



## Alabama Court Rejects Request For Sanctions Arising From “Missing” Personnel Documents That Would Not Have Altered Outcome Of Case

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**Koryn M.  
McHone**  
Of Counsel

The Northern District of Alabama recently [rejected a plaintiff's request for sanctions](#) against her former employer, Logan's Roadhouse, arising in relation to the contents of personnel files. The ruling stems from a case in which a former Assistant Manager claimed the restaurant had violated Title VII of the Civil Rights Act of 1964 by failing to promote her and then terminating her employment due to her sex or alleged past complaints of gender discrimination/harassment. The plaintiff further alleged that she had been paid unequally due to her sex, and that the restaurant had condoned and/or failed to appropriately respond to complaints of harassment, as well as made false statements about her.

The sanctions motion arose after counsel for Logan's Roadhouse produced personnel files for two alleged harassers that appeared to be incomplete. Plaintiff protested that sexual harassment complaints and other documents were missing from the production. Logan's Roadhouse denied having received the alleged complaints of harassment, but admitted that, had such complaints been lodged, the documents should have appeared in the personnel files. Similarly, Logan's Roadhouse conceded that certain types of materials (job application, testing materials, etc.) that ordinarily appeared in such files seemed to be missing. Defendant verified, however, that no other personnel documents had been located. In response, plaintiff's counsel claimed foul play, seeking adverse inferences against defendant (*e.g.*, that

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sexual harassment complaints had existed in the files and that defendant's decision not to promote plaintiff and to terminate her arose in retaliation for her sexual harassment complaints), and the denial (or striking of) defendant's summary judgment filings for alleged incomplete production.

The court these requests, finding plaintiff had not established the "missing" documents to be within the "possession, custody or control" of defendant, and that defendant had produced the most complete personnel files available. The court further emphasized that sanctions were inappropriate because plaintiff could not show that the "missing" items would have altered the summary judgment ruling against her; rather, even if all inferences were made in her favor, she still failed to meet her burden of proof.

What is the moral of this story? As employers, it is of little use to document issues, if those documents do not make it to the file. Don't put yourself in a position of having to defend your recordkeeping on routine performance documents. Further, with sexual harassment complaints, it is critical that the paper trail demonstrate appropriate investigation and action, if you wish to avoid challenges or claimed impropriety in your actions.