

Department of Labor & Industries

Contingency Plan for Budget Impasse (July 1, 2013)

As requested by the Governor, the Department of Labor & Industries (L&I) has developed a contingency plan in the event of a budgetary impasse on July 1, 2013. After careful review and consultation with the department's assistant attorney general, L&I provides services that fall into two of the four categories as outlined in the Governor's memo (bolded below):

- 1.) Services funded by appropriations in the enacted transportation budget (ESSB 5024).
- 2.) Services that do not require an appropriation, e.g., from non-appropriated funds.**
- 3.) Services to continue based on certain constitutional mandates and federal law.
- 4.) Services that are necessary for the immediate response to issues of public safety, or to avoid catastrophic loss of state property.**

This plan provides for the absolute minimal amount of staff required to ensure non-appropriated payments for workers' compensation benefits and medical services are continued, and that L&I can respond to concerns for public safety.

L&I has approximately 2,800 FTEs – this plan assumes only 44 employees (just under 2 percent) are included in this contingency plan:

- 13 staff would be from non-appropriated funds
- 2 staff would be full-time
- 8 staff would be part-time
- 21 staff would be "on call"

Services that do not require an appropriation: Automatic issuance of time loss payments (partial wage replacement)

Crime Victims Compensation Program

The Crime Victims Compensation Program provides financial assistance to victims recovering from violent crimes. The program provides financial compensation to crime victims for such expenses as medical bills, loss of financial support, and funeral expenses.

In 2012, L&I processed over 70,000 medical bills for just under 8,000 crime victims.

Resources required: 13 staff (about 1/3 of current staff) will continue to process a portion of the crime victims payments utilizing non-appropriated funds only.

Worker Compensation payments

In 2012, L&I paid approximately \$2 billion in workers' compensation benefits on 85,000 claims. The money to pay for medical (treatment/medications), time-loss, partial or permanent disability payments are non-appropriated; however the funding to pay for staff who manage claims **does** require an appropriation.

Therefore, this plan includes **only** the payment of existing claims that can be processed "automatically" and **would not** require intervention from claims staff. All claims that require staff to process will be on hold until the impasse is resolved.

This plan relies on the medical community to ensure that claimants receive emergent medical care; and L&I's 'first fill' rule will ensure prescriptions are filled. (The "first fill" rule enables an injured worker to get their initial prescription filled as long as they have a claim number which is provided by their doctor or an emergency room physician.)

Resources required:

- **Ensure non-appropriated account has adequate cash flow:**
 - 1 part-time accounting staff needed to ensure adequate cash is available. Every three days one person would spend a few hour calculating the cash flow needs and instruct the State Investment Board (presumed to be open) to sell or buy stocks.

- **Ensure systems continue to process payments and receive revenue:**
 - 5 part-time Information Technology staff to monitor and respond to issues for the medical payment, benefit payment, pension payment, and premium collection systems

Services that are necessary for the immediate response to issues of public safety, or to avoid catastrophic loss of state property.

Protecting the safety of Washington's workers

L&I is responsible for ensuring the occupational safety and health of Washington state workers. Even during a government shutdown, L&I must continue to respond 24 hours a day, 7 days a week, to imminent danger complaints, fatalities, and catastrophes regarding workers' safety (i.e. explosives, asbestos, high voltage, etc). During 2012, L&I inspected over 5,000 workplaces and addressed over 28,000 safety hazards.

This plan includes only the minimal amount of staff required to perform this function. Should a catastrophic event occur or if the numbers of complaints of imminent danger are greater than assumed, L&I would immediately increase staffing levels as appropriate.

Resources required:

- 17 staff deployed throughout the state to respond to public safety issues.
 - 1 staff to answer the 1-800 number for safety complaints.
 - 1 staff person to dispatch investigators as appropriate and to respond to worker fatalities.
 - 13 staff “on call” to investigate occupational safety and health complaints.
 - 2 staff “on call” with specialized knowledge to respond to serious complaints.

Protecting the safety of the public

L&I protects the safety of the public, in part by shutting down dangerous elevators and escalators that pose an immediate threat to the public. In the previous 12 months alone, L&I shut down 80 elevators deemed to be dangerous until the building owners made repairs. L&I will ensure staff are on-call to continue to respond to emergency issues.

Resources required:

- 6 statewide responders will be “on call” and available to take action on emergency situations, such as shutting down equipment that is deemed unsafe. The 6 responders will be dispersed throughout the state to ensure coverage:
 - 2 “on call” staff for the Electrical program.
 - 2 “on call” staff for the Elevator program.
 - 2 “on call” staff for the Boiler/Pressure Vessel program.

Administrative support to ensure L&I employees are paid appropriately.

In order to ensure staff are paid appropriately, the following resources would be required.

Resources required:

- 2 part-time staff will be needed for two hours for the month of July to ensure the July 25 payroll is processed for staff who are authorized to work during the shutdown.

From: [Sacks, Joel \(LNI\)](#)
To: [Schumacher, David \(OFM\)](#)
Cc: [Murray, Julie \(OFM\)](#)
Subject: REVISED Contingency Plan for L&I
Date: Friday, June 21, 2013 5:38:27 PM
Attachments: [OSHA Letter to Washington State.pdf](#)

David,

Attached please find a letter from the U.S. Department of Labor regarding federal mandates to provide certain occupational safety and health services in Washington state. Based on the federal mandate, I would like to revise L&I's previously submitted contingency plan.

Our Division of Occupational Safety and Health currently employs 358 staff. Of those, about half (162) are involved in enforcement activities, which are mandated by federal law.

We believe the minimum number of staff needed to provide enforcement services is 50. Each week we would assess the workload and increase staffing on an as-needed basis.

If you have any questions or concerns, please don't hesitate to call.

Summary

Total number of staff in Division of Occupational Safety and Health – 358

Number of staff involved in providing enforcement services – 162

Recommended minimum number of staff needed to provide enforcement services - 50

Joel



JUN 21 2013

The Honorable Joel Sacks
Director
Department of Labor & Industries
Washington State
P.O. Box 44000
Olympia, WA 98504-4000

Dear Director Sacks:

The Occupational Safety and Health Administration (OSHA) is aware of the possibility of a shutdown of Washington State government operations on June 30, 2013 if the legislature fails to pass a budget bill for the coming biennium. This raises serious concerns about the ability of the Washington State Department of Labor and Industries, Division of Occupational Safety and Health (DOSH) to assure the protection of workers by delivering an effective occupational safety and health program as mandated under Section 18 of the Occupational Safety and Health Act of 1970 (the Act).

A fully functioning state occupational safety and health program is essential to protecting workers from workplace hazards. Whenever business is being conducted, there is a need for OSHA to conduct activities at the workplace as specified in the Act, and in the laws and provisions of approved state plans. Suspending operations and removing safety and health personnel may put workers at risk of death or serious physical harm.

Our greatest concern involves the suspension of DOSH's enforcement operations for any length of time. Most employers will continue to do business, regardless of the state government's schedule. Effective enforcement is based on the expectation that employers could receive an unannounced inspection any day of the work week. A suspension of DOSH's services could lead some employers to relax their workplace safety and health protections. In addition, it is necessary at all times for staff to be available to respond to imminent danger situations, as well as fatalities and high gravity hazards. Suspending these essential activities, even for a short period, would have a serious impact on the ability of DOSH to fulfill its mission.

OSHA is sympathetic to DOSH's fiscal crisis; nevertheless, under Section 18 of the Act, DOSH receives funding from the Federal Government to run a program that is at least as effective as the federal OSHA program. Should a lapse in state government funding occur, at a minimum, we expect DOSH to receive exemptions based on the essential program activities for the protection of life and health required under Section 18.

Alternatively, Washington may voluntarily withdraw its State Plan under 29 CFR 1955.3(b), by notifying the Assistant Secretary of Labor for Occupational Safety and Health in writing of the reasons for such withdrawal. Such notification shall be accompanied by a letter terminating the application for related grants authorized under section 23(g) of the Act in accordance with 29 CFR 1951.25(d). However, please be advised that this course of action would have significant adverse effects upon worker safety and health in the state. For example, federal OSHA would not be able to enforce any unique DOSH standards, which often provide greater worker protection than federal standards. Federal OSHA would also not be able to equal DOSH's 115 allocated compliance staff, meaning fewer inspections would be conducted within the state. Federal OSHA could also not assure that any of DOSH's existing staff would be hired by federal OSHA. Additionally, more than 320,000 state and local government workers would no longer be provided workplace safety and health protections, as federal OSHA cannot provide protections for these workers. Please also be advised that the reestablishment of DOSH, as set forth in 29 CFR 1902 Subpart C, would be an arduous process that, based on past precedent, may take several years.

Please keep me informed of developments in your budget situation and any plans to implement alternative strategies to ensure maximum worker protection. If we can be of assistance in addressing these matters with your state executive or legislative authorities, please let me know.

Sincerely,

A handwritten signature in blue ink, appearing to read 'David Michaels', with a large, sweeping flourish at the end.

David Michaels, PhD, MPH

cc: Anne Soiza, Assistant Director for the Division of Occupational Safety and Health