

SAMPLE LITIGATION HOLD NOTICE¹

IMPORTANT LEGAL HOLD NOTICE

To:

From:

Date:

Re: Document Preservation for Pending Litigation in *Doe v. XYZ Co.*; Civil No. 1234

This is to notify you that you must retain and preserve all records, including documents, which may be relevant to the above-referenced lawsuit. This Notice relates to litigation pending against XYZ Co. (“XYZ”) in the Circuit Court of the First Circuit for the State of Hawaii entitled *Doe v. XYZ Co.*; Civil No. 1234. In the lawsuit, Plaintiff John Doe (“Doe”) alleges that XYZ discriminated against Doe by failing to promote him to a Manager position due to his national origin and sexual orientation, and that XYZ failed to pay Doe certain wages due and owing to Doe for overtime work. It is important that we continue to retain all documents and data that might assist us in our defense, or might be needed to satisfy our discovery obligations under the applicable Hawaii court rules. If you know of additional employees who should receive this notice, please send a list of names to me, and I will send them the notice separately.

CATEGORIES OF DOCUMENTS, INFORMATION AND ELECTRONIC MEDIA TO RETAIN

Until cancelled in writing by me, the following types of documents, information and electronic media (collectively, “documents”) must be retained – even if it would otherwise be your normal practice to discard such items in accordance with XYZ’s usual document retention policy:

1. The personnel file, if any, of Doe.
2. All written documentation, electronic information, or oral communications relating to Doe’s employment;
3. All personnel evaluations or other documents or electronic information relating to Doe’s work performance;
4. Any notes—taken in any format and however saved—that may have been taken during any conversations, meetings, or phone calls with Doe;
5. Any documents or information relating to any complaints Doe made during the term of his employment;

¹ This model litigation hold notice does not constitute legal advice. Employer’s faced with litigation or a credible threat of litigation should consult with legal counsel before issuing a litigation hold notice.

6. Any documents relating to employees that have been promoted to the position of Manager during the last five (5) years;
7. Any and all invoices, ledgers, journal entries, and cancelled checks relating to the payment of Doe's wages, including overtime payments, if any.
8. *Note: The particular categories of documents will vary on a case-by-case basis.*

The applicable time period from which potentially relevant materials must be preserved is _____ [identify starting date] to the present. All XYZ document retention schedules and procedures are suspended (superseded) and do not apply to these materials while this litigation hold remains in effect.

TYPES OF MATERIALS TO RETAIN

The requirement to retain information applies to ALL types of written, printed, electronic, and other materials including: memos, correspondence, spreadsheets, decks, PowerPoints, reports, handwritten notes, drafts, sales forms, files, calendars, appointment books, audio and video tapes, and diaries. This requirement to retain information also applies to ALL non-identical copies, versions, and/or drafts. If you create documents including memos, letters, decks and spreadsheets that are relevant to the subject matter of this litigation, you should save major revisions as new documents so prior drafts are preserved.

SPECIAL INSTRUCTIONS FOR E-DATA

You must also retain (and not delete) electronically stored information, including electronic documents (MS Word, PowerPoints, MS Excel, *etc.*), computerized calendars, email messages, Instant Messages (IM), wikis, blogs, and any other types of data or information wherever it may be stored, including on your workstation, laptop, PDA (*e.g.*, iPhone), or XYZ's network. For email messages that currently exist, or that you create or receive in the future, if they are covered by this Notice, you must create a folder in your e-mail called "Doe v. XYZ" and move (save) each message covered by this Notice to that folder. **Responsive information should not be preserved on "public" shared/drives.**

SPECIAL INSTRUCTIONS FOR DATABASES

If you are aware of potentially relevant data stored on a network, departmental database, shared or public mailbox, or with a third party vendor, it must be identified for me immediately so that our legal counsel are alerted and the information can be preserved. Document destruction policies must be suspended. Steps to preserve information created on an on-going basis should be discussed with Counsel.

ERR ON THE SIDE OF PRESERVATION

Documents covering or related to the subjects listed above should not be removed from their current files, and files containing those documents should be maintained as they currently exist. It is acceptable to segregate those files from your other files, as long as the files containing the

relevant documents remain intact. **ALL DOCUMENT DESTRUCTION POLICIES MUST BE SUSPENDED. IF YOU HAVE ANY DOUBT ABOUT WHETHER TO RETAIN ANY DOCUMENTS OR INFORMATION, YOU MUST PRESERVE AND RETAIN THE INFORMATION UNTIL FURTHER WRITTEN NOTICE FROM MYSELF.** Failure to abide by this request may result in sanctions and fines against XYZ and/or yourself, as well as disciplinary action by XYZ up to and including termination.

WHAT TO DO IF YOU ARE CONTACTED ABOUT THIS LITIGATION

If you are contacted by someone from outside XYZ, other than our outside counsel _____ [*identify counsel*], please do not speak to them; instead refer their call to my attention. In other words, please do not speak with Doe or his attorney. Also, it is important that you consult with me before writing anything discussing the lawsuit that is the subject of this Notice. Please direct any questions you may have regarding this matter to me.

If at any time you learn that you will be changing positions within XYZ, moving your physical office, upgrading or replacing any computer hardware, or leaving XYZ, please notify _____ at _____ immediately so that we can determine how best to continue to preserve documents you may have retained related to this matter.