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Litigation Hold Letters: How to Draft Them, Why We Have Them, and Litigation over Them.

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I. Introduction

You are a company. You've just been served with a summons and complaint. The lawsuit seeks millions of dollars in damages. You call your lawyer to let them know. What do you do next?

A. Vigorously examine all papers, electronically stored information, and other records and destroy anything that could be damaging or harmful to your case; or

B. Take reasonable steps to preserve all records that might be relevant to the case.

The correct answer, of course, is (B). Large and small businesses face the prospect of litigation every day. Many lawsuits are filed by outside individuals or entities, but some lawsuits originate from within the company. A company has a duty to preserve evidence when it knows, or should know, that there is a credible possibility of litigation. Lawyers handling these lawsuits are familiar with the daily issues associated with the preservation and production of documents, but company leaders and their employees might not be so familiar. Moreover, requests for electronic discovery are continuously becoming more prevalent than requests for paper discovery—leading to new sets of legal issues. The prompt issuance of an effective litigation hold letter is necessary to ensure that your clients, their employees, and sometimes even their business associates fully understand the types of data that must be preserved.

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