

Is Your Police Department Prepared for the Recent July 14 Implementation Date for Act 57 and Act 59?

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Has your police department taken steps to prepare for Act 57 and Act 59? Both acts went into effect on July 14, 2021, and steps should include amending police civil service regulations to incorporate the new Act 57 hiring procedures, as well as understanding the new rules pertaining to evaluation and treatment for post-traumatic stress disorder (“PTSD”), including mandatory evaluation following the use of lethal force.

Act 57 governs hiring and termination of law enforcement officers. The Act includes a two-part requirement with respect to hiring. First, a pre-employment background check is required for any candidate who advances to that stage in the hiring process, including the following: (1) criminal, driving and credit history checks; (2) interviews of at least three references who are not household members; (3) interviews of past employers for the past five years; (4) a review of the applicant’s employment information from prior law enforcement agencies, e.g., written application materials, evaluation records, disciplinary records and attendance records; and, (5) verification of the applicant’s eligibility to lawfully possess firearms. A MPOETC Authorization and Release Form is used to obtain the applicant’s employment information from a prior law enforcement agency.

For applicants who receive a conditional offer, the second step is to submit a Waiver Form to the MPOETC Training and Certification System (“MPOETC TACS”) database. Once the hiring process is complete, MPOETC must be notified within seven days of whether the conditional appointee was hired. If the separation records from the database indicate a history of either final and binding disciplinary action or a criminal conviction, or both, for certain enumerated offenses specified in Act 57, and the hiring agency chooses **not** to disqualify the conditional appointee, the hiring agency must submit a MPOETC Hiring Report Form to the database, explaining the reasoning for hiring the conditional appointee.

Forms for these new processes under ACT 57 are available on MPOETC’s website, along with informational webinars created by MPOETC. When an officer separates from employment, there is also a MPOETC Separation Record Form that must be submitted to the MPOETC TACS database.

Act 59, which pertains to evaluation and treatment for PTSD, also went into effect on July 14, 2021. Act 59 requires police departments to arrange for a mental health evaluation for PTSD whenever an officer is directly involved in an incident where lethal force was used in the course of law enforcement duties, or upon request by an officer or recommendation of the Chief of Police or other supervising officer. The evaluation is conducted by a qualified licensed psychologist at the employer’s cost. If the evaluation is the result of a lethal force incident, it should be scheduled within 30

calendar days of the incident. If the evaluation is the result of the officer's request or recommendation of the Chief of Police, it should be scheduled within 10 calendar days.

If the psychologist determines that an officer has symptoms of PTSD, the officer is to be provided with treatment until the psychologist determines that the officer is able to resume full duties. The officer is to be placed on temporary paid administrative duty (or paid administrative leave) if he or she is not able to resume full duty as determined by the psychologist.

Act 59 also requires reporting into the MPOETC TACS database. The Chief of Police must electronically submit a form within 5 calendar days whenever evaluation, diagnosis or treatment results in the officer being unable to perform essential job functions. The notice to MPOETC should only indicate that the officer is unable to perform regular duty and no other information concerning the evaluation, diagnosis or treatment. The Chief of Police shall also notify MPOETC when an officer fails to comply with his or obligation to attend and participate in a scheduled evaluation and any follow-up evaluations. Of course, all employee medical information must be maintained and stored confidentially, and in a file separate from the employee's personnel file.

Numerous questions will arise under Acts 57 and 59. Under Act 59, does paid administrative leave encompass sick leave and/or disability benefits, and what happens when an officer's leave related to PTSD becomes indefinite in nature? When multiple mental or physical conditions are involved, how is that addressed? As for hiring under Act 57, what is the scope of the personnel records provided to a prospective hiring agency, and how does a hiring agency know whether a termination is "final and binding" if the decision is pending arbitration? Please contact the attorneys at Campbell Durrant to help navigate through these new rules for municipal police departments, including amendments to police civil service rules and regulations.