

PROMOTING HEALTH AND WELLNESS: RETURNING TO FULL DUTY



Major Cities Chiefs

And

Federal Bureau of Investigation
National Executive Institute

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SPECIAL DEDICATION

The Human Resources Committee of the Major Cities Chiefs (MCC) Association would like to honor its founding member by dedicating this report to Larry Brockelsby, Director of Human Resources for the St. Louis Metropolitan Police Department (SLMPD).

At the beginning of the 1990's, MCC Vice President Clarence Harmon was the Chief of Police in St. Louis and Larry Brockelsby was the SLMPD Human Resources Director. Director Brockelsby accompanied Chief Harmon to the MCC meetings and found that many of the issues that the MCC discussed were HR in nature. Harmon and Brockelsby suggested that the MCC create a committee of HR personnel from MCC departments to research and report on current law enforcement HR issues. All MCC committees are chaired by a member chief, and Chief Harmon was appointed to that position.

The committee was established in 1993, and as Chief Harmon's representative, Director Brockelsby assumed the duty of chairing the group. The committee meets three times a year and Director Brockelsby took the responsibility for scheduling the meetings, keeping minutes, and overseeing all of the details for the committee. This has been a challenging assignment since the committee members' departments span the United States and Canada. Over the years he has overseen the process on fourteen committee reports. Throughout the years, Director Brockelsby has also coordinated frequent requests between committee members whenever their agency was researching a variety of law enforcement topics. His help and facilitation have greatly enhanced the success and professionalism of the committee collectively and of its individual members.

Director Brockelsby has announced that he is retiring from the MCC Human Resources Committee at the end of 2008. He is also planning his retirement from the St. Louis Metropolitan Police Department in 2009. He tells us that he is looking forward to spending more leisure time with his wife, children and grandchildren.

The MCC Human Resources Committee would like to thank Larry Brockelsby for all of his hard work and dedication to the Committee. We appreciate his leadership and commitment to excellence and will miss his professional and tireless contributions. We also appreciate his friendship and wish him a happy and healthy retirement.

FOREWORD

The Major Cities Chiefs (MCC) and the Major County Sheriffs (MCS) are organizations consisting of Chief Executive Officers (CEOs) of the largest law enforcement organizations in North America. Membership includes departments from the United States and Canada. The Human Resources Committee (HRC) of the MCC with members from the MCS meets three times a year to research, discuss and formulate strategies for contemporary personnel and policy issues and incidences.

The HRC is comprised of individuals, both sworn and civilian professionals, who have distinguished themselves during their careers. They are charged by their CEOs with addressing law enforcement's challenges and providing strategic alternatives for implementing, resolving and mitigating human resource issues of today.

Readers of this work will realize how difficult it is for writers to state opinions or make suggestions that apply equally to local, state, urban, rural, suburban, or federal law enforcement agencies. However, the HRC's experienced and wise practitioners, who are not simply espousing theory but are actually putting these ideas into effect on a daily basis, created this written document from many discussions.

While the MCC and MCS do not specifically endorse every conclusion or recommendation of this report, they use its information to generate discussion and reasonable debate during their roundtable sessions. The result is better informed CEOs who will continue to lead policy changes that will improve law enforcement services.

Companies or individuals identified or cited in this project are not endorsed by the MCC or MCS as they are provided for information purposes only.

ACKNOWLEDGEMENTS

The Human Resources Committee (HRC) of the Major Cities Chiefs (MCC) and the Major County Sheriffs (MCS) would like to thank Larry Brockelsby for his leadership as chairperson of the HRC. Thank you to Deputy Chief Keith Forde and the Toronto Police Service for their generous hospitality during the 2008 spring meeting. Thank you to Supervisory Special Agent Mike McAuliffe and Mrs. Anna Grymes Griffin, Leadership Program Specialist of the Federal Bureau of Investigation for their continuing dedication and support of the HRC.

The Leadership Development Institute of the FBI Academy would also like to thank resident Leadership Fellow, Captain Timothy Cannon of the Orange County Sheriff's Department for his assistance during the final stages of the publication process. In addition, we would like to thank former LDI Fellows David Boggs (Lexington Fayette Urban County Government, Kentucky), Bruce Barstad (Glasgow Police Department, Montana) and Kenith Hilte (El Paso County Sheriff's Office, Colorado).

Special thanks to the committee members who spent valuable time in research, discussion, writing and editing of this report. The following list of Human Resources Committee members contributed to the research and writing of this publication:

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Los Angeles County Sheriff's Department
Denver Police Department
Dallas Police Department
Austin Police Department
Salt Lake City Police Department
Fairfax County Police Department
Denver Police Department
Kansas City Police Department
St. Louis Metropolitan Police Department

This publication will be available online at the Major Cities Chiefs /National Executive Institute's website: www.neiassociates.org.

Hugh M. McKinney
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EXECUTIVE SUMMARY

How many times has it been said, “Our people are our greatest asset”? Typically, between 80 to 90% of a law enforcement agency’s budget is spent on employee salaries and benefits. With this kind of financial investment in human resources, it lends credence to the statement that the most valuable resource in any organization is its people. However, the health and wellness of law enforcement officers is more than managing costs. Leading police departments includes managing how well officers provide communities protection and service, but well-managed health and wellness policies could make the difference in whether an officer returns home safely at the end of each shift.

Law enforcement professionals face higher safety risks and more job-related stress than found in many other professions. Add to that a culture where some are taught to remain in control of a situation while suppressing one’s emotions and it is no surprise that law enforcement employees are at an increased risk for alcoholism, divorce and other health problems.

This report examines some of the issues and opportunities that impact the health, wellness and productivity of law enforcement officers. Included in the research and writing are wellness programs, return to work policies, workers compensation challenges, as well as topics of injury and illness. Another contemporary concern involves law enforcement agencies addressing the subject of employees returning from military deployments. However, in addition to addressing these challenges, this report also includes success stories insofar as promoting health and wellness in the workforce.

This work is divided into five sections. The first part focuses on **Health, Wellness and Prevention Programs** in law enforcement in the United States and Canada. During the research, a survey of the Major Cities Chiefs Human Resources Committee members was conducted. Twenty-one agencies responded providing information regarding physical fitness programs, mental health programs, general wellness programs, and safety related programs. Included in the following pages are their examples of model wellness plans and suggestions on how to create successful programs.

The second part of the report covers the topic of **Managing Injury and Illness** with an emphasis on prevention, medical treatment management, and sick leave management. One of the greatest challenges in this area is working within the parameters of collective bargaining agreements, city and county ordinances and state statues, as well as federal laws, such as the Americans with Disabilities Act (ADA) and the Family Medical Leave Act (FMLA) guidelines.

Fitness for Duty is the third part of the report addressing the physical, medical, and psychological aspects of officers fulfilling their essential job functions. A section on the benefits of fitness is presented as opposed to the liability aspects of retaining law enforcement officers who are not fit for duty. Agencies have an obligation to provide a healthy and safe environment for their employees. Agencies also have a responsibility to

the citizens they serve to provide them with employees who are healthy and capable of responding safely to their needs.

The fourth section, **Reintegration After Military Deployment** details a growing concern for law enforcement. With increasing numbers of police officers serving as military reservists who are deployed to Iraq and Afghanistan, the effects of reintegrating these employees may not be fully understood for some time. A number of officers experience multiple deployments enduring life-threatening missions that they have never dealt with in their law enforcement careers. Experiences include ambush, mortar fire, being shot at, explosions, or having seen someone seriously injured or killed in the line of duty. These occurrences can result in Post Traumatic Stress Disorder (PTSD) symptoms that may affect their everyday job function. In some extreme cases the officers have returned with a traumatic brain injury.

For some it may be difficult, as a law enforcement officer, to admit to having problems upon their return from active military duty. The Los Angeles County Sheriff's Department and the Phoenix Police Department are examples of two agencies who are taking a proactive support role with their officers serving in the military. These agencies have plans in place from the time an officer is militarily deployed to when they return for law enforcement duty, showing the employee that their agency cares and understands what they have been through. This section also provides a detailed listing of resources to facilitate the successful reintegration of military personnel. Lastly, the segment includes a portion of the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) that details the rights of employers and the employees who serve in the military.

The last section of this project provides an overview of **Legal Considerations** for inclusion when decisions are being made regarding health and wellness issues, fitness for duty, limited or light duty concerns, and the reemployment of law enforcement officers returning from military assignments. Included is a brief discussion of the FMLA, ADA and Title VII of the Civil Rights Act –Sex Discrimination and Physical Ability Tests. These are complicated and detailed laws that must be taken into consideration when developing programs and addressing issues. Care must be taken when an agency becomes aware of a fitness for duty issue with an employee because retaining that employee may result in liability for the agency.

In closing, there are many facets to providing a healthy and productive workforce. Law enforcement agencies should be concerned with the wellness of employees and their obligation to the public they serve. Concerned agencies want their employees to go home to their families each day, and, after a successful career, to enjoy a long and healthy retirement. If law enforcement agencies become more proactive in promoting health and wellness, there should be a corresponding increase in longevity for their officers. It would certainly support the idea that their people are their greatest asset.

HEALTH, WELLNESS AND PREVENTION PROGRAMS

The statistics in support of physical fitness and wellness programs in law enforcement demand attention from law enforcement leaders. Daniel Shell in his article, Physical Fitness, "Tips for the Law Enforcement Executive," in the FBI Law Enforcement Bulletin, (May 2005), identified that officers suffer from heart disease, hypertension, and diabetes more often than the general public. They have an above average risk for heart attacks, obesity, arthritis, ulcers and cancer and are prone to bouts of depression and suicide. Nearly 30% of police officers overindulge in alcohol compared to 10% of the general population. According to a study conducted by Violanti (1996), *Dying from the Job: The Mortality Risk for Police Officers*, the life expectancy of a police officer is 66 years. This is striking when compared to the life expectancy of the average male (76.9) and the average female (79.5) years.

As studies are released concerning the effects of poor health, agencies are becoming increasingly proactive in addressing issues such as obesity, stress, diabetes, high cholesterol, hypertension, and issues specific to women's and men's health. It is widely accepted that chronically ill or unhealthy employees is negatively impact productivity.

Numerous organizations cite workplace stress leading to absenteeism as causes for concern. In addition to the difficulties of the job, stress can also be attributed to conflict between employees, employees being overworked and underappreciated, family issues at home, and personal mental health issues. The effect of high levels of stress presents itself in the forms of employees taking personal days off, calling in sick and having to visit the doctor frequently.

Recent studies like the one by Toronto Police Service and Connex Health (2008) have begun to focus on the concept of “presenteeism.” Presenteeism occurs when an employee reports to work despite personal challenges such as illness or family issues that distract their attention and decrease productivity. These studies have shown that more than half of all employees practice presenteeism in Canada and in the United States.

Addressing issues contributing to the poor health of employees, many organizations are developing and implementing onsite wellness programs and services. The following is a list of onsite wellness programs and services for consideration:

- *Onsite Blood Testing*- Many organizations offer the service of testing their employee’s blood for diagnostic purposes. A test is performed to provide a defined blood analysis for conditions such as anemia, cholesterol, diabetes, various infections, kidney function, calcium levels, liver function, blood disease, and many other abnormalities in the body. An employee’s blood pressure is also measured to assess any potential health concerns.
- *Nutritionists*- Organizations hire nutritionists to help employees get back on a healthy eating track. A nutritionist is a health specialist who works to educate employees on food and nutritional science, preventive nutrition, diseases related to nutrient deficiencies, and the use of nutrients to increase the body’s defense against and the response to human diseases. They may also advise people on dietary matters relating to health, well-being and optimal nutrition,

and their counsel is especially vital where obesity and weight loss concerns are present. Typically, a nutritionist will develop an eating plan for an employee and work with them to have the proper caloric intake, while coaching them in eating regular and balanced meals.

- *Fitness Instructor*- Many organizations have a fitness instructor onsite to help develop a fitness plan for employees. A fitness instructor can guide employees to become physically active in a safe manner, develop a personalized exercise routine for the employee to follow, and educate them about fitness, exercise, and the proper way to get healthy.
- *Personal Consultant/Lifestyle Coach*– There are several companies that have hired personal consultants or lifestyle coaches to help employees along their path to wellness. These consultant/coaches make sure that the employee is on the right track with their personalized programs and help by providing necessary resources to help employees achieve their goals.

There are many avenues which an agency can choose to pursue employee wellness. The ideal wellness program should be voluntary, free, and confidential. It should provide personal help, be interesting, fun, and a blueprint for healthy living.

Lieutenant David Lapum of the Wayne County Sheriff's Department conducted a comprehensive research project entitled "The Maintenance of Police Officer Health Through a Mandatory Wellness Program" (Lapum, 2003). This study documents the importance of law enforcement officers being physically and mentally fit, because many

officers tend to keep their emotions hidden. They may see medical and mental health issues as weaknesses and would be unlikely to seek help until the problem is too large to ignore.

Benefits of a wellness program should include: higher levels of productivity, a reduction in severe/chronic stress, improvement in the officer's ability to respond appropriately to emergency situations, fewer instances of excessive force, less risk of injury to officers and those they are working with, early detection of disease, reduction of health care claims and absenteeism, fewer suicides and divorces, and reduced liability claims.

The Lapum (2003) study recommends the following as vital components of a wellness program:

- *Health risk appraisals and assessments* – proactive monitoring of blood pressure, serum cholesterol, heart stress testing, hepatitis and other communicable disease testing and other blood analysis to determine functioning and health of individual.
- *Mental Health Evaluation* – regular mental health evaluations. Courts have upheld such evaluations stating, “legitimate government interest is present” and as long as “the police officer is protected from constitutional violations of privacy.”
- *Nutrition and Weight Loss* – proper dietary habits to maintain optimum body weight and lower rates of heart disease, diabetes and cancer.
- *Stress Management* – methods for reducing stress which could include: progressive neuromuscular relaxation, meditation, trained/controlled breathing, biofeedback, learned optimism, neuro linguistic programming, emotional freedom technique, hypnosis, stress inoculation training, thought stopping, and freeze-frame stress reduction training developed by the Institute of Heartmath.
- *Tobacco use and prevention cessation* – education and access to smoke cessation programs.
- *Alcohol and substance abuse education*
- *Financial planning and management* – education to assist with the stress associated with financial issues.

Further, the study identifies the St. Paul, Minnesota, Police Department as having a model wellness program for law enforcement. The program includes medical screenings and testing, fitness assessments and on-duty exercise participation (worksites are equipped with exercise equipment, and aerobic classes are offered three times per week). In addition, various health promotion programs such as smoking cessation, weight loss, cholesterol control and blood pressure management are provided. The program has proven to be a success in increased job performance and reduced absenteeism and health claims. Medical screenings have detected symptom free cases of heart disease requiring immediate medical interventions, thus saving lives (Lapum, 2003).

MAJOR CITIES CHIEFS HUMAN RESOURCES COMMITTEE SURVEY

A Major Cities Chiefs Human Resources Committee survey, conducted by authors of this report, posed the following four questions:

1. Does your agency provide any wellness or employee assistance programs or services to its employees?
2. Does your agency have any programs specific to the prevention of occupational injuries, accidents, or body fluid exposures?
3. Have the programs proved beneficial or successful?
4. Does your agency have a dedicated position or unit for prevention/wellness/safety issues?

Results of the survey

Types of wellness and employee assistance programs or services provided to agency employees.

Physical Fitness Programs

Eighty-one percent, or 17 of the 21 responding agencies, stated they have a voluntary physical fitness program. Only one of those agencies, St. Louis Police Department has a mandatory program which they call the Physical Abilities Test where officer participation is mandatory. While employee wellness is the goal, failure to meet the established standards may result in dismissal.

The most widespread types of physical fitness programs offered are both the availability of fitness rooms or gyms within police facilities and organized fitness classes held at police facilities. Fitness rooms or gyms offer employees freedom to use the facilities at their convenience. Organized fitness classes provide an opportunity for group work-outs which may be more motivational for some employees. Some agencies allow for work-outs during a lunch break. Oklahoma City Police Department offers agility classes twice a week, weight resistance classes once a week and rowing classes once a week.

Ten agencies offer incentives to employees participating in physical fitness programs. Three agencies offer cash incentives and three agencies offer additional leave if the employee meets an established standard or completes a specific fitness program.

Another way agencies are encouraging participation in voluntary physical fitness programs is by sponsoring competitive events. Denver Police Department is participating in the iSatori Fitness Challenge. It is a voluntary weight loss program in which

participants begin a healthy regime of diet and exercise to promote physical fitness and well being. It is hosted three times a year. Once the participants of the Challenge are finished, iSatori tallies up their total body fat and "buys it back" at a dollar per pound. They donate that money to the charity of choice for each Civil Service department. In addition to the national competition, there are individual and group prizes for participants who lose the most weight and fat, while gaining lean muscle. Nassau County (NY) Police Department held a "Biggest Loser" weight loss competition in 2007 as part of a Healthy Nassau initiative. It was a ten-week competition to determine who would lose the most weight. The top three "losers" won cash prizes of \$300, \$200, and \$100 respectively.

In Montgomery County, Maryland, there is an annual physical fitness competition with an incentive of 12 to 20 hours additional leave time. The leave is earned if the employee successfully completes an evaluation based on five physical fitness components. Columbus (OH) Police Department employees receive additional vacation days dependent on the level of physical fitness passed during mandatory testing (voluntary for those hired prior to December 2007). In Kansas City, sworn and civilian employees may volunteer to participate in one of the following every six months: 12 minute run; 2.25 mile sports walk; or Physical Abilities Test. Members earn up to two extra days off every six months.

Organized sports are also part of the physical fitness programs in some agencies. Nassau County (NY) has the Nassau County Police Department Running Club which is a group of members who train and run races together. Intramural sports such as floor hockey and badminton are made available for the Ottawa Police Services employees.

Mental Health Programs

According to the survey, the most common type of mental health program available to employees is an Employee Assistance Program, often referred to as EAP. Employee Assistance Programs typically provide confidential assessment and referral services for those employees experiencing personal problems related to health, marriage, family, lifestyle, retirement, legal issues, finances, gambling, substance abuse, psychological/emotional disorders, work, or critical incident stress. The program is commonly extended to the immediate family of the agency employee. These programs are usually voluntary in nature with no incentives to participate and no sanctions if the employee does not participate.

Responses from the survey showed that the MCC departments' peer support groups also play a role in providing help to officers. Trained employees of the agency offer support and/or make referrals for employees with substance abuse issues, stress-related issues, family/marriage issues, and other personal problems. In Oklahoma City, the program is called CHAPPS, or Cops Helping to Alleviate Police Problems.

For several departments Critical Incident Stress Teams provide support to employees involved in shootings or other critical incidents. The team assists employees and their families in coping with their involvement in a critical incident.

Almost all of the responding agencies stated they provide services of and/or referral to a mental health professional following involvement in a critical incident such as an officer-involved shooting. Most require a mandatory session with the mental health professional following that type of incident. Commonly, there are sanctions for failure to comply with the mandate.

Ten of the responding agencies reported the availability of a Chaplain or Chaplaincy program. Chaplains can provide spiritual guidance on many matters to employees. Agencies may have one appointed Chaplain or a multi-denominational Chaplaincy Program. Meetings with the Chaplain are voluntary with no incentives for participation.

Denver Police Department has a unique program called the Heal and Feel Program. The Heal and Feel Program provides information to and support for present and retired officers who have fallen ill. The fact that these officers continue to receive communications from their agency gives them hope and encouragement for recovery.

The Los Angeles County Sheriff's Department has an Organizational Consultant Program that teaches supervisors how to recognize risk behaviors in their employees. Supervisors learn how to look for signs of stress and burnout. They learn ways to deal with difficult employees and how to give constructive criticism. Supervisors are also provided with information regarding departmental resources for affected employees, how to access these resources, and how to make referrals to these resources.

The Toronto Police Service provides specific mental health service to its employees who work routinely with child exploitation images. The program is called the Psychological Health Promotion Program-Child Exploitation and Technological Crimes. The focus of the sessions is on the development of stress and coping strategies and the enhancement of psychological resilience. For those employees described above, attendance is mandatory. Failure to attend sessions may result in transfer from the specialized unit. In 2008, the program will be expanded to include all undercover agents.

The Toronto Police Service also provides presentations regarding psychological wellness, stress, and coping to employees and their families. This year's initiatives, being offered to sworn and civilian employees, include presentations regarding the unique demands of working within a police environment. Attendance at these presentations is voluntary.

General Wellness Programs

Seventy-one percent or 15 of the 21 responding agencies said that they have general wellness programs available to their employees. These programs commonly relate to illness and disease prevention, nutrition, and general health issues. Of those 15 agencies, three offer general wellness programs solely through their health care provider.

The most common type of general wellness program offered to employees is a class, seminar, or in-service training about a specific health issue. The majority of these types of classes are voluntary with no incentives to participate. Some agencies require employees to attend general wellness classes. The classes become part of a mandatory training program at different levels of an employee's career. There can be sanctions for failure to attend these classes or program to include disciplinary action or loss of certification.

Another way agencies reach their employees is via the internet. In Pittsburgh, the City's Safety Manager and staff maintain a wellness calendar that highlights various health and wellness related topics each month. They provide links to other sites where the employee may obtain additional information. Within the City's Intranet, employees are informed about upcoming wellness events, organized sporting events, exercise

classes, and other health related issues. Employees are encouraged to utilize the wellness programs offered by the City's health care provider.

Influenza vaccination programs were mentioned by several agencies that provide free or low cost flu vaccinations to employees. The vaccination programs are voluntary with no incentives to participate.

Ottawa Police Services is piloting a program called the "Real You Program". The voluntary program combines a multi-disciplinary approach to wellness utilizing a physician and personal trainer. The program combines aerobic and strength conditioning, medical monitoring, nutritional and behavioral counseling.

The Nassau County Police Department addresses health and wellness topics in its monthly newsletter called "Cop to Cop". The subject areas are Fitness Focus, Your Health, and Hot Tips.

The Toronto Police Service provides a program to employees regarding shift work. The program is mandatory except for the component about nutrition. New supervisors are presented with a class on fatigue management and shift work challenges for employees from the supervisory viewpoint. For their recruits there is a Family Day that includes a section on shift-work challenges. During the annual Crisis Resolution training for uniformed officers, there is also a segment on shift work. Employees may also voluntarily participate in a nutrition class presented by a contracted nutritionist to include shift work strategies.

Another program provided by the Toronto Police Service is screening and counseling for blood cholesterol, blood sugar, and high blood pressure. The screening and health counseling is provided throughout the Service. Counseling is offered in

regards to prevention of Type 2 diabetes, control or prevention of hypertension, and blood cholesterol levels. The program is voluntary but is arranged on an invitation-only basis (10 minutes per employee, up to 35 at a time). Employees in the field can also benefit from a Field Wellness Program which consists of a one-hour lecture on cardiovascular issues, hypertension, cholesterol, and late onset diabetes. Similarly, this program is voluntary and is presented on a per request basis.

Nutrition programs are also available from the Toronto Police Service where employees may attend a group program that is eight sessions in length and held on-site at various locations. The group sessions are taught by a contracted holistic registered Nutritionist, with individual consultations available that include an individual nutrition evaluation and plan specific to the employee.

In 2003, the Toronto Police Service partnered with the Women's College Health Science Centre to create a Colorectal Cancer Awareness Program. An informational video was created using actual members of the Toronto Police Service who had been affected by colorectal cancer. Additionally, an informational pamphlet was created and disseminated to every member of the Service. Training was also provided regarding the signs, symptoms, and detection of colorectal cancer to unit trainers who then took the program to each work site. Partnering with the Women's College Hospital, Toronto has created and funded a three-year project comparing results from sigmoidoscopies and colonoscopies. Every member of the force who is over 50 or fits into an "at risk" category can access the clinic and receive a colonoscopy upon referral from their family physician. With the assistance of a major fundraising event, over 5,000 colonoscopies will be

completed in the project. In 2004, the Toronto Fire Service joined the program and by 2007, the Toronto EMS and the Ontario Power Generation had joined the program.

Prevention of occupational injuries and illnesses

In addition to the physical fitness programs, mental health programs, and general wellness programs, agencies also provide programs specific to the prevention of occupational injuries, accidents, or body fluid exposures (e.g. vehicle accidents, lifting injuries, blood exposures, and slip and fall injuries). Seventy-six percent or 16 of the 21 responding agencies said they have programs specific to the prevention of occupational injuries and illnesses.

Two of the responding agencies, Oklahoma City and Pittsburgh, described a vehicle collision reduction program whereby a department appointed board reviews of each vehicle collision for training issues and disciplinary recommendations. Remedial training which results from the board's recommendation, is specific to the cause of the collision.

In St. Louis, police officers are required to wear their seat belts. If they are involved in a vehicle accident and the seat belt was not in use and the officer is injured, the amount of the Workers' Compensation settlement may be reduced. For the first offense, the amount is reduced by 25%, and 50% for the second offense. This is allowed under Missouri Workers' Compensation Law, although it must be approved by the Administrative Law Judge for Workers' Compensation. This policy has been applied once in the St. Louis Police Department, which resulted in a savings of 25% of the settlement. There have been no other incidents in which an officer was not wearing their seat belt.

Since one of the most disconcerting occupational hazards is exposure to infectious diseases, the majority of responding agencies have a blood borne pathogen, body fluid exposure, or infectious disease program. The risks for employees who come in contact with blood and body fluids include but are not limited to: Hepatitis B and C, and HIV and, the potential for exposure are increasing.

In St. Louis, the Body Substance Exposure (BSE) hotline is a place to turn, 24 hours a day, to have a work-related exposure assessed. This service minimizes the time between an exposure and the administration of post-exposure prophylactic (PEP) drugs, thus decreasing the chance of infection. For less serious exposures, BSE provides employees with a reliable source of information and support to get them through an unsettling, anxious time. Within 15 minutes of calling the hotline, a registered nurse, trained as a body substance exposure specialist, will contact the caller. The BSE Specialist talks with the employee about the exposure and the source of the blood or body fluids to assess the seriousness of the situation. A standard protocol is followed to ensure a comprehensive assessment is completed. The BSE specialist works under the direction of an infectious disease physician's orders and will refer the employee to the physician for certain situations. If the exposure warrants PEP treatment, the employee will be referred to a nearby clinic or emergency room that stocks the appropriate drugs. The BSE specialist provides counseling and factual information to minimize the exposed employee's fears and to help them make informed decisions.

The BSE hotline exposure program is continuously used by employees at night when there is no one available at their medical provider. While statistics are not available, St. Louis Police Department officials believe there have been savings from

employees receiving expedited treatment and advice immediately after the incident occurs. In addition, this program provides a psychological benefit by putting the employee more at ease by hearing a professional opinion on the appropriate level of concern.

The Toronto Police Service has an intranet web site dedicated to identified health and safety matters. The web site can be accessed by the majority of the employees and offers information on topics such as: confined spaces, hybrid cars, sound levels, the Mandatory Blood Testing Act, 2006, Officer Safety Alerts, and all Chief's Memorandums.

Dedicated position or unit for prevention, wellness, and safety issues

Eighty-one percent or 17 of the 21 responding agencies stated that they had a dedicated position or unit for prevention, wellness, or safety issues using a variety of titles. The positions of safety officer, safety division, safety programs manager, and health and safety unit were common names used by the agencies for their unit that focuses on the prevention of on-duty accidents and illnesses. The responsibilities associated with those positions varied among agencies, but most were responsible for promoting policies and programs that related to safety in the work environment.

Oklahoma City Police Department gives a captain the responsibility for emerging health issues such as CA-MRSA, TB, the Respiratory Protection Program, and the Blood Borne Pathogen Exposure Program. Employee training in these programs is mandatory and failure to attend may include disciplinary action.

In the Los Angeles County Sheriff's Department, the person assigned to prevention, wellness, and safety is responsible for ensuring OSHA guidelines are followed. This same safety officer compiles statistical data, conducts unit/facility

inspection, and provides training. The safety policy of the Los Angeles County Sheriff's Department mandates that each unit develop a written Illness and Injury Prevention Program, personalized to the uniqueness of the unit and the duties it performs. The purpose of the policy is to create the mindset that every employee and supervisor is responsible for a healthy and hazard-free environment.

The San Diego Police Department has a designated safety officer in each Command. The safety officer participates in monthly meetings and receives training in areas of accident prevention, exposure issues, lifting, and workplace issues. The safety officer is responsible for taking this information back to their Command, updating the safety board, and conducting training with officers and civilians at the Command.

Some of the MCC department's units were dedicated to the coordination of care of an employee after a line-of duty accident or illness. Most of these types units handle worker's compensation issues, medical issues, and fit-for-duty issues.

In some of the responding MCC agencies, this dedicated position for prevention, wellness, and safety issues was located outside of the police department, service or bureau. At least two of the responding agencies stated their wellness and prevention program was a citywide initiative. In Pittsburgh, Pennsylvania, the city's safety manager coordinates general programs as part of a program called CitiFit. In addition to providing general wellness programs to all city employees, a wellness committee has been started to include representatives from all the different departments and bureaus of Pittsburgh. The wellness committee will work with the city's insurance carrier and other organizations to develop and deliver more wellness and prevention programs to the employees and their families.

MANAGING INJURY/ILLNESS

Between 80% and 90% of a law enforcement agency's budget is linked to personnel costs. Whenever law enforcement personnel are injured or become ill, there is an adverse impact on the agency's ability to provide adequate services to the community. The goal of any agency must be to get employees back to full duty as soon as possible. This section examines what can be done to manage and mitigate injuries and illness, and further consider that when they do occur, how the agency can assist the employee's return to full duty. The challenge will be to work within parameters such as collective bargaining agreements (CBA's), city and county ordinances and state statutes such as Workers Compensation and federal law such as the Americans with Disabilities Act (ADA) and Family and Medical Leave Act (FMLA) guidelines.

Line of duty (LOD) and non line of duty injuries and illness can significantly impact an operating budget. In 2007, the Denver Police Department, with an authorized sworn strength of 1,446 and an operating budget of \$174 million, estimated \$4.68 million in lost productivity and claims.

The hard-dollar costs of officer injuries and illness are only part of the impact on the agency. It is imperative that police agencies focus attention on what can be done to effectively manage and mitigate injuries and illnesses. This can be accomplished by focusing on prevention, medical management and sick leave management.

Prevention

A focus on prevention must become part of the organizational culture. By examining innovative ways to encourage employees to avoid injury, while also promoting

an environment of health, law enforcement agencies may see a reduction in injuries and associated costs. A more detailed discussion can be found in the Health, Wellness and Prevention Programs section of this report.

Medical Management

Agencies should have a system to track injuries and illnesses and the costs associated with the employee's treatment and rehabilitation. As part of a comprehensive system of medical management, agencies must ensure that employees present a documented diagnosis. In addition, a determination will have to be made as to when or if the employee will return to full or limited duty. Medical management policies and procedures must be fairly and consistently applied.

It is important for agencies to consider the following when developing or reviewing medical administration policies and practices:

1. Conduct home visits to employees on sick leave as needed,
2. Liaison with worker's compensation administrator to ensure requests for treatment are answered and treatment is provided in a timely fashion,
3. Investigate employees suspected of violating sick leave policies,
4. Track sick leave use by employees,
5. Track employees who are on limited duty,
6. Medically evaluate employees who are injured or ill so recommendations can be made and appropriate action taken.

The employment of (or contracting with) medical doctors may provide numerous benefits to the agency. Based on applicable law, policy and contractual obligations, it must be determined if the injury or illness is to be classified as a line of duty injury/illness.

Employees should be required to visit applicable medical doctors as soon as practical after a claimed line of duty injury or illness. The initial visit serves multiple purposes. In addition to allowing the doctor to determine if the injury should be approved as a line of duty injury, the doctor can ensure the employee is receiving proper treatment and is returned to duty when appropriate. As a matter of policy, agencies should mandate regularly scheduled visits to doctors depending on the nature of the injury or illness.

Limited/Light Duty

Limited duty assignments should be temporary in nature, providing the employee an opportunity to contribute to the agency while actively pursuing a transition to full duty. Agencies must have a policy in place which stipulates how and when the agency determines if the injured or ill employee will return to full duty or be separated from the agency.

It is essential that limited duty programs are supported by the agency's leadership and are managed to track and assist injured or ill officers with the ultimate goal being to return to full duty. Policies and procedures must be in place to ensure that they are implemented in a fair and consistent manner.

Sick Leave Management

Agencies should establish policies defining sick leave usage. The policy should include the acceptable number of occurrences and/or total number of sick days in a given period. If an employee consistently exceeds the standards, appropriate administrative action should be taken. Immediate supervisors of those using sick leave should monitor employee absences to identify leave abuse.

When sick leave management programs are implemented or modified, chief executives must take into consideration federal, state and local law, provisions of collective bargaining agreements, and agency policy. State laws can have an adverse affect in actually encouraging sick/injury leave abuse. For example, in New York State an employee injured in the line of duty will see an increase in net income due to tax treatment.

Strong internal controls are imperative in the management of sick leave. Sanctions must be identified and consistently applied to sick leave abusers. Sanctions may include, but are not limited to, overtime restrictions, detail restrictions and transfer restrictions. In some instances the denial of sick leave may be appropriate.

To discourage sick leave abuse, incentive based programs may be implemented. For example, a cash-out incentive allows employees to cash-out sick time upon retirement or on an annual basis, paying a percentage of the total value of sick time. Agencies can cap the amount employees may cash out, subject to provisions of collective bargaining agreements, retirement plans or other legal mandates.

Sick leave conversion is another incentive based program that permits employees to convert a certain number of sick leave days to vacation leave. Typically this program is only available to employees who take little or no sick time in a pre-determined time period.

Reward-based incentive programs provide a financial or time off reward to employees who take little or no sick time. For example, the Nassau County Police Department rewards employees who do not use any sick time in a calendar year with two additional leave days that can be used as time off or be paid upon retirement. Employees

of the Ottawa, Ontario, Police Service receive a financial reward if they use no sick time or have a strong attendance record. The Ottawa, Ontario, Police Service program was recognized as being a key contributor in an attendance enhancement program that resulted in a sick leave drop of 1.6 days per employee and the winning of the 2003 Webber Seavy Award.

FITNESS FOR DUTY

For the purposes of this report, fitness for duty is defined as being **physically**, **medically**, and **psychologically** able to perform the agency's essential job functions of each position.

Agencies should have functional job descriptions encompassing essential job duties required for each position. The job descriptions should be reviewed periodically and updated as needed since they provide the foundation for conducting physical, medical and psychological examinations.

Fitness for duty can be impacted by an employee's physical fitness, medical evaluations, and psychological wellbeing. When developing and considering policies and procedures related to fitness for duty, agencies should start with a review of applicable state, federal and local regulations (such as Civil Service Policies) to develop guidelines and procedures that are consistent and valid.

Physical Fitness

An integral part of the fitness for duty concept is the physical fitness of the employee. Testing should relate to the essential functions of the job and be scientifically validated. This is not to suggest that each agency must have the same physical requirements since essential job functions may vary by agency. Regardless of the tests used, it is critical that these tests are valid and defensible in court.

Many law enforcement agencies consider entry-level fitness a necessity but do not mandate a fitness standard once a trainee becomes an officer. "The decline of health and fitness among those in the law enforcement community is an indisputable fact. The consequences of this phenomenon are also well known: greater vulnerability

to on-duty injury and illness, increased exposure to liability and loss of respect by the public at large, among others” (Smith and Gregory, 2005).

The Cooper Institute of Dallas, Texas says the following about agency liability regarding fitness testing:

An agency that does not address the fitness requirements and needs of officers is susceptible to litigation for the following:

- a. Negligent hiring: failure to hire applicants who are fit to do the job.
- b. Negligent training: failure to train recruits and incumbents so that they are physically capable of doing the job.
- c. Negligent supervision: failure to supervise incumbents to ensure that they can meet the physical demands of the job.
- d. Negligent retention: failure to reassign officers who cannot meet the physical demands of the job (The Cooper Institute, 2008).

Fitness programs can be voluntary or mandatory. To foster participation agencies offer incentives such as cash awards, time off and commendation ribbons. The benefits of being fit should be embraced by and communicated from the highest level of the organization.

Agencies must be aware of the provisions of collective bargaining agreements when developing and implementing mandatory programs.

Whatever direction an agency may take, be it a voluntary or mandatory physical fitness program, [a] public safety total fitness and wellness program helps ensure that:

- officers have the requisite fitness to perform their duties;
- officer’s lifestyle habits will decrease health risks and improve quality of life; and
- agencies reduce their liability by ensuring officer’s physical readiness to perform while controlling risk and its associated costs (Smith and Tooker, 2005).

Physical fitness may increase an employee's level of performance. Generally, fit employees are better able to handle the stressors of the job, have fewer occurrences of injury and, in the long run, save the agency money in health care costs. "The first general goal is to get officers fit. Secondly, officers should be taught skills to maintain desired fitness levels. Employees should be prepared to stay active throughout their lives" (Lee and Mallory, 2004, 16).

Correctly implemented and maintained fitness programs offer benefits to the agency, employees, and the public. Fit employees enhance an agency's image and instill confidence in the public they serve. "A healthy workforce is more productive, takes less sick leave and lives longer to retirement. In the final analysis, this must be considered a worthwhile goal" (Bonneau and Brown, 1995).

Medical Evaluation

Issues concerning the medical condition of an employee may arise from the performance and behavior of the employee or by information received through medical evaluations. Some agencies conduct annual physical evaluations to assess the fitness of its employees. Although baseline standards may differ by agency, the evaluation should be used to assess whether the employee can perform the essential job functions without risk of harm to themselves or others.

Law enforcement agencies are sometimes faced with situations involving employees whose fitness for duty is called into question due to specific medical conditions. While there are several definitions of a medical condition concerning law enforcement officers, the Human Resources Division of the State of Massachusetts, defines a medical condition as any condition "that would (1) preclude an individual from

performing the essential job functions of ...a police officer in a training or operational environment, or (2) present a significant risk to the safety and health of that individual or others” (Massachusetts, 2007). Law enforcement agencies have a responsibility to provide the community with employees who are fit, not only physically and psychologically, but medically as well.

Unfortunately, all too often, agencies do not discover that medical conditions have affected employees adversely until an on or off duty incident brings it to the attention of management. Complicating the issue, federal laws, such as the Americans with Disabilities Act (ADA) and Health Insurance Portability and Accountability Act (HIPAA) limit the exchange of medical information between employees and their employers. Supervisors are hesitant to ask questions of employees regarding health issues for fear of violating laws.

Agencies in their routine daily operations deal with medical conditions concerning incumbent employees. However, these conditions may impact the safety and welfare of the affected employees and the citizens they serve and protect. For example, the Kansas City, Missouri, Police Department had an incident that occurred on September 24, 2007 involving an on-duty officer on a plain-clothes assignment. The officer, for no apparent reason, shot and wounded an innocent delivery truck driver in front of a convenience store. The officer was found several blocks from the scene with his duty weapon, but he had no recollection of the incident. It was determined that the incident likely occurred because the officer was an insulin dependent diabetic who had failed to control his blood sugar levels during his tour of duty.

Diabetes was the cause of another incident in a Chattanooga, Tennessee where an off-duty police officer drove the wrong way on a busy street and crashed his vehicle into three other vehicles. The officer continued swerving down the road before crashing to a stop. The officer reportedly stated that he had Type 1 diabetes and had “a problem with his blood sugar” (Mendis, 2007).

As agencies across the nation experience similar incidents regarding insulin dependent diabetics and other medical conditions, there is a need for proactive measures to protect employees and citizens from injury or death. Agencies need to balance concern for the health and wellness of employees afflicted with medical conditions while at the same time ensuring the safety of citizens.

Several agencies have established standards that address certain medical conditions that would hinder a law enforcement officer from performing the essential functions of their job. However, these standards primarily apply to pre-employment qualifications and often do not deal directly with incumbent employees with medical conditions. From a legal standpoint, agencies have faced litigation if policies were established that prohibited the hiring of individuals with medical conditions that are protected under the Americans with Disabilities Act. Therefore, all hiring and employment considerations must be made on a case-by-case basis since blanket exclusions are prohibited by the ADA.

A survey of the Major City Chiefs Human Resources Committee, determined that insulin dependent diabetics are not prohibited from being hired in the responding agencies. However, an Associated Press article from Boston dated May 15, 2007 reports that a Gloucester man “whose job offer to become a police officer was rescinded

because he is diabetic and wears an insulin pump has filed a complaint with the Massachusetts Commission Against Discrimination. The Northampton Police Department offered him a job last month then rescinded it.” Medical experts from the state, “determined in 2002, that people who wear insulin pumps to monitor their glucose levels can’t be hired as police officers” (Associated Press, 2007).

As legal challenges continue to be assessed in the hiring of law enforcement officers with certain medical conditions, an equally significant challenge has surfaced for law enforcement agencies to develop strategies for handling current employees who may develop medical conditions. Discharging these employees from the agency may not be a viable course of action because most will argue that they have performed their duties effectively and have not caused any issues that would bring the condition to light.

In an effort to proactively determine the health and wellness of its employees, some law enforcement agencies are currently conducting periodic mandatory or voluntary physicals. One benefit of periodic physicals is the ability to identify medical conditions that if undiscovered or untreated, could present a significant risk to the safety of the employee or citizens. Another positive aspect of routine physicals is it lessens the potential liability of the agency due to its proactive policies intended to identify medical problems before they become a risk.

The most significant benefit to periodic physicals is that employees receive vital and timely medical information that could improve their overall health and wellness. They may be alerted to conditions that can be treated, enabling them to enjoy their career as a healthy law enforcement employee. Additionally, agency medical experts

will be equipped with documented medical information to ensure the agency is deploying a healthy and safe police force into the community which it serves.

Psychological Evaluations

A law enforcement officer's psychological fitness is equally as important as physical fitness in carrying out the essential functions of the job. Each year, law enforcement agencies lose millions of dollars as a result of the inability of its employees to meet the psychological demands of their jobs.

Dr. John M. Violanti says that “[p]olice officers are under enormous stress on a daily basis for prolonged periods of time....in their work which significantly increase the risk of psychological trauma” (Violanti, 2008, ¶ 1, 2). He adds that some authorities have described law enforcement officers as being involved in "peacetime combat," fighting peacetime enemies “24 hours a day, 7 days a week” (¶ 3). Violanti adds, "[t]he police officer is expected to be combat-ready at all times while remaining normal and socially adaptive when away from the job. The psychological toll for many is great, unexpected, and not well understood” (¶ 3). As a result, police officers have an increased risk of suicide, substance abuse, and disrupted family lives. Violanti concludes that as a result, some officers may suffer from Post Traumatic Stress Disorder (PTSD) (¶ 6).

It is advisable to implement a variety of services designed to assist employees who find themselves in need of emotional support. Peer support programs, substance abuse assistance, critical incident stress programs, employee psychological assistance programs and chaplain services are important resources that should be available to all employees. When such resources are not enough or are not utilized by an employee,

supervisors may have to compel employees to submit to psychological fitness-for-duty evaluations (FFDEs).

Peer support programs allow trusted co-workers to assist others through difficult times and situations. Peer support has been described as "a process whereby officers who feel a need to communicate their feelings about their jobs, their home life, or a combination of the two, may do so with other officers that are trained to assist" (Hackett, 2008). Peer support programs can augment other outreach programs such as employee assistance programs but should not be deemed to replace traditional psychological treatment by a trained mental health professional.

Fitness-for-Duty Evaluations (FFDE)

Supervisors may suspect that stress reactions, personality disorders or other psychological problems are contributing to an employee's inability to perform the essential functions of their job. When these concerns arise, usually the employee will be ordered to submit to a formal psychological FFDE. Although a FFDE should not be used as a substitute for supervision and discipline, a FFDE can provide a psychologically justifiable and legally defensibly rationale for terminating an officer who cannot meet the standards of the employing agency (Miller, 2007).

The International Association of Chiefs of Police Psychological Services Section developed a set of psychological FFDE "guidelines for use by public safety agencies and mental health examiners. These guidelines are not intended to establish a rigid standard of practice... Instead, they are intended to reflect the commonly accepted practices (IACP, 2004, p. 1) of law enforcement and mental health practitioners. Some key points to consider include:

1. Initial Considerations

- Is there an objective and reasonable basis for believing “that the employee may be unable to safely or effectively perform” the essential functions of the job? This belief can be derived from the “direct observations” of supervisors, colleagues and administrators, “credible third party report” and “other reliable evidence” (p. 1).
- Rule out other options. FFDEs are not a substitute for discipline. Discuss options with legal counsel. Look at the facts and circumstances of each case.

2. Qualifications of Examiners for law enforcement agencies

[E]xaminers should:

- a. be a licensed psychologist or psychiatrist with education, training, and experience in the diagnostic evaluation of mental and emotional disorders;
- b. possess training and experience in the evaluation of law enforcement personnel;
- c. be familiar with the police psychology literature and the essential job functions of the employee being evaluated;
- d. be familiar with relevant state and federal statutes and case law, as well as other legal requirements related to employment and personnel practices (e.g., disability, privacy, third-party liability); and
- e. satisfy any other minimum requirements imposed by local jurisdiction or law (p. 2).

3. Maintain Confidentiality

- Remember that with all FFDEs, the client is the employing agency, not the employee. This fact must be conveyed to the employee prior to the evaluation. Once the report is obtained, the employing agency should not disseminate the mental health provider's report indiscriminately, recognizing the sensitive nature of the report's content.

- Treat the FFDE reports as other medical records. Maintain them separately from other personnel and investigatory records. Restrict access to the FFDE reports. (pp. 2-5)

Regardless of what conclusions are made by the mental health provider who conducts the FFDE, the head of the law enforcement agency must be the final decision maker. The FFDE is one factor in determining whether or not an employee can continue his/her employment.

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REINTEGRATION AFTER MILITARY DEPLOYMENT

Kevin Johnson's November 2007 article in *USA Today* described an event which could potentially have occurred anywhere in the United States. Former police officer Wayne Williamson of the Austin, Texas PD lost his job when he misjudged a situation involving an unarmed suspect and opened fire in a crowded shopping center. Williamson's attorney claimed that his misjudgment occurred because of his experiences as an Army reservist recently deployed to Iraq. However, Williamson never informed anyone within his military command or within the Austin PD that he was troubled by his experiences in Iraq. Fortunately, no one was injured in the incident although the factors for tragedy were present.

The Austin news story captures a real concern in the United States. The reliance on reservists to carry out the military mission is unprecedented. The needs of military reservists during their reintegration into civilian life (including re-employment) is not clearly defined nor understood. The U.S. Justice Department estimates that 11,380 police officers were called to military service in 2006 alone. In the November 2007 *USA Today* article, Dr. Audrey Honig from the Los Angeles Sheriff's Department comments that never before has there been an expectation for reservists to be involved in combat. And implications of redeployment, extended deployment, exposure to urban combat, repeated blast exposure and the cumulative effect of these experiences for law enforcement personnel and their families may not be fully understood for some time. Indeed, the disruption experienced in the service member's family as well as the stress associated with physical separation from loved ones during deployment have a

significant impact on one's overall psychological, emotional and physical health. The following excerpts further illustrate the nature of these concerns.

As our country's operational commitments have increased throughout the world, military families are now often faced with deployments in more rapid succession. In many situations, it is unknown when the deployment will end, increasing the anxiety and uncertainty for military families. (Morse, J., MD, 2006, *The new emotional cycles of deployment*, retrieved from www.hooah4health.com/deployment)

During deployment, service members may have taken part in missions and operations that exposed them to very stressful or often life threatening experiences. . . Service members may have been shot at, seen the death or injury of American personnel or of civilian and enemy combatants, or even witnessed the death or injury of people they knew. IEDs (improvised explosive devices) are common; many convoys deal with piles of garbage blowing up just as they pass by. Many troops are on alert 24/7.

Frequent Combat Experiences Reported by Members of the US Army, 2003		
	Afghanistan	Iraq
Being attacked or ambushed	58%	89%
Receiving incoming fire	84%	86%
Being shot at	66%	93%
Seeing dead bodies/remains	39%	95%
Knowing someone seriously injured or killed	43%	86%

(*Returning from the War Zone*, created by experts at the National Center for PTSD, 2006; retrieved from www.ncptsd.va.gov/ncmain/ncdocs/manuals/GuideforFamilies.pdf)

Are there specific concerns related to reintegration into law enforcement employment given the nature of the work, particularly in terms of the likelihood of law enforcement work to spur reoccurrences of Post Traumatic Stress Disorder (PTSD) symptoms? What are the responsibilities of law enforcement agencies in monitoring

their employees in a proactive yet supportive manner which complements assessment and treatment services provided by the military? What are the needs and concerns of reservists as they reintegrate?

While the military provides a variety of services to veterans, there is some disparity between services provided to active duty military members and military reservists. In his January 14, 2008 article entitled “Begging, Borrowing to Help our Soldiers,” Baltimore Sun reporter David Wood describes the Maryland Guard’s reintegration program as health assessment services for the reservist and a series of seminars to help reservists address common family/life issues. Funding from the federal government is limited, yet National Guard troops often have special needs relating to their transition back into civilian life. Unlike active duty personnel, the reservist’s military peers are not physically available on a daily basis to assist them as a support network upon their return. The Minnesota National Guard, nationally recognized for its *Beyond the Yellow Ribbon* reintegration program (www.minnesotanationalguard.org), spends \$852 per reservist without federal funding. But even services funded by Congress are inadequate to meet expressed needs. In his July 2007 remarks to the House Armed Services Committee, Vice Admiral Donald C. Arthur, Surgeon General of the Navy, outlined several shortcomings in the psychological services provided by the military. In addition to the need for reducing the stigma associated with psychological services and addressing staffing shortages of mental health professionals, Admiral Arthur recognized the need to develop a universal neuro-cognitive screening method and a personnel-borne blast sensor for detecting cumulative exposure. Without these enhancements, the current system is seen as

lacking reliable and consistent measures. While severe brain injuries are more readily identifiable, mild traumatic brain injury or concussion is an ongoing concern because of the difficulty in proper diagnosis

(http://armedservices.house.gov/pdfs/MilPers071207/Arthur_Testimony071207.pdf).

Employers are focused on employee health and wellness as a key human resource management concern. For law enforcement officers, health and wellness is more than a matter of managing health care costs or ensuring employee productivity. The health and wellness of an officer may determine whether a return home is possible at shift's end. Under the best of circumstances, there are many stressors that may impact an officer's ability to maintain optimum health and wellness. To proactively address the reintegration needs of service members, organizations can undertake any number of specific programs and efforts as discussed below.

Support Committee

Perhaps a first step in providing effective employer programs for the reintegration of military reservists is the creation of a support committee or team. This support committee can, in turn, develop a handbook specific to the organization which identifies resources available to the returning service member. Some agencies may wish to create a comprehensive strategic plan to explain the goals and objectives of employer programs with the input of the support committee. Posting and maintaining information on the agency's internal web site may be another responsibility of the committee. The primary mission of the committee should be to assist reservists both while on active duty and during the employment reintegration process. The committee should be comprised of employees with knowledge and expertise in typical human resources

functions such as payroll, employee benefits, training, employee relations, counseling services, and other related areas. It may be beneficial to include at least one key decision maker, perhaps at the executive level, to empower the group and ensure support from upper management.

Two law enforcement agencies that currently utilize committees or teams are the Los Angeles County Sheriff's Department (LASD) and the Phoenix (AZ) Police Department. LASD formally assembles its Military Activation Committee (MAC) at the discretion of the Sheriff when a significant number of employees are activated into military service. In part, the MAC functions as a resource in resolving conflicts that may arise due to military reserve obligations of employees. The MAC, headed by a commander, has a web page on the department's internal web site that provides information regarding legal issues, departmental procedures, forms, checklists, frequently asked questions, special events, media coverage, a photo gallery, and a listing of currently deployed reservists. Hyperlinks to employee's e-mail addresses are also provided as are links to reservists' military mailing addresses for employees who wish to send a personal letter or care package.

The Phoenix Police Department's Active Duty Support Team (ADST) provides support to reservist employees and their families while they are deployed, and assists with their transition back to civilian life. All ADST members are certified in peer support. Like LASD, the Phoenix Police Department has an internal web site that provides links to reservists' e-mail addresses.

Manual or Strategic Plan

The LASD's *Unit Commander Military Leave Resources Handbook* is an example of a handbook or manual that can serve as an effective tool for law enforcement agencies in the reintegration effort. It is a valuable resource for explaining some of the law enforcement managers' duties, responsibilities, and resources associated with military reservists on active duty. The LASD's handbook is divided into eight sections, summarized as follows:

1. **General introduction** – provides a disclaimer indicating that the handbook does not supersede or replace federal, state, or local laws or regulations; explains the purpose of the handbook; summarizes the purpose, duties, and leadership structure of the MAC.
2. **Reserve military obligations** – identifies categories of reserves and the handbook focus; describes basic training obligations.
3. **Legal aspects** – provides a brief explanation of the Uniformed Services Employment and Reemployment Rights Act (USERRA) as well as state and local regulations.
4. **Avoiding scheduling conflicts** – offers tips and suggestions; explains scheduling and training requirements.
5. **Out-processing an employee called to active duty** – explains procedures.
6. **In processing an employee returning from active duty** – emphasizes that the intent is to facilitate the reintegration process; discusses processes.
7. **Glossary** – provides information regarding terms and acronyms.
8. **References** – provides relevant internet links.

Mentoring

To facilitate reintegration into the workplace, law enforcement agencies may assign mentors to returning reservists. The role of a mentor is to guide the employee through the reintegration process and to assist with administrative processes as necessary. The mentor may assist the employee by:

- providing information about the availability of professional psychological or counseling services.
- resolving salary issues with the agency or military branch.
- assisting in determining work assignment, schedule, and vacation time.
- identifying promotional opportunities.
- notifying and explaining changes in laws or agency policies.
- assessing the need for refresher, remedial, or mandated training.
- assisting in obtaining ammunition, weapons, uniforms, or other logistical supplies and equipment.

Training

Since the duration of an individual's deployment can vary from several months to several years, a flexible training plan tailored to meet the needs of the employee is beneficial. An employee's training needs are based on factors including the officer's depth and breadth of experience with the agency, his/her ability to perform their duties, the nature and length of military service, and other relevant factors. Pre-existing policies, forms, and checklists help ensure that relevant issues are addressed and identify the employee, supervisor, or commander who is responsible for performing

specific functions or tasks. Managers and training staff must also determine whether the returning employee requires training.

Assessments/Psychological/Counseling

The following chart identifying four primary deployment-related stress disorders is found in the January 2006 “Redeployment Health Guide: A Service Member’s Guide to Deployment-Related Stress Problems” published by the US Army Center for Health Promotion & Preventive Medicine (USACPPM):

Level of Severity	Deployment-related Stress Problems
Mild	Combat/Operational Stress Reactions
Moderate	Adjustment Disorders
	Acute Stress Disorder
Severe	Post-Traumatic Stress Disorder

USACPPM recognizes that many individuals are able to work through these disorders without treatment and without long term impact. PTSD is generally recognized as being the most serious stress disorder and is also the most frequently cited in literature regarding reintegration concerns. The USACPPM brochure includes the following statement: “Most Soldiers will not develop PTSD. For those who do, it is important to keep in mind that about 50 percent of PTSD cases, get better on their own within 3 months. It is also important to remember that [a service member] can experience some PTSD symptoms without having full-blown PTSD. Roughly one out of

every ten Soldiers returning from Operation Iraqi Freedom (OIF) or Operation Enduring Freedom (OEF) says that they have had PTSD symptoms. [It is not known], however, how many actually have PTSD.” The brochure encourages service members to seek treatment, particularly if there is impairment of functions such as sleeping, concentrating, etc. It also reminds the reader that symptoms may not be evident immediately following deployment, but may appear 90-120 days later. Reducing the social stigma associated with seeking professional counseling and mental health services are significant challenges for both the military and the law enforcement communities.

In an article entitled “Reintegration & Readjustment Program for Iraqi Veterans: for Officers Returning from the War in Iraq,” Dr. Beverly Anderson, Clinical Director/Administrator for the Metropolitan Police Employee Assistance Program in Washington, D.C. describes the National Vietnam Veterans Readjustment Study and its findings which are also detailed in *Trauma and the Vietnam War Generation*, 1990. Aside from identifying the PTSD experience rate for males as 15.2% and for females as 8.9%, one of the relevant findings for law enforcement is the assertion that exposure to traumatic events prior to combat results in a greater likelihood for PTSD occurrence. In other words, there is a kind of cumulative effect noted for people who had pre-war exposure to trauma. Dr. Anderson comments, “this finding is significant for police officers who experience multiple traumas as an everyday part of their work in law enforcement.” Given the nature of the work, it is logical to assume that law enforcement professionals serving as military reservists may be more susceptible to mental health risks (reference www.giftfromwithin.org).

Yet Dr. Mary Wales North, police psychologist for the Tucson, Arizona Police Department commented in the February 2008 issue of *HR News Magazine* that when returning police officers “feel they have. . . support, they are not as likely to develop symptoms of PTSD or have longer term difficulties.”

In 2006, the National Center for PTSD prepared *A Guide for Families of Military Members*. This publication is an important resource in that it provides information to help service members and their loved ones to understand the emotions experienced by the returning reservists, and to recognize signs and symptoms brought about by exposure to war zone experiences.

Current studies of military combat trauma are reporting higher rates of emotional consequences (PTSD) and neurological injuries than experienced in other modern U.S. combat experiences. This increase results from greater exposure to combat conditions in each war zone tour, the compounding effects of multiple combat tours and the high frequency of exposure to concussive effects of improvised explosive devices (IEDs), resulting in closed head injury. Returning service members are reporting greater levels of disability than in any modern combat experience. Two predominant kinds of neuropsychiatric disabilities are PTSD and TBI.

- Post Traumatic Stress Disorder (PTSD)
 - Symptoms of depression and/or anxiety result from exposure to life-threatening experience, upsetting and reducing personal resources, which can interfere with the demands of law enforcement duty

- Symptoms can present immediately or later; many who appear to be initially well-adjusted suffer at a later time, often in the context of other stressors, which in combination are overwhelming.
- PTSD can usually be treated, but can also be treatment resistant.
- Traumatic Brain Injury (TBI)
 - TBI is a collective term that summarizes any of a number of neurological consequences following exposure to the concussive force of an explosion of incoming artillery rounds, land mines and improvised explosive devices (IED).
 - Among the more common symptoms of TBI are loss of problem solving ability (and intellectual potential), being easily confused, disoriented and frustrated.
 - Treatment for TBI depends on the kind(s) of neurological injury suffered. For many with TBI symptoms, however, the potential for improvement is uncertain. Some of the literature suggests that 1/3 will improve (with or without treatment), 1/3 will not change and 1/3 will decline further and become worse.

Law enforcement employers can determine if employees are at risk for these types of disabilities by using “self-report” questionnaires that list symptoms and ask the examinee to report whether they apply similar to what is used by the military. The “incentive” for accurately responding is the promise of treatment. However, the cost for an officer to accurately respond is the potential of not being able to return to duty / not being found fit for duty.

It appears that only a comprehensive examination that measures emotional adjustment and cognitive ability is reliable in assessing the presence of these conditions. Competent screening and fitness for duty procedures should already be doing this but should be confirmed. Employees should be assessed prior to returning to duty after serving a military tour. However, PTSD symptoms may not immediately manifest and employers must train their supervisors to be aware of the advent of symptoms of PTSD in their returning service members.

ESGR's 5-Star Employer Program and Awards

The Employee Support of the Guard and Reserve has as its goal and purpose the education of employers as to their responsibilities for employees who serve in the National Guard and Reserve. In addition to its 5-Star Program which recognizes employers for supporting service members above and beyond the requirements of the law, another essential component of the ESGR is to formally recognize employers through its awards and recognition program. There are four primary awards sponsored by the ESGR including the Patriot, Above and Beyond, Pro Patria, and Freedom awards. The ESGR is a valuable resource for employers to identify the nature and extent of their legal obligation to reservists and to identify ways in which they can support service members beyond the legal requirements.

Resources

The number and types of resources available to returning service members is increasing in direct response to the expressed needs of these individuals. While the U.S. Department of Veterans Affairs (VA) provides resources dedicated to the reintegration of service members, the VA is overwhelmed by requests for service which results in slower access to these services. Many states now make resources available through their National Guard units. In addition, some Employee Assistance Programs (EAP) and insurance companies provide reintegration services for returning service members. These resources range from information wholly accessible on websites to the availability of volunteering professionals who are dedicated to providing services to returning veterans. A sampling of resources aimed at facilitating the reintegration process follows:

- United States 211 Information and Referral

Many states provide 2-1-1 referral phone lines. Individuals staffing these lines provide information regarding services available in a specific geographic area.

- www.va.gov

U.S. Department of Veterans Affairs

This site provides a comprehensive list of resources for returning veterans.

- www.ncptsd.va.gov/ncmain/veterans/

U.S. Department of Veterans Affairs, National Center for Post Traumatic Stress Disorder

This guide, intended for service members and their families, contains information about what a service member can expect during the reintegration period and is designed to help them adapt to home life with their loved ones.

- <http://www.govbenefits.gov>

GovBenefits.gov

GovBenefits.gov is the official benefits website of the U.S. government with information on over 1,000 benefit and assistance programs.

- <http://deploymenthealthlibrary.fhp.osd.mil>

Deployment Health and Family Readiness Library

This library provides service members and their families with fact sheets, guides, and other products related to deployment, health and family readiness information.

- www.militaryonesource.com

MilitaryOne Source

This free 24-hour service, provided by the U.S. Department of Defense is available to active duty, Guard, and Reserve members and their families. Consultants provide information and make referrals on a wide range of issues.

- www.esgr.org

Employer Support of the Guard and Reserve

Individuals can find fact sheets and resources for employers and members of the National Guard and Reserve on all aspects of workplace reentry and implications for employees and employers.

- <http://www.mentalhealthamerica.net/reunions/InfoReturnWork.cfm>

Operation Healthy Reunions

This site provides educational information and addresses mental health issues impacting soldiers and their families and is intended to ensure that a greater number of individuals receive prompt, high quality care.

- www.ameriforce.net/deployment

Ameriforce Deployment Guide

This site provides fact sheets and information relative to post-deployment issues.

- www.thesoldiersproject.com

The Soldiers Project

Information on free services for soldiers with physical and/or emotional injuries can be accessed on this site. The Soldiers Project is a group of licensed psychiatrists, psychologists, social workers and marriage and family therapists who volunteer their time to help military personnel and their loved ones before, during and after deployment.

- www.soldiersmind.com

A Soldiers Mind

This site provides information on reintegration and other topics of interest for soldiers, families and employers.

- www.Hooah4Health.com

US Army health promotion and wellness website

This site targets the Reserve Components and is a health promotion partnership that allows individuals to assume the responsibility to explore options and take charge of their health and well being.

- www.TurboTAP.org

Transition Assistance Program website

TurboTAP.org is the Department of Defense's official website providing information for service members on transitioning from military service. This site is also supported by the Departments of Labor and Veterans Affairs.

- www.dol.gov/vets/programs/tap/tap-fs.htm

U.S. Department of Labor – Veterans' Employment and Training Service

This site provides information to meet the needs of separating service members during their period of transition into civilian life by offering job search assistance and related services.

- http://www.minnesotanationalguard.org/returning_troops/btyr_overview.php

Beyond the Yellow Ribbon

The Minnesota National Guard has pioneered a program aimed at changing how soldiers and airmen reintegrate into their communities. The program is named as a reminder that the support of soldiers cannot end when they return from deployment and yellow ribbons are untied.

- <http://www.capcityrehabgroup.com/index.html>

Capitol City Rehabilitation Group (CCRG)

CCRG provides administrative healthcare services to assist in preparing applications for assistance from the Department of Defense, the Department of Veterans Affairs, and other public and private sector agencies. The goal is to increase the number of transitioning or injured workers successfully returning to work by identifying and addressing employability concerns, increasing independence, improving workplace

integration, and increasing the participation of the transitioning or injured reservist in the workplace or community.

Uniformed Services Employment and Reemployment Rights Act (USERRA)

“Every day, men and women of our nation’s armed forces put their lives on the line to protect the freedoms we enjoy, and it is our responsibility to ensure that their rights are protected in return,” said Attorney General Alberto R. Gonzales. Toward this end, the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) as well as state laws, local ordinances, and provisions of various collective bargaining agreements present a comprehensive legal framework within which employers must operate when employees are called to active military service as well as when employees return to their civilian employment following a period of active military service.

USERRA is a federal statute that protects service members’ and veterans’ civilian employment rights. Among other things, the act seeks to ensure that members of the uniformed services are returned to their civilian employment upon completion of their military service. The law also protects service members from discrimination in hiring, promotion, and retention on the basis of their military service or affiliation. The Department of Labor is the enforcement authority for USERRA. It processes all formal complaints alleging violation of the law.

To effectively manage military leaves of absence, agencies must be aware of the following:

- An employee does not have to request permission to be absent for military leave. Rather, the employee simply provides notification to the employer of pending military service.
- There is no longer any differentiation between voluntary and involuntary service.
- An employee cannot be required to use earned vacation or similar leave days for military leave of absence.
- Military service is not counted as time away from the employer for retirement purposes.

Key features of USERRA are outlined below:

- It is a Federal law. No law, policy, practice, etc. that would diminish the rights established in USERRA takes precedence over the provisions of USERRA. Conversely, USERRA does not supersede, nullify, or diminish any federal or state law, or company policy, union agreement, practice or contract that provides greater rights or benefits to service members.
- USERRA applies to all employers in the United States, regardless of the size of the business. It protects part-time positions, unless the employment is for a brief, non-recurring period and is not expected to last indefinitely or for a significant period. USERRA does not protect independent contractors and others considered to be self-employed.
- USERRA prohibits discrimination in hiring, retention, promotion, or other benefits of employment because that person "is a member of, applies to be a member of,

performs, has performed, applies to perform, or has an obligation to perform service in a uniformed service...." (USERRA, 1994). In addition, employers are prohibited from reprisal against anyone who exercises USERRA rights or anyone who assists in the exercise of those rights by testifying or otherwise participating in an investigation, even if that person has no military connection.

- To qualify for reemployment rights following military service, employees must meet the following five eligibility criteria:
 1. must have left a civilian job,
 2. must have given notice that s/he was leaving to perform military service,
 3. cumulative period of military service must not have exceeded five years (there are exceptions),
 4. the individual must have been released from service under honorable or general conditions,
 5. the individual must have reported back to work or applied for reemployment within time constraints prescribed by law.
- Under USERRA, an employee (or an officer from his/her command) must provide their employer with advance notice (either written or verbal) of upcoming military service. Otherwise, the individual will not be eligible for reemployment protection following the period of military service. The only exceptions to the notification requirement are if giving notice is precluded by military necessity (e.g., a classified recall) or if it is otherwise impossible or unreasonable to give notice. These exceptions to the notice requirement are expected to be rare.

- USERRA sets a five year cumulative limit on the amount of military leave an individual can perform and retain reemployment rights with a given employer. If the employer begins work with a new employer, a new five year limit applies. There are some important exceptions to the five year limit. If the employee is unable to obtain release or if service is required to complete an initial period of service, that time of service is exempt. If an employee was hospitalized for or is convalescing from an illness or injury incurred in, or aggravated during military service, the limit may be extended up to an additional two years. Drills (inactive duty training), annual training, involuntary active duty extensions (including training certified as necessary), and recalls due to a war or national emergency are not counted in the five year cumulative total.

Under USERRA reemployment protection does not depend on the timing, frequency, duration, or nature of an individual's military service. USERRA clarifies that while an individual is performing military service, he or she is deemed to be on a furlough or leave of absence and is entitled to the non-seniority rights accorded other individuals on nonmilitary leaves of absence.

- The type of military duty performed doesn't relate to the employee getting his/her job back. Reinstatement is strictly based on the duration of the uniformed service. For periods of military service up to 30 days, the employee must report back to work at the next regularly scheduled shift on the day following release from the military, safe travel home, and eight hours of rest. Following a period of service of 31-180 days, the employee must apply for reemployment within 14 days following release. Following a period of service of 181 days or more, the

employee must apply for reemployment within 90 days after release. However, an employee's failure to return to work or apply for reemployment within the specified time limits through his/her own fault does not necessarily cause the employee to forfeit his/her reemployment rights but makes the employee subject to the employer's rules concerning unauthorized absence from work.

- Employees returning from military service must be reemployed in the job that they would have attained had they not been absent for military service (known as the 'escalator' principle) and with the same seniority, status and pay, as well as other rights and benefits determined by seniority. Reasonable efforts must be made to enable returning employees to refresh or upgrade their skills to enable them to qualify for reemployment. If refresher training is not successful, USERRA requires that the employee must be reinstated in a position that most nearly approximates the position originally held. Employees who are disabled, either temporarily or permanently, due to military service must also be accommodated in a position most nearly approximating their original position.
- Following a period of military service, if the employee meets the eligibility criteria discussed above, s/he has a number of specific entitlements. S/he is entitled to prompt reemployment. S/he is entitled to seniority, seniority-related benefits (including pension), status, and rate of pay as if s/he was continuously employed during the military absence. S/he is entitled to immediate reinstatement of health insurance for him / herself and previously covered dependents, with no waiting period and no exclusion of preexisting conditions, except conditions determined by the Government to be service-connected. The employee is entitled to training

or retraining if necessary to qualify for reemployment. If the employee was disabled while on military duty, or a disability is aggravated by military service, the employer must make reasonable efforts to accommodate the disability. If the period of service was 181 days or more, the employee is protected from discharge, except for cause, for one year. If the service was for 31-180 days, the period of protection from discharge is 180 days.

- Under the provisions of USERRA, the employee may elect to continue employer-provided health insurance for a period up to the first 24 months of military service. If the period of service is 30 days or less, the employee pays the normal employee cost, if any, for the coverage. If the period of service is 31 days or more, the employee can be required to pay up to 102 percent of the total premium. In addition, the employee is also entitled to any non-seniority-related benefits that the employer offers to employees on nonmilitary leaves of absence (e.g., jury duty).
- Under USERRA, pension plans in which benefits are earned for *length of service* are protected. An employee's military service is not considered a break in employment for pension benefit purposes. The employee's military service must be considered service with the employer for vesting and benefit accrual purposes.
- An employee may elect to use personal vacation time that has accrued with the employer. However, the employer cannot require the employee to use vacation during the period of military service. Employees do not accrue civilian vacation

during a period of military service unless the employer provides this as a benefit for employees on a non-military, non-pay leave of absence of similar duration.

Family and Medical Leave Act (FMLA)

The FMLA is a Federal law that provides eligible employees of covered employers the right to take up to 12 work weeks of unpaid, job-protected leave, during any 12 months, for the birth and care of a newborn, adoption or foster care, or a serious health condition of the employee or certain family members.

To be eligible for leave under the FMLA, employees must meet several eligibility criteria. Two of these criteria affected by USERRA are: the person must have been employed by the employer for at least 12 months and the person must have worked at least 1250 hours for that employer during the 12 month period preceding the start of the leave. The requirement of 1250 hours worked applies to individuals employed by private employers, state and local governments and the Postal Service.

USERRA requires that military service members who conclude their tour of duty and are re-employed by their civilian employers receive all benefits of employment that they would have obtained if they had been continuously employed, except those benefits that are considered a form of short-term compensation, such as accrued paid vacation. If a military service member had been continuously employed, one benefit to which s/he might have been entitled is leave under the FMLA. The service member's eligibility will depend upon whether the service member would have met the eligibility requirements had s/he not performed military service.

In determining eligibility for FMLA leave, USERRA requires that a person re-employed under its provisions be given credit for any time s/he would have been

employed if they hadn't been ordered to active military duty. A person re-employed following military service should be given credit for the period of military service toward the months-of-employment eligibility requirement, i.e., each month spent performing military service counts as a month actively employed by the employer.

In determining FMLA eligibility, an employee returning after military service should be credited with the hours-of-service that s/he would have been performed if they hadn't been ordered to active military duty. For a person re-employed following military service, the hours that would have been worked for the employer are to be added to any hours that were actually worked during the previous 12-month period and are applied towards meet the 1250-hour requirement. To determine the hours that would have been worked during the period of military service, the employee's pre-service work scheduled can generally be used for calculations.

References

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LEGAL CONSIDERATIONS

It is important to recognize that there are legal considerations that must be factored into any agency's decisions regarding health and wellness issues, fitness for duty, limited or light duty and the reemployment of law enforcement officers returning from military assignments. It is recommended that policies and practices dealing with these issues be made in consultation with agency legal counsel whose advice can keep agency administrators from making well-intentioned, but legally unsound, decisions. The following discussion points out some of the laws and legal considerations that should be taken into account when dealing with health, wellness and fitness issues.

Family and Medical Leave Act (FMLA) amended to address military family leave

Enacted in 1993, the FMLA is now firmly entrenched in the workplace and routinely administered by human resource professionals. It has remained virtually unchanged since its inception until recently. In January 2008, President Bush signed into law the National Defense Authorization Act (NDAA) which amended the FMLA as it relates to military family leave. The amendments became effective on January 28, 2008 and provide two important new leave rights related to military service – a new qualifying reason for leave and a new leave entitlement.

The complete text of the amendments to the FMLA can be accessed at <http://www.dol.gov/esa/whd/fmla/fmlaAmended.htm>. Summarized below are some of the military family leave provisions that reflect significant changes to the FMLA.

- The terms “parent,” “spouse,” and “son or daughter,” have been expanded to include “next of kin” (meaning nearest blood relative) in a service member’s family. 29 USC § 2611(18).

- A “covered service member” means a member of the Armed Forces, including the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness. 29 USC § 2611(16).
- The term “serious injury or illness” describes an injury or illness incurred by the service member in the line of duty or active duty that may render the service member medically unfit to perform the duties of the member’s office, grade, rank, or rating. 29 USC § 2611(19).
- In addition to the four FMLA qualifying events that entitle an eligible employee to 12 workweeks of leave during any 12-month period, an eligible employee is now entitled to that same leave because of a “qualifying exigency” arising out of the fact that the spouse, son, daughter or parent of the employee is on active duty or has been notified of an impending call or order to active duty. 29 USC § 2612(a)(1)(E).
- An eligible employee who is the spouse, son, daughter, parent or next of kin of a covered service member shall be entitled to a total of 26 workweeks of leave during a 12-month period to care for the service member. 29 USC § 2612(a)(3).
- During a single 12-month period, an eligible employee shall be entitled to a combined total of 26 workweeks of leave for leave taken for the “qualifying exigency” and the care of a service member who is ill or injured as defined in the amendments. 29 USC § 2612(a)(4).

- The military family leave can be taken intermittently or on a reduced leave schedule. 29 USC § 2612(b)(1).

Although the above amendments were adopted and became effective on January 28, 2008, the regulation defining what constitutes a “qualifying exigency” has not yet been adopted. The U. S. Department of Labor, in its notice poster announcing the new military leave rights, states that “employers are encouraged to provide this type of leave [i.e. for a “qualifying exigency”] to qualifying employees in the interim.” (A copy of the notice poster is provided as an attachment to this paper). Until such time as a final regulation is enacted defining a “qualifying exigency,” employers are left to guess what might constitute such an exigency. In this interim period, guidance can be found in statements made by key members of the United States House of Representatives about this provision. Representative Jason Altmire, who introduced the provision, stated:

What this legislation does is allow family members of our brave men and women serving in the Guard and Reserve to use Family and Medical Leave Act time to see of, to see the deployment, or to see the members return when they come back, and to use that, importantly, to deal with economic issues, and get the household economics in order . . . It will allow military families to use family and medical leave time to manage issues such as childcare and financial planning that arise as a result of the deployment of an immediate family member. Federal Register, Vol. 73, No. 28, February 11, 2008, at 7927.

Representative Tom Udall, who co-sponsored the provision, stated:

For every soldier who is deployed overseas, there is a family back home faced with new and challenging hardships. The toll extends beyond emotional stress. From raising a child to managing household finances to day-to-day events, families have to find the time and resources to deal with the absence of a loved one. The Altmire-Udall amendment would allow spouses, parents or children of military personnel to use Family and Medical Leave Act benefits for issues related directly to the deployment of a soldier. Federal Register, Vol. 73, No. 28, February 11, 2008 at 7927.

Representative George Miller added:

These deployments and extended tours are not easy on families, and two-parent households can suddenly become a single-parent household and one parent is left alone to deal with paying the bills, going to the bank, picking up the kids from school, watching the kids, providing emotional support to the rest of the family. You have got to deal with these predeployment preparations. Federal Register, Vol. 73, No. 28, February 11, 2008 at 7927.

Until the final regulation is enacted that provides the interpretation of what constitutes a “qualifying exigency,” evaluate each request on a case-by-case basis with the above statements as a guide. Include the agency’s human resource professionals and legal counsel in the decision making process for decisions on this issue.

Americans with Disabilities Act (ADA)

The ADA has implications in a number of areas explored in this paper, such as physical fitness standards, fitness for duty and other medical examinations, and light duty, as well as the safety concerns presented by law enforcement officers who suffer from disabilities and cannot adequately perform the essential functions of their jobs.

The duty to accommodate and the safety concerns that are ever present in law enforcement require a balancing of these sometimes competing interests and law enforcement agency administrators should include human resource professionals and legal counsel in the evaluative process when dealing with issues impacted by the ADA.

The ADA prohibits discrimination in all employment practices against an applicant and employee who is considered to be a “qualified individual” with a disability. 42 USC § 12111(8). A “qualified individual” with a disability is an individual who can perform the essential functions of the job with or without an accommodation. 42 USC §

12111(8). A disability is defined as a physical or mental impairment that substantially limits one or more major life activities. 42 USC §12102(2)(A). The Equal Employment Opportunities Commission (EEOC) defines a physical or mental impairment as follows:

(1) Any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine; or (2) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. 29 C.F.R. § 1630.2(h)(1998).

A major life activity is defined as “functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

The ADA also protects an individual who has a record of a disability, 42 USC § 12102(B), or is regarded as having a disability, regardless of whether the person actually has the disability. 42 USC 12102(2)(C).

The United States Supreme Court, in *Sutton v. United Air Lines*, 527 U.S. 471, 482-84 (1999) established that individuals must be evaluated in light of any corrective or mitigating measures:

We conclude that respondent is correct that the approach adopted by the agency guidelines—that persons are to be evaluated in their hypothetical uncorrected state—is an impermissible interpretation of the ADA. Looking at the Act as a whole, it is apparent that if a person is taking measures to correct for, or mitigate, a physical or mental impairment, the effects of those measures—both positive and negative—must be taken into account when judging whether that person is “substantially limited “ in a major life activity and thus “disabled” under the Act.

* * * * *

For instance, under this view, courts would almost certainly find all diabetics to be disabled, because if they failed to monitor their blood sugar levels and administer insulin, they

would almost certainly be substantially limited in one or more major life activities. A diabetic whose illness does not impair his or her daily activities would therefore be considered disabled simply because he or she has diabetes. Thus, the guidelines approach would create a system in which persons often must be treated as members of a group of people with similar impairments, rather than as individuals. This is contrary to both the letter and the spirit of the ADA.

The protections of the ADA do not apply if a disabled person cannot perform the essential functions of the job, even with an accommodation. However, if a person can perform a job's essential functions and is a qualified individual, the ADA prohibits discrimination in areas such as job application procedures, hiring, and advancement. 42 USC § 12112(a). Under the ADA, an employer discriminates by using qualification standards or selection criteria that have a tendency to screen out an individual with a disability or a class of individuals with disabilities unless the standard or selection criteria is shown to be "job-related for the position in question and is consistent with business necessity." 42 USC § 12112(b)(6). For instance, a blanket exclusion of all disabled law enforcement officers constitutes unlawful discrimination on the basis of a disability because the exclusion is based on generalizations or stereotypes about the effects of a particular disability on an individual. *Stillwell v. Kansas City Bd. of Police Comm'rs.*, 872 F. Supp. 682, 686 (W.D. Mo. 1995).

Agencies have an obligation to engage in an interactive process with an employee who is requesting a reasonable accommodation to determine if the individual is a qualified individual with a disability and to determine whether or not a reasonable accommodation can be fashioned. An employer is required to make reasonable accommodation to the known physical or mental limitations of a qualified individual

unless the accommodation would pose an undue hardship on the employer. *Sch. Bd. of Nassau County v. Arline*, 480 U.S. 273, 289 n. 17 (1987).

In certain cases where an employer can show that the employee poses a “direct threat” that cannot be eliminated by a reasonable accommodation, the employer is not mandated to accommodate the individual. 42 USC §12113(a)-(b). The determination that an applicant or employee with a disability does pose a “direct threat” to the health and safety of others must be based on objective facts related to that particular individual’s present ability to safely perform the essential functions of the job. 29 CFR § 1630.2(r)(1998).

This case-by-case determination as to whether an individual poses a significant risk of harm to others requires the employer to identify the specific behavior exhibited by the individual with the disability. The employer then should consider these four factors: (1) The duration of the risk; (2) The nature and severity of the potential harm; (3) The likelihood that the potential harm will occur; and (4) The imminence of the potential harm. 29 C.F.R. § 1630(2)(r)(1998).

The issue frequently arises as to whether light-duty or limited duty constitutes a reasonable accommodation. In the law enforcement context, light or limited duty assignments are made for sworn law enforcement officers who suffer temporary disability but are expected to return to full-duty status at some point in the future. Usually, salaries of law enforcement officers and civilians within the same department or agency reflect that the sworn officers are compensated for physical abilities and hazardous duty and receive higher compensation than civilians who do not face those demands. This makes it very difficult to reasonably accommodate a sworn officer by

placing him or her in a light or limited duty position that removes those physical requirements and hazardous duties, while still paying him or her the salary of a full-duty law enforcement officer. One court recognized this problem, observing that the plaintiff police officer with a disability “did not desire a position as a dispatcher, but rather wanted a new position: dispatcher with a police officer’s salary.” *Conklin v. City of Englewood*, 98 F.3d 1341 (6th Cir. 1996). His request that the department “employ him as a dispatcher and pay him as a police officer” was an “unreasonable accommodation.” *Id.*

Similarly, the court in *Santos v. Port Authority of New York and New Jersey*, 1995 WL 431336, ruled against a police officer with a permanently injured foot who had been allowed to perform a “light duty” assignment for more than two years and who wanted to keep that assignment permanently. The court determined that “no rational fact finder could conclude that the essential functions of the job of a police officer do not include duties well beyond the limited clerical work that plaintiff is capable of performing.” *Id.* The court ruled that “a showing by plaintiff that he can satisfactorily perform light duty functions is insufficient, for these duties do not encompass all of the essential duties of a ...police officer” and that “an accommodation that eliminates an essential function of the job is not reasonable.” *Id.*

The ADA does not require an employer to create a permanent light duty position. *Watson v. Lithonia*, 304 F.3d 749 (7th Cir. 2002), *cert. denied* 537 U.S. 1193 (2003). It has been deemed to be unreasonable to require an employer to create new jobs that are tailored to each employee’s abilities. *Id.* at 251. *See also, Champ v. Baltimore County*, 884 F. Supp. 991, 999-1000 (D. Md. 1995)(holding that city allowing a police

officer to perform light-duty position for 16 years did not convert it to a permanent position and police officer's ADA claim failed because he could not perform the essential functions of a police officer, such as effecting an arrest); *Allen v. Hamm*, 2006 WL 436054 (D. Md.)(Federal court finds that a police department policy abolishing permanent light-duty positions for disabled officers did not violate the ADA even if officers were not individually assessed for suitable positions. Management's employment decisions were based on reasonable physical criteria and applied on an individualized basis); *Ensslin v. Twp. of N. Bergen*, 646 A. 2d 452 (N.J. Super.A.D. 1994)(Appellate court affirms termination of paraplegic police sergeant; department was not required to create a permanent administrative position to accommodate his disability nor was it required to waive performance of essential functions of police officer job); *Santos v. Port Auth. N.Y.*, 1995 WL 431336 (S.D.N.Y) (Department that does not maintain any permanent restricted duty positions was not required to accommodate a disabled police officer. ADA does not require employer to restructure jobs by eliminating essential functions).

Law enforcement agencies somewhat routinely require law enforcement officers to undergo fitness for duty examinations. That subject is explored in other sections of this paper. When ordering an employee to submit to a fitness for duty evaluation, agencies should be aware that these evaluations may implicate the ADA. Specifically, the ADA provides that an employer:

shall not require a medical examination and shall not make inquiries of an employee as to whether such employee is an individual with a disability or as to the nature or severity of the disability, unless such examination or inquiry is shown to be job-related and consistent with business necessity.

42 U.S.C § 12112(d)(4)(A). Conversely, the ADA does not prohibit such exams when they are job-related and consistent with business necessity. 42 U.S.C. § 12112(d)(4)(B). It is well-recognized that “the ADA does not, indeed cannot, require a police department to forgo a fitness for duty examination to wait until a perceived threat becomes real or questionable behavior results in injuries.” *Watson v. City of Miami Beach*, 177 F.3d 932, 935 (11th Cir. 1999).

An employer is entitled to inquire into the mental health of its employees when there are legitimate concerns about the employee and public safety. *Krocka v. City of Chicago*, 203 F. 3d 507, 515 (7th Cir. 2000)(It was entirely reasonable and responsible for the Chicago police department to evaluate the police officer’s fitness for duty once it learned that he was experiencing difficulties with his mental health). In the context of police officers, employers do not violate the ADA by ensuring that officers are psychologically fit for duty. *Watson v. City of Miami Beach*, 177 F. 3d 932, 935 (11th Cir. 1999)(holding that police department did not violate the ADA by requiring a fitness for duty evaluation of an officer who displayed hostile behavior towards other officers and the public). *See, also, Miller v. City of Springfield*, 146 F. 3d 612, 615 (8th Cir. 1998)(no ADA violation where police department did not hire an applicant who failed a psychological examination); *Metzenbaum v. John Carroll Univ.*, 987 F. Supp. 610, 615-16 (N.D. Ohio 1997)(no violation of ADA to request mental health records of a campus police officer that displayed bizarre behavior); *Barnes v. Cochran*, 944 F. Supp. 897, 901-02 (S.D. Fla. 1996)(ADA not violated by not hiring a deputy sheriff applicant with a history of Vietnam flashbacks, and who experienced nightmares, blackouts, and hallucinations under stress).

Title VII of the Civil Rights Act -- Sex Discrimination and Physical Ability Tests

Title VII protects women and minorities from employment practices that discriminate against them. Physical agility testing has been challenged in the past as being a form of sex discrimination. One such test became the focus of a lawsuit brought by the federal government against the City of Erie, Pennsylvania, alleging that the city's physical agility test constituted sex discrimination. The test included a 220-yard obstacle course which included: a six-foot high wall the applicants were required to climb over; a window opening three feet above the ground the applicants were required to climb through; a platform two feet off the ground and eight feet long the applicants were required to crawl under; and a four-foot wall the applicants were required to climb over. *U.S. v. City of Erie, PA*, 411 F. Supp2d 524, 530 (W.D. Pa 2005). In addition, the test required applicants to perform 17 push-ups and 9 sit-ups. All aspects of the test were to be completed within 90 seconds. *Id.* Over the years, modifications to the test were made to make it fairer to women. A chain link fence was added to the obstacle course to give the applicants an option of climbing either the wooden fence or the chain link fence and the number of push-ups was reduced from 17 to 13. *Id.* at 533.

There were significantly disproportionate pass rates for men and women. In 1996, for instance, women passed the test at the rate of 4.3 percent while men passed the test at the rate of 53.7 percent. Over the seven year period between 1996 and 2002, women passed the test at the rate of 12.9 percent while the men passed at the rate of 71 percent. *Id.* at 534.

The federal government brought suit against the City of Erie alleging that the physical agility test violated Title VII of the Civil Rights Act because it unfairly

discriminated against women. The court found that the city could not prove that the test was job related as required by Title VII. The court specifically found that the City did not prove the validity of the push-ups or sit-ups component of the test, concluding that both components were invalid. The court also was unconvinced that the test met Title VII's standard that the test be "consistent with business necessity." Finally, the court determined that the cut-off scores were set too high. *Id.* at 568-69.

Other cases have addressed claims asserted by females seeking to invalidate physical ability tests with divergent results. *See, e.g., Brunet v. City of Columbus*, 642 F. Supp. 1214 (S.D. Ohio 1986)(invalidating physical ability tests); *Hardy v. Stumpf*, 572 P.2d 1342 (Cal. 1978)(upholding physical ability tests). Writing for the University of Chicago Law Review in an article entitled "Physical Ability Tests and Title VII," David E. Hollar explained:

Because the Supreme Court precedent is so confusing and the terms "business necessity" and "job related" are seemingly redundant, lower courts have struggled to articulate a rule for analyzing physical test cases. Essentially, four major standards have developed. From most to least deferential to employers they are: manifest relationship, the *Spurlock* public safety doctrine, close approximation, and minimum qualifications.

Because these approaches include standards that show great deference to employer tests and those that would ban virtually any physical test used as a prerequisite for employment, they can yield substantially different results when applied to similar physical tests.

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When evaluating a present physical ability test or when considering implementing a new test, law enforcement agencies should evaluate the test with guidance from legal counsel in order to avoid the potential legal pitfalls created by the erratic legal decisions interpreting physical ability tests under Title VII.

Negligent Supervision and Retention Claims

Negligent supervision occurs when, during the course of employment, the employer becomes aware or should have become aware of problems with an employee that indicate his unfitness, and the employer fails to take further actions such as investigation, discharge, or reassignment. *Garcia v. Duffy*, 492 So.2d 435, 438-39 (Fla. Dist. Ct. App. 1986). A person making a negligent supervision claim must allege facts sufficient to show that once an employer received actual or constructive notice of problems with an employee's fitness, it was unreasonable for the employer not to investigate or take corrective action. *Id.* at 441. The employer's liability for negligent supervision is not, however, unlimited; not only must the employer owe a duty to the plaintiff but the breach of that duty must be the proximate cause of the plaintiff's harm. *Watson*, 552 So 2d at 1149. There must be a connection and foreseeability between the employee's employment history and the employee's conduct. *Id.*

The court in *Denis v. City of Newark*, 307 N.J. Super. 304, 314 (App. Div. 1998), recognized that liability may exist against a public entity for "its negligent retention of a police officer who presents a clear public danger." Such a claim exists if the employer knew or should have known of the officer's "dangerous propensities" and the "risk of injury" he presented to the public. *Id.*

Care should be taken when dealing with issues concerning the fitness of a law enforcement officer to perform his or her duties. Once an agency is aware or should be aware of a problem, failure to take appropriate actions to address the problem or ignoring the problem altogether can leave the agency vulnerable to claims such as negligent supervision and retention.