How to Overcome eDiscovery Challenges in Food Manufacturing

January 7, 2020

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In today's digital world, nearly every company produces gigabytes of electronically stored information (ESI) on a weekly – if not daily – basis. That means that when litigation arises, there's an ever-growing number of documents to collect, analyze and review for the case. That process is called electronic discovery, or eDiscovery. It includes data acquisition from multiple parties, data culling, advanced analytics, document review, document production and more. The eDiscovery process comes with unique challenges for the food industry—the volume of data, the need to work within industry rules and regulatory requirements and the high frequency of claims.

Here's a look at three main eDiscovery challenges the food industry faces and ways to manage them:

1.   Large volume of data

The amount of data involved in a case can add up quickly, especially when considering the number of different sources where data is stored – email, mobile devices, social media platforms, computers, servers, cloud-based repositories and more. Adding to

the complexity is data that lives in a proprietary database or atypical format. In these instances, a tailored solution might be necessary to review that data in the same format as more traditional files and handle all the data uniformly. This requires advanced planning, the right technology and experienced personnel to oversee the process.

It's important to first understand what data you have, where it is stored and who has access to it. This process of "mapping" data can be handled internally or through a third party and should include a thorough custodian questionnaire (CQ), which can easily be set up and handled through some eDiscovery platforms. In the early stages of a matter, CQs help counsel winnow down a broad custodian list to those most involved or closest to the matter, so they can reveal where any potentially relevant files reside. Additionally, CQs can enable counsel to do early case analysis and work out a strategy for handling the data and managing the case.

Once you have an understanding of where your data lives, the eDiscovery team can help determine the best platform, or ideally, a tailored combination of tools and platforms, for preserving, collecting, processing and reviewing data in the most efficient and cost-effective manner. The review platform should allow for plug-ins that offer additional functionality, like advanced analytics, including technology-assisted review (TAR), deep analysis, exact and near deduplication, email threading, conversation indexes and robust redaction capability, all of which will help both increase accuracy and decrease costs when utilized correctly.

2.   Regulatory requirements

With the number of regulations that food manufacturers face – from an alphabet soup of organizations including OSHA, FDA, USDA, FTC and EPA – it makes sense that many of those requirements relate to a company's data. For example, companies must keep extensive records to show they have implemented food safety plans and Hazard and Critical Control Points (HACCP) plans. Further, they're required to document the monitoring of critical control points, critical limits and verification activities, among other things.

Establish and implement a document management policy that clearly outlines what data your organization needs to keep, where to store it and for how long, what data to delete, when to delete it and how to delete it defensibly. This includes data like emails and other communication that should be categorized in a certain way to comply with regulations. It's important to audit the policy regularly to ensure it remains justifiable if questioned by regulators or in litigation.

3.   Frequent litigation

Unfortunately for the food manufacturing industry, legal matters pop up rather frequently. In recent years, consumers have begun paying more attention to product labeling, advertising, genetically modified organisms (GMOs) and consumer fraud, making the food and beverage industry a top target for class actions and individual lawsuits, according to a report published by Perkins Coie, Seattle, Wash. Frequent litigation is costly and time-consuming, especially for companies that lack a proper process for handling eDiscovery.

Make eDiscovery a standard business procedure rather than scrambling every time a new matter arises. Work with an eDiscovery expert to create a plan that is customized to your company's requirements and expectations. The plan should outline, in a clear and effective manner, your organization's policies, procedures and best practices for each part of the discovery process. This will ensure every legal matter is handled defensibly, consistently and correctly, saving both time and money.

Don't let eDiscovery challenges create unnecessary costs and frustration. Take the steps now to gain complete visibility into data, so that you can manage it effectively, defensibly and securely. With the right team, processes and technology in place, your organization will be well equipped to handle the discovery process when litigation arises.

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