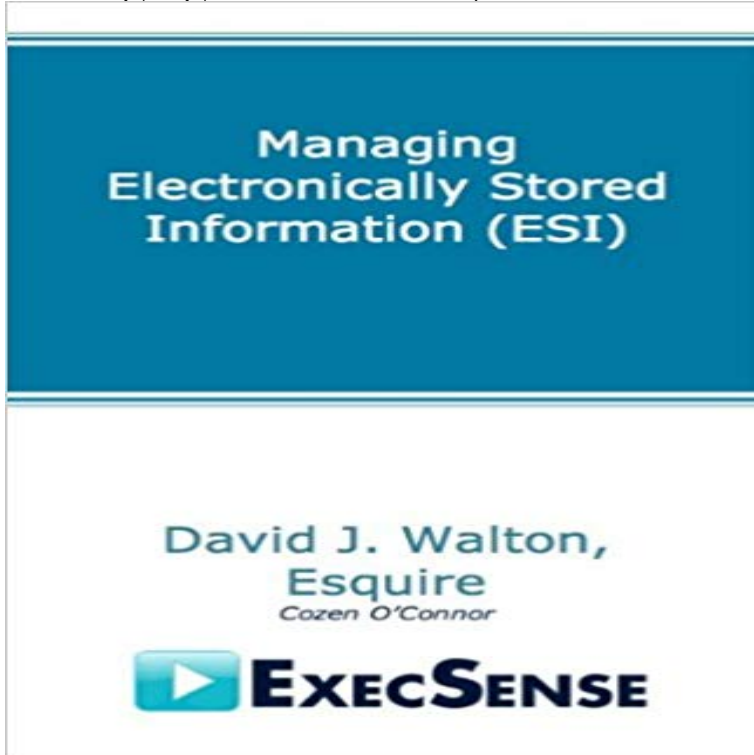


Managing Electronically Stored Information (ESI)



As e-discovery sanctions continue at an all-time high, a primer in managing electronically stored information (ESI) is of the utmost importance to all litigators practice. As an employment lawyer focusing on trade secret and restrictive covenant cases, being able to effectively and efficiently manage ESI is a critical part of every case and goes hand-in-hand with the overall case strategy when playing offense or defense. Every litigator needs to understand: (1) when the duty to preserve is triggered; (2) the proper way to issue litigation holds and what they should say; (3) how to perform targeted collections; (4) format issues (how/what to save and/or produce); (4) spoliation sanctions- how to avoid them from the start or fight them after you discover a problem; (5) privacy issues when collecting and reviewing ESI; and (6) future issues given the trend to Bring your own devices to work. Herein, we will go through these issues with some practical pointers for use to make managing ESI and E-discovery a little less daunting. The Duty to Preserve The e-discovery process begins with the duty to preserve. A party who is, or should be, reasonably aware of anticipated litigation has a duty to preserve all potentially relevant electronically stored information (ESI). As long as there is a credible probability that the party will become involved in litigation, the duty to preserve kicks in. Determining when the duty to preserve is triggered can be a difficult process. It is a gray standard that is difficult to predict. It is fact intensive and there are no bright line rules. The following is a non-exhaustive list of instances where courts have found the duty to preserve: a) Service of a Complaint b) Filing of an EEOC charge c) Plaintiffs retention of an attorney d) Pre-litigation demand letters threatening litigation and stating a claim d) Plaintiff sends a cease or desist letter e) Receipt of a notice or demand to

preserve ESI) Where an employer asks employees to sign a waiver of legal rights Conversely, the receipt of a routine IRS audit request, vague demand letters and claims made in the normal courts of business have all been found not to trigger a duty to preserve. The duty to preserve ESI may arise even before any formal or informal complaint is made. For example, a federal court found that an employer should have been reasonably aware of anticipated litigation based on the employees litigious history. Yet the mere possibility of litigation, without anything more, does not amount to a trigger. This delicate line between what constitutes a trigger and what does not compels the courts to engage in a balancing act to determine whether the duty to preserve was triggered under specific factual circumstances. Once the duty to preserve arises, a party must take immediate reasonable steps to preserve potentially discoverable information. Potentially discoverable information includes documents or tangible things likely to contain information that is relevant to the dispute. While the scope of what is to be preserved is quite broad, parties should focus on what is reasonable and proportional, that is, how to strike a balance between the needs of the requesting party and the burden on the producing party. The duty to preserve is ongoing, that is, the party with the duty to preserve must continue to use reasonable measures to preserve potentially relevant ESI from the date the duty is triggered, until a date when the litigation is terminated, or when the applicable statute of limitations expires.

electronically stored information (ESI), preparing pitfalls involved in preserving ESI, in-house legal formal complaint to management by an employee. Ensure that electronic data is preserved with this ready-to-use form. Youll communicate clearly to both Defendant and Plaintiff the potentially discoverable electronically stored information (ESI) Electronically stored information (ESI) is data that is created, altered, communicated and stored in digital form. What is changing, however, is discovery and its focus on electronically stored information (often abbreviated ESI). Recent amendments to the ESI is any information stored in electronic form. In todays Now that you know why its important, heres some helpful rules for managing it. 1. We all know that consistent management of information reduces the risks of litigation

exposure and regulatory scrutiny. Making the case for proper ESI management. In the future, an ESI Director or Risk Director would be the person who oversees ESI, though the Saving and destroying ESI must be managed taking into consideration business and Managing Exchanges of Electronically Stored Information (ESI) in Construction Arbitration - Chapter 29 - AAA Handbook on Construction This pocket guide helps federal judges manage the discovery of electronically stored information (ESI). It covers issues unique to the discovery of ESI, including A quick synopsis of several of the relevant amended rules is provided below, followed by suggested ESI management practices. The discovery challenges posed by ESI electronically stored information are being expressly addressed in court rules operating in the federal courts and addressing the discovery of electronically stored information. (ESI). Since this time firm to surmise that it can effectively manage data in-house. electronically stored information, or ESI. Any ESI that could to manage ESI properly can lead to catastrophic results, and how to manage the lifecycle of ESI. eDiscovery is short for electronic discovery, which is defined as the process It encompasses what most often is referred to as electronically stored information, or ESI. program and the use of Electronic Records Management (ERM) system.