

CHAPTER 1

SUBSTANCE ABUSE AND THE SUPERVISOR'S/MANAGER'S ROLE

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CHAPTER 1

SUBSTANCE ABUSE AND THE SUPERVISOR'S/MANAGER'S ROLE

1. INTRODUCTION. On September 24, 1986, Governor Deukmejian issued an Executive Order, D-58-86, to establish a substance testing policy to combat the effects of substance abuse in the state workplace (refer to Chapter 3 of this manual). This manual details policy and provides specific direction to the departmental management team on how to effectively administer a legal and successful substance testing program.

2. SUPERVISOR'S/MANAGER'S ROLE.

a. Supervisor. The first-line supervisor plays the most important role in any successful substance testing program. Supervisors generally have the routine, daily contact with the employee for the purpose of directing and evaluating performance; therefore, the supervisor is in the best position to assess any changes in an employee's job performance, behavior, and/or appearance.

(1) Supervisors are the main defense in maintaining a drug-free workplace. When a problem arises, it is their responsibility to confront the situation and initiate the proper action, including substance testing. Chapter 7, Testing Process and Standards; Annex A, Substance Testing Action Checklist, of this manual, provides a brief checklist synopsis of the requirements outlined in detail throughout this manual, to assist supervisors with correctly handling substance testing situations. For a substance test to be effective, each supervisor must ensure the following steps are adhered to.

- (a) Reasonable suspicion is supported by proper documentation.
- (b) The sample is properly collected.
- (c) The chain of custody is maintained.
- (d) The employee's rights are not violated.

(2) Without these safeguards, the necessity and appropriateness of a test could successfully be challenged.

(3) Liability arises when it can be shown a supervisor negligently failed to supervise subordinates appropriately, and the negligence resulted in an injury to a coworker and/or the public. Since the potential for such liability clearly exists, departmental supervisors must act quickly and reasonably when dealing with employees whom they suspect are abusing alcohol and/or drugs. In the area of substance abuse, the Department can be criticized for inaction as well

as inappropriate action. Even if there is no indication of negligent supervision, the Department could still be held vicariously liable because of a questionable act by its employees.

b. Manager. The state's substance testing policy requires the involvement of specified managers in all substance tests, as a confirming official, before any sample can be collected. These managers are to make certain the policy is properly applied, and the test appropriately administered. When managers or supervisors are suspected of substance abuse, their superiors are responsible for ensuring the items enumerated in paragraph 2.a.(1) above, are met.

c. All Employees. While supervisors and managers have specific roles in the substance testing process, all departmental employees shall alert a supervisor to indications that another employee is involved in substance abuse. The consequences are too grave to allow a coworker to perform duties while under the influence of alcohol and/or drugs.

3. OTHER LEGAL CONCERNS.

a. Negligent Retention. Frequently, courts are holding employers directly responsible for retaining “dangerous” employees. There is no doubt, employees who abuse alcohol and/or drugs can pose a serious threat to the health and safety of coworkers and the public. Therefore, supervisors must be attentive regarding any signs of substance abuse. Failure to act in a reasonable manner when such information comes to a supervisor’s attention, or could have come to a supervisor’s attention, exposes the Department to liability. Liability can also arise from an act of deliberate indifference on the part of a supervisor.

4. PROGRAM EFFECTIVENESS.

a. The effectiveness of the substance testing program is dependent on the Department's ability to justify its actions and demonstrate a proper application of the policy. The following elements are critical if the program is to be successful:

(1) Consistency. The Department must consistently apply all aspects of the program. Decisions to test must be made based solely upon facts and/or evidence, rather than hunches or groundless suspicions. Additionally, whenever the test process is administered, it must be done in the same manner each time following an established set of procedures. Deviation from established procedures could jeopardize the test.

(2) Confirmation. Before any sample is obtained, the supervisor's foundation for reasonable suspicion must be approved by a specified departmental manager (refer to Chapter 6, Reasonable Suspicion, paragraph 3.i.). This

approval may be given by telephone if a manager is not on scene and immediately available. Without this approval, the charge could be made that the decision to test was based on other than specific facts and/or evidence. If reasonable suspicion for the test cannot be established, the test results will be of little value.

(3) Collection of Sample. Before any action can be taken against an employee for substance abuse, a sample must be properly collected and analyzed. After the test, the Department must be able to testify to the fact the sample is unadulterated. Since the advent of substance abuse testing, many techniques have been developed by employees to "beat" the test or to render the sample useless by contamination.

(4) Chain of Custody. To avoid countercharges of sample tampering, a concise chain of custody must be established and followed. Therefore, the number of persons handling any samples must be limited and those handling samples (and their reasons for doing so) must be carefully documented.

(5) Control of Quality. The Department must ensure the contracting laboratory meets accepted scientific standards and each sample is properly handled and tested. The quality of the testing procedure will be continually audited to ensure accuracy. Additionally, the laboratory must have qualified personnel who can testify not only to the scientific techniques used and their accuracy, but also to the steps taken to maintain sample integrity.

(6) Contracts. Supervisors must be mindful of the different Memoranda of Understanding (MOU) and, as such, refer to the specific contract covering the involved employee(s). When an MOU conflicts with the Department of Personnel Administration rules, the MOU shall take precedence. Failure to take the MOU into consideration when dealing with a reasonable suspicion test could allow the validity of the test to be challenged.

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