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Companies Can No Longer Afford to Slack Off in Preserving Chats and Messages

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Doubling down on guidance originally issued in [September 2022](#), the U.S. Department of Justice (DOJ) Antitrust Division and the Federal Trade Commission (FTC) recently announced updates to standard preservation letters and grand jury subpoenas regarding the preservation of collaborative messaging platforms, to respond to the increased use of such platforms in the workplace. The updates require companies under investigation to expressly preserve communications and chats exchanged on these messaging platforms, including Slack, Microsoft Teams, and Signal. While companies under investigation have always had a legal obligation to preserve documents while under investigation or involved in litigation, the explosion of collaborative and remote working in the COVID and post-COVID era has created preservation challenges for companies conducting business across these platforms, as we discussed [here](#). Now that collaborative messaging has become a routine feature of modern business, companies must update and adapt their preservation policies, or face potential civil and criminal liability for failing to properly preserve messages.

When announcing the updates, Deputy Assistant Attorney General Manish Kumar of the Antitrust Division said, “These updates to our legal process will ensure that neither opposing counsel nor their clients can feign ignorance when their clients or companies choose to conduct business through ephemeral messages.” Kumar continued, “The Antitrust Division and the Federal Trade Commission expect that opposing counsel will preserve and produce any and all responsive documents, including data from ephemeral messaging applications designed to hide evidence. Failure to produce such documents may result in obstruction of justice charges.” Likewise, the FTC has successfully moved for civil spoliation sanctions when a company failed to preserve documents, including Signal messages, covered by an FTC investigation.

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