

DELOITTE: ONE-THIRD OF COMPANIES STILL HAVE NO POLICY ON LEGAL HOLDS FOR DISCOVERY

Bringing IT and Legal Teams Together for Discovery Could Help Mitigate Risk

NEW YORK, Dec. 4, 2008 – One-third (30 percent) of attorneys and executives polled by Deloitte said their companies have no formal policies and procedures in place regarding legal holds, the process by which companies preserve evidence subject to discovery for lawsuits and other legal and regulatory matters.

"While the discovery process has become increasingly complex and therefore poses a significant challenge for corporate America, having no legal hold policy is a significant risk factor for companies," said Jeff Seymour, a principal in the Analytic & Forensic Technology practice of Deloitte Financial Advisory Services LLP. "Given the relatively low cost of establishing a policy framework and processes to address legal hold issues, it is surprising to see such a large percentage of corporate America lacking in this area."

According to attorneys and executives surveyed, responding to discovery requests has become significantly more complex (33 percent) and more costly (30 percent) during the past year. Less than one-third of respondents reported that their companies are very (20 percent) or extremely (7 percent) effective in managing the readiness aspect of the discovery process, which includes procedures and protocols to manage electronically stored information and hard copy documents in anticipation of discovery requests.

Respondents reported that guidance provided to the IT department on litigation hold policies was unclear (5 percent) or only somewhat clear (35 percent) further contributing to the challenges organizations face in complying with discovery requests that are heavily based in electronically stored information.

"Bringing both IT and legal teams to the table to develop a discovery readiness program is an important step that organizations should take to protect themselves given the current regulatory and legal environment," said Seymour.

Major causes of increases in cost and complexity of complying with discovery requests for respondents included complexity of producing electronic information (78 percent) and changes in discovery rules (44 percent).

"Throughout the business day, we engage in multiple activities that generate various sources of electronic data that might be subject to discovery including voicemail, email, text messaging, instant messaging and other electronic files, and our corporate IT infrastructure tends to replicate much of that data, furthering the continued and rapid increase in electronically stored data volumes," said Bruce Hartley, a director in the Analytic & Forensic Technology practice of Deloitte Financial Advisory Services.

About the Survey

Deloitte contracted Bayer Consulting to conduct a survey of 114 attorneys and executives. The survey was conducted in June 2008 through an online questionnaire.

Respondents worked in organizations with annual revenues of less than \$100 million (26 percent), \$100 million to less than \$1 billion (21 percent), \$1 billion to less than \$ 5 billion (27 percent) and \$ 5

billion or more (26 percent). Respondents worked within the following industries: financial services (25 percent), manufacturing (17 percent), life sciences and health care (12 percent), technology (9 percent), energy and resources (8 percent), retail (4 percent) and public sector (4 percent).

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