

Texting and Using Personal Devices for Business

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Usama Kahf and Brent Cossrow's article "Texting and Using Personal Devices for Business" was featured in the Dec/Jan 2015 issue of *Today's Corporate Counsel*.

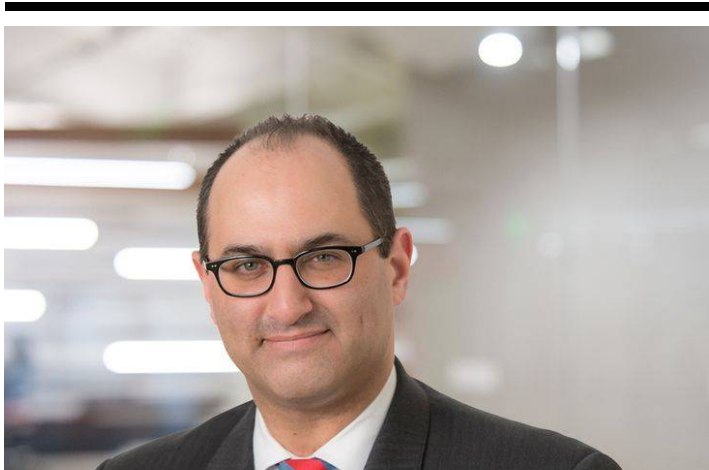
Employee use of personal electronic devices to communicate, and generate what it may be argued are business records, raises interesting issues for businesses, particularly in the face of threatened or pending litigation. Various policies, ranging from encouraging "bring-your-own-device" (BYOD) to outright banning it, have advantages and risks.

A decision on any of these issues may, under certain circumstances, give rise to a legal duty to preserve information on your employees; personal devices that is relevant to pending or reasonably anticipated litigation.

In the article, Usama and Brent discuss how several courts across the country have recently grappled with the issue of whether data on employees' personal device is within the custody, possession or control of the employer.

Preserving employee text messages may be a logistical challenge, but in many cases the evidence preserved can be helpful. The attorneys suggest that if the reality of your business is that employees will be using their personal cell phones for work, then it may be in your best interest to implement policies and procedures that provide the right to access, and if needed the ability to preserve, work-related information on employees' personal devices.

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