Litigation Hold Notice: What Duty Does a Non-Party Have to Preserve Documents?

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Sometimes, companies receive notices demanding that they preserve customer data for a lawsuit, called a litigation hold notice. These notices typically don't have an expiration date, and the sender has no obligation to keep the company informed about the status of their lawsuit (e.g., if it was filed, settled, or dismissed). The question then becomes – does a non-party company have an obligation to abide by these preservation of data notices? In short, the answer is no, unless one of the following applies:

- The company voluntarily undertook to preserve data (e.g., by promising to do so in its terms and conditions);
- An independent legal duty exists to preserve the data (e.g., a contract, statute, regulation, court order, or subpoena); or
- The company, itself, reasonably anticipates becoming a party in the lawsuit.

If your company has received a notice requesting that you preserve customer data, and you're unsure whether you must comply, contact us today. We can help you evaluate your obligations and respond appropriately.

If you have any further questions, please contact Paige Zacharakis.