

## **Legal Hold Information** <sup>[1]</sup>

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## **Litigation Hold Flowchart**



**TRIGGERING  
EVENT**

```
graph TD; A((TRIGGERING EVENT)) --> B[LEGAL HOLD  
Issued by University Court]; B --> C[NO RELEVANT DOCUMENTS]; B --> D[ ]; C --> E[ ]; D --> F[ ]; style D fill:none,stroke:#808080,stroke-width:10px; style E fill:#FF6347,stroke:#333,stroke-width:1px; style F fill:#90EE90,stroke:#333,stroke-width:1px;
```

**LEGAL HOLD**  
*Issued by University Court*

**NO RELEVANT DOCUMENTS**

Acknowledge Legal Hold as  
instructed in the Legal Hold Notice

When answering a survey, answer  
“NO” on the first question, and then  
“None of the Above” for the  
remaining questions.

**SUBMIT THE SURVEY**

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- **For paper documents:** Scan the documents and save them to a folder on your individual university issued network drive, also known as a personal/home network drive.
- **For emails:** Create a folder inside your mailbox and place a copy of all relevant emails there.
- **For electronic documents:** Create a folder on your individual university issued network drive (also know as a personal/home drive) and place a copy al all relevant documents there.?

***For assistance with saving and collecting your data in the requested format, please contact the assigned paralegal for the case.***

| University Counsel<br>Litigation,<br>System Admin.                     | University Counsel<br>Denver  <br>Anschutz                                    | Professional<br>Risk<br>Management,<br>Anschutz   | University Counsel,<br>Colorado<br>Springs                                      | University Counsel,<br>Boulder                            |
|--|---|---|---|---|
| 1800 Grant<br>Street, Suite 700<br>Denver, CO<br>80203<br>303-860-5691 | 1380 Lawrence<br>Street, Suite<br>1450<br>Denver, CO<br>80204<br>303-315-6617 | 13001 E. 17th<br>Place<br>Bldg. 500, 4th<br>Fl., Suite N4217<br>Aurora, CO<br>80045<br>303-724-7475 | 1420 Austin<br>Bluffs Pkwy.<br>Colorado<br>Springs, CO<br>80918<br>719-255-3820 | 924 Broadway<br>Boulder, CO<br>80309-0013<br>303-492-7481 |

A legal hold is a notice that informs an individual of their obligation to preserve paper and electronic records that an opposing party may find relevant when litigation is reasonably anticipated.

Certain “triggering events” create the obligation for the University of Colorado (“CU”) to issue a legal hold.

### **What are some examples of a triggering event?**

- A summons or complaint
- Certain types of subpoenas
- A notice of claim under the Colorado Governmental Immunity Act
- A demand letter from an attorney
- A serious event on campus that could result in litigation
- A charge from the Colorado Civil Rights Division
- A charge from the United States Equal Employment Opportunity Commission
- An appeal to the State Personnel Board
- Notice by a department of a high profile employee termination
- Notice by a department of a contract termination
- Other pre-claim matters that may lead to litigation

### **What should I do if I see a possible triggering event?**

Notify University Counsel: All possible triggering events should be reported to the Office of University Counsel ("University Counsel"). Determining whether something is a triggering event is fact-intensive and should be made by individuals at CU who are experienced with the legal process and can properly analyze whether litigation is reasonably anticipated.

Do Not Delete/Destroy Anything: Do not delete or destroy any documents in your possession that may be relevant to the matter. Additionally, do not delete or destroy any new documents that you or people in your department receive or create that might relate to the matter.

## **Who issues a legal hold?**

CU will issue a legal hold through University Counsel. CU issues the legal hold because of CU's duty to preserve paper and electronic records under Rule 37 of the Federal Rules of Civil Procedure.

## **A legal hold is dictated under what authority?**

Under Rule 37 <sup>[2]</sup> of the Federal Rules of Civil Procedure, which governs disclosures during litigation, CU has a duty to preserve all information related to a triggering event. The rule states that "[w]hen a party is under a duty to preserve information because of pending or reasonably anticipated litigation, intervention in the routine operation of an information system is one aspect of what is often called a 'litigation hold.'" Fed. R. Civ. P. 37 advisory committee's note. If there is a triggering event, CU should prevent the routine destruction of data until the possibility of litigation has ended.

The duty, created by Rule 37 of the Federal Rules of Civil Procedure, requires CU to:

1. Have a clear understanding of the type of electronic records that may be relevant in a particular case;
2. know where to locate such electronic records so that they may be preserved

## **Why is compliance with a legal hold important?**

Compliance with a legal hold is important because if CU destroys (even accidentally) a relevant document after CU knew or should have known about the possibility of litigation, the court could sanction CU. These sanctions could affect CU's ability to win the case. Possible sanctions could include:

- Monetary sanctions;
- Denial of certain testimony that favors the university; or
- An adverse inference ruling. Such a ruling means that the judge could instruct a jury that it should infer that the lost or destroyed electronic record supports the opposing side's case even if CU believes that the record would support CU's case.

## **How will University Counsel notify me if I'm placed under legal hold?**

University Counsel will send you a legal hold memorandum that is a confidential, attorney-

client communication. The memorandum will explain the legal hold and the fact that you may have documents, information, and records that need to be preserved. You will be given a deadline, usually ten (10) calendar days from the date of the memorandum, to respond in accordance with the directions in the memorandum.

## **How do I preserve relevant information?**

**Email:** Please create a folder inside your mailbox that will contain copies of all relevant emails. The folder should include all sent, received, drafted and deleted emails that exist at the time of the legal hold.

**Electronic Documents:** Please create a folder on your personal network folder and place a copy of all relevant documents inside that folder. Access to this folder should be restricted to you. The folder should be on a network so the data may be retrieved should something happen to your computer.

**Paper Documents:** Please scan the documents and save them to your personal network folder described above.

**Personal Computer:** Although you should do all work related projects on your work computer, if you have worked on a project on your personal computer, the relevant files on your personal computer may be subject to the legal hold.

If you have any questions about whether a document is related to the event, you should save the document.

## **Can I just keep printed versions of the documents?**

No. Preserving a printed version of all correspondence and documents may not suffice because electronic versions often provide information such as track changes and other metadata that may not appear on the printed version of these documents. You should store any related information in a separate file on your computer while you wait for legal counsel to determine whether collection of the data is necessary. Emails and electronic versions of documents should be kept if they are relevant to the legal hold.

## **How long must I continue to save my emails and electronic records?**

The length of time will vary and will depend on the nature of the legal hold. University Counsel will coordinate with you and will let you know in writing via a Legal Hold Release when you are able to delete e-mails and records.

## **What should I do if I have questions?**

If you have any questions regarding this process, please refer to the contact information contained the legal hold notice. If you have not received a legal hold notice, but have general questions, please contact Tanya Cohen in the Office of University Counsel at (303) 860-5691 or [tanya.cohen@cu.edu](mailto:tanya.cohen@cu.edu) <sup>[3]</sup>. For technical questions please contact Leonid Balaban in the Office of Information Security at (303) 860-5678 or [Leonid.Balaban@cu.edu](mailto:Leonid.Balaban@cu.edu) <sup>[4]</sup>

| TERM   | DEFINITION   |
|--|--|
| <b>Litigation</b>                              | A lawsuit, including complaints filed with the court or other governmental agencies such as the State Personnel Board, the Colorado Civil Rights Division, the Equal Employment Opportunity Commission or the Office for Civil Rights.   |
| <b>Email Mailbox</b>                           | University supported and/or current/live mailbox you use on a daily basis.   |
| <b>Email Archive</b>                           | Email repository stored on a university drive or your computer's hard drive.   |
| <b>Shared Network Drive</b>                    | A university network location where access to documents is provided to multiple parties within a particular department.  |
| <b>P (Personal)/Home Drive</b>                 | A university network location where access to documents is limited to an individual user. This may include a personal One Drive location.  |
| <b>ESI (Electronically Stored Information)</b> | Electronically stored information, for the purpose of the Federal Rules of Civil Procedure (FRCP) is information created, manipulated, communicated, stored, and best utilized in digital form, requiring the use of computer hardware and software. ESI includes, but is not limited to documents, emails, videos, voicemails and pictures. ESI denotes all forms of electronic data and is the principal subject matter under e-discovery. |
| <b>Discovery</b>                               | A fact-finding process that takes place for each matter in order to allow the parties in the case to prepare for settlement or trial.  |
| <b>Preserve</b>                                | To keep possession of or retain.   |
| <b>Groups audience:</b><br>University Counsel  |  |

**Source URL:** <https://www.cu.edu/universitycounsel/legal-hold-faqs>

#### Links

[1] <https://www.cu.edu/universitycounsel/legal-hold-faqs> [2] [https://www.law.cornell.edu/rules/frcp/rule\\_37](https://www.law.cornell.edu/rules/frcp/rule_37)  
[3] <mailto:tanya.cohen@cu.edu> [4] <mailto:Leonid.Balaban@cu.edu>