

CHAPTER 7
JOB ACTION CONTINGENCY PLANNING
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CHAPTER 7

JOB ACTION CONTINGENCY PLANNING

1. INTRODUCTION. Emergency planning for departmental response to potential employee job actions is the function of each Division and Area/section command. The extent to which any particular plan may require implementation is largely dependent on the magnitude of the concerted activity encountered. In the planning stage, managers must consider in advance how possible contingencies can be met, taking into account the need to ensure communications, automotive servicing, clerical, and traffic-related functions are continued.

2. POLICY. All commanders shall develop written plans to provide for the most effective response and use of available California Highway Patrol (CHP) personnel and resources in employee job action situations. The use of departmental confidential, supervisory, and managerial employees to fill the void left by striking employees is the most desirable option. Written plans shall be reviewed and updated periodically, as needed.

3. PURPOSE. The purpose of this chapter is to assist commanders in developing plans and procedures that will ensure the most effective and efficient use of available departmental resources during job action situations.

4. SCOPE.

a. Degree of Planning. Job action contingency plans will be developed to the extent necessary for an effective departmental response. Accordingly, every consideration should be given to the possibilities of a job action involving only uniformed members or a combination of uniformed and nonuniformed personnel (e.g., uniformed and dispatch personnel). Commanders are encouraged to utilize Highway Patrol Manual (HPM) 50.1, Emergency Incident Management Planning and Operations Manual, and HPM 70.6, Officer Safety Manual. The following items should be considered by commanders when developing their plans. Plans should:

(1) Be responsive to the objectives of the Department and their relative priority.

(2) Be practical, usable, and available to those personnel who may be required to affect implementation.

(3) Ensure continuation of critical programs and services.

- (4) Provide orderly transition from normal to emergency operations.
- (5) Provide safety for employees and the public. Commanders should consider the need for visible police protection at locations such as entrances to key buildings, emergency operations command centers, employee parking lots, etc.
- (6) Provide for protection of state property, supplies, and facilities.
- (7) Provide for a rapid orientation training on a periodic basis or prior to a potential job action as a refresher.
- (8) Identify all direct job action-related costs, such as the cost of emergency replacements, establishing emergency communications, overtime, damage to state property, etc.

b. Plan Publication. Job action contingency plans shall be set forth in a separate document that best suits the needs of the particular command. A separate document normally facilitates use, training, and revision (Annex B).

5. DIVISION PLANNING.

a. Division Role. The Division's primary role is to coordinate the resources within its jurisdiction and to facilitate communication between the affected Areas, Division, and headquarters.

- (1) The Division should be ready to extend cooperation and available resources to affected Areas or to adjacent Divisions.
- (2) Critical functions must be delineated and staffing requirements identified relative to these functions.
- (3) Divisions will provide for uniformity of action to fill the void created by uniformed and/or nonuniformed personnel absences. This may require Division personnel be assigned to Division support activities necessitated by the job action or to selected Area offices to augment road patrol.

b. Division Alternatives.

- (1) Prepare plans for backfilling depleted Area strengths from other Areas and/or Divisions.
- (2) Close all but key Area offices and redistribute the remaining personnel.
- (3) Assistant Commissioner, Field, will be contacted for the assistance of resources outside of the Division.

c. Area Guidance. Division shall develop procedures to assure the operational readiness of the Areas within its command.

6. AREA/SECTION PLANNING.

a. Area/Section Role. The Area/section command's primary role is the continued performance of essential services, safety of departmental personnel and the general public, and security and protection of departmental facilities and property. As such, the following considerations should be evaluated by commanders when developing their plans:

- (1) Prioritizing critical functions and essential services and identifying staffing requirements relative to these functions and services (Annex B).
- (2) Reviewing contingency plans already in existence and updating as necessary.
- (3) Determining if cancellation of vacations and regular days off is necessary.
- (4) Establishing a 7-day work week, with 12-hour shift schedules.
- (5) Using overtime and schedule adjustments.
- (6) Reviewing safety requirements for operating under emergency conditions with smaller-than-normal complement, and outlining steps planned to minimize hazards.
- (7) Discontinuing nonessential services and reassigning special duty and other specialized personnel.
- (8) Using personnel from other state agencies, retired members, employees of the Department, or individuals from other sources hired under the provisions for emergency appointments to perform essential functions (e.g., California Department of Transportation personnel for clearing roadways or assisting disabled motorists, others to provide clerical, dispatch, custodial, and automotive services assistance). Human Resources Section will assist, upon request, in securing the assistance of former departmental employees.
- (9) Curtailing office functions.
- (10) Coordinating with local courts and district attorneys for assistance with subpoenas and court dates.

(11) Requesting Division to temporarily assign personnel and other resources between Areas within the Division to augment depleted Area resources.

(12) Preparing a communication plan with alternatives.

(13) Determining any special hazards which may be increased during a job action and making arrangements with the appropriate agencies to protect state property.

(14) Preparing a checklist of reminders of tasks to complete immediately when a job action begins. Making key duty checklists available for critical assignments.

b. Mutual Aid Refusal. Consideration must be given to the fact that any mutual aid effort could be unsuccessful because of other allied agencies' refusal to become involved as strike breakers.

c. Last Resort. The use of allied agencies should only be considered as a last resort and only after approval of the Office of the Commissioner.

ANNEX A
REFERENCES

The Ralph C. Dills Act

The Ralph C. Dills Act (Senate Bill 839) was enacted as Chapter 1159, State Employer-Employee Relations Act, Government Code Section 3512-3524, effective July 1, 1978.

The statute is silent on the issue of strikes by State employees, except for the statement that nothing in the act is intend to make Labor Code Section 923 "applicable to State employees" (Section 3523.5). Section 923 guarantees private sector employees the right to engage in "concerted activities" which has been interpreted to include the right to strike.

On May 13, 1985, the California Supreme court ruled that public employees have a legal right to strike except in cases of danger to the public health or safety. Strikes by firefighters are illegal, and the courts can also forbid strikes by police and others that are shown to create "a substantial and imminent threat to the health or safety of the public."

The ruling came in the case of a 1976 strike by Los Angeles Sanitation Workers wherein the Sanitation District sued the public employees' union seeking damages for an alleged unlawful economic strike. County Sanitation District v. L. A. County Employees' Association, 38 Cal. App. 3d 564. The court held that it is not unlawful for public employees to engage in concerted work stoppage for the purpose of improving their wages or conditions of employment except when the public's health or safety is at risk. The decision - - which opened a new chapter in public sector labor relations - - dramatically rejected the long-revered common law rule that public employee strikes are prohibited unless authorized..."In the absence of legislative authorization, public employees in general do not have the right to strike..."

County Sanitation District No 2 of Los Angeles County v. Los Angeles County Employees' Association. Local 660 (1985) 38 Cal. 3d 564

Negotiations between the district and the association reached an impasse and a strike ensued. The district petitioned the court for an injunction which was granted. The association continued the strike eleven more days before accepting a tentative agreement identical to the district's offer prior to the strike. The district then initiated action for tort damages.

The trial court awarded damages and prejudgment interest to the district. The State Supreme Court reversed stating that the common law prohibition against all public employee strikes is no longer supportable. It was concluded that it is not unlawful for public employees to strike unless it has been determined that the work stoppage poses an imminent, substantial threat to public health or safety.

ANNEX A

REFERENCES (*continued*)

GOVERNMENT CODES

19253.5.

(a) An appointing power may require an employee to submit to a medical examination by a physician or physicians designated by the appointing power to evaluate the capacity of the employee to perform the work of his or her position.

(b) Fees for the examination and for the services of medical specialists or technicians, if necessary, shall be paid by the state agency. The employee may submit medical or other evidence to the examining physician or to the appointing power. The examining physician shall make a written report of the examination to the appointing power. The appointing power shall provide a copy to the physician designated by the employee.

19261.

(a) The Department of Human Resources may establish standards of health and safety in state agencies and may develop a comprehensive health and safety program designed to improve the efficiency and raise the morale of state employees. Nothing in this section or in the standards established thereunder shall discriminate against treatment by prayer or spiritual means nor require physical examination of any employee who files with the board an affidavit setting forth that he or she depends exclusively upon prayer for healing in accordance with the teachings of a bona fide religious sect, denomination or organization and that he or she is to the best of his or her knowledge and belief in good health and that he or she claims exemption on such grounds, except that when there is probable cause to believe that such employee is not physically able to perform the duties of his or her employment, the board may require a physical examination of the employee sufficient to indicate whether or not he or she is able to perform the duties of his or her employment.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if such provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

19572.

Each of the following constitutes cause for discipline of an employee, or of a person whose name appears on any employment list:

(a) Fraud in securing appointment.

(b) Incompetency.

ANNEX A

REFERENCES *(continued)*

- (c) Inefficiency.
- (d) Inexcusable neglect of duty.
- (e) Insubordination.
- (f) Dishonesty.
- (g) Drunkenness on duty.
- (h) Intemperance.
- (i) Addiction to the use of controlled substances.
- (j) Inexcusable absence without leave.
- (k) Conviction of a felony or conviction of a misdemeanor involving moral turpitude. A plea or verdict of guilty, or a conviction following a plea of nolo contendere, to a charge of a felony or any offense involving moral turpitude is deemed to be a conviction within the meaning of this section.
- (l) Immorality.
- (m) Discourteous treatment of the public or other employees.
- (n) Improper political activity.
- (o) Willful disobedience.
- (p) Misuse of state property.
- (q) Violation of this part or of a board rule.
- (r) Violation of the prohibitions set forth in accordance with Section 19990.
- (s) Refusal to take and subscribe any oath or affirmation that is required by law in connection with the employment.
- (t) Other failure of good behavior either during or outside of duty hours, which is of such a nature that it causes discredit to the appointing authority or the person's employment.
- (u) Any negligence, recklessness, or intentional act that results in the death of a patient of a state hospital serving the mentally disabled or the developmentally disabled.

ANNEX A

REFERENCES (*continued*)

(v) The use during duty hours, for training or target practice, of any material that is not authorized for that use by the appointing power.

(w) Unlawful discrimination, including harassment, on any basis listed in subdivision (a) of Section 12940, as those bases are defined in Sections 12926 and 12926.1, except as otherwise provided in Section 12940, against the public or other employees while acting in the capacity of a state employee.

(x) Unlawful retaliation against any other state officer or employee or member of the public who in good faith reports, discloses, divulges, or otherwise brings to the attention of, the Attorney General or any other appropriate authority, any facts or information relative to actual or suspected violation of any law of this state or the United States occurring on the job or directly related to the job.

19574.

(a) The appointing power, or its authorized representative, may take adverse action against an employee for one or more of the causes for discipline specified in this article. Adverse action is valid only if a written notice is served on the employee prior to the effective date of the action, as defined by board rule. The notice shall be served upon the employee either personally or by mail and shall include: (1) a statement of the nature of the adverse action; (2) the effective date of the action; (3) a statement of the reasons therefor in ordinary language; (4) a statement advising the employee of the right to answer the notice orally or in writing; and (5) a statement advising the employee of the time within which an appeal must be filed. The notice shall be filed with the board not later than 15 calendar days after the effective date of the adverse action.

(b) Effective January 1, 1996, this subdivision shall apply only to state employees in State Bargaining Unit 5. This section shall not apply to discipline as defined by Section 19576.1.

19575.

The employee has 30 calendar days after the effective date of the adverse action to file with the board a written answer to the notice of adverse action. The answer shall be deemed to be a denial of all of the allegations of the notice of adverse action not expressly admitted and a request for hearing or investigation as provided in this article. With the consent of the board or its authorized representative an amended answer may subsequently be filed. If the employee fails to answer within the time specified or after answer withdraws his or her appeal the adverse action taken by the appointing power shall be final. A copy of the employee's answer and of any amended answer shall promptly be given by the board to the appointing power.

ANNEX A

REFERENCES *(continued)*

STATE PERSONNEL BOARD RULE

EXCERPT FROM PENAL CODE – 12590

Section 12590. (Amended by Stats. 1983, Ch. 101, Sec. 149.)

Cite as: Cal. Penal Code §12590.

(a) Any person who does any of the following acts while engaged in picketing, or other informational activities in a public place relating to a concerted refusal to work, is guilty of a misdemeanor:

(1) Carries concealed upon his person or within any vehicle which is under his or her control or direction any pistol, revolver, or other firearm capable of being concealed upon the person.

(2) Carries a loaded firearm upon his or her person or within any vehicle which is under his or her control or direction.

(3) Carries a deadly weapon.

(4) Wears the uniform of a peace officer, whether or not the person is a peace officer.

(b) This section shall not be construed to authorize or ratify any picketing or other informational activities not otherwise authorized by law.

(c) Section 12027 shall not be construed to authorize any conduct described in paragraph (1) of subdivision (a), nor shall subdivision (b) of Section 12031 be construed to authorize any conduct described in paragraph (2) of subdivision (a).

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ANNEX B

PERSONNEL REDUCTION CONTINGENCY PLAN

SAMPLE AREA

PURPOSE

To provide a plan of action in case of an employee strike, employee disruptive action, or epidemic illness causing a high percentage of personnel to be unavailable for work.

OBJECTIVE

To maintain an adequate level of service and deployment by prioritizing functions and coordinating the efforts of the remaining workforce.

PLAN DEVELOPMENT

This plan is divided into three phases which are designed to be implemented progressively as the available workforce decreases. All plan phases are presented in brief to allow for ease and simplicity of implementation. Levels of service and deployment needs are prioritized to allow for adjustment as personnel reduction develops and needs arise.

Phase I contains recommendations to be used when more than 50 percent of Area personnel are available for work. Phase II is to be implemented as the available workforce decreases to less than 50 percent. Phase III is designed to cover a situation where all or nearly all personnel are unavailable for work.

It is anticipated that levels of service will be reduced according to the attached priority listing as deployment decreases. The Area will continue to use the normal beat priority plan.

OPERATIONAL GUIDELINES

In the event of any indication of workforce reduction, including but not limited to an employee strike, an employee sick-out or similar disruptive action or an epidemic illness, the Area commander is to be notified. The commander will, in turn, notify Division. Supervisors should immediately attempt to contact all personnel in order to assess personnel availability. When personnel availability has been determined, the appropriate phase of operation can be implemented. The Commander's Daily Report Log is to be prepared.

Phase I – More than 50 percent of Area personnel available for work.

Level of Service. It is anticipated that Phase I will not reduce the workforce to a degree requiring curtailment of services if the following deployment recommendations are followed.

Deployment.

1. Reduce shifts from 5 to 3; 0600, 1400, and 2200.
2. Adjust work schedules to assign remaining personnel to all shifts; 31 percent to 0600 shift, 38 percent to 1400 shift, and 30 percent to 2200 shift.
3. Deploy to high priority beats as shown on existing beat priority lists.
4. Cancel all vacations.
5. Consider continuing scheduled court appearances to keep personnel on patrol.
6. Consider increasing shift hours as needs develop.
7. Contact Division for approval of 1 officer units at night.

Office Security. Same as present standard operating procedure (SOP).

Outside Agencies. Area commander to contact the sheriff's office and appropriate police department to advise them of current level of service and the possible need for assistance. The Field Operations Officer (FOO) will alert county roads and California Department of Transportation as necessary.

Phase II – Less than 50 percent of Area personnel available for work.

Level of Service.

1. Reduce administrative support from 6 to 2; 1 officer to function as court liaison, the other as the Accident Investigation Review Officer.
2. Suspend court services.
3. Curtail road information services.
4. Suspend enforcement of nonhazardous violations.

5. Cancel investigation and/or reporting of property damage only accidents. Continue to respond to scene to remove hazards.

Deployment.

1. Cancel all days off.
2. Increase shift hours from 8 to 12 for officers and sergeants, as needed.
3. Use one-officer units for night shift, in accordance with policy.
4. Deploy personnel in accordance with established beat priority plans.

Office Security. In the event of employee disruptive action, it may be necessary to assign 2 uniformed officers to office security on 12-hour shifts. Officers are to make periodic checks of building and grounds per present SOP.

Outside Agencies. Maintain close liaison with allied agencies. Consider requesting mutual aid.

Phase III - All or nearly all uniform personnel unavailable for work.

Clerical staff may or may not be included in the disruptive action. In any event, Phase III is designed to provide a minimum of services with only 10 percent of Area personnel remaining.

Level of Service.

1. Suspend all administrative support services.
2. Restrict transportation services to emergencies only.
3. Curtail law enforcement to felonies, major misdemeanors, driving under the influence, reckless driving, etc.
4. To maximize congestion relief, keep all available units on patrol and in view.
5. Restrict accident investigation and reporting to fatal and serious injury accidents. Continue response to all accidents causing congestion and/or hazard and clear the scene.

Deployment.

1. Request mutual aid. (In the event mutual aid is available, it may be possible to revert back to either Phase II or Phase I.)
2. All uniform personnel to work 12-hour shifts; 12 on, 12 off. Days off cancelled.
2. In the event of a clerical personnel strike that coincides with uniform employee action, the Executive Lieutenant will assume necessary office duties until an adjustment can be made which include the following administrative functions:
 - a. Processing arrest reports and sale of accident reports.
 - b. Logging and tabulation of accident reports.
 - c. Processing and preservation of evidence and property.
 - d. Maintenance of automotive fleet.
4. The FOO will direct field operations and provide support, as necessary.
5. All available personnel, including sergeants, will work Area beats according to established priorities.

Office Security. Use the same security plans as Phase II.

Outside Agencies. Allied agencies should be advised of the level of service being provided by this Department as they will be asked to assist if we are unable to respond.