

How To Respond To A Subpoena Regarding One Of Your Employees

March 1, 2016 | [Employment Lessons, Labor And Employment](#)



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From time to time, an employer will be served with a subpoena for information relating to one of its employees. Most commonly, this is in the context of a domestic dispute in which the employee is involved. A subpoena imposes a legal obligation on the organization receiving it and it is important that it be treated accordingly. Failure to properly respond can result in fines or other sanctions for contempt of court. Here are some basic steps to help your company respond to a subpoena to fulfill legal obligations with minimum inconvenience and intrusion.

1. Define the target: What do they really need and want?

It is common for a subpoena to ask for more than the issuing party really needs and wants. The most common example of this is: many subpoenas call for the attendance of an individual at a certain time, date, and place in addition to seeking certain records. Also, sometimes the subpoena asks for very broad document requests because the party issuing the subpoena wants to be sure it is not missing anything. Often you can reduce the burden of the subpoena by simply reaching out and asking, "What do you really need?" The majority of the time, a representative of your organization does not need to appear; the party issuing the subpoena just wants the documents, perhaps along with some sort of certification of the documents' authenticity. Generally we advise clients not to contact lawyers themselves – under almost any circumstance. It is better to have your legal counsel do so, at least for the first contact.

2. What responsive documents does your organization have?

Once you have defined the target, you need to determine what you have. Even if you believe you should not have to provide some of the information and intend to fight about that (see below), it is important to first identify what documents you have that are responsive. If you do contest the subpoena in whole or in part, it is still important to be able to communicate to the litigants, and potentially a court, specific information about the documents.

3. Do you have any objection to providing the documents?

Because a subpoena is a legally compelling document, usually the company is legally protected if the employee objects to the information being provided. However, you also have employee relations issues to consider, so it often is a good practice to at least have the internal dialogue about how the information will be handled. Usually it makes sense to notify the employee about the

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subpoena and see if the employee has any objections. If the employee does object and it is a party to the legal proceeding (such as a domestic matter), it will likely make sense to put the burden of opposing the subpoena on the employee and his/her lawyer.