

**CHAPTER 5**  
**NONSENSITIVE POSITIONS**  
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## CHAPTER 5

### NONSENSITIVE POSITIONS

1. POLICY. The California Department of Human Resources rules do not permit the mandated substance testing of persons in nonsensitive positions. Despite this requirement, there is nothing in the rule which precludes a nonsensitive employee from voluntarily submitting to a substance test. Such a test will be limited to instances where the Department receives an unsolicited request for a test from a nonsensitive employee. Commanders are not precluded from taking action against a nonsensitive employee suspected of substance abuse. Rather, the rule only prevents the collection of an involuntary sample, even if reasonable suspicion is established.

2. PROCEDURES.

a. Investigation. Should a supervisor suspect on-duty substance abuse or intoxication of an employee in a nonsensitive position, prompt action is still required. While the employee cannot be ordered to submit to a chemical test, there is a need for a thorough investigation into the actions/circumstances which led to the suspicion of substance abuse. Accordingly, supervisors shall not attempt to elicit a chemical test from an employee whose position has been designated as “non-sensitive.” Such an investigation and any subsequent action taken shall be done in accordance with Highway Patrol Manual (HPM) 10.2, *Internal Investigations Manual*. The event which leads to the suspicion of substance abuse may be a complaint from a citizen. If this is the case, the complaint should be investigated consistent with HPM 10.4, *Citizens' Complaint Investigations*.

b. Determination of Substance Abuse. Supervisors who suspect substance abuse by nonsensitive employees are encouraged to support their observations using the same criteria used to establish reasonable suspicion for sensitive positions. Since a chemical test will not normally be part of the investigation, it is essential that the supervisor's final determination be based upon:

- (1) Articulable facts;
- (2) Close observation; and
- (3) Good faith.

c. Documentation. As part of the internal investigation, supervisors will be required to carefully document their observations. Since there will not be a

mandated test result and there may not be a voluntary test result to confirm the supervisor's suspicions, documentation must be especially accurate and complete. Circumstances, observations, and/or witness statements leading to a determination of substance abuse shall be documented using the *Reasonable Suspicion Report* format outlined in Chapter 11, *Documentation*. This report will then be included as an exhibit in the final request for adverse action.

3. CONSIDERATIONS.

a. Adverse Action. Adverse action should be sought when there is a determination of substance abuse. The requested penalty should be consistent with the specific described circumstances surrounding the abuse.

b. Employee Assistance Programs. The Department recognizes that many behavioral and personal problems can be successfully treated if early identification is made and appropriate help is obtained. Employees have access to prepaid professional counseling services for a variety of personal problems. Any person, including a supervisor, may make these services known to the employee. (Refer to HPM 10.5, *Employee Assistance Manual*, Chapter 3, *Employee Substance Abuse Program*.)

c. Memoranda of Understanding. As with the sensitive positions, the issue of substance abuse may be addressed in the appropriate Memorandum of Understanding (MOU). Supervisors shall review the applicable MOU when dealing with a nonsensitive employee whom they suspect of substance abuse to determine if there is additional action they must take or are precluded from taking.