



# Using Electronic Discovery in the Food Industry

Make eDiscovery a standardized business process

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Litigation is a constant concern in the food industry. Any number of situations can trigger a legal matter: instances of *Salmonella* or *E. coli*, labeling errors or unknown ingredients, even personal injury or product liability concerns.

In a typical lawsuit, the process of discovery takes place early on, giving both sides the chance to see what evi-

dence might be presented in court. Today, this is a digitally focused process, given that most communication takes place by email, text messages, and other electronic platforms.

Electronic discovery (eDiscovery) providers dig through countless gigabytes of electronically stored information in search of pertinent documents for a legal matter. This multi-stage process involves identi-

fying the parties who have the necessary data, acquiring that data, culling anything that's clearly irrelevant, and using a suite of tools to locate the most important documents and study them in more detail. After a final attorney review, any relevant documents are produced to the opposing party.

For food manufacturers, eDiscovery involves some additional and distinctive challenges, among them the high volume of data, the need to follow special industry rules and regulations, unique data types and systems, and the high rate of claims. Yet, despite those challenges, most businesses in the industry still treat eDiscovery as an afterthought—a rushed, panicked process that is more reactive than proactive, often starting eDiscovery

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from scratch with each new [litigation](#). That approach only creates unnecessary disruptions and wastes huge amounts of time and money. There is a better way, and it's easier than you might think.

Although you can't predict when litigation is going to occur, it's a foregone conclusion that it's going to happen at some point. So why not prepare your company for what you know is around the corner? By establishing eDiscovery as a standard business process, you can ensure that you respond to each legal matter confidently and effectively while avoiding unnecessary stress and costly business and employee disruptions along the way.

Here are four steps to help your business rethink its approach to eDiscovery.

### Step 1: Establish an eDiscovery Process Framework

Although every legal matter is going to be different, it's possible to envision some likely scenarios and start developing a set of steps for how to handle them. Make sure that you establish a solid framework of how this process will be handled internally. Among the questions to ask are:

- Which employees will be involved in the process, what will their roles be, and how will this additional responsibility impact their existing workloads?
- How will your company issue legal holds and take the other steps required to meet your legal data preservation obligations?
- What data will be retained in expectation of a possible legal matter?
- Where will your organization store data collected for litigation, and what steps will be taken to secure it?
- How will you handle attorney document review of the collected and culled data?
- Will you enlist an outside review team to help, especially with larger cases?

Once the key players, roles, and processes have been established and a plan has been proactively laid out, businesses will find that litigation no longer creates the same level of upheaval in daily operations. Having successfully established the process, you can save existing data that has already gone through legal review can be saved for reuse in future cases, further

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simplifying the process and reducing your overall legal spend.

### Step 2. Choose the Right eDiscovery Platforms

The eDiscovery process involves several stages in which data is collected, processed, culled, and reviewed, using a series of software platforms to accomplish specific tasks. For instance, one platform might be used to manage legal holds, preserve the data and make targeted data collections. The data is then culled and migrated to a separate document review platform, where your legal team searches and tags it before producing it to the opposing party.

Research to determine which platform best fit your needs. There is a risk, however small, of data being compromised as it moves from platform to platform. Of course, managing the data also requires time and personnel. Consider platforms that include a data repository; this will reduce your overall cost.

### Step 3. Incorporate AI and Machine Learning Technologies

Some of the most powerful tools you can employ in eDiscovery are the various machine learning or artificial intelligence tools, often called technology-assisted review (TAR). TAR makes it possible to quickly examine large amounts of data to uncover relevant information, enabling human reviewers to easily identify similarities and trends. The newest TAR options now eliminate the need for an initial review set, allow rolling uploads of data, and find pertinent documents more quickly and accurately than any other approach.

TAR has become a customary element of the managed review process offered by many eDiscovery providers today. Almost any case can benefit from using some level of TAR, although depending on the type of data that's been collected, you might opt

for a particular tool or suite of tools. As you plan for potential legal matters down the road, talk to an eDiscovery expert about how TAR can best help your particular situation.

### Step 4. Leverage Your Legal Spend across Matters

As mentioned above, one benefit of incorporating eDiscovery into your day-to-day business operations is that you won't have to start from zero every time a legal matter comes up. If you've already collected and reviewed documents for one case, it's only logical to securely archive the results for use in a future matter. This comprehensive approach of reusing work product (e.g., previous legal hold notices, data collections, even document review) will help leverage your legal spend to the greatest extent possible and lower your overall costs.

You'll want to regularly organize and archive new data as it's created so that it's easily accessible when the next legal matter arises. As a company following that process, you'll gain an incredibly valuable side benefit as well; in examining the collected data for patterns and trends, you can recognize areas for improvement and build upon established strengths.

All of these steps are reasons why it's advisable to choose a single, comprehensive eDiscovery platform to handle all your cases. In an industry where litigation is a certainty, it doesn't make good business sense to treat data collection and eDiscovery as an afterthought. By establishing a predictable, repeatable model for data collection and review, food manufacturing companies can greatly reduce the uncertainty of the process and improve their chances of presenting a complete and accurate case when future legal matters occur. ■

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