



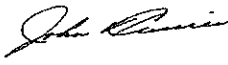
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MEMORANDUM

November 13, 2006

TO: Directors of Human Resources
FROM: John V. Currier 
SUBJECT: Agency Planning for a
Pandemic Influenza Crisis

The purpose of this memorandum is to provide guidance to agencies that are developing Continuity of Operations Plans (COOPs) for use in the event of a pandemic influenza crisis. The Governor's Office of Employee Relations (GOER) worked with the Department of Civil Service (DCS) to prepare this memorandum.

For information on preparation of COOPs, agencies should print and review both documents found under the heading *Empire Agency Continuity of Operations Plan (COOP) - Sample Plan* on the State Emergency Management Office (SEMO) web site at <http://www.semo.state.ny.us/programs/planning/>. For additional information on COOP preparation, agencies can contact the SEMO Planning Section at (518) 292-2302 (not a CAPNET number).

Since specific parameters of any future pandemic influenza crisis are impossible to predict, this memorandum provides a general overview of workforce issues that agencies should consider in establishing their plans. If a pandemic influenza crisis does occur, the SEMO, in conjunction with GOER, DCS and the Department of Health (DOH), will be providing more detailed guidance to agencies.

Because the State has broad statutory power and authority to define agency mission and goals and to manage its workforce, there are no legal impediments to its authority to do so during a pandemic influenza crisis. Moreover, there are no contractual impediments to the State's ability to identify essential assignments or carry out any other necessary measures for managing its workforce during a pandemic influenza crisis.

While the State has broad authority to manage its workforce, cooperation and sharing of information with the unions during a pandemic crisis will be very important. Accordingly, GOER will work with DOH and DCS to coordinate meetings and establish ongoing communication with the unions.

The identification of critical assignments and the development of a strategy to staff them under difficult circumstances are essential elements in the development of each agency's COOP. Set forth below is information on workforce issues to assist agencies with the development of such plans.

A. Identification of Critical Functions and Assignments

We recommend that agencies focus on the identification of critical functions needed during a pandemic influenza crisis and the assignments critical to the operation of those functions. After an agency's plans for critical functions have been finalized, the agency should create a staffing plan identifying essential employees to carry out the critical assignments. In addition, planning should include identifying additional employees who could staff these critical assignments.

Identification of specific employees who could perform critical assignments far in advance of a possible pandemic influenza crisis may not be feasible given the fact that employees will continue to enter and leave the workforce between now and the onset of any pandemic. However, if identification of employees to perform critical assignments is needed as part of the planning process, agencies must plan to update such lists regularly to reflect staffing changes. Also, agencies should bear in mind that their critical functions could change unexpectedly in response to a crisis and should be prepared to re-evaluate their critical assignments accordingly.

The State has previously had occasion to identify critical functions that need to be maintained, albeit for different purposes. While such past experience is a good starting point, there is no guarantee that functions deemed critical in past incidents would be identical to those needed in the event of a pandemic crisis. Accordingly, agencies should re-evaluate their needs in the context of a pandemic influenza crisis that may exceed the scope and duration of previous crises.

To reiterate, the agency planning process must focus on critical assignments within critical functions. It cannot be simply title or employee-based.

B. Staffing

We have divided our staffing discussion into four topics: Essential Employees, Location of Assignments, Work at Home, and Non-Essential Employees.

1. Essential employees

During a pandemic influenza crisis, the paramount goal of agencies is to keep critical assignments staffed. Should essential employees become unable to continue in such assignments, there are a variety of tools that agencies could employ to fill them. Suggested tools an agency could use include:

- a. Volunteers. The first choice should be to ask for volunteers from the pool of employees in the agency in the same title who are qualified and normally assigned to perform such duties. Second, volunteers willing to work out-of-title but qualified and competent to do the work could be sought and be temporarily reassigned by the agency.
- b. Assignment to duty. When an agency cannot fill critical assignments through volunteers, employees in the agency in the same title who are qualified and normally assigned to perform such duties could be assigned to work.
- c. Temporary reassignment of other employees. Within each appointing authority, management is entitled to reassign employees within the same layoff unit, as needed. If it becomes necessary to move employees from one appointing authority to another, transfer under Section 70(1) of the Civil Service Law (CSL) can be used as a mechanism to do so. Under the law, employees must consent to such a transfer.
- d. Out of title. State employees who are assigned or volunteer to perform duties and functions of a title at a higher salary grade are working out of title, and should be paid appropriately. Those employees assigned to, or volunteering for, duties at a lower grade level should be held harmless. This will remain true even where employees are temporarily assigned to another agency. In preparation for a possible pandemic crisis, DOB and DCS will develop a streamlined payment mechanism for out-of-title work in advance. If use of such a payment mechanism becomes necessary, guidelines will be shared with agencies.
- e. Former State employees. Retirees and former State employees can currently be rehired under Retirement and Social Security Law Sections 211 and 212, but these provisions impose income limits. There are also restrictions under the Public Officers Law. Should conditions warrant, the State may ease these restrictions. Any such modifications will be communicated to agencies when and if they become necessary.

f. Temporary items. The Civil Service Law provides for temporary appointments and allows the Director of Classification and Compensation to create and allocate positions (see CSL Sections 64 and 118, respectively). Using this authority, the Department of Civil Service and the Division of the Budget will work to establish in advance a pool of temporary items set at various compensation levels. This would allow agencies to acquire new employees rapidly as circumstances warrant. This pool of items could only be used with proper authorization. A procedure will be established for use of these items and communicated to agencies when and if this measure becomes necessary.

g. Contracting out. Although the State currently has the right to contract out for goods and services, this should be viewed as a last resort for filling critical assignments. A better alternative is to make temporary appointments as discussed above.

h. Compliance. Whenever possible, agencies should seek volunteers to perform critical assignments. Although employee behavior in a crisis environment, particularly one involving the threat of communicable disease, is unpredictable, State employees have historically shown dedication to their jobs by volunteering to work under difficult conditions.

Employee education and training will be carried out to prevent unfounded fears and combat rumors as well as to make employees aware of employer expectations. DOH, DCS, and GOER will coordinate the development of training (See Section D, Education and Training, below).

The disciplinary provisions found in Civil Service Law Section 75 and the collective bargaining agreements are available where employees do not report to work as directed. However, this is a lengthy process and would most likely not be effective in getting employees to report within the timeframes necessitated by a pandemic.

2. Location of Assignments

The location where an employee performs critical assignments depends, among other things, upon the nature of such assignments and the severity of the pandemic influenza crisis. Employees may always be assigned to perform work at their normal worksite. In addition, the State has the authority to assign employees to work at an alternate worksite or to work at home. The State has always had the authority to assign employees to work at home, and such work-at-home arrangements are not "telecommuting" as described in the PS&T Unit Agreement.

a. Housing and food. Agencies could plan for and provide food and housing for staff required to stay at or near their worksites. Similarly, the

State could pay for hotel accommodations, food, and travel expenses for employees assigned to worksites away from their homes, but not staying at their worksites.

3. Work at Home

As stated above employees may be assigned to work at home during a pandemic influenza crisis. The State has always had the authority to assign employees to work at home. Such work-at-home arrangements are not "telecommuting" as described in the PS&T Unit Agreement and no labor/management agreement is necessary in order to assign employees to work at home. Employees who are assigned to work at home should, where possible, be performing their assigned duties or be available to do so during their normally scheduled work hours. Agencies that intend to assign employees to work at home must make logistical preparations in advance (i.e., technological infrastructure, equipment, supplies, etc.).

Employees assigned to work at home are in pay status and must complete a record of attendance. Direct deposit of pay should be encouraged so that employees assigned to work at home will have timely access to their funds.

There is no presumption that employees assigned to work at home are on standby/on-call status unless so notified by the employer. Standby/On-Call provisions of the collective bargaining agreements are only operative if the employee in question is required to restrict activities or movement during non-work hours for the express purpose of being ready to work on short notice. Similarly, there is no presumption that employees assigned to work at home are working overtime unless so assigned by the employer.

Detailed guidelines regarding work at home issues will be developed and shared with agencies when and if this measure becomes necessary.

4. Non-Essential Employees

While agencies will always strive to ensure performance of critical functions, the extent to which they curtail other non-essential functions will likely depend upon the severity of the pandemic influenza crisis. If the severity of the crisis results in a decision to direct non-essential employees not to report to the work place, such employees are in pay status without charge to credits because we are precluding them from reporting to work. Accordingly, under this scenario, they would be assigned to work at home (See "Work at Home" above). Such work-at-home arrangements are not "telecommuting" as described in the PS&T Unit Agreement. Non-essential employees who are assigned to work at home should, where possible, be performing their assigned duties or be available to do so during their normally scheduled work hours. Non-essential employees who typically earn overtime will not be compensated for the loss of opportunity to do so as a result of assignment to duty at home.

C. Budgetary/Fiscal and Overtime Issues

Under Civil Service Law Section 134(6), the Director of the Budget has authority to approve waivers allowing overtime payments to employees deemed to be overtime ineligible. This has been done in previous situations including the September 11, 2001 terrorist attacks and the preparation for Y2K. The Division of the Budget will establish an expedited process for granting overtime waivers to essential employees in the event of a pandemic influenza crisis. Guidelines on this process will be shared with agencies when and if this measure becomes necessary.

D. Education and Training

DOH, DCS, and GOER will coordinate education and training programs. Programs for the general employee population will focus on specific infection control practices and reducing staff fear and anxiety through education about influenza and its prevention. In addition, informational sessions geared toward personnel and/or human resource managers will focus on topics related to management of the workforce during a pandemic influenza crisis.

E. Internal Agency Communication

Since communication with employees will be crucial in sustaining the execution of critical assignments, agencies must ensure that their records regarding employee home phone numbers (and home e-mail addresses where possible) are up to date. Agencies should establish an emergency communication plan and advise employees on its use. Once the agency COOP planning process is complete, agencies should conduct agency-level informational sessions with union representatives and employees to explain agency plans in the event of a pandemic.

F. Next Steps

In the event of a pandemic influenza crisis, SEMO, in conjunction with GOER, DCS, and DOH, will provide more detailed instructions to agency managers on the issues discussed above as well as other contingencies that may arise.

If you have any questions about this memorandum, please contact Rebecca Caudle or Richard Ahl of the Governor's Office of Employee Relations at (518) 473-8375.

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