

NJ Department of Community Affairs

5:30-8.6 Managing and accounting for outside employment of off duty law enforcement officers

(Effective August 7,2023)

(a) Each local unit that permits employment of off-duty law enforcement officers by outside entities or individuals shall adopt a formal policy relating to such employment. The policy shall provide for exercise of the local unit's authority to regulate outside employment of off-duty law enforcement officers and to set hourly compensation rates for law enforcement officers engaging in outside employment that is consistent with the Federal Fair Labor Standards Act (FLSA), 29 U.S.C. §§ 201 et seq.*, and other applicable laws, and any relevant provisions included in a collective negotiated agreement to which the local unit's law enforcement officers are subject.* For purposes of this section, off-duty work or off-duty employment shall be work performed on behalf of an outside entity or individual performed outside of a law enforcement officer's regular shift or overtime.

(b) If an outside entity or individual utilizes off-duty law enforcement officers for police-related activities at assignments or projects, such as, but not limited to, security and traffic safety control, any payment by the outside entity or individual in connection therewith must be remitted directly to the local unit.

(c) Any rates or fees charged by a local unit for employment of off duty law enforcement officers by outside entities or individuals shall be subject to the provisions of this section and incorporated into the local unit's formal policy regulating such off-duty employment. The rates or fees shall either be established by ordinance or resolution, as appropriate to the form of government, unless the hourly compensation paid to off-duty law enforcement officers is specified in a collective negotiated agreement. Such rates or fees shall not incorporate local unit costs other than those directly attributable to the provision of off-duty law enforcement officers for the project or event. Rates or fees charged by the municipality shall be itemized as follows: **1. Personnel; 2. Administrative; 3. Vehicle; 4. Equipment; and 5. Other costs.**

(d) Subsection (c) above shall not be interpreted to require a local unit to charge a fee for each of the above categories. Charges for "Equipment" or "Other costs" shall be directly related to those goods or services not encompassed within the "Personnel," "Administrative," or "Vehicle" categories that are necessary for an off-duty law enforcement officer to effectively fulfill the duties of the off-duty employment; however, any costs relating to personnel, administration, vehicles, and equipment that are barred from being incorporated into the rate or fees charged for said categories pursuant to this section may not be included pursuant to the categories "Equipment" or "Other costs."

(e) Hourly compensation paid to off-duty law enforcement officers and payroll taxes attributable to the off-duty employment of law enforcement officers, along with any additional liability insurance that may be required, are the only costs that may be charged as personnel-related costs. The cost of pension benefits, health benefits, and other fringe benefits that are part of base salary and employment shall be

excluded from personnel costs charged to an outside entity or individual utilizing off-duty law enforcement officers for police-related activities.

(f) Administrative costs shall be limited to the scheduling of officers for off-duty employment, maintenance of time records, payroll processing, and billing. 1. If a third-party firm administers *all, or a portion, of* the contracting unit's program for off-duty employment of law enforcement officers, the contracting unit may only incorporate the amount billed by the third-party administrator for performing *one or more of* the above referenced tasks.

2. A contracting unit that directly administers *[such a program]* *all, or a portion, of a program for off-duty employment of law enforcement officers* shall charge only up to the cost of hourly compensation for the lowest paid employee or employees that can efficiently perform the above-referenced tasks. Charges for staff may also include the prorated cost of payroll taxes and employer contribution toward worker's compensation insurance, pension benefits, health benefits, and other fringe benefits.

(g) Costs charged for use of a law enforcement vehicle shall not exceed the cost of operating the vehicle during the off-duty assignment, together with travel to and from the assignment. If the charge for use of a law enforcement vehicle exceeds the per-hour or per-mile rate, as applicable, established for police automobiles or motorcycles by the most recent Federal Emergency Management Agency's Schedule of Equipment Rates for reimbursement-eligible equipment costs pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121, et seq., a written explanation and detailed calculation justifying the rate shall accompany the written itemized estimate issued pursuant to

(h) below. (h) In advance of the police-related activities being performed by the local unit's off-duty law enforcement officers, the outside entity*[,] or individual shall pay to the local unit the estimated cost of the police related activities. The local unit shall issue a written itemized estimate to the outside entity or individual. Items charged pursuant to the "equipment" and "other costs" categories must be necessary to carry out the duties associated with the off-duty employment, and shall be specifically itemized and justified in the estimate. If a third-party firm administers the local unit's program pursuant to (f) above, the local unit may permit the third-party administrator to receive payment from the outside entity or individual in the amount of the written estimate, which the third-party administrator must pay over to the local unit in advance of the police-related activities being performed.

(i) If a contractor will be utilizing a local unit's off-duty law enforcement officers for purposes of traffic safety in performance of a contract awarded by the same local unit, the local unit may charge the cost of employing the off-duty law enforcement officers to the capital ordinance, grant, or other appropriation.

(j) A local unit shall establish a trust fund pursuant to N.J.A.C. 5:30- 3.3(c)5, within which receipts from outside entities and individuals employing off-duty law enforcement officers charged by local units pursuant to (i) above, shall be deposited. Local units are not permitted to use "contra" accounting methods, where the local unit pays law enforcement officers for off-duty employment, along with any staff administering such employment, through the normal salary and wage budget line item and the funds paid by the outside entity or individual serve to reimburse the salary and wage budget line item.

(k) A local unit shall issue a written statement to the outside entity or individual no later than 30 days after the police-related activities were performed. The statement must show the law enforcement officers and vehicles assigned to the project, as well as itemized by the categories set forth at (c) above with a further breakdown of the component costs for each category. Any outstanding balance must be included with the statement, which shall also include any interest and penalties for which the outside entity or individual would be liable in the event of late payment.

(l) Outside entities and individuals employing off-duty law enforcement officers on a regular basis may be required to maintain a minimum balance in the trust fund equal to the average amount paid to assigned off-duty law enforcement officers within a specified time period, and the local unit may cease making off-duty law enforcement officers available for police-related activities until such time as the outside entity or individual replenishes the minimum balance. ***In circumstances where the local unit is not requiring an outside entity or individual to maintain a minimum balance in the trust fund, any monies in the trust fund that exceed the cost of the police-related activities for an individual assignment or project shall be returned to the outside individual or entity within 30 days after conclusion of the assignment or project.***