



## **eDiscovery and Digital Workplace**

### *Overview*

**Electronically stored information (ESI) is critical to every employer, no matter the industry. As data types and sources constantly evolve to enhance business collaboration and communication, ESI in the workplace is exploding. This can have some unintended and costly consequences when it comes to meeting discovery obligations in litigation, arbitrations and workplace investigations. Applying the right legal and practical strategies, defensible workflows, and technological solutions – and effectively managing data upfront to meet business and regulatory requirements while protecting data privacy – can significantly constrain the costs and burdens of ESI-related projects and help manage future litigation and investigations.**

**The Fisher Phillips eDiscovery and Digital Workplace team of attorneys and project managers brings a holistic, flexible, and cost-effective approach to managing ESI in all stages of litigation, from preservation through production, and in employment law investigations, including forensic investigations of a defecting employee’s misuse or misappropriation of trade secrets and other confidential business information and unauthorized access of workplace computers. We use cutting edge technologies and assets to help firm clients manage the challenges of an ever-evolving data landscape.**

Working side-by-side with clients and colleagues across 36 offices nationwide, our team provides practical and legal guidance, including reasonable and defensible workflows, to create customized, sensible approaches for each matter. Because we understand that the costs of prosecuting and defending the discovery of ESI, commonly known as eDiscovery, can easily escalate in litigation, we aim to right-size our work on each matter. Our guidance can include identifying and preserving evidence, custodian interviews, collecting ESI, meet and confer strategies, preparing ESI and forensic protocols, engaging and collaborating with forensic experts and discovery service

providers, search term analysis, machine learning and other forms of technology assisted review, adhering to data protection and privacy laws, preparing privilege logs, document review workflows, and securely producing documents.

Our attorneys and project managers are available to assist at any point in any type of project involving ESI, including single plaintiff cases, class actions, MDLs, forensic investigations, internal workplace investigations and government or regulatory investigations and audits.

### **What We Do:**

**eDiscovery.** Preparing for the discovery phase of arbitration or litigation should begin long before documents are actually produced, and properly identifying and preserving potentially relevant ESI is critical to the ultimate outcome of any matter. Moreover, scoping ESI with an eye toward proportionality and using customized eDiscovery technology solutions can greatly reduce the costs of document review, which are typically the most expensive part of any eDiscovery project – comprising up to 70% (and possibly more) of the total. We employ a variety of legal and technological tools to meet the needs of each case, while controlling costs and burdens. We help clients tap additional customized solutions, such as forensic collections and investigations, data processing and hosting, managed domestic and foreign document reviews, and in-country data hosting alternatives. Our team also regularly works with clients' and carriers' preferred vendors to meet specific needs.

**Forensic Investigation.** Together with our attorneys in the Fisher Phillips Employee Defection and Trade Secrets (EDTS) practice group, the eDiscovery and Digital Workplace team understands the need to mobilize quickly to protect client data in connection with employee defections or to investigate competitors' allegations. Collaborating with clients and the firm's EDTS attorneys, Fisher Phillips' eDiscovery and Digital Workplace attorneys and project managers quickly engage forensic investigation solutions, experts and other services to meet clients' needs in any posture, whether it is a pre-litigation forensic investigation or expedited discovery in injunction proceedings. We also provide guidance for forensic protocols, the identification and preservation of evidence and anything else involving the search, review and production of ESI, again with an eye toward controlling costs using customized strategies, workflows, and technology.

**Information Governance.** Working with members of our Data Security and Workplace Privacy Group, our team helps clients manage their ESI to meet business and regulatory needs, reduce exposure to data breaches, comply with data protection and privacy laws, and save considerable time and expense when eDiscovery or investigation projects arise. We advise on sound data retention and disposition practices and a variety of records management policies and protocols.

### **Technology Offerings:**

- Relativity
- RelativityOne

- Brainspace
- Trial Director
- Page Vault
- ESI Analyst
- Technology assisted review, including machine learning

### **Our Experience Covers the Entire Digital Workplace:**

- *eDiscovery Meet and Confers*: Used samplings of keyword search strings in trade secret misappropriation litigation matter to successfully make proportionality and undue burden arguments during multiple meet and confers, thus reducing the client's document review volume by over 90% (an estimated savings of at least \$900,000).
- *Data Analytics in eDiscovery*: Applied data analytics, including concept clustering technology, combined with samplings of clusters and proposed document review population to determine that the liner review of approximately 186,000 documents was not warranted (saving the client hundreds of thousands of dollars).
- *Machine Learning in Document Reviews*: Applied machine learning technology to prioritize review, cull irrelevant documents from review using a sampling to validate results (saving the client more than \$30,000 in potential review costs).
- *Preparation of Privilege Logs*: Created legal and process strategy for a nearly fully automated privilege log and oversaw managed privilege review of about 72,000 documents with a 10-day turnaround time, which was completed on time and under budget.
- *Forensic investigation Uncovers Fraud in Multi-Million Dollar Whistleblower Matter*: Uncovered the digital forgery of a college diploma and serial falsification of education credentials by our client's former executive and won a motion for sanctions requiring the former executive to pay attorneys' fees and costs and turn over his personal computer, cell phone and email accounts for forensic analysis, which resulted in the settlement and dismissal of the multi-million dollar whistleblower claims in New Jersey state court.
- *Prelitigation Forensic Investigation Helps Resolve Equal Pay Act and Discrimination Claims*: Timely pre-litigation forensic examination of workplace computers used by the former president of our client's subsidiary and its entire staff uncovered a plot to unfairly compete against our client, which resulted in the resolution of the former president's Equal Pay Act and discrimination claims in federal court in South Carolina.
- *Forensic Investigation Reveals Misappropriated Customer Information in Employee Defection Injunction Matter*: Forensic analysis of workplace computers used by our client's former employees revealed their illegal transfer of customers' personal financial information, which led to a special injunction and ultimately a final consent order against the former employees in Pennsylvania state court pursuant to the Commonwealth's Uniform Trade Secrets Act.

- *Forensic Investigation Uncovers Misuse of Confidential Information in Misappropriation of Trade Secrets Matter:* Forensic analysis of a workplace computer and email account used by our client's former employee revealed the deletion of client records and the transfer of confidential information, which was the basis of the court's decision to order expedited electronic and forensic discovery in federal court in Chicago pursuant to the Computer Fraud and Abuse Act and the Illinois Uniform Trade Secrets Act.
- *Pre-Complaint Discovery of ESI Leads to Successful Resolution of Sexual Harassment Claims:* Pre-complaint discovery in Pennsylvania state court yielded production of text messages that exposed cooperation between the alleged victim and the alleged harasser.
- *Forensic Investigation Leads to Special Injunction and Consent Order Against Client's Former Employee:* Forensic Investigation of former employee's workplace computer and email account found the employee downloaded copies of our client's customers' FICO scores and social security numbers for use in a competing business, leading to a special injunction and consent order against the former employee in Pennsylvania state court.

## ***Insights***

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NEWS

10/21/24

### **National Media Covers the Arrival of Simon Nagel, eDiscovery Attorney in Philadelphia**

Simon Nagel, Wendy Hughes, Michael P. Elkon, Christopher P. Stief

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NEWS

10/09/24

### **Fisher Phillips Adds eDiscovery Attorney in Philadelphia**

Simon Nagel, Michael P. Elkon, Wendy Hughes, Christopher P. Stief

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NEWS

09/11/23

### **eDiscovery Partner Discusses Corporate Communications and Ephemeral Data**

Wendy Hughes

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INSIGHTS

01/20/23

### **WhatsApp Messages May Be Gone But Never Forgotten – At Least Not By the DOJ: Your Company's 6-Step Action Plan**

Wendy Hughes, Raymond W. Perez

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NEWS

10/07/22

## Philadelphia Partner Discusses NYC Hiring Restrictions with AI

David J. Walton

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NEWS

07/25/22

## David Walton Discusses AI Hiring Tools and How They May Lead to Discrimination Claims

David J. Walton

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NEWS

02/02/22

## Fisher Phillips Welcomes Lauren Frisch in Atlanta

Lauren Frisch

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NEWS

05/04/21

## Fisher Phillips Continues Expansion in Pennsylvania with Prominent Trade Secrets and Technology Attorney

David J. Walton

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NEWS

04/20/21

## Wendy Hughes Interviews with Law360 on her move to Fisher Phillips

Wendy Hughes

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EVENT

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## eDiscovery Under the Federal Rules of Civil Procedures

Usama Kahf

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## ***Key Contacts***



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