

**DIVISION OF OCCUPATIONAL SAFETY AND HEALTH  
POLICY AND PROCEDURES MANUAL**

**SUBPOENAS AND LETTERS  
REQUESTING DOCUMENTS**

P&P C-24

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**AUTHORITY:** California Labor Code Sec. 6304.5, 6313 and 6314(c) and California

**POLICY:** It is the policy of the Division of Occupational Safety and Health to issue a subpoena when necessary to compel the attendance of witnesses and the production of books, papers, records and physical materials, and to respond to all subpoenas served on the Division.

**PROCEDURES:**

**A. ISSUING AND SERVING SUBPOENAS**

1. Definitions
  - a. A subpoena is a written order directing a person to appear at a particular place to give testimony.
  - b. A subpoena duces tecum is an order to produce specified records.

2. Use

A subpoena or subpoena duces tecum, or both, may be served by the Division on an employer, a representative of the employer, or any other person, to obtain evidence during the course of an investigation or inspection.

3. Preparation and Issuance of Division Administrative Subpoenas
  - a. Subpoena

Compliance personnel shall complete a Subpoena (Cal/OSHA 24A, Attachment A) and submit it to the District Manager for review and approval prior to service.

- b. Subpoena Duces Tecum

Compliance personnel shall complete a Subpoena and Subpoena Duces Tecum (Cal/OSHA 24B, Attachment B), send a copy to the

appropriate Legal Unit Office for review, and submit the Form to the District Manager for review and approval prior to service.

- c. Subpoenas and subpoenas duces tecum shall be issued during the investigatory phase of Division activities and shall not be issued after the issuance of citations and after initiation of Occupational Safety and Health Appeals Board proceedings.

#### 4. Service

Subpoenas shall be served by a contracted subpoena service, or, with the District Manager approval, by compliance personnel.

NOTE: When serving a subpoena, compliance personnel shall also complete a Declaration of Service (Cal/OSHA 25C, Attachment C), give a copy of the subpoena and Declaration to the person being served and place the original of the subpoena and the Declaration in the employer case file at the District Office.

#### 5. Occupational Safety and Health Appeals Board Hearing Subpoenas

Subpoenas used in conjunction with Occupational Safety and Health Appeals Board hearings may be obtained from the Appeals Board in Sacramento. Compliance personnel may contact the Legal Unit for assistance.

### B. RESPONDING TO SUBPOENAS SERVED ON THE DIVISION

1. Accepting Service of the Subpoena
  - a. Named Individuals

Personal service either upon the person designated in the subpoena, or service upon the individual's immediate supervisor, is required.

NOTE: When served with a subpoena requiring attendance at a trial, hearing, or deposition, compliance personnel shall make a demand for payment in advance of the applicable fee for one day's attendance if payment is not offered when the subpoena is served. Compliance personnel shall also notify the party who issued the subpoena that the applicable fee must be paid prior to attendance and that, if the fee is not received in a timely fashion, compliance personnel will not comply with the subpoena.

- b. Custodian of Records

Subpoenas directed to the Custodian of Records at a particular Division Office may be accepted by any employee of that office, but shall not be accepted if the subpoena requires attendance at a deposition more than 75 miles from the Custodian of Records place of residence.

2. Complying with Subpoenas

a. Division is the Defendant In a Civil Injury Case

If compliance personnel are served with a subpoena in which the Division is the defendant in a civil injury case, compliance personnel shall contact the Deputy Attorney General, if known, or refer the subpoena to the appropriate office of the Legal Unit immediately.

b. Division Records Are Required

When the Custodian of Records, or his or her designee, at a District Office has accepted a subpoena for records, the Custodian shall adhere to the following provisions:

1. Locating and Duplicating Records

After receiving the subpoena, the Custodian shall locate the requested records and if the records are located, the Custodian shall copy all records requested.

NOTE: If the requested records cannot be located, the Custodian shall complete and sign the Declaration of No Records (Cal/OSHA 24E, Attachment E) and mail it to the party who issued the subpoena.

2. Mailing Records

- a. If the subpoena indicates that mailing the records is acceptable, the Custodian shall mail copies of discloseable requested records with a completed and signed Declaration of the Custodian of Records (Cal/OSHA 24D, Attachment D) in an inner, sealed envelope with the name of employer, the inspection number of the case, the name of the witness (if any), and the date of the subpoena and place the inner envelope in an outer envelope for mailing.
- b. If requested records are not provided because of their confidential nature, e.g., personnel files, complaints or documents that may reveal the identity of the complainant, photographs and video film, Bureau of Investigations files and trade secret and other documents which were not generated by Division personnel, the Custodian shall inform the party requesting the records in writing that the Division is asserting its privilege not to disclose confidential records based on Labor Code Sec. 6322 and Government Code Sec. 6254 and 6255.

NOTE: If photographs are not being disclosed, the Custodian shall also assert the Division's privilege not to disclose confidential records based on Labor Code Sec. 6314(a).

3. Duplicating Fees

Fees for duplicating the requested materials shall be collected at the time the materials are delivered to the requesting party. The materials may be withheld until applicable fees are paid. All fees shall be in the form of checks payable to the State of California.

EXCEPTION:

If the records are duplicated by the requesting party at the District Office, no duplicating fees shall be charged by the Division.

c. Attendance Required

1. Subpoenaed Party Did Not Participate in Inspection

a. Custodian of Records

- i. When making an appearance at a deposition or at a trial, the Custodian of Records shall appear and bring a copy of requested records to produce during the deposition or trial.

NOTE: If any records considered confidential are brought to the deposition or trial, the Custodian shall contain the records in a sealed envelope marked "Confidential" which shall not be released. The Custodian shall inform the party requesting the records or the court that the Division is asserting its privilege not to disclose confidential records based on Labor Code Sec. 6322 and Government Code Sec. 6254 and 6255. If photographs are not being disclosed, the Custodian shall also assert the Division's privilege not to disclose confidential records based on Labor Code Sec. 6314(a).

- ii. If the subpoena requires that the Custodian appear in court, the subpoena shall be referred to the Legal Unit.

b. Compliance Personnel

If compliance personnel receive a subpoena to provide testimony at a deposition, hearing or trial in a case where they did not participate in the underlying inspection, compliance personnel shall immediately notify the District Manager and refer the subpoena to the Legal Unit.

2. Subpoenaed Party Participated in the Inspection

a. Appeals Board Hearings

If compliance personnel receive a subpoena to provide testimony at a Appeals Board hearing in a case where compliance personnel participated in the underlying inspection, compliance personnel

shall notify the District Manager and refer the subpoena to the Legal Unit immediately.

b. Deposition

- i. It is the policy of the Division of Occupational Safety and Health to allow compliance personnel to participate in depositions.
- ii. The policy is based on the following:
  - I. A deposition is a part of the discovery process;
  - II. Compliance personnel may have information which can promote the discovery process by leading to other relevant and material information; and  

NOTE: Generally, however, the following three types of information given by compliance personnel at a deposition are not admissible at trial: (1) information relating to the issuance of, or failure to issue, a citation; (2) the application of occupational safety and health standards; and (3) all other types of expert testimony. Although in cases between an employer and his or her employee (chiefly, in workers' compensation cases, but also in civil suits), the three types of compliance personnel information are admissible. See Labor Code Section 6304.5.
  - III. A deposition can be scheduled at a time and place convenient for compliance personnel.
- iii. If compliance personnel receive a subpoena to provide testimony at a deposition in a case where compliance personnel participated in the underlying inspection, compliance personnel shall request payment of the applicable fee and shall comply with the conditions of the subpoena. However, compliance personnel will not comply with a deposition subpoena which requires travel in excess of seventy-five (75) miles from the person's office or residence.
- iv. Whenever compliance personnel receive a subpoena for a deposition in a case in which the Legal Unit is representing the Division, compliance personnel shall immediately send a facsimile of the subpoena to the Legal Unit so that the Legal Unit can make a determination whether it is necessary to have an attorney attend the deposition. Upon receipt of the subpoena, the Legal Unit will notify compliance personnel whether an attorney will attend.
- v. If an attorney does not attend the deposition, compliance personnel shall:
  - I. Review carefully their deposition testimony for any errors and notify the court reporter of those errors;
  - II. Request a copy of their deposition at the time of deposition, but only in those cases involving a currently contested Cal/OSHA citation; and

- III. Send a copy of the deposition to the Legal Unit, but only when an attorney represents the Division in the case.
- c. Trial
    - i. The policy of the Division of Occupational Safety and Health is not to generally allow compliance personnel to testify in civil actions in court.
    - ii. The policy is based on the fact that compliance resource time spent by compliance personnel in preparing testimony for trial, in waiting to be called to testify, and in testifying may adversely impact the Division's ability to respond to accidents, employee complaints and to conduct inspections and investigations of high hazard workplaces. In addition, Labor Code Sec. 6304.5 provides that the statutory and regulatory provisions governing occupational safety and health shall not have any application to, be considered in, or be admissible into evidence in a third party personal injury or wrongful death action.
    - iii. However, there may be unique situations where compliance personnel have percipient information which may be material and relevant, e.g., an action between an employee and his or her own employer.
    - iv. Thus, if compliance personnel receive a subpoena to provide testimony in a civil action, compliance personnel shall notify the District Manager and send the subpoena to the Legal Unit immediately so that a determination can be made whether provision of testimony in response to the subpoena is appropriate.

### C. REQUESTS FOR INFORMAL INTERVIEWS

Compliance personnel shall not grant interviews to private attorneys or investigators who wish to question compliance personnel about inspections, files or records of the Division.

### D. LETTERS REQUESTING DOCUMENTS

Compliance personnel who receive letters requesting documents shall treat the letter like a subpoena duces tecum, except that a brief cover letter shall be sent by the Custodian of Records to the requesting party instead of a Declaration.

### E. DISCOVERY

Compliance personnel and District Managers shall promptly comply with all discovery requests in matters concerning appeal of the Division's enforcement actions in an investigation or inspection.

NOTE: If the particular case, or the discovery portion of the case, is being handled by the Legal Unit, promptly fax the discovery request to the appropriate office of the Legal Unit.

## F. FEES

### 1. Subpoena

#### a. When Division Issues/Serves a Subpoena

1. When the Division issues a subpoena, the Division shall pay applicable fees on demand.

#### EXCEPTION:

The Division is not required to pay fees if the person who is subpoenaed is a party to a Division proceeding or an officer or employee of the State of California, or a political subdivision of the State.

2. When the witness demands payment of applicable fees in advance, compliance personnel serving the subpoena shall pay the fees and shall claim the fee payment as an expense on a Request For Funds Form. See P&P A-12.

#### b. When Division Is Served with a Subpoena

1. When the Division is served with a subpoena requesting attendance at a deposition or a trial, the Division is entitled to \$275.00 per day for each day's actual appearance and to be paid at the time the subpoena is served.
2. Compliance personnel are not entitled to any fees if subpoenaed to attend any proceeding of the Occupational Safety and Health Appeals Board.
3. All checks shall be endorsed to the State of California General Fund and forwarded with a copy of the subpoena to the DIR Accounting Unit.

### 2. Subpoena Duces Tecum

When a subpoena duces tecum is served on the Division, the Division is entitled to fees as follows:

#### a. Attendance of the Custodian is Required

1. If attendance of the custodian is required at a deposition or a trial, the Division is entitled to \$275.00 per day for each day's actual appearance and to be paid at the time the subpoena is served.
2. In addition, upon presence of the requested documents, the Division is entitled to receive from the party requesting the documents \$0.19 per page with no charge for the first 10 pages.

#### b. Attendance of the Custodian is Not Required

If attendance of the custodian is not required, the Division is entitled to duplicating charges only.

NOTE: For each photograph provided, the Division is entitled to \$1.50 per photograph or digital print. [If multiple digital prints are requested, the requestor has the option to obtain such digital photos on a CD for a charge of \$20.00 per CD]. A copy of an audio tape maybe obtained for \$8.00 per tape.

3. Former Division Employees
  - a. Retired Division Employees

Retired Division employees whose testimony is necessary in an Appeals Board hearing shall be reimbursed as follows:

1. A day wages, reduced by daily retirement income for each day's actual preparation or appearance;  
NOTE: Retired personnel may request to be reinstated for the period of the hearing in which case the wages are not reduced by the amount of the retirement income.
2. Total mileage traveled at the authorized State rate; and
3. Per diem, if staying overnight is required.

- b. Other Division Employees

Other former Division employees shall be entitled to the witness fee (\$275.00 per day for each day's actual appearance).

- c. Billing

Former employees shall prepare a bill, including full name, mailing address, social security number and retirement income amount, and submit the bill to the District Manager for signature. After signature, the District Manager shall forward the bill to the DIR Accounting Unit.

Attachments:

- A -- [Cal/OSHA 24A](#)
- B -- [Cal/OSHA 24B](#)
- C -- [Cal/OSHA 24C](#)
- D -- [Cal/OSHA 24D](#) (pdf format, 48KB)
- E -- [Cal/OSHA 24E](#) (pdf format, 53KB)