COVID-19: THERE'S NO PLACE LIKE HOME: WHAT GCS NEED YOU TO REMEMBER WHILE WORKING REMOTELY

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Now more than any time in history, companies have been left to manage a remote workforce that was never anticipated, and on a proverbial moment's notice. While certain practices may be habit when working from the office, it is often the case that, while working in a new environment, those habits can become less routine or even fall to the wayside. This article outlines best practices for employees not accustomed to working remotely (and even for those who are), including continued observation of legal holds, preservation of privileges and maintaining confidentiality, and electronic execution and transmission of documents.

USE OF INFORMATION TECHNOLOGY AT HOME – PERSONAL COMPUTERS AND E-MAIL

Use of information technology at home is fraught with perils that may not exist while working at the office. Vigilance with respect to cyber security and ongoing risk of scams (e.g., wire transfer scams) is of paramount importance. In the rush to prepare for or while working remotely, you may be tempted or feel there is a need to forward work-related information to personal e-mail accounts for easy at-home access or to work with sensitive documents and information on personal computers. There are steps you can and should take to minimize and avoid risks.

Reminders

- Take a few moments to review policies related to the acceptable uses of information technology and ensure that you are up-to-date on any available cybersecurity training.
- Home networks and public internet are often not as secure as corporate networks. Use VPN capability when possible (or exclusively, if required by company policy).
- Be vigilant for an uptick in wire transfer scams, fraudulent e-mails, and phishing.
- Review company policy on whether and to what extent use of personal computers or personal e-mail accounts is allowed to conduct company business. If not allowed, but you feel it is necessary for you to be able to do your work, contact your in-house legal department first.
- Avoid using personal e-mail accounts. This is true even if it is simply forwarding documents to print at home. This practice makes it difficult to secure company data, complicates litigation holds, and can waive privilege claims. If use of a personal e-mail account is unavoidable and permissible, make sure to take

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precautions to avoid inadvertent waiver of potentially privileged information or confidentiality, such as including language within the document or e-mail that it is privileged and intended to remain confidential.

PHONE CALLS AND TEXT MESSAGES

Working remotely may increase the need for telephone calls or invite the need or desire to conduct business over text message.

Reminders

- Phone conversations about sensitive business matters should not take place in public. Even while at home, if possible, take calls away from people living in the same home.
- Review company policies on whether use of text messages to conduct business is allowed. If permitted, proceed cautiously in conducting business via text messages, which tend to be more informal and less carefully drafted, but are still subject to discovery in litigation.

PROTECTING SENSITIVE DOCUMENTS

You may be required to work with sensitive documents and information while working remotely.

Reminders

- Information and documents must be kept confidential and out-of-sight, even from family members.
- Make sure that information is not left on computer screens.
- Protect hard copy documents that contain sensitive information and consider maintaining a box for shredding purposes.

LEGAL HOLDS

Your company may have hundreds of legal holds in place intended to preserve documents relevant to ongoing litigation, government investigations, or various other purposes.

Reminders

- Remind yourself which legal holds are applicable to you and take a moment to review them.
- Your retention obligations extend beyond the office. Legal holds and record retention policies must still be observed while working remotely.
- Working remotely may necessitate (where permitted by company policy) the use of personal cell phones, computers, and other devices, or may require bringing work files to personal residences. Relevant information must be preserved regardless of whether it is found on personal devices, in a home office, or on company-issued devices.
- If you are concerned a legal hold that is applicable to you does not cover media you are using to create, edit or transmit information covered by a legal hold, contact your in-house legal department for guidance.

E-SIGNATURES

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When it comes time to signing documents, working remotely can make obtaining physical signatures a challenge.

Reminders

- Before using an e-signature, be sure that e-signatures are authorized. For documents that require multiple signatures, review the document to be sure that it can be executed in counterparts.
- If the answer is unclear, contact your in-house legal department to consider whether your agreements need an amendment to allow for e-signatures and execution in counterparts.
- Consider including a provision authorizing e-signatures and execution in counterparts in newly negotiated contracts.
- For more information regarding e-signature and notaries, please see COVID-19: Enforceability of Electronic Signatures and Notaries Amidst COVID-19

ROLE OF IN-HOUSE LEGAL

And last, but certainly not least, the responsibilities of in-house lawyers often expand when companies face challenges. This also typically increases the frequency with which in-house legal departments wear both the "business advice" and the "legal advice" hats. And when you need to consult lawyers, it is important to remember that the attorney-client privilege only protects legal advice and does not protect business advice.

Reminders

- If possible, separate communications requesting business and legal advice.
- If you are responding to a request from the legal department or outside counsel for information pertinent to a legal issue or are yourself seeking legal advice, use language such as "I am writing to provide information at the request of the legal department [or outside counsel]" or "I am writing to seek legal advice on…."
- Do not forward legal advice to third parties, which may waive the privilege protections afforded to such advice.

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