

Compliance to a T

How to develop a record management program **Interviewed by Elizabeth Grace Saunders**

What you don't save can hurt you. Most companies fall under mandatory requirements regarding document retention and data preservation for their business operations. In order to avoid serious compliance issues, businesses should develop and follow a document retention policy.

"All businesses need to be in compliance with IRS document-retention requirements," says Robert Moody, partner at Berenfeld, Spritzer, Shechter & Sheer. "Also, companies need to make sure they follow data-preservation rules for applicable legislation, such as HIPAA or Sarbanes-Oxley."

Smart Business spoke with Moody about how to develop proper document-retention and data-preservation procedures.

What types of documents and data do companies need to retain?

When business professionals think about data retention, they need to look at it as communication preservation. This goes beyond just traditional documents or e-mail messages. Any form of correspondence may need to be saved, including voicemail, e-mail, text messages, IM, databases and faxes.

How can businesses ensure record management compliance?

The key to compliance is developing a comprehensive document-retention policy that follows regulatory and statutory requirements and makes solid business sense. Data storage and management is very expensive, so it's reasonable to dispose of some data as part of normal business procedures. Establishing and following a sound data-preservation policy gives companies the ability to get rid of unnecessary data without fear of retribution.

Issues with noncompliance usually arise for two main reasons. One reason is that many companies have a document-retention policy, but their employees don't follow it. If a company goes into litigation, the fact that employees didn't follow internal policies will raise red flags. Although the noncompliance could have been done with innocent motives, not following



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established procedures would make parties appear guilty. Another type of issue occurs when individuals act in bad faith. This means that they dispose of documents without a solid business case for getting rid of them. Having a policy that states that e-mail more than 90 days old will be deleted makes sense in terms of maintaining storage capacity. Randomly destroying e-mails and other communications that could provide evidence of wrongdoing is not justifiable in a business sense.

What are the components of an effective records-management program?

An effective document-retention program requires a multi-part analysis across the entire organization. To start, businesses need to determine what data they have and what workflow is associated with that data. Once members of the organization have an understanding of the types of communication, they can determine what makes business sense to keep and to destroy.

Each type of communication needs to have a corresponding retention process in place that meets regulatory, statutory and legal requirements. After compiling a docu-

ment-retention policy, companies should have their lawyer review it to check that it meets compliance standards.

Who should collaborate in developing this program?

A document-retention and data-preservation program really needs to begin with a C-level mandate that defines what this program should accomplish and establishes it as a priority. Once the process starts, different people can be involved in various stages of the process. But to make sure the program successfully reaches completion, one or two people need to champion the cause throughout the entire process.

After executives set the framework, IT professionals could help with identifying and organizing the types of communication. Both IT and HR staff members could help map the corresponding workflow connected with each form of correspondence. For the business analysis, the department heads could offer their input on what makes sense to keep or to destroy. And both HR team members and either internal or external legal council should review the document to ensure it meets statutory and legal standards.

How can retention procedures be successfully implemented?

The key is to act in good faith once a procedure is created. Individuals can only demonstrate good faith by their actions. This includes following established procedures under normal circumstances and being extremely careful to preserve every type of data if litigation ensues. Complete data preservation includes suspending the use of their computer until the IT department can properly preserve the usage data. Having a third party review the policy and implementation can also help protect an organization from problems. External audits and accountability prevent situations where a single employee has to step forward and say that procedures aren't being followed correctly.

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