

**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:

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 objects (blank if not applicable):

The provisions of Code of Federal Regulations (CFR) 29 CFR §§18.24(c) 18.15, 18.22 and 18.34(e) and Federal Rules of Civil Procedure (FRCP) Rule 45(c), relating to your protection as a person subject to a subpoena, and 29 CFR §§18.24(d) and 18.29(b) and FRCP Rule 45(d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are summarized at the end of this form.

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

(Person requesting subpoena) (Address and Telephone Number)

Name _____

Address _____

City _____ State _____ Zip Code _____

Phone Number _____

IN WITNESS WHEREOF the undersigned United States Administrative Law Judge has hereunto set his/her hand and caused the seal of the United States Department of Labor to be affixed.

Signature of U.S. Administrative Law Judge Date

To be valid, a raised USDOL Seal must appear here

PROOF OF SERVICE

Person served (print name)

Date of Service

Server (print name)

Place of Service

Title of Server

Manner of Service

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of _____ .

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

Signature of Server

Date

City

State

Zip Code

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.

PRIOR NOTICE: Notice must be given pursuant to 29 C.F.R. § 18.22(c) when using a subpoena to direct appearance at a deposition. In addition, a party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. Fed.R.Civ.P. 30(b)(1), as made applicable by 29 C.F.R. § 18.1(a).

Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges, 29 C.F.R. Part 18

29 C.F.R. §18.24 Subpoenas

(c) Motion to quash or limit subpoena. Provides that within ten (10) days of receipt of a subpoena but not later than the date of the hearing, the person subject to a subpoena may file a motion to quash or limit the scope of the subpoena with the presiding judge. The motion must state the reasons why the subpoena should be withdrawn or limited in scope.

(d) Failure to comply. Provides that any person who fails to comply with an order to testify or a subpoena may be referred to a U.S. District Court for enforcement of the subpoena by the party adversely affected by such failure to comply, when authorized by statute or law.

29 C.F.R. §18.34 Representation

(e) Rights of witnesses. Any person compelled to testify in a proceeding in response to a subpoena may be accompanied, represented, and advised by counsel or other representative, and may purchase a transcript of his or her testimony.

29 C.F.R. §18.22 Depositions

(e) Motion to terminate or limit examination. Provides that the person compelled to testify at a deposition may object to continuing a deposition because of improper questions, oppressive conduct, or bad faith by an examining party. The person must immediately ask to notify the judge who may stop the deposition or limit the scope and manner of the deposition.

29 C.F.R. §18.15 Protective orders

Provides that the person subject to the subpoena may file a motion to request the presiding judge to protect him or her from annoyance, embarrassment, oppression, undue burden or expense, or to protect trade secrets or other confidential research, development or commercial information.

29 C.F.R. §18.29 Authority of administrative law judge

(b) Enforcement. Provides that if any person disobeys or resists a lawful order or process, or neglects to produce, after having been ordered to do so, any pertinent book, paper or document, or refuses to appear after having been subpoenaed, or upon appearing refuses to be examined according to law, the presiding judge may certify facts to the U.S. District Court and request that Court impose appropriate remedies, where authorized by statute or law.

HIPPA 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).

Federal Rules of Civil Procedure [Applied by 29 C.F.R. §18.1(a)]

Rule 45 Subpoena

(c) Protecting a Person Subject to a Subpoena.

(c)(1) Provides that the party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena and the issuing court must enforce this duty and impose an appropriate sanction on a party or attorney who fails to comply.

(c)(2) Provides that, unless ordered to appear for a deposition or hearing, a person ordered to produce documents, electronically stored information, or tangible things, or to permit inspection of premises, need be present at the place of production or inspection. The person subject to the subpoena may also object to producing the documents, electronically stored information, or tangible things, or to permit inspection of premises, by giving written notice to the party or attorney responsible for issuing and serving the subpoena. The written objection must be made before the date of requested performance or 14 days from receiving the subpoena, whichever is earlier.

(c)(3) Provides that the person subject to the subpoena may file a motion to quash (stop) or limit the scope of a subpoena because there is not enough time to comply with the subpoena, the person would incur substantial expense requiring travel more than 100 miles to comply, privileged or protected matter would be disclosed, or other undue burden would result.

(d) Duties in Responding to a Subpoena.

(d)(1) Requires that the person responding to the subpoena produce documents as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the subpoena. If the subpoena does not specify a form for producing electronically stored information, the person responding must produce it in the form in which it is usually maintained or in another reasonably usable form.

(d)(2) Require that a person withholding subpoenaed information because it is privileged information or subject to protection as trial-preparation material must expressly make such claim and describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing the privileged or protected information, will enable the parties to assess the claim of privilege or protection.

(e) Contempt. Provided that a U.S. District Court may hold a person in contempt if the person fails to obey the subpoena without adequate excuse, such as those reasons in Rule 45(c)(3).