

# CLAIMS, LITIGATION AND E-DISCOVERY READINESS

FOR  
FIRMS  
OF ALL  
SIZES



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Large companies have no excuse for being unprepared to pursue claims or defend lawsuits, as they tend to have their own legal, IT and HR staffs and budgets. Many learn from experience that they absolutely must spend time on, and invest money in, information governance.

But small companies get sued too. Unlike many large firms, small companies ultimately may fail or succeed based on their ability to defend a lawsuit (or pursue claims). While it certainly is tough for small companies involved in relatively few legal challenges to rationalize spending money on policies for retaining records and planning for electronic discovery, they must do so or constantly live in fear that a single claim or lawsuit may lead to bankruptcy.

Small companies must strike the right balance between implementing the policies

and planning necessary to defend and pursue claims or litigation and the costs of being caught flat-footed and responding on the fly. If done right, these policies and procedures should help small companies operate more efficiently and profitably.

When confronted with unexpected claims, litigation or government investigations, unprepared companies face significant costs to comply with their obligations to produce hard copy and electronic documents. Clients often get sticker shock over the cost of complying with discovery obligations even when law firms use the most cutting-edge technologies.

The burden to produce data pursuant to electronic discovery obligations in litigation can be extremely time consuming and expensive, especially for small companies with limited litigation budgets. But it can become crippling for a small company that has not taken any steps to preserve potential electronic evidence. If small companies fail to put plans in place immediately, they could wind up paying more to settle cases and accepting less money on their claims because they have not retained documents or cannot produce

electronic data needed in litigation.

Companies of all sizes can proactively prepare for claims and litigation by developing a litigation readiness plan, creating a document retention policy and cleaning up their information with electronic data management software. Small companies can create these plans and implement these policies for a fraction of the cost of complying with e-discovery obligations from scratch.

In fact, small companies can take these three actions with just three people: an IT professional, an attorney and an HR professional. The IT professional must fully understand the company's electronic communications systems and know where the data (including emails and back-up tapes) is stored and how often it is overwritten. This staff member also should assess the company's ancillary information stores, such as PDAs, smartphones, tablets and any web-based instant messaging or document sharing programs.

The attorney should specialize in e-discovery issues and help identify what electronic data must be accessible in the event of a claim or litigation. Attorneys working with companies involved in regulated

industries also must know the governing rules and the systems or types of electronically stored information that their clients must maintain and be able to access for certain time periods.

Finally, the HR professional must help administer any electronic data policies created by the team and promote awareness of the company's data preservation and production obligations. This information should be shared with all employees when the policies are first created and then again when the company receives a claim notice or lawsuit.

The team must periodically meet to review and discuss improvements to the company's current systems and policies, as well as address the following issues:

- how the systems, network, data infrastructure and technologies operate and store information;
- whether the processes and policies store unnecessary information;
- whether the system allows text searching for quick and efficient document retrieval;
- the quality of any written policies on the retention and routine destruction of electronic data; and
- any existing processes that automatically get triggered if the company has claims, gets sued or becomes involved in litigation.

Additionally, the team should interview employees about their electronic document archiving and deleting practices, as well as identify potentially problematic projects that have a good chance of producing claims or winding up in litigation or arbitration. Finally, the team should identify and categorize the key data custodians and personnel with primary project responsibility so they will be prepared if faced with claims or litigation.

The bottom line is companies of all sizes can (and should) take basic cost-saving steps to make sure they properly retain their records and electronic documents in advance of claims and litigation.

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