

CHAPTER 14
REMOVAL FOR CAUSE FROM SPECIALTY PAY POSITIONS
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CHAPTER 14

REMOVAL FOR CAUSE FROM SPECIALTY PAY POSITIONS

1. GENERAL. There are times when it is necessary and appropriate to remove an employee from a particular assignment. Some assignments have specialty pays attached to them. When the removal involves one of these specialty pay positions, it cannot be made arbitrarily but must be done only when there is legitimate cause to take such action. This restriction is the result of the 1982 Robert White vs. County of Sacramento case which was ultimately heard by the California Supreme Court.

2. WHITE DECISION.
 - a. Background. In the situation leading to the White decision, a deputy sheriff was assigned as a detective. This was a specialized position involving an additional 5 percent pay allowance. The deputy was told that his performance was deficient and he was reassigned to the patrol division. As a result, he lost his special pay allowance. He requested a hearing before the County Civil Service Commissioner, but his request was denied. He appealed this decision through the courts.

 - b. Court Decision. The California Supreme Court ruled that the Public Safety Officers' Procedural Bill of Rights Act affords a peace officer, who is reassigned to a lower paying position based upon alleged deficient performance, a right to administrative appeal. The Court did not specify, however, what appeal process was to be utilized.

3. ELEMENTS OF CAUSE.
 - a. Definition. Cause is defined as an articulable reason an employee cannot continue to perform in the specialty pay assignment safely and/or effectively. Management must be able to show that there is something about the employee's performance/conduct which has a direct relationship to the employee's ability to perform that particular skilled assignment. For example, an employee could be removed from motorcycle duty based upon their frequency of accidents on the motorcycle. A pilot could be removed if placed on interim reporting for lack of knowledge of departmental policies/procedures. In both instances, the deficiency does or could have a direct impact upon the employee's ability to perform properly. An employee could not, however, be removed from a flight officer position solely because they received an adverse action for an unrelated off-duty incident.

b. Specialty Pay. Not all special assignments have a specialty pay attached. For example, applicant investigators and Area special duty officers are not afforded additional pay for their duties. Other positions do, however, have a skill or specialty pay attached. The assignments which warrant this additional pay are determined through negotiations. Specialty pay is defined as a premium pay which is paid on a monthly, rather than a daily basis. Currently, only the following are considered specialty pay positions:

- (1) Motorcycle assignments.
- (2) Pilot or flight officer positions.
- (3) Bilingual positions.
- (4) Investigator positions.

c. Reassignment. Consistent with General Order 10.7, Field and Headquarters Assignments and Transfers Uniformed Employees, commanders are given the authority and responsibility for making assignments within their commands. The procedures of this chapter do not apply if an employee is removed from a non-specialty pay position.

4. SPECIALTY PAY REMOVAL PROCEDURES.

a. Approval. Prior to removing an employee for cause from any specialty pay position, approval must be obtained from the appropriate Assistant Commissioner, through channels.

b. For Cause. If the removal from a specialty pay position is not a result of an adverse action, the commander shall provide documentation to the employee advising them of the specific reason(s) for the removal and the effective date of the action.

c. Adverse Action. When removing an employee from a specialty pay position as part of an adverse action, prior approval of the appropriate Assistant Commissioner is also required. The request for removal should be incorporated into the adverse action package as a part of the penalty. Under these circumstances, it is not necessary to prepare a separate specialty pay removal file. In addition, there must be an established relationship between the adverse action and the removal.

- (1) Example of Established Relationship. An on-duty officer operating a departmental motorcycle in a reckless manner could be removed from their motorcycle assignment and served with an adverse action.

(2) Example of No Established Relationship. A motorcycle officer involved in an off-duty drunk driving incident in a private vehicle could be served with an adverse action but could not be permanently removed from motorcycle duty as a result of the incident.

d. Notification. Once the removal is approved and specialty pay terminated, Human Resources Section shall be notified either by Comm-Net message or memorandum and a copy forwarded to Office of Employee Relations.

5. DOCUMENTATION. As indicated in the White decision, an employee removed from a specialty pay position is entitled to an administrative hearing if desired. Upon such an appeal, the employee will attempt to demonstrate that the action taken by the Department was inappropriate and the specialty pay position should be restored. For this reason, management must be prepared to defend its decision to remove the employee. Therefore, actions leading up to the removal, including those attempts to correct the deficient performance, must be documented for possible future use.

6. PRELIMINARY MEMORANDUM OF REMOVAL.

a. After the verbal request for removal has been approved, the commander is to prepare a Preliminary Memorandum of Removal on a CHP 51, Memorandum. This memorandum shall be directed to the employee and is designed to provide the employee and subsequent review levels with a synopsis of the action to be taken. An investigative file will follow detailing the specific reasons for the action and the date specialty pay will terminate. The following elements must be contained in the memorandum:

(1) Date and Location of Temporary Reassignment. Pending the completion of the Specialty Pay Removal File, the commander should reassign the affected employee without loss of specialty pay. The memorandum must contain the date and location of this temporary reassignment.

(2) Problem Summary. A concise statement setting forth the reasons for the removal must be included. When the basis for removal involves a single serious incident, previous minor occurrences should not be included. When minor performance problems indicate a pattern of unacceptable behavior and the pattern is to be used as a basis for removal, each incident should be included in the report as cumulative evidence. The final sentence in the problem summary should be, "The basis for this decision will be fully described in a subsequent Specialty Pay Removal File."

7. PREPARATION OF THE SPECIALTY PAY REMOVAL FILE.

- a. Adverse Action. In all incidents where there is an established nexus between an adverse action and a resulting loss of specialty pay, the removal will be processed with the adverse action. This is outlined in HPM 10.2, Internal Investigations Manual, Chapter 5, General Employee Relations Guidelines, of this manual.
- b. Specialty Pay Removal File. In instances where there is no adverse action, a complete report of the investigation leading up to the removal shall be prepared. This file will be the basis for the final decision to permanently remove the employee from the specialty pay position.
- c. Format. The following elements should be included in the investigative file:
 - (1) Notice of Removal. This will be the final notification informing the employee the date the specialty pay will terminate and the location of the new assignment.
 - (2) Table of Contents. A listing of all items in the file and each exhibit, by number.
 - (3) Copy of Preliminary Memorandum of Removal.
 - (4) Chronological Summary. Each entry in the summary should be written as briefly and concisely as possible. Supporting documentation should be included as exhibits and referenced by number in the chronological summary.
 - (5) Subject/Witness Summary. Include all persons who may be called upon to testify in an appeal hearing. Briefly explain their involvement and summarize the facts to which they may testify. Any detailed statements should be included as exhibits.
 - (6) Physical Evidence. Briefly describe physical evidence, if available, and its relevance. Include all documentary evidence as an exhibit.
 - (7) Interrogation/Interview Records. Briefly summarize any interrogation/interview of the employee against whom removal is being initiated.
 - (8) Exhibits. The exhibits are the most important part of the file since they provide the documentation necessary to support the removal. If the employee appeals, the following exhibits may be introduced to establish the Department's case:

(a) Documents gathered during the investigation. This includes statements, memorandums, transcripts, performance reports, Incident Reports, maps, photographs, diagrams, etc.

(b) Copies of relevant departmental policy and/or Area/Division Standard Operating Procedures.

8. DISTRIBUTION OF THE INVESTIGATIVE FILE.

a. General. Commanders are responsible for the accuracy and thoroughness of the file prior to transmittal. All communications pertaining to the investigation are confidential and should be handled accordingly.

b. Distribution. The original file, with index tabs, shall be forwarded through channels to the appropriate Assistant Commissioner. One copy shall be retained by the initiating command and another provided to the affected employee after final approval. Upon the employee's request, their copy should include a copy of any tape recordings and/or transcripts made of the employee's interrogation/interview.

c. Review. The Division chief shall review the request and add their recommendations. As part of the review process, Division will ensure that investigations are complete, properly documented, and correctly assembled. After review, the original will be forwarded to the appropriate Assistant Commissioner.

d. Final Approval. After approval by the appropriate Assistant Commissioner, the employee's commander will provide a copy of the file to the employee.

9. SPECIALTY PAY REMOVAL APPEAL.

a. Represented Employees. Represented employees removed for cause from a specialty pay position without an adverse action may file an appeal utilizing the grievance procedure contained in the appropriate contract.

b. Excluded Employees. Excluded employees removed for cause without an adverse action may file an appeal utilizing the grievance and appeal procedure for excluded employees set forth in Chapter 8, Excluded Employee Grievance and Appeal Procedures, of this manual.

c. Adverse Action. Employees who have been removed for cause and served with an adverse action may file a written appeal to the State Personnel Board pursuant to HPM 10.2, Internal Investigations Manual, Chapter 9, Predisciplinary Hearing, Leave Credits, and Appeals.

d. Removal Due to Operational Necessity. Removal as a result of an operational necessity, such as a reduction or elimination of motorcycles or aircraft, is not appealable.