



George Deukmejian, Governor

TO:

DEPARTMENT DIRECTORS AND
AGENCY SECRETARIES

PERSONNEL MANAGEMENT LIAISONS

REFERENCE CODE: MM88-26
EFFECTIVE DATE: September 15, 1988
EXPIRATION DATE: December 31, 1988
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THIS MEMORANDUM SHOULD BE DISTRIBUTED TO:

Employee Relations Officers and Personnel Officers

From: **Department of Personnel Administration**
Office of the Director

Subject: State's Substance Abuse Program - Identification of Sensitive Positions

On May 11, 1988 the Department of Personnel Administration (DPA) issued Management Memorandum 88-13 asking departments to preliminarily identify sensitive positions per proposed DPA Regulation 599.961. Under DPA's proposed substance abuse rules, employees in these positions will be subject to drug/alcohol testing when there is reasonable suspicion that they are under the influence while at work or on call.

DPA recently submitted its rulemaking file to the Office of Administrative Law (OAL) and received approval from OAL for Rules 599.960 through 599.966 on September 6, 1988. A copy of the adopted rules is included as Attachment 1.

With the formal adoption of the Substance Abuse program rules, DPA staff is ready to initiate the formal identification of sensitive positions. Under Rule 599.961, this will proceed as follows:

- As outlined below, departments will submit their proposed lists of sensitive positions to DPA. We are asking that this occur by October 10.
- DPA will review the departmental proposals and then notify affected employees and union representatives concerning positions that are to be designated sensitive. Employees and unions will be given 30 days to respond to this notice.
- After considering any responses, DPA will finalize the sensitive position designations. Affected employees and unions will then receive 60 days notice before the new substance testing practices are implemented.

Because of the long time-line for implementing Rule 599.961 we are asking for as much cooperation from departments as possible in meeting the October 10 deadline for submitting sensitive position lists.

As described in MM88-13, we still see the sensitive position designation process being conducted in two phases. The first would include positions which, by their nature, can be immediately identified as sensitive. For general guidance, the Phase One description (below) lists the types of positions that DPA sees in this group. Phase Two will cover positions that are not as readily identifiable and/or that will require more review and discussion before they are designated sensitive.

Phase One Sensitive Positions

The following positions have immediate potential to be designated as sensitive under proposed Rule 599.961. DPA anticipates that positions which fall within these criteria will become subject to testing during Fiscal Year 1988-1989. If you believe that additional positions should be included in Phase One, please also provide us with that information. Phase One positions should include:

- Peace officer positions;
- Emergency response positions (e.g., firefighters and emergency communication operators);
- Positions in which employees must possess a medical certificate to operate assigned vehicles or aircraft;
- Ferry and drawbridge operators;
- Hydroelectric plant operators, mechanics, etc;
- Caltrans highway maintenance positions;
- Positions performing automotive/equipment repair work that have critical safety implications (e.g., brakes, welding heavy equipment);
- Positions having regular contact with prisoners or wards in security settings (includes Alternate Range 40 positions); and
- Licensed health care positions with duties involving responsibility for the immediate care and well-being of patients, wards, or inmates.

Phase Two Sensitive Positions

After further review, including that associated with the identification of sensitive positions under the State Personnel Board (SPB) drug testing rules, additional positions may be designated sensitive under DPA Rule 599.961. Where this causes significant additional impact on bargaining unit employees, DPA will offer to meet and confer over that impact before additional positions become subject to DPA's substance abuse testing rules.

For both Phase I and II positions we need specific information on class titles , special locations or work settings (if applicable), bargaining units of classes, and the rationale for including a class or position in the list of sensitive positions. Where positions are similar, they may be referred to as a group provided that this can be done clearly (e.g. all state traffic officers, all cooks assigned to correctional facilities, etc.). We are providing a sample form (see Attachment 2) to assist you in the designation process.

Under the above outlined approach, we are asking you to identify both Phase One and Phase Two sensitive positions with the highlighted information and provide this to us by October 10, 1988. This should be sent to:

Department of Personnel Administration
1515 S Street, North Building, Suite 400
P. O. Box 944234
Sacramento, CA 94244-2340
Attention: Karen Neuwald

Questions on the program may be referred to Karen Neuwald on (916) 324-0526 or ATSS 454-0526.



David J. Tirapelle
Chief Deputy Director

Attachments

DEPARTMENT OF PERSONNEL ADMINISTRATION

Rules 599.960-599.966 are adopted as follows:

ARTICLE 29. SUBSTANCE ABUSE

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.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19820 of the Government Code. Reference: Section 19261 of the Government Code.

599.961 Sensitive Positions

(a) For the purposes of this Article, sensitive positions are peace officer positions, as defined by section 830 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.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19820 of the Government Code. Reference: Section 19261 of the Government Code.

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.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19820 of the Government Code. Reference: Section 19261 of the Government Code.

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, Group 8, Article 7 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) 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.

(e) The department shall specify measures 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.

(f) Drug tests shall be performed by a commercial laboratory selected based on its meeting standards that are the same as those used by the National Institute on Drug Abuse (NIDA) to certify laboratories engaged in urine drug testing for Federal agencies (Mandatory Guidelines for Federal Workplace Drug Testing Program, Federal Register, Vol. 53, No. 69) or those 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).

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19820 of the Government Code. Reference: Section 19261 of the Government Code.

599.964. Employee Rights.

(a) 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.

(b) 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.

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

(d) 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.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19820 of the Government Code.
Reference: Section 19261 of the Government Code.

599.965. Medical Review Officer.

Each appointing power shall designate one or more Medical Review Officers, who shall be licensed physicians, 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.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19820 of the Government Code.
Reference: Section 19261 of the Government Code.

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.

NOTE: Authority cited: Sections 19815.4(d), 19816 and 19820 of the Government Code.
Reference: Section 19261 of the Government Code.

SENSITIVE POSITIONS

<u>Classification Title</u>	<u>Schematic Code</u>	<u>Class Code</u>	<u>Bargaining ID</u>	<u>Phase I or II</u>	<u>SPB Sensitive Designation</u>	<u>Number of Positions</u>	<u>Work Location</u>	<u>Rationale*</u>
				I or II	Yes or No		Statewide or specific locations	

*Please use the following codes to specify the rationale for designating positions sensitive.

- A - Peace officer position
- B - Provides licensed health care
- C - Works in security setting (e.g. prison)
- D - Assigned driving duties requiring possession of medical certificate
- E - Emergency response position
- F - Operates passenger ferry or drawbridge
- G - Heavy equipment/highway maintenance or repair work
- H - Other (describe why positions meet sensitive position criteria)