

## FRY'S ELECTRONICS PENALIZED \$100,000 BEFORE CASE EVEN MAKES IT TO TRIAL



A sexual harassment and retaliation suit against Fry's Electronics, Inc. has not yet made it to trial, but the company has already been ordered by a federal judge to pay sanctions and a \$100,000 penalty for willfully destroying and later withholding evidence. The EEOC (Equal Employment Opportunity Commission) brought action against Fry's on September 29, 2010, alleging that an assistant store manager had sexually harassed a female employee. The agency also claimed that a supervisor was fired in retaliation for complaining to management about the harassment. The lawsuit is seeking relief for both individuals. In early May of this year, U.S. District Court Judge Robert S. Lasnik ordered sanctions against Fry's for destroying evidence – hard drives that may have contained pertinent information. Likewise, the jury is to be instructed to make an adverse inference on one of the company's defenses; in other words, jurors will accept the evidence as detrimental to the defendants' case, or in whatever way the plaintiffs' attorney interprets what the evidence might have been. Just two months later, sanctions were again ordered against Fry's for intentionally withholding evidence, including detailed allegations of sexual harassment in 2001 against the same assistant store manager but from another female employee. The evidence was withheld until mere weeks before an arbitration regarding the matter was to be held. Due to the company's actions, the court has struck from the arguments Fry's affirmative defenses concerning efforts to prevent and correct harassment in the workplace, as well as the plaintiffs' alleged failure to take advantage of the protective and corrective options. Furthermore, documents regarding previous complaints of sexual harassment from the assistant store manager in question will be admitted at trial. There's also the \$100,000 penalty, which will be shared by the court, the EEOC and the plaintiffs. The court stayed the matter – a temporary halt to the proceedings – for verification and certification of all previous requests for discovery. A "special master" will be appointed, at the company's



expense, to review Fry's Electronics' document retention, search and disclosure activities during the remainder of the litigation.

"As trial attorneys, we all expect zealous advocacy from the other side, but we also expect all parties to a lawsuit to play fair," said EEOC Supervisory Trial Attorney John Stanley. "Violating discovery rules and orders of the court drags our profession down and does nothing to further the cause of justice." Judge Lasnik's order for sanctions – the second one in July – stated that Fry's had "deliberately engaged in deceptive practices that undermine the integrity and orderly administration of [the] proceedings." EEOC Regional Attorney William Tamayo supported the Judge's decision and believed that he "took [the] matter seriously and sent a strong message to [Fry's] and other litigants that the court will not tolerate discovery abuses and hide-the-ball litigation tactics." The trial, set in the U.S. District Court for the Western District of Washington, is scheduled to begin in November.