

The State of the e-Discovery and Data Privacy Job Market: Pre and Post COVID-19

A Deep Dive Into the Pre and Post Pandemic E-Discovery Job Market Landscape and What Data Privacy Professionals Can Learn from ESI Employment Trends

Part Two of a Two-Part Article

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Part One of “The State of the e-Discovery and Data Privacy Job Market: Pre and Post COVID-19” drew attention to overarching patterns across all legal technology disciplines including an undeniable pause in hiring domestically in much of late March and April followed by an almost instantaneous shift in staffing modality from add-to-staff direct hire to as-needed replacement contract hiring. Most importantly, the pandemic has given corporations, law firms, and the alternative legal service providers (ALSPs) that service them opportunity to recalibrate internal staff, right-size, and begin to adjust human capital strategy to profit in the post-pandemic economy. For data privacy and protection professionals, see Part One for a deep dive into the privacy job market; but, take note of what is happening in the e-discovery job market as this community’s maturation may reflect a potential future state for the data privacy community.

e-Discovery Trends, Pre and Post COVID-19

In January of 2020, before COVID hit the U.S., TRU made several annual

predictions for 2020 that were pointed squarely at the e-discovery community: a return to customer service and success; growth options for ESI Project Managers; remote work-from-home augmentation will reach 33% by 2021; and contract augmentation could reach 50% by 2021. Surprisingly, all these predictions remain mostly true despite the dynamic effects of COVID-19. The e-discovery industry has been on such a steady trajectory for so long that the intrinsic organic growth trends for professionals in the space have remained almost unaffected. What has changed, and dramatically, are the number of available positions for professionals in the space. On March 13, TRU was engaged in over one hundred ESI-related searches. By April 1, that number dropped to only twelve active searches, mostly sales. It wasn’t until mid-May that the e-discovery industry began rebuilding and hiring again.

The PPP Effect on ESI

The PPP (Payroll Protection Program) had a remarkable impact on the late second quarter and early third quarter 2020 hiring patterns in e-discovery. While large e-discovery vendors and many Am Law litigation support

departments had either RIFs, furloughs, reductions in salary, or freezes in hiring, small businesses in e-discovery took advantage of government loans and went to market to hire talent. In Q2 2020, TRU received three job orders from e-discovery vendors under \$100 million in annual revenue for every one role in vendors grossing more than \$100 million annually.

Most small businesses went straight for sales talent. The second most notable hiring trend was smaller ESI businesses augmenting staff with talent that would expand their service capability. For example, a bolstering of leadership and capability in forensic collection services or information governance consulting are two areas with repeat interest from growing service providers looking to capture more streams of revenue from existing clients, if not new ones.

Large vendors are now getting much busier, especially those who right- or downsized in Q2. TRU anticipates a bell curve in job order intakes in late Q3 and most of Q4 as courts reopen, litigation resumes, and everyone finds themselves at capacity, suddenly needing fast talent augmentation for spikes in work. For project managers,

data processing and systems analysts, and even advanced TAR and analytics experts, expect contract and contract-to-hire to be the modality of choice for most hiring managers, whether law firm, provider, or corporate.

Hyper-Acceleration of Remote Staffing

Though it needs little explaining, it is worth noting that hiring talent working remotely from home is now the norm, if not the only modality for hiring ESI talent throughout the world. TRU predicted, by 2021, 33% of e-discovery professionals would be working remotely, but it could be closer to 80% as a result of the pandemic with four out of five staffers currently working from home with no end in sight. Between April and August 2020, all e-discovery jobs filled by TRU were work-from-home (WFH) hires except for government hires, though about 20% of non-government workers will be expected to return to the office "at some point."

The trending for employer expectations around remote versus in-office practices for discovery staff is as follows: Government agencies are in-office, always will be, and there will be no room for negotiation here. Service providers and consulting firms were already largely remote or flexible with WFH options, so this shift is not really a shift. These employers will remain 90% remote, if not more, for the duration of 2020 and likely 2021. Many of these employees will never return to an office. Law firms are the most surprising trend. The once impermeable rigidity of demanding ESI staff be on

premise from partners and associates has crumbled. In Q2 and the first half of Q3, over 50% of TRU's Am Law clients with open headcount have shifted their hiring strategy to remote and opened the possible pool of talent to a national search. It appears law firms suddenly became wise to the unnecessary cost of real estate to house their e-discovery professionals onsite and concurrently woke to the already existing desire for e-discovery pros to work from home. In 2019, one in four jobs filled by TRU in ESI was a remote hire. Expect law firms to liquidate office space in 2021 and take advantage of a national talent pool in the months and years ahead. (The vendors who service them are already way ahead of the game on this.)

E-discovery jobs in corporations rarely existed before the pandemic, and they hardly exist now. Corporations are pushing more of the work out to vendors and law firms than ever before, and that will not change. However, when corporations do hire, they almost entirely expect staff to return to the office as soon as it is safe.

Hyper-Acceleration of Contract Staffing

Between 2016 and 2019, over 40% of placements made by TRU in e-discovery were contract or contract-to-hire requisitions. While the hyper-acceleration of contract staffing may not have been quite as dramatic as the shift to remote hiring, 78% of ESI placements made by TRU in Q2 were contractors or contract-to-hires. Additionally, Q2 contract requisitions were up 20% from Q1 despite (or as a result of) the economic downturn. As was the case after the Great Recession over ten years ago, most e-discovery hiring managers are suddenly without full-time headcount approvals but are enabled to scale up with contractors on an as-needed basis.

The use of contractors in e-discovery will not be limited to project managers and data processors. Roles involving project management team leadership, departmental oversight,

complex consultative needs related to TAR and analytics workflows, and technology software installation and systems integration are all skills that employers are looking for in ad hoc resources. The same is true in privacy where piecemeal contract augmentation requests are rising for nuances like DSAR automation, policy writing revisions, programmatic improvements related to the California Consumer Privacy Act (CCPA) or the General Data Protection Regulation (GDPR), product compliance oversight, and contract review and risk analysis. Some corporations are pulling their ESI staff into projects related to data privacy where skills and technology platforms overlap, but many simply don't have the time or desire to train, nor the desire to pay consulting firm pricing and instead are hiring contractors. Corporate privacy hiring managers who will not get headcount approvals in 2020, full-time or contract, but need resources to complete privacy projects would be wise to turn to the in-house e-discovery talent to assist as a partial resource. While interviewing over 100 corporate Chief Privacy Officers about their current human capital resources, over 80% commented on using partial dotted-line resources in one or several departments internally, including IT, human resources, legal, compliance, marketing, sales, or security.

Expecting More, Hiring Less

There is no doubt that e-discovery hiring managers are expecting more from their existing staff than ever before, not only in the form of additional hours, pushing overachievers to the limit during the pandemic, but also in the form of substance, style, and expertise. Project managers are being increasingly expected to have adeptness at doing a bit of everything. While e-discovery companies and law firm litigation support departments, unlike corporate privacy programs, will likely not desire or require top-down C-level or even director-level leadership changes, they will

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be hiring for seasoned talent that can lead as well as execute. At law firms, this will still come in the form of project managers. These project managers will be expected to do more than simply manage projects. Responsibilities will include mentorship and management of engagement teams, delivery of strategic guidance to clients on complex matters of predictive coding, technology-assisted review, information governance, and yes, data privacy and security.

When vendors and law firms are not hiring contractors, they are hiring at levels slightly above project management in client service management or project management leadership. More middle management opportunities are developing for vendors to dually provide a higher caliber of client services and mentorship of staff. This trend was already happening before the pandemic and will persist now, just in smaller doses of job openings.

For jobseekers to whom this role deeply appeals, know this: Managing people won't get you out of managing clients — not now and likely not ever unless another major shift occurs in the e-discovery industry, and that is unlikely to occur anytime soon. Staying billable is critical right now, and e-discovery professionals who are no longer billing were the most vulnerable in Q2 2020 and will remain vulnerable throughout the next several years. While the legal industry has evolved tremendously over the last decade, one thing remains constant above all else: Job stability lies with the billable hour. New hires will likely not be made until utilization exceeds customer satisfaction.

Here's What's Going To Be Different

It is suddenly going to be harder for entry-level professionals to break into e-discovery. The demand for talent is going to, like privacy, swim upstream for more consultative and experienced talent to handle immediate impact needs with clients that have complex

discovery challenges. Entry-level talent will be best served to focus on getting that experience at any cost in order to ride the traditional 24- to 36-month bell curve in earnings growth potential. Freshmen to the space are well-advised to get their ACEDS certification, so they understand the why behind what they do as well as have the industry vernacular to speak intelligently and consistently about the work. In years past, lacking Relativity skills was a non-starter for those looking to break in, but that, too, may be changing as focus from hiring managers shifts to substance over tool know-how in entry-level hires.

Unlike the events of the Great Recession, e-discovery does not appear to be taking a hit on pricing. This was not the case in 2008–2010, when ESI pricing commoditized exponentially, causing huge rippling effects in job compensation metrics moving forward. Instead, things are steady. This era in ESI will be defined by reliability, ability to go remote, and customer service. It is clear these defining factors are how vendors and law firms will keep and win clients, and e-discovery talent that can demonstrate ability in those areas will rise in the post-pandemic ESI ecosystem.

ESI Present, Privacy Future State

Privacy is in a state of chaos in many ways. Fifty different regulatory requirements in the U.S., global compliance variation, high demand for talent and low supply, evolving and recalibrating role expectations, and frequent top-down leadership change all make the data privacy and protection profession a wonderful place to make a mark and forge a career. Stability and predictability, however, may not be the cornerstones of that job market for some time. Privacy technology is just now entering the limelight, with leader OneTrust being named the Fastest Growing Company in the country by *Inc. magazine* just last month. Laws are going to change, and a fully Democratic U.S. Congress and President could lead

to dramatic shifts in regulation that reshape how American companies approach advertising, product development, data and customer acquisition, and so much more.

Though global harmony on privacy policy is unlikely on the horizon, growing codification and uniformity of cross-border laws coupled with increasing tool dominance in the space could lead to a commoditization of industry pricing on technology and talent in the coming decade. This is precisely what happened to e-discovery in 2009. Pricing on processing and hosting bottomed out, and Relativity took over most of the industry a few years later. Privacy pros would be wise to look and learn from their peers in e-discovery that have experienced a greater level of job market maturation and standardization over the last 20 years, a maturation that, in this case, was depressed but not destroyed during a global economic collapse. In the years to come, role definition and departmental infrastructure will standardize in corporate privacy programs, leading to greater predictability and stability in the privacy job market, but perhaps less voluminous mobility and vertical growth opportunity, as is the case in e-discovery today.



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