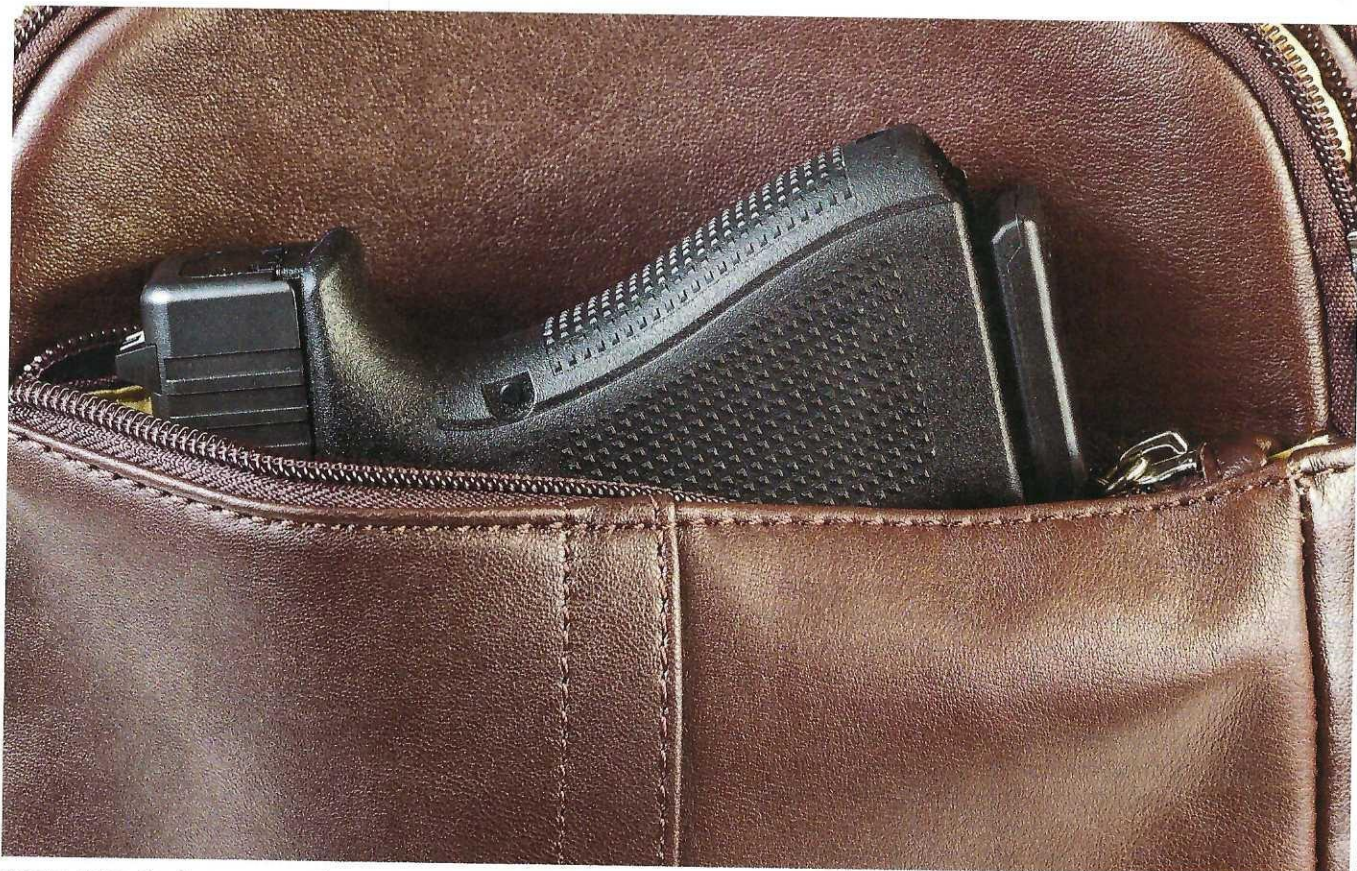


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In some states, the firearm you qualify with is the only one you can legally carry under LEOSA. Be sure that you understand the laws of where you live and where you plan to travel.

these states and getting caught breaking their laws could cause you serious legal problems.

Alabama does not require annual re-qualification for concealed firearms. So the identification issued by this state will only be valid in that state and on those states that have reciprocity with Alabama. I strongly recommend that LEOs from this state should familiarize themselves with the states that have reciprocity with Alabama or should not carry their concealed firearm out of state.

Alaska is non-compliant because it does not require concealed carry permits. This affects LEOs because there is no in-

**IF YOU AS A LEO ARE STOPPED
IN ANOTHER STATE BY ANOTHER LEO,
NOTIFY THAT OFFICER THAT YOU
ARE CARRYING A CONCEALED
WEAPON IMMEDIATELY.**

frastructure for providing documentation that officers can use out of state. LEOs from Alaska should not carry their concealed firearm out of state.

Arizona does not extend the LEOSA privilege to campus or university police officers when they retire because the state does not consider them qualified to carry a concealed weapon.

Hawaii requires a visiting LEO who wants to carry concealed to register at the local police department, regardless of how long they stay. Officers also have to provide the address of where they are staying, bring their weapons for inspection, and

pay a nominal fee. The process can take as much as three hours.

Each **Indiana** law enforcement agency handles its own retirees in accordance with its guidelines and standards. Some agencies may qualify retirees from federal and/or out-of-state agencies. The Indiana State Police only issue retired credentials to their retirees after 25 years of service and will only qualify their retirees in good standing.

Missouri law specifies that only the law enforcement agencies where the LEOs are from can offer qualification training and issue a LEOSA identification. If a law enforcement agency from that state does not have the program available, those LEOs that are or were from that agency are not allowed to have a concealed weapon under LEOSA. Out of state LEOs moving to Missouri must verify if they have reciprocity with their state of residence or corroborate if any of Missouri's law enforcement agencies will qualify them and issue them a LEOSA identification.

Montana would seem to be a natural for LEOSA compliance. But since no federal funding was provided to implement LEOSA in the states, there are only a few local agencies that offer the qualification training and the LEOSA identification.

New Jersey has its own law equivalent to LEOSA. Also, the state requires semiannual qualification in order to be able to carry, bans magazines that hold more than 10 rounds, and the use of hollow point bullets.

Ohio does not issue LEOSA identification cards. It leaves the decision of the issuance of LEOSA identification cards to the local police departments and sheriffs' offices. Retired LEOs can qualify and re-qualify with their concealed fire-

arms in the law enforcement agency they retired from, but they will have no identification to prove it out of state. The only document that shows whether an active duty officer has qualified with a firearm is an Ohio Peace Officer Training Academy (OPOTA) score sheet. Out of state LEOs may request to qualify under Ohio standards for LEOSA to an Ohio Peace Officer Training Commission approved instructor. This represents a risk to LEOs if they decide to carry their concealed firearm out of state.

So far **Oklahoma** has not designated any state agency to be responsible for LEOSA. CLEET sets standards for law enforcement education and training, and approved CLEET firearms instructors can conduct annual LEOSA qualifications. Even though Oklahoma does not have a designated agency for the LEOSA identifications, the state does issue concealed weapons permits to retired full-time or reserve Oklahoma state, county, or municipal law enforcement agencies, or federal law enforcement agencies. Oklahoma permits may not be valid in other states.

Puerto Rico has confusing requirements. Active LEOs are only allowed to carry their regulation firearm or the firearm issued to them by the Puerto Rico Police Department after being qualified. They are allowed to carry that firearm concealed. LEOs who retired in good standing can apply for a license to carry a firearm and they are allowed to carry it concealed. Out of state LEOs are required to notify and register their firearm with the Puerto Rico Police Department, even if they are only visiting. LEOSA identification or active LEO identification is essential for the notification/registration process. It is strongly recommended to learn about the notification/registration process before traveling to this territory with the intent to carry.

Rhode Island only certifies its own law enforcement officers and does not honor any other state permits or identifications under LEOSA. The only solution for out of state LEOs is to apply for a concealed firearm permit like any other citizen of Rhode Island in accordance with their requirements.

U.S. Virgin Islands does not recognize or accept any identification issued by another state or territory. LEOs should not bring their concealed firearms with them if they visit. The territory has its own system to issue firearms licenses.

Any **Vermont** Criminal Justice Training Council certified firearms instructor can conduct qualifications shoots for retired LEOs. Each agency is responsible for issuing the appropriate documentation as evidence of annual qualification.

Washington does not require a permit, certification, or identification for LEOs to carry a concealed firearm. Retired LEOs are allowed to carry concealed weapons as long as they retired in good standing from their law enforcement agencies. We strongly recommend that LEOs from this state should familiarize themselves with the states that have reciprocity with Washington or should not carry their concealed firearm out of state. If a LEO moves out of this state, he/she should qualify for a LEOSA identification in the new state.

West Virginia is "LEOSA friendly." But it does not require an identification for retired LEOs that qualify under LEOSA. West Virginia law enforcement agencies can qualify their own retired officers. On an individual basis, some retired officers from out of state and federal agencies have been qualified by West Virginia State Police or by local law enforce-

SIGNIFICANT CASES THAT AFFECT LEOSA CARRY

Duberry v. District of Columbia, 824 F.3d 1046 (D.C. Cir. 2016): This case decided three important things:

1. The U.S. Court of Appeals for the Washington D.C. Circuit extended the right of retired law enforcement officers to carry concealed weapons under LEOSA to retired corrections officers.

2. LEOSA "does not afford discretion" to state or local authorities to decide who is and who is not a qualified LEO or retired LEO.

3. LEOSA is fully enforceable under the civil rights statute 42 U.S.C. § 1983 ("Section 1983"). That is, officers may bring a lawsuit under Section 1983 to challenge any acts by state or local authorities (or "under color" of any such authority) that in any way deprive them or "cause" them to be deprived of their LEOSA right to carry.

Thorne v. United States, 11-CF-492, 11-CF-730 (D.C. Cir. 2012): The Court declared private security guards are not protected by LEOSA.

McKinley v. City of Topeka, Case No. 06-C-376; *Moore, et. al. v. Trent, et.al.*, 2010 U.S. Dist. LEXIS 133038 (E.D. Illinois 2010); and *Johnson v. NY State Dept. of Corrections*, 709 F. Supp. 2d 178 (N.D.N.Y. 2010). LEOSA does not bestow either an explicit right to obtain the required photographic ID or a federal remedy when a state agency refuses to issue one.

ment agencies. We strongly recommend that LEOs from this state should familiarize themselves with the states that have reciprocity with West Virginia or should not carry their concealed firearm out of state. If a LEO moves out of this state, he/she should qualify for a LEOSA identification in the new location.

DON'T BREAK THE LAW

Familiarize yourself with the firearm laws of your state or of states you intend to visit. If you need to travel to another state and want to carry, consult with an attorney with knowledge of the laws of that state or call a law enforcement agency in that area to ask about LEOSA.

When there are work-related assignments out of your state, your city or county attorneys should find out the necessary carry requirements and provide that information to you.

If you as a LEO are stopped in another state by another LEO, notify that officer that you are carrying a concealed weapon immediately. Also, provide the officer with the identification that authorizes your carry of the concealed weapon.

Finally, do not assume the risk that you will not get caught if you carry in violation of local laws. And do not assume that if caught you will receive professional courtesy from another law enforcement officer. ☒

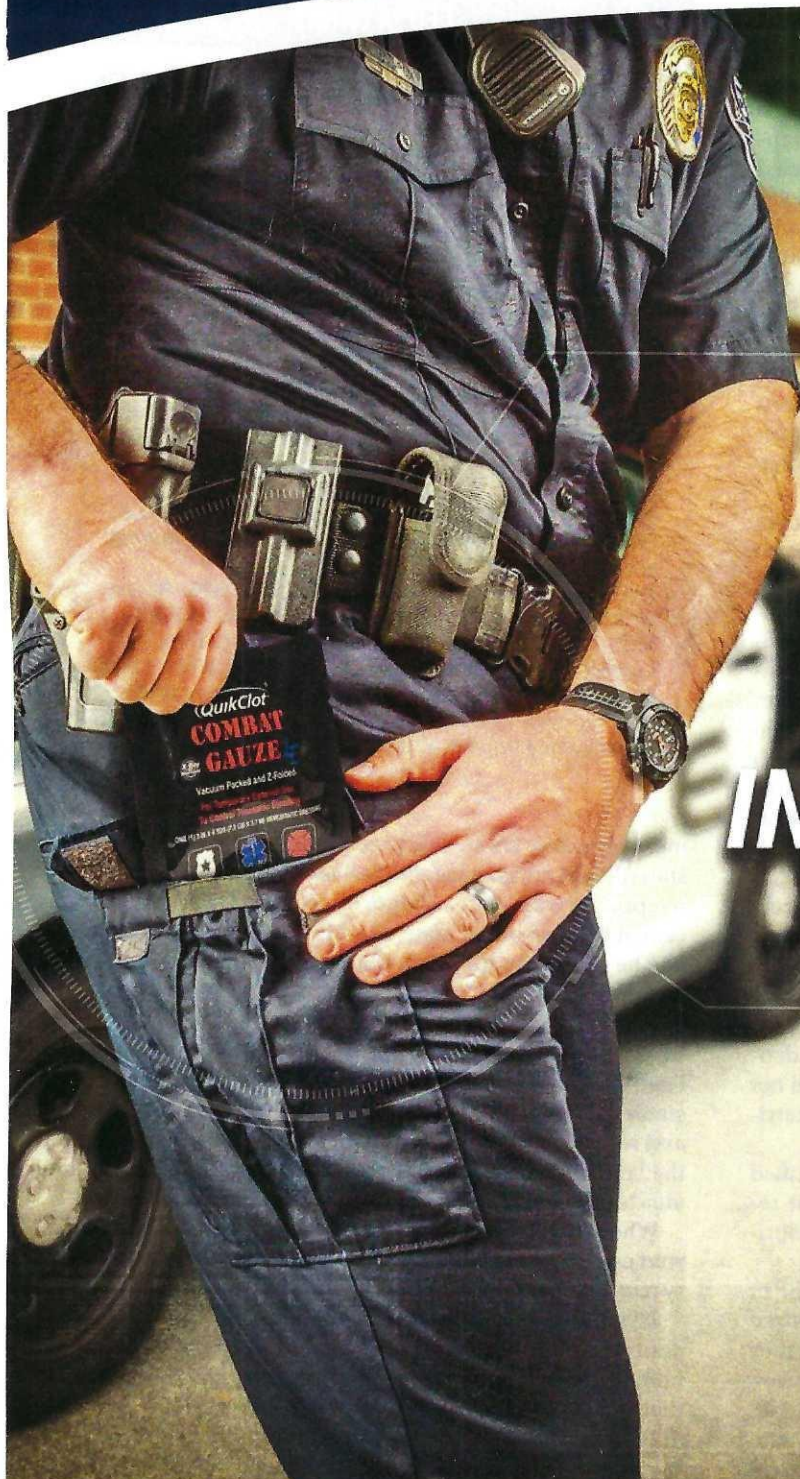
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