

# A Reminder to Take Evidence-Preservation Obligations Seriously

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Recent legal developments underscore the importance of adhering to evidence-preservation obligations. A party can face severe sanctions for failing to preserve critical documents, including email accounts of former employees. Sanctions can vary from reasonable attorney fees and expenses in connection with a motion for sanctions to having certain facts established, or, in the worst case, dismissal of the entire case or a default judgment. Rule 37(b)(2) gives the court latitude on the types of sanctions it can impose.

Below are a few takeaways that could save you and your client from sanctions.

## 1. Be Diligent with Evidence Preservation

Upon notice of pending or probable litigation, immediately retain the email accounts of key personnel, including former employees if the accounts are still in the client's possession. Not doing so could lead to the deletion of potentially crucial evidence.

## 2. Thoroughly Enforce Litigation Holds

Ensure that litigation holds are being enforced and continue to update them as needed to avoid the deletion of critical information. It is counsel's responsibility to monitor efforts to preserve documents, including ensuring that all key personnel are informed of the litigation holds and that IT departments are directed to preserve any necessary data.

## 3. Be Transparent with Opposing Counsel and the Court about Evidence Preservation and Production

Be candid with the court and opposing counsel about the status of evidence preservation and production. Misleading statements and omissions can result in severe penalties and damages to your credibility.

## 4. Become Familiar with the Client's Data-Management Practices

Regularly review and update electronic data-management practices to ensure compliance with legal obligations. This is especially critical when it comes to the email accounts of former employees.

These points highlight the importance of diligent evidence preservation, thorough enforcement of litigation holds, transparent communication, and effective data management. Failure to adhere to these practices can lead to significant legal repercussions and damage to organizational credibility.

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