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Effective Immediately: California Enacts E-Discovery Law

By Samuel H. Ruby

Now signed into law, the Electronic Discovery Act ([AB 5](#)) amends the Code of Civil Procedure to provide detailed rules for discovery of electronically stored information ("ESI") in cases pending in California state courts.

Under the Act, litigants are now expressly permitted to request that other parties produce ESI. Via subpoena, litigants may also obtain ESI from non-parties. The request or subpoena may—but need not—specify a form in which the ESI is to be produced.

If no form is specified in the request or subpoena, the responding party may produce the ESI in the form or forms "in which it is ordinarily maintained or in a form that is reasonably usable." A responding party need not produce the same ESI in more than one form. At the request and expense of the requesting party, the responding party must, "through detection devices, translate any data compilations . . . into a reasonably usable form."

The responding party may object if the requested ESI is from "a source that is not reasonably accessible because of undue burden or expense." A court may overrule such an objection but impose conditions upon the discovery, "including allocation of the expense."

The Act provides remedies for inadvertent disclosure of ESI that is subject to attorney-client privilege or work product protection. It also provides that parties and their attorneys may not be sanctioned for failure to produce ESI that has been lost or overwritten "as the result of the routine, good faith operation of an electronic information system."

Though it may not seem "necessary for the immediate preservation of the public peace, health or safety," California has adopted the Act as an "urgency statute," meaning that it takes effect immediately.