



CALDWELL POLICE DEPARTMENT
Policy & Procedures
FITNESS FOR DUTY/EARLY WARNING SYSTEM

	Chapter: 322	Volume Three The Personnel Structure	
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322.1
POLICY & PROCEDURES:

322.1.1

POLICY: It is the policy of the Caldwell Police Department to strongly recommend that all agency employees participate in a regular program of health and fitness maintenance. Employees who are sick, injured, or otherwise unfit for duty are required to follow the reporting process outlined within.

The Caldwell Police Department will also provide early intervention to employees who meet established criteria. The Caldwell Police Department has a responsibility to its employees and the community to identify and assist employees who show symptoms of job stress or personal problems. Such symptoms may be exhibited in on-the-job performance behaviors that results in complaints from citizens or may be indicated in the frequency of use-of-force incidents. The Caldwell Police Department has existing programs available to assist employees, including- Cop-2-Cop Assistance Program, and other counseling, which are available to employees on a voluntary and policy-mandated basis. In order to enhance these services, the Department has implemented the Early Intervention Program (EIP) detailed below.

It is the policy of the Caldwell Police Department to provide for the protection and confidentiality of the Early Intervention Program records maintained by the Department that are Personnel Records. This policy shall comply with SOP 360 (Discipline), and 620 (Internal Affairs).

322.1.2

PURPOSE: The purpose of this policy is to provide direction to employees concerning their health and fitness in order for employees to remain gainfully employed, and, sufficiently fit to perform the essential functions of their positions in a safe, effective and efficient manner. This department recognizes that

the nature of policing requires a level of general health and physical fitness not demanded by many other occupations. In addition, a satisfactory level of fitness increases an employee's overall health and contributes to a reduction in sick leave. This policy will provide: guidance for establishing an Early Intervention System to identify employees who may require proactive intervention efforts, guidance to employees in order to assist in maintaining proper fitness for duty, and will provide direction in properly reporting sick or injured pursuant to the Rules and Regulations of the Caldwell Police Department.

322.2 PROCEDURES:

322.2.1

EARLY INTERVENTION PROGRAM:

An Early Intervention Program (EIP) is an essential component in a well-managed law enforcement agency. The early identification of potential problems and a menu of remedial actions can increase accountability and offer employees a better opportunity to meet the agency's values and mission statement. Any time the Early Intervention Program is activated pursuant to this general order, the totality of the circumstances surrounding each incident and/or complaint shall be considered separately, drawing on general knowledge of human behavior, agency policies and procedures, and wisdom gained from years of law enforcement experience. The process should include recognition that there are circumstances when use of force is necessary and proper, and that there are occasions when false accusations may be made against employees by citizens. The intent of this system is to provide non-disciplinary intervention, whenever possible, to assist our employees in their professional development in order to provide the highest level of service and satisfaction to the public. Early Intervention Program will not be used for disciplinary purposes. The activation of the EIP does not necessarily indicate a problem with the involved employee, nor is it intended to be punitive, but may merely suggest a pattern exists that bears investigation or monitoring.

322.2.2

MAINTAINING FITNESS FOR DUTY: All members are to be sufficiently fit to perform the essential functions of their positions in a safe, effective and an efficient manner. This means that all employees are to be physically, psychologically and mentally prepared and able to perform the essential functions of their positions. All members are to avoid any activity that might adversely affect their general health and well-being. All members shall be conscious of their diet, shall get proper rest and sleep, and shall have any health problems treated promptly.

A. **CRITERIA FOR GENERAL HEALTH AND FITNESS:** Each employee, when meeting with their physician, should have in their possession a copy of their current job description. This document can be valuable to the physician in helping to determine the employee's present fitness for their specific job assignment. In general terms, each employee should be evaluated based upon accepted medical criteria for their age, sex, and job assignment. Additionally, employees are recommended to include in their examination the following tests/evaluations. This list is not all inclusive, but serves as a general recommendation for evaluation. Each employee should be guided by their physician's recommendations concerning any medical tests/evaluations.

1. Rectal examination, to include colon cancer screening.
2. Vision screening
3. Urinalysis by dipstick

4. Occult blood in stool samples
5. Micro urinalysis
6. Complete blood count (CBC)
7. Blood Chemistries (SMAC)
8. Venipuncture, processing and lab interpretation
9. Simple audio tone testing
10. Pulmonary function testing
11. Electro-cardiogram (ECG)
12. Chest X-Ray (if medically indicated)
13. Cholesterol (HDL/LDL) analysis
14. Blood Pressure
15. Spirometry, (lung-air exchange capacity)
16. Body weight/fat content and nutritional counseling
17. Overall health risk appraisal

322.2.3

EVALUATING FITNESS FOR DUTY: There may be situations where an employee's fitness for duty may be in question. The nature and circumstances surrounding a question of fitness may require a fitness evaluation. An example may be a person who wishes to return after an extended medical leave, who has been taking prescription drugs as part of the medical leave. This employee can expect to be physically and medically evaluated and tested for drugs. Members claiming or diagnosed as having a stress problem or disorder can expect to be psychologically evaluated. Each situation must be judged on a case-by-case basis. However, where there exist facts that provide a reasonable objective basis to suspect the officer is illegally using drugs, agency policy 324: *Law Enforcement Drug Screening* shall be strictly adhered to.

- A. **MEDICAL/PSYCHOLOGICAL EXAMINATIONS:** Where a medical/psychological examination is indicated and required by the department, said examination shall be provided at no cost to the employee.
1. Where an examination is required of an employee who has been out due to illness for a condition unrelated to the job, a medical note authorizing the employee's return to work may be required, but shall be at the cost of the employee.

322.3

PERSONNEL EARLY WARNING SYSTEM

322.3.1

ESTABLISHMENT OF THE SYSTEM: The Personnel Early Warning System is established in order to identify employees who may experience a wide range of personal problems that can have a negative effect on their job performance and affect their fitness for duty. By identifying such personnel in the early stages of their trouble, a solution for their problem may be found before the matter escalates into a major dilemma. Employees who perform in a substandard manner not only place themselves at risk but also their fellow employees and the general public.

322.3.2 – 2.2.3a

PERSONNEL EARLY WARNING SYSTEM COMPONENTS: The Personnel Early Warning System may consist of, but not be limited to, a review by the Internal Affairs Division (Professional Standards) of the following files as they pertain to an employee's job performance:

- A. Attendance
- B. Disciplinary
- C. Internal Affairs
- D. Use of Force
- E. Performance Evaluations
- F. Supervisory Reports
- G. Peer Reports
- H. Deteriorated work product

1) Many different measures of employee performance can be regularly examined for patterns or practices that may indicate potential problems. These performance measures may include, but are not limited to, the following indicators, as per the Attorney General Guidelines:

- a) Internal affairs complaints against the officer, whether initiated by another officer or by a member of the public;
- b) Civil actions filed against the officer;
- c) Criminal investigations of or criminal complaints against the officer;
- d) Any use of force by the officer that is formally determined or adjudicated (for example, by internal affairs or a grand jury) to have been excessive, unjustified, or unreasonable;
- e) Domestic violence investigations in which the officer is an alleged subject;
- f) An arrest of the officer, including on a driving under the influence charge;
- g) Sexual Harassment claims against the officer;
- h) Vehicular collisions involving the officer that is formally determined to have been the fault of the officer;
- i) A positive drug test by the officer;
- j) Cases or arrests by the officer that are rejected or dismissed by a court;
- k) Cases in which evidence obtained by an officer is suppressed by a court;
- l) Insubordination by the officer;
- m) Neglect of duty by the officer;
- n) Unexcused absences by the officer; and

- o) Any other indicators, as determined by the Chief of Police.

While none of the aforementioned shall carry more weight than any other, any combination of the above may trigger a response by the Police Department. By using all of the above, the Personnel Early Warning System will show a chronic downtrend or a sudden drop in performance standards of an employee.

322.3.3 – 2.2.3b,c

REPORTING REQUIREMENT: Supervisory and peer reports shall not be minimized but rather held in the highest regard. In many cases, it is the first and second line supervisor or the employee's co-workers who become aware of personal problems that are causing the employee to perform his or her duties in a substandard manner. By promptly reporting the details through the chain of command, the Police Department can provide assistance to the troubled employee before the need for discipline arises.

322.3.4 –

ADMINISTRATION and TRACKING: At least every six months the Internal Affairs Bureau (Professional Standards Bureau) shall audit the tracking system and records to assess the accuracy and efficacy of the tracking system. Supervisory officers in the subject officer's chain of command also should be directly involved in any EW System review process.

Early Warning System Options:

- 1) Options or course(s) of action include, but are not limited to:
 - a) Training or re-training;
 - b) Counseling;
 - c) Intensive Supervision;
 - d) Fitness-for-duty examination
 - e) Employee Assistance Program (EAP) referral; and
 - f) Any other appropriate remedial or corrective action.
- 2) Internal disciplinary action, remedial action, and fitness for duty examinations are not mutually exclusive and should be jointly pursued if appropriate.
- 3) When remedial action has been undertaken, the Professional Standards Unit (SOP 620) should be formally notified of such efforts. This information should be recorded in an early warning system spread sheet by the officer in charge of Professional Standards. No entry should be made in the employee's personnel file, unless the action results in disciplinary action. If the remedial action was an appropriate training program, attendance and completion of that program should be noted in the officer's training record.

4) In addition to the regular, automated review by the early warning system, the Professional Standards Unit should query the early warning system and review an individual employee's history any time a new complaint is made. Using this information and their experience, internal affairs investigators may be able to identify employees who may need counseling; training or other remediation even before such is indicated by the early warning system's ongoing data review.

5) At a minimum, the Agency's Early Warning System Policy shall provide that three separate instances of performance indicators (as listed in 322.3.2(1)) within any twelve month period will trigger the EW System review process. If one incident triggers multiple performance indicators, that incident shall not be double- or triple- counted, but instead shall count as only one performance indicator. The Chief of Police may in his or her discretion determine that a lower number of performance indicators within a twelve month period (one or two performance indicators) will trigger the EW System review process.

6) Once an officer has displayed the requisite number of performance indicators necessary to trigger the EW System review process (as set forth above) assigned supervisory personnel shall initiate remedial action to address the officer's behavior. When an EW System review process is initiated, personnel assigned to oversee the EW System should (1) formally notify the subject officer, in writing; (2) conference with the subject officer and appropriate supervisory personnel; (3) develop and administer a remedial program including the appropriate remedial/corrective actions listed below; (4) continue to monitor the subject officer for at least three months, or until the supervisor concludes that the officer's behavior has been remediated (whichever is longer); (5) document and report findings to the appropriate supervisory personnel and, if warranted, the internal affairs unit. Any statement made by the subject officer in connection with the EW System review process may not be used against the subject officer in any disciplinary or other proceeding.

322.3.5 – 2.2.3c,d,e

REFERRAL INTO THE PROGRAM:

Internal Affairs will complete a Performance Notice detailing his/her findings concerning the employee's need for early intervention, the employee's response, and his/her recommendations. Recommendations may include the following:

1. Assessment that no problem or pattern of behavior exists.
2. Dispositions may include a need for remediation or training.
3. Referral to the Cop-2-Cop or other assistance program offered by the Borough of Caldwell. The employee may need personal or family counseling, financial and money management counseling, drug or alcohol counseling/treatment.
4. Attend stress awareness course. Consideration should be given to physical fitness testing, weight management counseling, and enrollment in a physical exercise program.
5. Restriction on secondary employment and/or restrictions on department authorized extra-duty employment.
6. Fitness for duty evaluation, if authorized by the Chief of Police.

B. Implementation of Recommendations

1. Participation by departmental employees in counseling and/or training may be voluntary or mandatory.
2. The Chief of Police will make a determination as to whether the referral will be mandatory or suggested.
3. Mandatory attendance shall be considered on-duty time, and the employee's schedule will be adjusted accordingly.
4. Training and counseling as a result of this program are not considered punitive or to be disciplinary action.

322.3.6 – 2.2.3c,d

REMEDIAL ACTION AND FORMAL EMPLOYEE ASSISTANCE: The names of any employees who have not performed up to their expected level shall be referred to their appropriate Division Commander for counseling and guidance. All counseling sessions should be memorialized in writing. Supervisors should refer to Policy 360, and 620 for supervisory roles in the program. Depending on the circumstances, the department may consider participation in an Employee Assistance Program as a mitigating factor in the penalty level of a disciplinary action, but utilization or participation in an Employee Assistance Program will not preclude or be a defense to any disciplinary action or proceeding. The following are considered to be the preferred methods of assistance:

- A. Caldwell Borough Employee Assistance Program is a strictly confidential program offered by the Borough that provides assistance to employees and their family members with financial, alcohol, marital or family problems.
- B. Law Enforcement Officer Crisis Intervention Hot Line is a similar confidential service operated by the State of New Jersey on a 24-hour basis. A counselor can be reached by calling 1-866-267-2267.
- C. A Police Psychologist is available if the first two methods fail or the employee does not or prefers not to take advantage of them. In some cases, an employee may be ordered to see the police psychologist in order to ensure that the employee can return to full duty and be a productive worker. In these cases, a report by the psychologist will be forwarded to the Chief of Police for his review in order to help determine the status of the employee.

322.4

SICK AND INJURED REPORTING REQUIREMENTS AND FOLLOW-UP

322.4.1

SICK LEAVE TIME: Members and Employees (sworn and/or uniformed personnel) are entitled to sick leave time as detailed in their applicable collective bargaining agreements. Members and Employees may only utilize sick time consistent with all applicable Rules and Regulations and this policy.

322.4.2

REPORTING SICK OR INJURED: Members and Employees who are unable to report for duty because of sickness or injury shall make an immediate report by calling in on phone line 973- 403-6730 to the Shift Commander.

322.4.3

SICK LEAVE INVESTIGATION: The shift commander shall be responsible for verifying the validity of an officers use of a sick day by placing a phone call to their residence or place of confinement or by making an in person inspection to see that the officer is truly out due to an illness which prevents them from performing their duties for the sick call period. This process shall be documented via the incident report system.

322.4.4

UNAUTHORIZED AND IMPROPER ABSENCES: Unauthorized and Improper Absences are defined in the Rules and Regulations of the Caldwell Police Department and Policy 327. Members and Employees will be subject to disciplinary action for unauthorized and improper absences. Consistent with progressive discipline the following action shall apply: Subject to Oral Reprimand to Suspension per Rules and Regulations.

322.4.5

SICK LEAVE ABUSE: In order to suppress sick leave abuse and maintain proper staffing levels, a doctor's note may be required when unauthorized absence and/or sick leave abuse is identified. A prima facie case of unauthorized absence and sick leave abuse exists whenever a sick leave abuse pattern is identified and/or when an excessive number of one-day illnesses occur without a doctor's note, if one has been requested by the Department.

322.4.6

ELECTIVE SURGERY OR ELECTIVE MEDICAL PROCEDURES: In order to maintain proper staffing levels any sick leave granted for elective surgery or elective medical procedures must be approved by the Chief of Police. The definition of Elective Surgery is as follows: Elective surgery is any surgery that is not considered emergency Surgery. Emergency surgery is the condition for which surgery is needed to correct an emergency medical condition. As defined by the Social Security Act section 1903(v)(3), an emergency medical condition manifests itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in:

- Placing the patient's health in serious jeopardy or
- Serious impairment to bodily functions or
- Serious dysfunction of any bodily part or organ

Medically necessary care and treatment is recommended or approved by a Physician; and is consistent with the patient's condition or accepted standards of good medical practice; and is medically proven to be effective treatment of the condition; and is not performed mainly for the convenience of the patient or provider; and is not conducted for research purposes; and is the most appropriate level of services which can be safely provided to the patient.

Except as provided in the relevant collective bargaining agreement, requests for use of sick leave for Elective Surgery or Elective Medical Procedures will not be unreasonably denied and shall be accommodated as department scheduling permits.

322.5 NOTIFICATION

322.5.1

NOTIFICATION TO SUBSEQUENT LAW ENFORCEMENT EMPLOYER: If any officer who is or has been subject to an EW System review process applies to or accepts employment at a different law enforcement agency than the one where he or she underwent the EW System review process, it is the responsibility of the prior or current employing agency to notify the subsequent employing law enforcement agency of the officer's EW System review process history and outcomes. Upon request, the prior or current employing agency shall share the officer's EW System review process file with the subsequent employing agency.

322.5.2

NOTIFICATION TO THE COUNTY PROSECUTOR: Upon initiation of the EW System review process, the Chief of Police or a designee shall make confidential written notification to the County Prosecutor or his/her designee of the identity of the subject officer, the nature of the triggering performance indicators, and the planned remedial action program. Upon completion of the EW System review process, the Chief of Police shall make a confidential written notification to the County prosecutor or his/her designee of the outcome of the EW System review, including any remedial measures taken on behalf of the subject officer.