

## Employer Sanctioned for Failing to Issue a Litigation Hold After Notice of EEOC Charge

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In a case from the United States District Court for the Western District of Washington, an employer and its attorneys were sanctioned for spoliation of evidence caused by the employer's failure to issue a litigation hold and subsequent deletion of employee e-mails pursuant to the employer's document retention policy.

In *Knickerbocker v. Corinthian Colleges, Inc.*, several former employees of Corinthian, a company that runs for-profit colleges throughout the United States and Canada, sued the company alleging racial discrimination, harassment, and retaliation in violation of Title VII of the Civil Rights Act of 1964. Plaintiffs alleged the racial discrimination culminated in the termination of their respective employment.

During the discovery process, it was uncovered that the plaintiffs' work e-mail accounts were deleted shortly after their termination. While employer's counsel argued that the employer deleted the plaintiffs' e-mail accounts before the duty to preserve was triggered, the court held that the duty to preserve was triggered after they received notice of the plaintiffs' charges with the Equal Employment Opportunity Commission (EEOC) and that the employer's litigation hold efforts were insufficient.

The employer hand-selected certain "key" witnesses and requested that they retrieve and retain relevant documents. However, the court was critical of the employer's failure to ensure that the employees provided with the notice actually complied with the instruction to locate and preserve relevant documents.

Based on the tardiness of the notice and the apparent lack of enforcement by the employer, the court held there was no dispute that the employer failed to issue a litigation hold and deleted the plaintiffs' e-mail accounts after the employer received the Charges of Discrimination from the EEOC and the duty to preserve documents was triggered. Accordingly, the court imposed sanctions which included, among other things, an award of attorney's fees and a \$25,000 fine against the employer.

This case is an important reminder of the risks associated with failing to preserve electronic information related to actual or **threatened** litigation. Once an employer receives an EEOC charge, it should immediately institute an effective legal hold to prevent the loss or deletion of relevant electronically stored information or other evidence - and take steps to ensure the hold procedures are actually followed. Failure to take this critical step in the charge process may result in sanctions from a court or an adverse inference instruction to a jury that potentially relevant evidence was destroyed.

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