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## **E-Discovery Rules Can Impact Your Business**

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Over the last decade or so, an issue has arisen that significantly impacts the cost of litigation: electronic discovery. In today's world of computers, networks, and electronic storage of information, the impact that those technologies have on management of information, and potentially the marshalling of evidence for litigation, is huge.

What is Electronically Stored Information (“ESI”)? Electronically Stored Information is any electronic data stored on various media types, which can include:

- Computers, computer peripherals (like printers and fax machines), PDAs, pagers and wireless phones;
- Computer disks, back-up tapes or removable drives, CDs, and other forms of media;
- Hidden data in areas such as “metadata,” system data, and deleted data seemingly overwritten.

The existence of ESI raises questions about a business' ability to preserve its electronic data. Because businesses now preserve most information electronically rather than in paper files, it is critical that a business employ an organized and secure system for storing and preserving its vital information.

Every business needs to be able to efficiently produce information from its electronic systems in response to a request—whether internally or from a third party. Having a system available to pinpoint specific data prevents disclosing more information than necessary and limits the possibility that an opposing party will object. It also minimizes the possibility of producing data that is protected by the attorney-client privilege, right to privacy (including employees), or trade secret.

It is vital that a business then set forth in writing a document retention policy for all employees in the organization to follow. Without a written document retention policy, a business opens itself up to sanctions—both monetary and concerning issues of a specific case—for illicitly

destroying information, which could have a terminal effect on the litigation.

But, if a business learns of imminent litigation, it must implement what is called a “litigation hold” on the destruction of its data. In fact, if ESI is likely to be a major factor in the case, a business will likely receive a litigation hold letter from the opposing party or its own attorney demanding that all data be preserved. Should you receive such a letter, contact KDG immediately.

Because running afoul of the requirements for handling ESI can crop up long before any litigation actually commences, it is important that your business put in place policies and procedures for handling ESI now. KDG has the experience and expertise to guide you through this process one step at a time.