

Being Prepared for the Knock on the Door: Subpoenas and Domestic Investigations

October 19, 2016

Edward Glynn
Principal
Ernst & Young

Sarah K. diFrancesca
Senior Associate
Cooley LLP

ARE YOU PREPARED?





Survey Question

Has your company implemented and trained its employees on how to handle government contacts, such as service of a subpoena?

1. Yes
2. No
3. Not sure

- Develop, implement and train employees on a policy regarding contacts from a government enforcement agency.
- The policy should address all types of potential contact, including company service of process and raids.
- It also should provide employees with information regarding their obligations and rights if they are contacted directly by government agents.

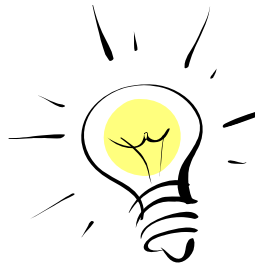


Survey Question

Our company's corporate compliance program has robust auditing, monitoring, and internal investigation processes in place to detect and prevent fraud, waste and abuse.

1. True
2. False
3. Not Sure

- Critical for companies to implement an effective corporate compliance program that prevents, detects and fixes potential issues before they result in a government action.
 - Federal Sentencing Guidelines
- This includes robust internal investigation processes.



GROUP DISCUSSION

Imagine for a minute all of the places where your company houses electronically stored information

Email	Sales	Compliance	IT
Text messages	Marketing	Human Resources	
Voicemail	Clinical	Commercial Operations	
Instance messages	Medical	Legal	
Cloud data	Regulatory	Third Party Vendors	

- Most companies have a significant number of current and historic electronic systems that contain company data and information that may be critical to a government investigation/inquiry.
- Maintain a list of all active and retired systems, including business owner, purpose, vendor, dates of use, and data size.

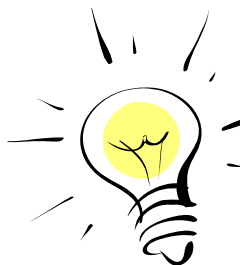


Survey Question

Does your company have documented policies and procedures related to the creation, retention, destruction and re-use of disaster recovery systems?

1. Yes
2. No
3. Not sure

- Create, maintain and retain critical information related to the company's IT infrastructure, including hardware, software and cloud systems.
- Includes documented policies and procedures related to the creation, retention, destruction and re-use of disaster recovery systems.



Survey Question

My company has implemented and trained employees on our company-wide records management program.

1. True
2. False
3. Not sure

- Implement a written records management program and ensure rigorous adherence to these records management policies and processes.



Survey Question

If needed, I could provide a list of all internal and external legal counsel used by the company currently and in the past to defense counsel.

1. Absolutely
2. Maybe
3. Not a chance

- Companies must maintain a list of all internal and external counsel of the company, including relevant areas of law or specific responsibilities, any special or significant legal projects, and dates of service.

INVESTIGATION TEAM



"The Court will allow the cape but will draw the line at the wind machine."

- Become familiar with external counsel and litigation support vendors experienced in handling health care fraud investigations/ inquiries.
- Become familiar with public relations and crisis management firms that specialize in “bet the ranch” litigation for health care and life sciences companies.

Being Prepared for the Knock on the Door: Subpoenas and Domestic Investigations

October 19, 2016

Edward Glynn
Principal
Ernst & Young

Sarah K. diFrancesca
Senior Associate
Cooley LLP