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## **Public Agency Risk Managers Association (PARMA) *2009 Annual Risk Management Conf.***

### **“Disaster Service Workers”**

*February 2, 2009*

*Presenter:*

**Mark Meyerhoff**

**Disaster Service Workers –  
If You Call Them, Will They  
Come?**

Presented by:  
**Mark Meyerhoff**

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**California Emergency Services Act**

- Purpose
  - To mitigate the effects of natural, manmade or war-caused emergencies.
  - To insure that preparations within the state are adequate to deal with emergencies.

Government Code §8550, *et. seq.*

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**How Does the CESA Carry Out Its Purpose?**

1. Confers broad powers upon Governor and governing bodies of the state, including local agencies
2. Establishes the Office of Emergency Services
3. Assigns functions to state agencies during emergencies
4. Provides for mutual aid




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**How Does the CESA Carry Out Its Purpose?** *(continued)*

- 5. Authorizes necessary actions to carry out policies
  - Commandeer private property
  - Contract with public/private entities
  - Give orders with effect of law
  - Suspend regulatory statutes

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**How Does the CESA Carry Out Its Purpose?**

- Establishes the California Emergency Council
- Advisory body to the Governor
  - How to assign services, activities
  - Boundaries of mutual aid regions
  - How to handle volunteer response
- Certifies the accredited status of local disaster councils
- Establishes classes of disaster workers and scope of duties
- Establishes payment of workers' compensation

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**How Does the CESA Carry Out Its Purpose?**

- Can be created by ordinance in order to:
  1. Develop disaster plan
  2. Provide for mutual aid agreements
  3. Establish procedures for dealing with volunteers
- Must be certified by Emergency Council
  - Must be accredited in order to register individuals for Disaster Service Workers Volunteer Program

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**Types of Emergencies**

- War
  - Actual or threat of probable or imminent attack
- State of emergency
  - Extreme peril to persons or property within state (air pollution, storm, fire, flood, riot, epidemic, drought, energy shortage, infestation, earthquake, volcanic eruption, year 2000 problem, etc.)
- Local emergency
  - Same as State of Emergency within territorial limits of City or County

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**Proclamation of a Local Emergency**

- Gives local governing body broad powers, including power to issue orders and regulations to protect life and property:
  - Curfews (narrowly drafted to be constitutional)
  - Road closures
  - Prohibit transportation of fuel
  - Close places of public assembly and certain types of businesses
  - Arrest persons who obstruct or hinder emergency operations

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**Proclamation of a Local Emergency**

**TIME TO PLAY:**

“GOVERNING BODY PROCLAIMS LOCAL EMERGENCY FEUD”

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**Proclamation of a Local Emergency**

- Question One:
  - Who can proclaim a local emergency?

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**Proclamation of Local Emergency**

- Question Two:
  - If a local emergency is proclaimed by a designated official, how long can the proclamation stay in effect?

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**Proclamation of Local Emergency**

- Question Three
  - How often must a governing body review its decision to proclaim a local emergency?

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**Proclamation of Local Emergency**

- Question Four
  - Do you need a quorum of the governing body to proclaim a local emergency?

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**Proclamation of Local Emergency**

- Question Five
  - What are duties of governing body during emergency?

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**Proclamation of Local Emergency**

- Question Six
  - Is Brown Act violated if governing body does not give notice of emergency meeting?

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**Proclamation of Local Emergency**

- Question Seven
  - Should the meeting be in a closed session?

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**Succession Planning**

- A governing body **shall** “proceed to reconstitute itself by filling vacancies until there are sufficient officers to form the largest quorum required by the law.”
- One member or one standby officer “shall have the power to reconstitute the governing body.”

Government Code §8643

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**Succession Planning**

- During an emergency, the governing body shall have the power to appoint the following standby officers:
  - Three for each member of the governing body
  - Standby officers shall be designated Nos. 1, 2 and 3 as the case may be
  - Temporary officers after that

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**Succession Planning**

- Selection of Standby Officers
  - Local agencies should carefully investigate the qualification of each standby officer.
  - The standby officer must consent.
  - May ask OES to assist with investigation

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**Succession Planning**

- Selection of Standby Officers (cont.)
  - Agency should consider where standby officers work and reside for greatest probability of survivorship.
  - Do not have to be residents of the political subdivision.
  - Doctrine of incompatible offices does not apply to standbys.
  - Must take same oath as regular officers
  - May be removed and replaced at any time with or without cause

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**Disaster Service Workers**

“All public employees are hereby declared to be disaster service workers subject to such disaster service activities as may be assigned to them by their superiors or by law.”

Legally employed aliens are excluded from definition of “public employees.”

Government Code §3100

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**Disaster Service Workers**

- All disaster service workers must, before they enter upon duties of employment, take and subscribe to loyalty oath
- Good for successive employment within one year

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**The Loyalty Oath**

- Government Code §3102
- California Constitution Article XX, §3
  - CA Supreme Court held portion of oath unconstitutional
  - Make sure your agency's oath does not contain invalid provision dealing with overthrow of the Government

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**The Loyalty Oath**

- Administered by any offices authorized to administer oaths
- Filed within 30 days (County Clerk, City Clerk, official personnel file of County employee, any officer or employee designated by a special district)
- Can be destroyed 5 years after employment

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**The Loyalty Oath**

- What if an employee refuses to sign the loyalty oath?
  - No compensation or reimbursement shall be paid to any disaster service worker unless the worker has taken and subscribed to the loyalty oath or affirmation.

Government Code §3107

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**The Loyalty Oath**

- What if the employee has religious or non-religious objections to the oath?
  - Courts have consistently held that oath does not violate First Amendment rights
  - Employee cannot alter the oath for religious beliefs
  - Have conference
  - Provide reasonable amount of time for employee to decide

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**The Loyalty Oath**

- What if the agency inadvertently forgot to administer the oath?
  - Administer the oath retroactively
  - Send letter to employee advising of requirement to take oath
  - Attach oath for review (App. D)

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**The Loyalty Oath**

- What if the agency inadvertently forgot to administer the oath?
  - Allow a reasonable time for employee to review oath
  - *Skelly* recommended

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**Obtain Contact Information for Disaster Service Workers**

- Obtain the following information:
  - a) name;
  - b) address;
  - c) date enrolled (date the loyalty oath or affirmation is administered);
  - d) classification of disaster service; and
  - e) a signed statement that the loyalty oath/affirmation was taken or subscribed before an officer authorized to administer oaths.

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**Disaster Service Worker Classifications**

- Animal Rescue, Care and Shelter
- Communications
- Community Emergency Response Team Member
- Finance and Administrative Staff
- Human Services
- Fire
- Laborer

Cal. Code Regs., title 19, § 2572.1

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**Disaster Service Worker Classifications**

- Law Enforcement
- Logistics
- Medical and Environmental Health
- Safety Assessment Inspector
- Search and Rescue
- Utilities

Cal. Code Regs., title 19, § 2572.1

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**Volunteers**

- State Disaster Service Workers Volunteer Program
  - Provides Workers' Compensation Coverage

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**Volunteers**

- Must be registered with accredited Disaster Council
- Must not receive pay for services
- Also applies if pressed into service

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**Volunteers**

1. Pre-registered
2. Convergent
  - Come forward spontaneously
  - 10,000 during Loma Prieta earthquake
  - Agency can define assignment
  - Agency responsible for making sure volunteer capable and trained (backgrounds?)

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**Volunteers**

- Local emergency plan should address convergent workers (registration and supervision)
- Cannot retroactively register after injury
- Must take loyalty oath
- Can register for up to one year

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**Disaster Plan and Policies**

- Local governments should formulate a disaster preparedness plan that:
  1. Specifies how the plan will be activated
  2. Identifies individual(s) authorized to activate plan
  3. Identifies individual(s) who can redirect employees from their usual job duties to their disaster service duties

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**Disaster Plan and Policies**

- Local governments should formulate a disaster plan that:
  4. Identifies individuals who may authorize overtime
  5. Delineates the chain of authority for making decisions during work and outside of work
  6. Identifies reasons for which employees may be authorized to not report to work as scheduled

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**Disaster Plan and Policies**

- Disciplinary Action
  - The CESA does not provide for the prosecution of employees who do not carry out their disaster service worker assignments
  - The agency has discretion to discipline
  - Consider:
    - Personnel Rules / MOU
    - Consistency and fairness
    - Due Process

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**Disaster Plan and Policies**

- Anticipate the possibility of workers not reporting
  - Require communication between employee and agency
  - Identify excused absences:
    - Emergencies including families
    - Need to secure family/property
    - Inability to travel safely to the agency

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**Disaster Plan and Policies**

- Agency should anticipate needs of disaster service workers
  - Provide for child care if possible
  - Provide phone banks
  - Assign employees to check on families, property, etc
  - Allow an employee some opportunity to take care of personal business/concerns

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**Liability and Immunity**

- No liability for exercise of duties under the CESA
- Applies to registered volunteers or those impressed into service
- No liability for personal injury or property damage

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**Liability and Immunity**

- Disaster service workers are protected from liability if they acted within the scope of their volunteer responsibilities at the time of the act or omission which resulted in damage/injury

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**Liability and Immunity**

Immunity is not available

Where disaster service worker engaged in a willful or criminal act, gross negligence or reckless misconduct

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**Workers' Compensation**

Workers' Compensation Benefits

- Disaster service workers and registered volunteers may file workers' compensation claims for their injuries incurred while:
  1. Performing disaster services;
  2. Traveling to/from incident sites to perform disaster services;
  3. Participating in a search and rescue operation; and
  4. Participating (excluding travel) in an authorized disaster service training/exercise.

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