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Perfectly Preserved

In-house counsel turn to software to automate the legal hold process.

Instituting litigation holds is an exercise in coordination. Legal serves as the nucleus of the operation, while IT, records management, HR and relevant employees revolve around this center. If legal doesn't ensure each one of these stakeholders is kept in the loop, it could cause big problems downstream.

“The litigation-hold process is really the backbone of discovery in today's technology landscape,” says Michele Lange, director of legal technologies at Kroll Ontrack, a legal technology vendor and consultancy. “If there's a fault in this process, you'll see ramifications all the way through your trial.”

To minimize human error, reduce inefficiencies and automate the hold process, many companies are investing in litigation-hold software. This software offers an additional benefit for companies involved in a lot of litigation. Rather than juggling multiple holds—a difficult feat for even well-staffed legal departments—in-house counsel can use litigation-hold technology to keep tabs on dozens of preservation orders at the same time.

“It's very difficult absent using some kind of technology to manage litigation holds, especially for larger companies that may have many legal holds in place and multiple employees subject to each hold,” says Deborah Johnson, vice president, legal and discovery solutions for Orchestra Corp., a provider of litigation-hold solutions. “Technology automates this, greatly reducing a company's risk exposure.”

Manual Labor

Few in-house counsel realize how labor intensive the hold process can be. Preserving information doesn't merely entail sending out a few notices to employees instructing them to lock down their e-mail inboxes. Legal holds are a multi-step process that can last years—from pre-discovery to post-trial—and can involve nearly every employee in the company (see [“Hold It!”](#)).

And with the amended Federal Rules of Civil Procedure putting a spotlight on the discovery process, the old way just doesn't cut it anymore. “This job used to be relegated to paralegals and tracked using spreadsheets,” says Diedre Paknad, president and CEO of PSS Systems, which produces litigation-hold technology. “If you have 200 cases with 50 custodians each, you'll end up managing 40,000 rows in an Excel spreadsheet. If you want to notice the details and have control and transparency during the hold process, it's pretty difficult to do it this way.”

By relying on technology, in-house counsel don't have to manually update spreadsheets to maintain an audit trail of the hold, a process that easily can be fraught with human error. Instead, software tracks the audit automatically.

At the moment a lawyer e-mails a hold notice to an employee, the system automatically logs the date, time, recipient and content of the hold notice. In addition, users can set up the system to bundle a confirmation mechanism to recipients so that they can easily notify legal they have received and will abide by the notice. Whether the employee confirms or rejects the notice gets logged into the system. Software can also send reminders to recipients that they are subject to a hold or that they have not yet confirmed receipt of a hold notice.

Reducing Work

Along with maintaining a thorough audit of the process, legal hold software also can help lawyers cut down on redundancy. Rather than writing a new hold notice from scratch for each matter that arises, in-house counsel can save old hold notices and create templates to use for future preservation orders.

“The box built into the software where attorneys can create and send the hold notification looks very similar to how you would normally create an e-mail,” Johnson says. “So it’s fairly intuitive for in-house counsel to use.”

The software also helps reduce redundancy when implementing future litigation holds. Because the software maintains information on each hold, in-house counsel can reuse this information when a similar matter arises.

“It’s important to leverage previous collections to create cost savings,” says Bobby Balachandran, CEO of Exterro Inc., a provider of litigation-hold solutions. “Repeatability and consistency are important.”

Expensive Solutions

Placing legal holds is only half of the process. The second phase is releasing them. Legal-hold software can keep track of a matter’s progress, alerting attorneys as to when they can lift the hold. These timely alerts are crucial to mitigating risk. That’s because if the data subject to a hold isn’t dealt with—whether by deleting it or integrating it back into the company’s systems—it could become applicable to another matter.

However, in-house counsel often are hesitant to lift a hold for fear of confusing employees who may have multiple holds placed on them. The software helps clear up this problem.

“Our software can automatically send release notices to let employees know they are still subject to other holds,” Paknad says. “You can even require them to check a box that says they understand they have other obligations and that this hold is the only one being released.”

But there’s a price to pay for electronic conveniences. Litigation-hold software costs on average about \$500,000. Still, for large organizations that experience a deluge of litigation, it can prove cost-effective.

“The issue is that with the sheer number of matters some of these organizations are handling and this huge risk of not implementing holds properly, large companies can’t afford to not have an automated process,” Balachandran says.

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