



MEMORANDUM



DATE: September 12, 2006
TO: Return-to-Work-Coordinators
FROM: Tracy Caldwell
Workers Compensation Program Trainer
Benefits Division
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SUBJECT: Subpoenas and Personnel Files

It has come to our attention that State Fund Legal has become involved in the process of handling some subpoenas for department personnel files.

There are two ways that State Fund has become involved with these subpoenas. Sometimes, the applicant's attorney will serve a subpoena on State Fund and request the agency's personnel file. In other cases, the agency will receive a subpoena for their personnel file, note that it's from the applicant's attorney on the workers' compensation claim, and ship both the personnel file and the subpoena off to State Fund.

State Fund's attorneys have often gone ahead and handled the subpoena request, withholding privileged documents and sending copies of the rest to the opposing counsel as specified in the subpoena.

State Fund attorneys should not be handling subpoenas for personnel files.

Please do not forward your personnel files to State Fund when you receive a subpoena asking for those records. The subpoenas should be handled by your department's legal staff. If your agency does not have the legal resources necessary to process the subpoenas, you can contact DPA's legal department for assistance.

Remember that any correspondence or other claims information from State Fund Legal is privileged attorney/client information and should not be stored in an employee's personnel file. Further, you must purge your Workers' Compensation file for privileged attorney/client information when complying with the subpoena.

The State Fund attorney assigned to the workers' compensation claim will work with other litigation staff in the department's best interest when issues involve litigation in multiple forums (i.e. WCAB, Municipal, Superior or Federal Court) but they should not process subpoenas for your personnel files for the following reasons:

- 1) Since State Fund is not familiar with your personnel files and your processes, there is an increased chance that the State Fund attorney will release information that you wanted to keep confidential and had a legal right to keep confidential.

- 2) These files often have active litigation in other legal arenas, or the subpoena could be a search for information prior to beginning litigation in another arena. Since the State Fund attorney would not be familiar with other litigation or potential litigation, the chance that confidential information would be released to the applicant's counsel is increased.
- 3) Since State Fund does not control the personnel file, they cannot certify that they have fully complied with the subpoena.
- 4) Your agency may wish to challenge the subpoena in court.
- 5) This activity falls outside of State Fund's duties under the Master Agreement.

Thank you for taking the time to read this and take note of the information that it contains.