



# Why Moonlighting Policies for Police Officers



## Can Mean the Difference Between Night and Day

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**W**ith today's tough economic climate, almost no one is immune to financial challenges. Like many other citizens, city employees may be taking a second or even a third job. For most employees, this does not cause any conflict of interest with their city duties. However, when police officers are the ones taking on extra work, cities are often concerned about how additional employment could affect their responsibilities as local law enforcement officers. Make sure your city and your police officers are prepared by reviewing your legal authority to regulate outside employment and having a moonlighting policy in place before any conflicts arise.

First, a city should be aware of statutory requirements that might affect your moonlighting policy. KRS 61.310(4) states that any peace officer (including city police officers) may "during hours other than regular or scheduled duty hours, act in any private employment as guard or watchman or in any other similar or private employment. However, he may not participate directly or indirectly, in any labor dispute during his off-duty hours."

Although the statute seems to give off-duty police officers the ability to obtain basically any outside employment they wish, the attorney general and courts over the years have recognized reasonable limitations a city may place on its moonlighting officers to protect city interests.

Since at least 1968, Kentucky's highest court has upheld moonlighting policies (for peace officers) as acceptable practice. See *Puckett v. Miller*, 821 S.W.2d 791 (Ky. 1991), which states, "It is widely recognized that the rights of public employees may be abridged in the interest of preventing conflicts with official duties or promoting some legitimate interest of the governmental employer." While this statement does not grant the city the right to completely prohibit officers from engaging in off-duty employment, it does allow the city to establish criteria or standards with which the off-duty officers must comply. The Kentucky Supreme Court, in *Puckett*, said that the city may choose to have a policy that states that its off-duty officers are not allowed to work in/for a business that sells alcohol as its main function (e.g., package stores and bars) and are not allowed to work for people with a criminal reputation/association. The Court stated that the city had a legitimate interest in these restrictions — such as avoiding situations where the officers might be motivated to neglect their official duties or where their actions might result in failure of public trust — and, therefore, no constitutional or statutory rights of the police officers were violated.

The Court upheld the city's requirement that moonlighting officers obtain workers' compensation and general liability insurance for off-duty employment requiring the use of police authority and indemnify the city for claims arising out of the off-duty work. This requirement was reasonable, the Court

said, to prevent government liability for the police officer's outside employment.

The *Puckett* case offers one final and critical rule for cities regulating their police officers' outside employment. The Court struck down a provision of the city's policy that required prior approval from the police chief because it did not establish any standards for approval or disapproval of the outside employment and did not provide a hearing process the officer could use to protest the chief's decision. If a city creates a moonlighting policy that does not have decision-making standards or appeal procedures, it gives arbitrary power to the police chief or other manager overseeing the moonlighting requests, which is unconstitutional.

The lesson to be learned is to have a clear policy in place and follow it consistently to avoid any conflicts or issues that may arise with moonlighting officers. The policy should outline what the acceptable practices are for moonlighting officers, establish definite criteria and standards for approval or disapproval and provide a hearing process for protesting decisions regarding moonlighting. If your city does not currently have a moonlighting policy, one could easily be adopted by municipal or executive order. It is important to work closely with the city attorney when drafting your policy to ensure the city and its police officers are both able to achieve their goals. For sample moonlighting policies, please contact the KLC Member Legal Services Department. 