

United States Department of Labor
OFFICE OF ADMINISTRATIVE LAW JUDGES

In Re:

(Plaintiff/Complainant/Claimant)

v.

OALJ Case No:

(Defendant/Respondent/Employer/Carrier)

SUBPOENA TO APPEAR AND TESTIFY AT A DEPOSITION

To: Address City State Zip Code

YOU ARE DIRECTED to appear at the time, date, and place set forth below to testify at a deposition to be taken in the above captioned proceeding. If you are an organization that is not a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Place of Testimony:

Date: \_\_\_\_\_

Time: \_\_\_\_\_

The deposition will be recorded by this method: \_\_\_\_\_

YOU MUST ALSO BRING WITH YOU the following documents, electronically stored information, or tangible things and permit their inspection, copying, testing or sampling of material (blank if not applicable):

The provisions of Code of Federal Regulations (CFR) 29 C.F.R. §§18.56(c) and 18.52(a), relating to your protection as a person subject to a subpoena, and 29 CFR §§18.56(d) and 18.56(e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

This subpoena is issued upon the application of (indicate attorney/representative for named party):

(Person requesting subpoena)

(Address and Telephone Number)

Firm Name \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

Bar Number \_\_\_\_\_

City \_\_\_\_\_

Phone Number \_\_\_\_\_

State \_\_\_\_\_

Zip Code \_\_\_\_\_

If this subpoena commands the production of documents, electronically stored information, or tangible things, a copy of this subpoena must be served on each party before it is served on the person to whom it is directed. 29 C.F.R. §18.56(b)

IN WITNESS WHEREOF the undersigned United States Department of Labor Administrative Law Judge has signed this subpoena.



Signature of U.S. Administrative Law Judge

Date

## NOTICES

**NOTICE:** This subpoena is only valid in proceedings before the Office of Administrative Law Judges or Office of Workers' Compensation Programs. To be valid, this subpoena must bear a raised United States Department of Labor (USDOL) seal, and the signature of a Department of Labor (DOL) administrative law judge.

**29 C.F.R. §18.56 Subpoenas****(c) Protecting a Person Subject to a Subpoena.**

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or representative responsible for requesting, issuing or serving a subpoena must take reasonable steps to avoid imposing undue burden on a person subject to the subpoena. The judge must enforce this duty and impose an appropriate sanction.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition or hearing.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or representative designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises - or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served

(i) At any time, upon notice to the commanded person, the serving party may move the judge for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the judge must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person - except that, subject to paragraph (c)(3)(B)(iii) of this section, the person may be commanded to attend the formal hearing;
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When permitted.* To protect a person subject to or affected by a subpoena, the judge may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information;
- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or
- (iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend the formal hearing.

**(d) Duties in Responding to a Subpoena.**

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is usually maintained or in a reasonably usable form or forms.

**HIPAA NOTICE:** In regard to the Privacy of Individually Identifiable Health Information under the Health Insurance Portability and Accountability Act of 1996, if this subpoena does not bear a raised USDOL seal and the signature of a DOL administrative law judge, it is not valid under 45 C.F.R. §§164.512(e), 164.512(f) or 164.512(l).

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or expense. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the judge may nonetheless order discovery from such sources if the requesting party show good cause. The judge may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as hearing-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as hearing-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the judge *in camera* for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(e) Failure to Obey.** When a person fails to obey a subpoena, the party adversely affected by the failure may, when authorized by statute or law, apply to the appropriate District Court to enforce the subpoena.

**29 C.F.R. §18.52 Protective orders**

**(a) In General.** A party or person from whom discovery is sought may file a written motion for a protective order. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the affected parties in an effort to resolve the dispute without the judge's action. The judge may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

- (1) Forbidding the disclosure or discovery;
- (2) Specifying terms, including a designation of the time and place, for the disclosure or discovery;
- (3) Prescribing a discovery method other than the one selected by the party seeking discovery;
- (4) Forbidding inquiry into certain matters, or limiting the scope of disclosure or discovery to certain matters;
- (5) Designating the persons who may be present while discovery is conducted;
- (6) Requiring that a deposition be sealed and only opened on the judge's order;
- (7) Requiring that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a specified way; and
- (8) Requiring that the parties simultaneously file specified documents or information in sealed envelopes, to be opened as the judge directs.

**PROOF OF SERVICE**

On \_\_\_\_\_ I received this subpoena and served it pursuant to 29 CFR §18.56(b) as follows:

\_\_\_\_\_  
Person served (print name)

\_\_\_\_\_  
Date of Service

\_\_\_\_\_  
Place of Service

\_\_\_\_\_  
Manner of Service

I have also tendered to the witness fees for one day's attendance and the mileage allowed by law, in the amount of \$ \_\_\_\_\_

I have not tendered witness fees for one day's attendance and for the mileage allowed by law.

**DECLARATION OF SERVER**

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Address:

[Empty box for address]

\_\_\_\_\_  
Signature of Server

\_\_\_\_\_  
Date

City:

[Empty box for city]

State:

[Empty box for state]

ZIP:

[Empty box for ZIP]

\_\_\_\_\_  
Name of Server (Print Name)