

Management Alert



New Year and New Legal Considerations: A Careful Review of Corporate Document Retention Policies Should be a Part of Your New Year's Resolutions

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There are many competing business and legal considerations that can shape corporate record retention policies. Federal and state governments have enacted statutes, and agencies have issued myriad regulations that require corporations to hold certain categories of documents for certain defined periods, particularly with regard to areas such as labor and employment, customs and border entry, immigration, and tax. Often overlooked in this complex web of requirements are the practical considerations involved in potentially responding to white collar criminal investigations, enforcements, or related litigation. Specifically, retained documents can be used to demonstrate corporate knowledge of the information contained in those records. And materials that have been retained for twenty years or more may even qualify for the ancient documents exception to the rule against hearsay brining to bear the old adage that some things seem to get "better" with age.

As companies step into 2018, it is the perfect time to reassess their document retention policies, which are often taken for granted and usually assumed as being appropriate and sufficient. Laws relevant to preservation change, and it is important to stay abreast of the latest developments and their implications. For example, federal rule-makers recently recognized the concern about the ancient documents exception outlined above and on December 1, 2016, amended the relevant Federal Rule of Evidence 803(16) to apply only to materials "prepared before January 1, 1998, and whose authenticity is established." Some similar state rules, however, remain unchanged. Forward-looking companies would do well to work with in-house counsel and their outside advisors to carefully reevaluate their document preservation calculus to ensure it properly takes into account white collar criminal and other retention considerations. Doing so can make all the difference in enforcement and litigation matters, especially in high-profile matters and highly-regulated industries.

For the full version of a related article that comprehensively examines many of the issues flagged in this Alert and that originally appeared in *Bloomberg Law White Collar Crime Report*, 12 WCR 1061 (Dec. 22, 2017), please [click here](#).

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