

**CHAPTER 3
CALIFORNIA DEPARTMENT OF HUMAN RESOURCES POLICY**

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CHAPTER 3

CALIFORNIA DEPARTMENT OF HUMAN RESOURCES POLICY

1. PURPOSE.

a. On September 24, 1986, Governor Deukmejian issued Executive Order D-58-86 (Annex A) directing the California Department of Human Resources (CalHR) to develop "...policies and guidelines designed to achieve a drug-free state workplace, while protecting the privacy and with due regard for the constitutional rights of state employees." In response to this charge, CalHR developed Sections 599.960-599.966 in Title 2 of the California Code of Regulations (CCR 599.960-599.966). These rules constitute CalHR's current policy on substance abuse and testing (refer to Annex A).

NOTE: CCR 599.960-599.966 contains references to the Department of Personnel Administration (DPA). The DPA is now known as CalHR. These sections have not been updated or amended to reflect the name change.

b. The Department does not condone the use of illegal substances under any circumstances. However, the CalHR policy only addresses on-duty impairment. This policy is intended to help ensure that the state workplace is free from the effects of drug and alcohol abuse. These provisions are not a required prerequisite to, nor do they replace, limit, or set standards for any other types of personnel actions, such as:

- (1) Adverse actions.
- (2) Employee Assistance Program.
- (3) Medical examination.

2. POLICY.

a. General Policy.

- (1) No state employee who is on duty or on standby for duty shall:
 - (a) Use, possess, or be under the influence of illegal or unauthorized drugs or other illegal mind-altering substances; or

(b) Use or be under the influence of alcohol to any extent that would impede the employee's ability to perform their duties safely and effectively.

NOTE: For the purposes of this policy, standby for duty occurs when an employee is designated on standby and must thereby be available to respond to an incident within a specified period of time. This includes situations such as planned protest demonstrations, special events, and natural disasters.

- b. Sensitive Positions. Only employees serving in sensitive positions shall be subject to substance testing when there is reasonable suspicion to believe the employee has violated paragraph 2.a. of this chapter.
- c. Legal Prescriptions. No employee shall attempt to perform duties which, because of drugs taken due to a legal prescription, cannot be performed without posing a threat to the health and safety of the employee or others. Employees who are so restricted may be subject to reassignment, medical examination, or other actions specified by applicable statutes and regulations. Employees must report any known physical condition which might reasonably be expected to adversely affect job performance, including the use of drugs or medication as required by Highway Patrol Manual 10.3, *Personnel Transactions Manual*, Chapter 14, *Inconsistent and Incompatible Activities*. In addition, drugs, taken in excess of amounts prescribed would be considered "unauthorized" and subject the employee to testing as authorized in paragraph 2.a. of this chapter.
- d. Interpreting Memoranda of Understanding. The CalHR's policy may be superseded by a Memorandum Of Understanding (MOU), which can further restrict or define the state's ability to compel a substance test. Supervisors and managers are reminded to review applicable MOUs to ensure substance testing is being properly administered. If a conflict exists between these rules and a negotiated MOU, the MOU is controlling.
- e. Voluntary Testing. There is nothing in CalHR rules which precludes an employee from voluntarily submitting to a substance test after being involved in a significant incident (e.g., combat shooting, major traffic collision) for the purpose of establishing the employee's sobriety at the time of the incident as protection in the event of future litigation. While an employee may ask for a test or a supervisor may suggest a test, no action can be taken against the employee for not participating in a test unless there is reasonable suspicion of substance abuse. In this voluntary situation, an employee's decision not to be tested shall not be documented as a refusal, since it is the employee's option. If the employee requests such a test, the Department will pay for it and the test can be administered according to these established departmental procedures. In accordance with the Code of Federal Regulations, Title 49, Part 40, Subpart B, Section 40.27, employees shall not be required to sign a consent, release, waiver of liability, or indemnification agreement

with respect to any part of the drug or alcohol testing process. Furthermore, the employee must not be offered favorable management actions (e.g., discontinuing an investigation) as an inducement to volunteer for a test. An employee's decision not to volunteer for a test shall not lead to unfavorable management actions, conclusions, or documentation. See Chapter 11, *Documentation*, for voluntary testing procedures.

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ANNEX A

CALIFORNIA CODE OF REGULATIONS SECTIONS 599.960 – 599.966



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DPA Regulations Pertaining to Drug Testing

California Code of Regulations 599.960-599.966

Sections

- [599.960. General Policy](#)
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- [599.962. Reasonable Suspicion](#)
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599.960 General Policy

(a) It is the purpose of this article to help ensure that the State workplace is free from the effects of drug and alcohol abuse. These provisions shall be in addition to and shall not be construed as a required prerequisite to or as replacing, limiting or setting standards for any other types of provisions available under law to serve this purpose, including employee assistance, adverse action and medical examination.

(b) Consistent with Government Code Section 19572 and Governor's Executive Order D-58-86, no State employee who is on duty or on standby for duty shall.

- (1) Use, possess, or be under the influence of illegal or unauthorized drugs or other illegal mind-altering substances; or
- (2) Use or be under the influence of alcohol to any extent that would impede the employee's ability to perform his or her duties safely and effectively.

(c) Employees serving in sensitive positions shall be subject to drug and alcohol testing, hereinafter referred to as substance testing, as provided in this Article when there is reasonable suspicion that the employee has violated subsection (b). In addition, when such an employee has already been found in violation of subsection (b) through the adverse action or medical examination processes under the Civil Service Act (Government Code Section 19253.5; Government Code Sections 19570-19593), as a result of substance testing under this article, or by the employee's own admission, the employee may be required to submit to periodic substance testing as a condition of remaining in or returning to State employment. Unless otherwise provided in the settlement of an adverse action the period for this testing shall not exceed one year.

(d) No employee shall perform duties which, because of drugs taken under a legal prescription, the employee cannot perform without posing a threat to the health or safety of the employee or others. Employees whose job performance is so restricted may be subject to reassignment, medical examination or other actions specified by applicable statutes and regulations.

(e) To protect the public and ensure the safety and security of its correctional institutions, the State must ensure that its peace officers do not use illegal drugs, or misuse prescription drugs, unauthorized or other illegal mind altering substances under any circumstances, and are not under the influence of alcohol while on the job. Consistent with a peace officer's sworn oath to uphold the laws of the State of California, all excluded and exempt State employees who are peace officers under Part 2, Title 3, Chapter 4.5, Section 830.2(d) and Section 830.5 of the Penal Code, will be subject to random drug and alcohol testing pursuant to this article.

(f) For purposes of this Article, an excluded State employee is an employee as defined in Section 3527(b) of the Government Code; an exempt State employee is an officer or employee of the executive branch of government who is not a member of the civil service.

599.961 Sensitive Positions

(a) For the purposes of this Article, sensitive positions are peace officer positions, as defined by Part 2, Title 3, Chapter 4.5, Section 830.2(d) and Section 830.5 of the Penal Code, and other positions in which drug or alcohol affected performance could clearly endanger the health and safety of others. These other positions have the following general characteristics:

- (1) Their duties involve a greater than normal level of trust, responsibility for or impact on the health and safety of others; and
- (2) errors in judgment, inattentiveness or diminished coordination, dexterity or composure while performing their duties could clearly result in mistakes that would endanger the health and safety of others; and
- (3) employees in these positions work with such independence, or, perform such tasks that it cannot be safely assumed that mistakes such as those described in (2) could be prevented by a supervisor or another employee.

(b) Filled positions shall be identified as sensitive through the following process:

- (1) Subject to Department of Personnel Administration approval, each appointing power shall identify the positions under his/her jurisdiction that meet the standards in (a).
- (2) The employees serving in the identified positions and, where applicable, their union representatives, shall receive an initial notice that the position has been identified as sensitive and shall be given 30 days to respond.
- (3) After considering responses to the initial notice and meeting with employee representatives as required by the Ralph C. Dills Act (Government Code Sections 3512-3524), the Department of Personnel Administration shall issue a final notice to the employees serving in the positions that have been identified as sensitive. This notice shall include a description of the provisions of this article. Existing practices in this area shall not change for any position until 60 days after the final notice concerning it is issued.

(c) Vacant positions shall be identified as sensitive through the procedures specified in (b), including those procedures involving employee organizations, except that the employee notification provisions as stated in (b)(2) and (b)(3) shall not apply.

(d) Once a position has been designated sensitive, the appointing power shall take measures to reasonably and likely ensure that future appointees to it are aware that it is sensitive and are informed of the provisions of this article.

599.962 Reasonable Suspicion

(a) Reasonable suspicion is the good faith belief based on specific articulable facts or evidence that an employee may have violated the policy prescribed in section 599.960(b) and that substance testing could reveal evidence related to that violation.

(b) For the purposes of this Article, reasonable suspicion will exist only after the appointing power or his/her designee has considered the facts and/or evidence in the particular case and agrees that they constitute a finding of reasonable suspicion. A designee shall be an individual other than the suspected employee's immediate supervisor and other than the person who made the initial observation leading to the question of reasonable suspicion. The designee shall be a person who is authorized to act for the appointing power in carrying out this Article and who is thoroughly familiar with its provisions and procedures.

(c) After it has been confirmed by the designee the facts and/or evidence upon which the reasonable suspicion is based shall be documented in writing. A copy of this shall be given to the affected employee.

599.963 Testing Process and Standards

Substance testing under this Article shall comply with the following standards and procedures:

(a) The drug testing process shall be one that is scientifically proven to be at least as accurate and valid as urinalysis using an immunoassay screening test, with all positive screening results being confirmed utilizing gas chromatography/mass spectrometry before a sample is considered positive. The alcohol testing process shall be one that is scientifically proven to be at least as accurate and valid as (1) urinalysis using an enzymatic assay screening test, with all positive screening results being confirmed using gas chromatography before a sample is considered positive or (2) breath sample testing using breath alcohol analyzing instruments which meet the State Department of Health Services standards specified in Title 17, Division 1, Chapter 2, Subchapter 1, Group 8, Article 7, Sections 1221.2 and 1221.3 of the California Code of Regulations.

(b) Substances to be tested for shall include the following:

- (1) Amphetamines and Methamphetamines
- (2) Cocaine
- (3) Marijuana/Cannabinoids (THC)
- (4) Opiates (narcotics)
- (5) Phencyclidine (PCP)
- (6) Barbiturates
- (7) Benzodiazepines
- (8) Methaqualone
- (9) Alcohol

In addition, with the approval of the department testing may be conducted for other controlled substances when the appointing power reasonably suspects the use of other substances.

(c) After consulting with expert staff of the laboratory or laboratories selected to perform the testing under this Article, the department shall set test cutoff levels that will identify positive test samples while minimizing false positive test results.

(d) Notwithstanding (c), the Department shall use cutoff levels for substances listed in (b)(1) through (5) as established in SAMHSA, Mandatory Guidelines for Federal Workplace Drug Testing Programs, Subpart B, Section 2.4, Part (e) and Part (f), 59 FR 29916 dated June 9, 1994, and 62 FR 51118 dated September 30, 1997. For alcohol (b)(9) the Department shall use the Federal Motor Carrier Safety Administration alcohol concentration cutoff level as described in Part 382 - Controlled Substances and Alcohol Use and Testing, Section 201, 49 CFR dated July 25, 1995.

(e) Test samples will be collected in a clinical setting such as a laboratory collection station, doctor's office, hospital or clinic or in another setting approved by the department on the basis that it provides for at least an equally secure and professional collection process. The department shall specify procedures to ensure that true samples are obtained.

(f) The Department shall use chain of custody procedures similar to those used by SAMHSA to ensure that a strict chain of custody is maintained for the sample from the time it is taken, through the testing process, to its final disposition. Chain of custody forms shall, at a minimum, include an entry documenting date and purpose each time a specimen or sample is handled or transferred and identifying every individual in the chain of custody.

(g) Drug tests shall be performed by a commercial laboratory that is certified by SAMHSA (pursuant to Mandatory Guidelines for Federal Workplace Drug Testing Program, Federal Register, Vol. 53, No. 69 or which meets the standards used by the College of American Pathologists (CAP) to accredit laboratories for forensic urine drug testing (Standards for Accreditation, Forensic Urine Drug Testing Laboratories, College of American Pathologists).

(h) For random substance testing under this article, the department will use a scientifically valid method such as a random number table or a computer based random number generator that is matched with Social Security numbers, payroll identification numbers, or other comparable identifying numbers. A number not to exceed thirty-five percent of managers, supervisors, and exempt employees who are subject to random substance testing will be randomly selected for substance testing annually.

599.964 Employee Rights

(a) Employees subject to random testing shall be noticed at least thirty days prior to implementation of the testing program that they will be subject to random substance testing. The notice shall include information explaining the substance abuse testing procedures to be followed.

(b) Employees suspected of violating the policy prescribed in section 599.960 shall be entitled to representation during any interrogative interviews with the affected employee that could lead to a decision by the appointing power to take adverse action against the employee, regardless of whether these interviews occur before or after the sample is taken. Employees shall also be entitled to representation in any discussions with the Medical Review Officer that occur under section 599.965.

(c) The sample collection process shall include the opportunity for the employee to provide information about factors other than illegal drug use, such as taking legally prescribed medication, that could cause a positive test result. At the employee's option, this information may be submitted in a sealed envelope to be opened only by the Medical Review Officer if the test result is positive.

(d) The employee shall receive a full copy of any test results and related documentation of the testing process.

(e) All confirmed positive samples shall be retained by the testing laboratory in secure frozen storage for one year following the test or until the sample is no longer needed for appeal proceedings or litigation, whichever is longer. At the employee's request and expense the sample may be retested by that laboratory or another laboratory of the employee's choice.

599.965 Medical Review Officer

Subject to the Department of Personnel Administration approval, each appointing power shall designate one or more Medical Review Officers who shall be licensed physicians who meet federal SAMHSA requirements as described in 59 FR 29908, Mandatory Guidelines For Federal Workplace Drug Testing Programs, Subpart A, Section 1.2 Definitions, dated June 9, 1994 to have the appropriate medical training to interpret and evaluate an individual's confirmed positive test result, to receive test results from the laboratory. Upon receiving results, the Medical Review Officer shall:

(a) Review the results and determine if the standards and procedures required by this Article have been followed.

(b) For positive results interview the affected employee to determine if factors other than illegal drug use may have caused the result.

(c) Consider any assertions by the affected employee of irregularities in the sample collection and testing process.

(d) Based on the above, provide a written explanation of the test results to the appointing power or his/her designee. The employee shall also receive a copy of this explanation.

599.966 Records Confidentiality

As prescribed by the director, each appointing power shall maintain records of the circumstances and results of any employee testing under this Article. These records, and any other information pertaining to an employee's drug or alcohol test, shall be considered confidential and shall be released only to:

(a) The employee who was tested or other individuals designated in writing by that employee.

(b) The appointing power's Medical Review Officer.

(c) The Department of Personnel Administration as needed for the effective Administration of the Article.

(d) Individuals who need the records or information to:

- (1) Properly supervise or assign the employee.
- (2) Determine, or assist in determining, what action the appointing power should take in response to the test results.
- (3) Respond to appeals or litigation arising from the drug test or related actions.

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