

CHAPTER 10
SEPARATIONS DURING AN INTERNAL INVESTIGATION

REVISED NOVEMBER 2023

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CHAPTER 10

SEPARATIONS DURING AN INTERNAL INVESTIGATION

1. OVERVIEW. This chapter explains departmental procedures in the event an employee separates from the Department due to an absence without leave (AWOL), prior to service of a Notice of Adverse Action, Notice of Rejection During Probation, Notice of Non-Punitive Termination, or prior to service of closing documentation from a miscellaneous investigation.

a. Should an employee separate from the Department prior to being served with a notice, the internal investigation shall be converted to a miscellaneous investigation, and documented in accordance with Chapter 7, Investigation Documentation, of this manual.

2. PERMANENT SEPARATIONS.

a. Voluntary Resignation. An employee may voluntarily resign from the Department by submitting a written resignation, through correspondence or e-mail, to the employee's commander. Should an employee provide an oral resignation, a written resignation should be sought to avoid potential misunderstanding. Either form of resignation, oral or written, is equally binding.

b. Resignation During an Internal Investigation. A commander shall accept a resignation submitted by an employee against whom an internal investigation is pending. In reply, the commander shall provide the employee with a Response to Voluntary Resignation memorandum (memo). The memo provides the employee a 24-hour period to consult and seek guidance before the resignation takes effect. A sample Response to Voluntary Resignation memo is located in Annex A and can also be found on the Office of Internal Affairs (OIA) Intranet reference page.

(1) Managers and supervisors shall not exert undue influence, or subject an employee to duress, with the intent to obtain a resignation. Care should be taken to avoid making statements which could be the basis for an appeal by the employee. Should the above occur, the resignation could be set aside by the State Personnel Board on the grounds it was obtained under duress, undue influence, excessive persuasion, or by mistake.

(2) An employee's separation from the Department prior to the completion of the internal investigation shall not impact the thoroughness of the investigation, other than the possible absence of an administrative interrogation of the involved employee. A finding for each allegation is required and the investigative file is to be completed.

c. Office of Internal Affairs Responsibility. If an employee resigns or retires during an internal investigation, the OIA shall make notification to the employee that they separated under unfavorable circumstances, with an active adverse action investigation pending, and should they reinstate, the Department will pursue the adverse action.

3. ABSENT WITHOUT LEAVE. Absent Without Leave (AWOL) is an automatic resignation from state service (Government Code [GC] Section 19996.2) which occurs when an employee is absent for five (5) or more consecutive working days, whether the absence is voluntary or involuntary. Consecutive working days are days the employee is scheduled to work despite scheduled days off between workdays.

NOTE: Less than full-time employees are considered AWOL when they are absent for five (5) or more of their consecutive scheduled workdays, despite the scheduled length of the workday (e.g., a less than full-time employee may only work four hours a day).

a. Conditions for Absent Without Leave. Employees are considered AWOL when any one of the circumstances outlined in Highway Patrol Manual (HPM) 10.3, Personnel Transaction Manual; Chapter 9, Separations; are met.

b. Procedures.

(1) On the third day of no contact with the employee, or if the reasons for the employee's absences have been unacceptable, a warning notice shall be sent to the employee's last known address. The warning notice will identify the days the employee has been AWOL and give an effective date of separation. A sample Three-Day Warning Notice is located in Annex B, and on the OIA Intranet reference page.

(a) If the employee returns to work before the date of separation, the period of unauthorized absence shall be reported as "dock time" on the employee's attendance report.

(2) After the fifth day of AWOL, the employee's commander shall send an Absent Without Leave Notice to the last known address of the employee. A sample Absent Without Leave Notice is located in Annex C, and on the OIA Intranet reference page. The notice will contain:

(a) The date the automatic resignation will be effective, allowing the employee reasonable time to request a Coleman Hearing.

(b) The dates the employee has been AWOL.

(c) The employee's right to request a Coleman Hearing, including timeframes for said request.

(d) The employee's right to request reinstatement through the California Department of Human Resources (CalHR).

(3) The Absent Without Leave Notice shall be sent by overnight mail with an attached proof of service.

(4) A copy of the Absent Without Leave Notice and the proof of service shall be scanned and e-mailed to the Office of Internal Affairs and the Human Resources Section.

c. Documentation. At the fifth day of AWOL, in addition to an Absent Without Leave Notice, an internal investigation shall be initiated upon Division approval. As a result of the employee's automatic resignation, per GC Section 19996.2, the internal investigation shall be documented as a miscellaneous investigation (refer to Chapter 7, of this manual). This documentation may be used in the Coleman Hearing and CalHR appeal, if applicable.

d. Coleman Hearings. Similar to a Pre-disciplinary Hearing, the Coleman Hearing is an informal review conducted by an impartial and uninvolved Assistant Chief. The Coleman Hearing officer must determine if the employee was absent for five (5) consecutive workdays and if the absence was without permission. Once this determination is made, the Coleman Hearing officer is empowered to sustain or rescind the automatic resignation.

(1) Prior to making a final decision, the Coleman Hearing officer should consider and evaluate the reasons for the AWOL and why the employee failed to obtain permission. Refer to HPM 10.3, Chapter 9, for more information regarding reinstatement procedures through CalHR.

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ANNEX A
RESPONSE TO VOLUNTARY RESIGNATION

State of California

Transportation Agency

M e m o r a n d u m

C O N F I D E N T I A L

Date: September 3, 2022

To: Officer Jaime Lannister, ID 41234

From: **DEPARTMENT OF CALIFORNIA HIGHWAY PATROL**
Pinehurst Area

File No.: 148.31313.38383

Subject: RESPONSE TO VOLUNTARY RESIGNATION

You have expressed a desire to resign from your position of Officer with the California Highway Patrol in lieu of Adverse Action being taken against you. Although you have a right to terminate your employment with the Department at any time, I will tentatively accept your resignation to be effective on September 4, 2022, at 1700 hours. (Normally at least 24 hours later).

Prior to or at that time, you are requested to advise me of your final decision. In the interim, I suggest you seek advice from individuals outside of the Department, such as representatives from your employee labor organization, attorneys, relatives, friends, etc., before reaching your final decision. If I do not hear from you by the aforementioned date and time, I will process your resignation. Once your resignation becomes effective, you may only reinstate with the Department at the discretion of the Commissioner.

T. GREYJOY, Captain
Commander

cc: Office of Internal Affairs
Northern Division
Pinehurst Area

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CHP 51WP (Rev. 06/2013) OPI 076

ANNEX A

RESPONSE TO VOLUNTARY RESIGNATION (*continued*)

Officer Jaime Lannister, ID 41234
Page 2
September 3, 2022

I hereby acknowledge receipt of this memorandum.

Employee's Signature ID Date

Service information:

Supervisor's Signature ID Date

Final Disposition:

Employee did / did not provide a response. This resignation is accepted / rescinded,
effective _____ at _____ hours.

Commander's Signature ID Date

ANNEX B
THREE-DAY WARNING NOTICE

State of California—Transportation Agency

GAVIN NEWSOM, Governor

DEPARTMENT OF CALIFORNIA HIGHWAY PATROL
P. O. Box 942898
Sacramento, CA 94298-0001
(916) 843-3060
(800) 735-2923 (TT/TDD)
(800) 735-2922 (Voice)



May 25, 2023

File No.: 347.54321.Johnson3daywarning

Mr. Arthur Johnson
1234 San Ysidro Way
Pinehurst, CA 91234

Dear Mr. Johnson:

You were absent from work without approved leave on Monday, May 22, 2023, Tuesday, May 23, 2023, and Wednesday, May 24, 2023.

You are hereby warned that absence without leave, whether voluntary or involuntary, for five (5) consecutive workdays is an automatic resignation from state service pursuant to the provisions of Government Code Section 19996.2.

If you do not return to work or obtain approval for your absence from your immediate supervisor by May 26, 2023, at 1700 hours, you will be considered to have automatically resigned from state service as of Friday, May 19, 2023, your last day worked.

Sincerely,

R. T. Williams, Captain
Commander
Pinehurst Area

cc: Office of Internal Affairs
Human Resources Section

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ANNEX C

ABSENT WITHOUT LEAVE NOTICE

State of California—Transportation Agency

GAVIN NEWSOM, Governor

DEPARTMENT OF CALIFORNIA HIGHWAY PATROL
P. O. Box 942898
Sacramento, CA 94298-0001
(916) 843-3060
(800) 735-2929 (TT/TDD)
(800) 735-2922 (Voice)



May 27, 2023

File No.: 347.54321.Johnsonawolnotice

Mr. Arthur Johnson
1234 San Ysidro Way
Pinehurst, CA 91234

Dear Mr. Johnson:

Please take notice that effective June 2, 2023, the California Highway Patrol will invoke the Absent Without Leave (AWOL) statute (Government Code Section 19996.2) because you have been AWOL for five (5) consecutive working days. You have been absent from work without approved leave on Monday, May 22, 2023, through Friday, May 26, 2023.

If you disagree with these facts, you may request an informal hearing (Coleman Hearing) to be held prior to June 2, 2023, at 1700 hours. To request a Coleman Hearing, contact the Coleman Hearing officer, Assistant Chief S. Bonno at 1234 Sunset Drive, Pinehurst, CA 91234, (916) 555-1234. At the hearing you will have an opportunity to explain why you disagree with the intended decision. If the AWOL separation is finalized, you will be considered to have resigned on May 19, 2023, your last day worked.

Whether or not you respond to the Department to request a Coleman Hearing, you will still have the right to file a written request for reinstatement with the California Department of Human Resources (CalHR) at 1515 S Street, North Building, Suite 400, Sacramento, CA 95814, within 15 calendar days of service of this notice. You will have an additional five (5) days if this notice was sent by mail in California. If a request is made, an authorized representative from CalHR will hold a hearing within a reasonable time.

Sincerely,

R. T. Williams, Captain
Commander
Pinehurst Area

cc: Office of Internal Affairs
Human Resources Section

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