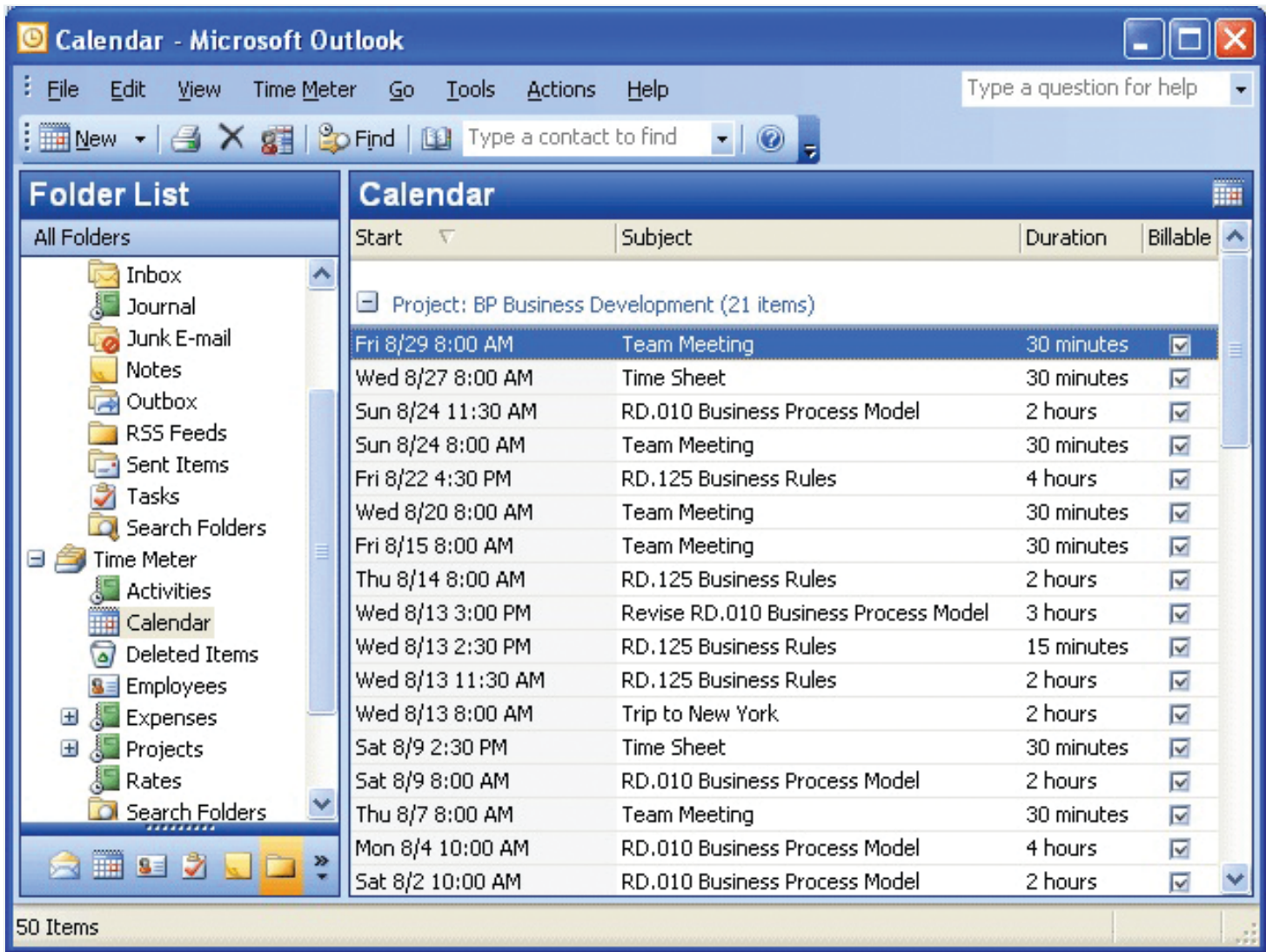


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financial loss in cases of litigation.

Roman Kepczyk • Mar. 22, 2012



Email has become a critical business tool not only as one of the primary means of communicating with clients but also for documenting decisions and business information in client files. With today's smart phones, tablets and remote access services via the Internet, email is universally accessible and its extreme ease of use

makes it the primary communication tool for just about everyone. Unfortunately,

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retention issue, which is definitely not the case. So what does a firm need to do to tackle the issue?

The solution is to develop an email retention policy that is easy for firm personnel to understand and is well documented. While this is admittedly a very difficult thing to do, it is the responsibility of the firm to put in place tools that allow the email retention policy to be consistently applied across the firm including the implementation of a document management or archival solution. Firms should work with their legal council to develop a policy specific to their State and areas of practice. There are specific rules for managing email regarding HIPAA compliance, SEC, investment management, and financial institution type work that the firm may have to comply with, so it is imperative that the firm's policy incorporate those rules along within the overall policy.

One of the first steps in creating a policy is to specifically identify what types of information employees are allowed to send via email. For instance, stating that sensitive, confidential documents should not be sent unless encrypted, or specifying that the firm's portal should be used for these documents instead, outlines boundaries for firm personnel. The policy should identify what constitutes acceptable business use for email and include specifications that prohibit inappropriate content or any item that could be deemed as harassment being sent in an email. The policy should also identify what would be construed as acceptable and unacceptable personal use of the firm's email accounts.

The policy should also specify how emails with an ongoing business purpose are to be archived and at what point any emails stored locally would be archived or erased. Some firms specify that email older than a certain age (we have seen the most common policies being between 30 and 180 days) will be automatically deleted. Firms without an archiving solution would also need to specify how files should be

saved including the client folder, email file naming convention, and the disposition

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policy should state also clearly document the firm's rights to that information.

Many firms include within their policies that the employee agrees that any such local information is the property of the firm and is to be deleted upon termination, that they agree to adhere to the firm's retention policy across any and all devices, and that the firm retains the right to remotely wipe the device if it is misplaced, stolen or if the employee leaves the firm. In the event that this must be done, the IT team needs to be involved in "digital cleansing" of the device as simply deleting files does not always ensure they are actually gone.

The email retention policy should also outline the firm's right to review emails to ensure compliance with the policy, as well as consequences to the employee for not complying with them. These consequences are not to be taken lightly as the firm must adhere to the policy across the board or face it being thrown out in the event of litigation.

The IT department also must be involved in the creation of the policy as they will need to implement email archival tools and processes to enforce and manage it. The reality is that if the policy is too hard to comply with or the email tools too difficult to use, personnel will find a way to work around it, so this consideration needs to be incorporated. When policies mandate the destruction of old emails, the IT team will be involved to verify that procedures were properly completed and that the data on any backups has also been taken into account. IT personnel will also need to be included as a part of a litigation response team in the event that the firm anticipates a law suit or regulatory inquiry, so they can immediately suspend the document destruction policy for a litigation hold and properly document which files are impacted. In this regard, the IT team will also be involved with managing a central archiving or document management solution for those firms that choose automated tools.

Once the policy is written and reviewed by the firm's legal counsel, it must be

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right providers, it can be done and it is usually less expensive before receiving a subpoena from an attorney.

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