



The range Appeal

Orange County Association of Legal Administrators

March/April 1996

New Statute Controlling Subpoenas for Employee Records

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Well, that ship of fools known as "Employment in California" is once again picking up speed.

Last year the California legislature added a statute to the Code of Civil Procedure applying new rules to every employer's favorite pastime - the production of subpoenaed employment records.

Subpoenas are always a trouble some aspect of an employer's undertaking because they require action that is outside the regular course of the business. Subpoenas are tantamount to a court order, and thus can be somewhat threatening to an unfamiliar staff. However, remember that subpoenas are generally issued by attorneys in their capacity as officers of the court. As a result, they are sometimes "inartfully drafted," - such as referring to persons whom the subpoenaing attorney only "thinks" are employed, or to records the attorney merely "assumes" exist. Not to mention the possibility of the employee claiming that you invaded his or her privacy by producing the employment records, plus the joy of being threatened with some sort of a court order because you were supposed to have produced the documents yesterday.

C.C.P. § 1985.6.

The new statute, Code of Civil Procedure § 1985.6, makes an effort to cure some of the abuses associated with the subpoenaing of employment records. Specifically the statute provides that anyone who subpoenas employment records in a civil action, except government agencies, must now also serve the employee (or past employee) with the subpoena, and also provide a specific notice to the employee whose records are being subpoenaed.

Notice to the Employee.

This notice must inform the employee that: 1) employment records concerning the employee are being sought from the named employer; 2) that these records may be protected by a right of privacy; 3) that if the employee objects to the production of the records that he or she may file appropriate papers with the court prior to the date when the records are to be produced; 4) the notice must also indicate that if the employee objects to the production that he or she should consult an attorney regarding the protection of their rights.

The statute requires that this notice be served upon employee, along with a copy of the subpoena at least 10 days prior to the date when the records are to be produced. Moreover, the employee must be served with this information at least 5 days prior to the actual service of the subpoena upon the employer's custodian of records. This last requirement assures that the employee does not get

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Newsletter Corner

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The Association of Legal Administrators' mission is to:

Promote and enhance the competence and professionalism of legal administrators and other members of the legal management team by providing high quality, competency-based educational programs in legal management;

Represent professional legal management and managers to the legal community and to the community at large; and

Improve the quality of management in legal services organizations.

Goals

Develop and deliver programs and products that will provide high quality, competency-based education to members of the legal management team.

Increase the visibility and credibility of the association and its members in the legal community through effective marketing and communications and through liaison with the bar and other law related associations at local, state and national levels.

Enhance the services and benefits available to members.

Retain and recruit members from all components of the legal management team.

Strengthen the association's economic base.

Increase sensitivity to cultural diversity within the association and in the legal management community.

Implement an organizational structure which separates the policy and operational roles and responsibilities of volunteers and staff to assure that organizational resources are used appropriately to achieve the association's goals.