

# Lawyer Insights

## California Early Discovery Disclosures Demand More of Defendants

By Meghan Podolny and Kate Bauer  
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California's early discovery rule change will push defendants to investigate the merits of claims early and prepare evidence, going further than its federal counterpart, and putting a thumb on the scale for plaintiffs.

The state amended California Code of Civil Procedure § [2016.090](#) to require initial disclosures upon demand for all cases filed on or after Jan. 1, 2024. Advocates for this change say early disclosure of critical information will reduce litigation expenses by helping litigants gain an early understanding of the strengths of each side. More information up front, it's supposed, furthers the elusive goal of streamlined, effective discovery and case management.

Proponents of the new rule posit the amendment is modeled after the initial disclosure regime of Federal Rule of Civil Procedure [26\(a\)](#), where initial disclosures are automatic and mandatory. Yet, significant differences exist between the California and federal rule—driving California's practices over to the plaintiff-friendly side of the “v.”

The bill amending the rule, [SB 235](#), was ostensibly drafted to combat perceived discovery abuses: unnecessarily delaying access to information essential to evaluating a party's case strength and potential settlement opportunity.

SB 235 made initial disclosures mandatory for all parties within 60 days of a demand of any represented party (with few exemptions based on case type). Prior to this legislation, California's Code required initial disclosures within 45 days only “upon an order of the court following stipulation by all parties to the action.”

On the one hand, exchanging initial disclosures up front may provide significant early intelligence to frame the discussion around discovery going forward. It could free up interrogatories and time otherwise spent attempting to identify individuals who are capable of providing relevant information and testimony. It could eliminate multiple rounds of written discovery and conferences to better understand the documents parties intend to rely on and demand for production.

However, the potential benefits mask some significant drawbacks. The breadth of required disclosure under this new rule expands beyond the realm of what's reasonable to know or be pertinent to the action. For example, the federal disclosure rule is limited to individuals and information that the party “may use to support its claims or defenses.”

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California's rule demands disclosure also of people and information "relevant to the subject matter of the action or court order on discovery"—and California's rules aren't bound to the principle of proportionality found throughout federal rules.

### Plaintiffs' Advantage

Further, the California rule seems to advantage plaintiffs in litigation compared to its federal counterpart. Fed. R. Civ. P. 26(a) requires disclosure of the "insurance agreements with an insurance business" that may satisfy a judgment or be available for reimbursement or indemnification. California's rule additionally requires disclosure of "any contractual agreement" with any "person" that may be liable to satisfy a judgment or to reimburse or indemnify.

Fed. R. Civ. P. 26(a) requires computation of each category of damages claimed by the disclosing party, aiding a better understanding of the damages claimed beyond merely complaint allegations. Yet the California rule doesn't include this requirement. This omission lets plaintiffs obfuscate the nature of their claimed damages until later in the litigation process.

### Other States

The past several years, a handful of other states made similar moves to mandate early information disclosure, and some more expansive compared to the federal rules. [Ohio Rule of Civil Procedure 26\(B\)\(3\)\(a\)](#) requires service of initial disclosures modeling Fed. R. Civ. P. 26(a) without awaiting a discovery request, no later than the parties' first pre-trial or case management conference, with some exceptions.

Similar to the California rule, [Michigan Court Rule 2.302\(A\)](#) expands the scope defined in Fed. R. Civ. P. 26(a) to include information such as the "factual basis" and "legal theories on which the party's claims and defense are based"; a description of documents, electronically stored information and tangible things not in the party's possession, custody, or control that it may use to support its claims or defenses; and anticipated subject areas of expert testimony.

Texas Rule of Civil Procedure [194.2\(a\)](#) requires disclosures within 30 days after the filing of the first answer or general appearance unless a different time is set by the parties' agreement or court order. Its reach goes perhaps even further demanding exchange of expansive categories of information, including contact information of potential parties, factual bases for claims and defenses, witness statements, and—in cases alleging physical or mental injury or damages—medical records and bills.

Parties that practice in California state court must understand the radical shift these changes represent. A reactive stance will no longer be enough. Deliberate strategic planning is required.

### Early Preparation

Litigants must now expedite efforts to prepare the disclosure-mandated information, perhaps before the full scope of the matter is understood. This requires early investigation and interviews to identify relevant employees, witnesses, data sources, and communications systems. Early preparation will ensure compliance with the new rule and offer an opportunistic advantage in the preliminary stages of litigation.

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And, as the sanctions for noncompliance can fall on attorneys, those lawyers need to counsel their clients on the importance of gathering and organizing pertinent documents and information right from the threshold to forestall any unwelcome surprises or last-minute scrambles. SB 235 sunsets Jan. 1, 2027, unless extended by legislature, so the legal community has three years to assess the effectiveness of this shift in discovery practice.

This recalibration of expectations isn't merely procedural. California and other states are calling for a cultural shift within the legal community regarding early cooperation in the disclosure process. By acknowledging and adapting to these changes, parties can mitigate risk and position themselves effectively for the life of the litigation process.

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