

SAM—PAYROLLS

ABSENCE AS A COURT SUBPOENED WITNESS

8594.1

(Revised 06/13)

If an employee is requested to appear as a witness, the employee will confer with the court or attorney to determine if certified copies of appropriate documents would be suitable to eliminate the need for a court appearance. If a court appearance waiver is not approved, the employee will request a subpoena and whatever fees and travel allowances that may be allowed by law from the party requesting the employee's appearance. Government Code (GC) section 1230.1 requires a compensable absence be granted to subpoenaed employees, unless he/she is an expert witness (SAM section 8594.2) or is a party to the suit. GC sections 68093-68097.10 govern witness fees for a civil trial; Penal Code sections 1329-29.1 govern witness fees for a criminal trial.

The treatment of attendance fees and travel expenses of an employee serving as a subpoenaed witness depends on whether the appearance is in the interest of the state. The following are payment and leave instructions when an employee is subpoenaed:

Interest of the State

The employing department will pay the employee his/her regular salary in addition to any actual necessary and reasonable traveling expenses incurred by the employee in complying with the subpoena. The employee must remit to the state all fees received for court attendance and travel. The employee's absence as a court witness is authorized time off with pay. Vacation, annual leave, or compensating time off (CTO) will not be charged.

For civil actions, the party at whose request the subpoena is issued shall provide, together with the subpoena, \$275 for each day the employee's attendance is required, in accordance with GC section 68097.2 (b). This amount must be tendered to the person accepting the subpoena: the subpoenaed party, his/her immediate supervisor, or an agent designated by the supervisor. After the employee's appearance, the department will calculate the employee's personal services costs in accordance with the SAM section 8740. If the total costs, e.g., personal services, travel, and indirect (SAM sections 8752-8752.1), are less than the amount remitted, the difference shall be refunded. If the total costs are greater than the amount remitted, the difference shall be paid by the party whose request the subpoena was issued.

Not in the Interest of the State

When an employee is subpoenaed as a witness in a matter not in the interest of the state and in which the employee is not a party to the suit, the employing department will pay regular salaries to the employee for the period of absence, providing the employee remits to the state all attendance fees received. Any court travel allowance may be retained by the employee. Travel expenses, if any, will not be paid by the state.

If the employee elects to retain the attendance fees, the subpoenaed witness time off is not compensable. The employee may charge absence without pay or, if a sufficient balance exists, vacation, annual leave, or CTO.

When an employee is subpoenaed as a witness and is a party to the suit, the employee must use vacation, annual leave, CTO, or be charged dock time for the period of absence. Attendance fees and travel allowances may be kept by the employee; travel expenses will not be paid by the state.