

# Mintz Wins Terminating Sanctions in Employment Case

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## PRIMARY INDUSTRY

Retail & Consumer Products

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## RELATED INDUSTRIES

- Retail & Consumer Products
  - Technology
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## RELATED PRACTICES

- Employment Litigation & Arbitration

## Key Facts

- A former employee sued our client for disability discrimination and Family and Medical Leave retaliation
- During pretrial discovery, Mintz uncovered serious misconduct by the former employee and Mintz moved for dismissal of the case
- Mintz won the motion and the court awarded terminating sanctions — which ended the case

## The Situation

Mintz’s client, a nationwide retailer, terminated an employee for violating its internal policies and procedures. The former employee sued our client for disability discrimination and Family and Medical Leave retaliation in a Los Angeles Superior Court. The client called Mintz to defend it.

## The Approach

Mintz attorneys Jen Rubin and Paul Huston collaborated with our client to develop an aggressive case strategy that focused not only on defeating the merits of the claims, but more importantly, on the former employee’s conduct during and after employment and while the case was pending. Pursuing this aggressive strategy, Mintz conducted a critical examination of the former employee’s prior statements and communications. Focusing particularly on the former employee’s discovery responses, the Mintz team compared the information to third-party documentary evidence and identified numerous examples of what the attorneys believed to be material inconsistencies.

After learning during discovery that the former employee used a personal laptop during the time in question, Mintz demanded its production and preservation for forensic examination. When the plaintiff refused to produce the laptop, Mintz moved to compel its production. The court granted Mintz’s motion, and ordered the plaintiff to preserve all evidence on the laptop and provide the laptop to Mintz. The forensics examiners Mintz engaged discovered substantial volumes of data had been triple-deleted from the laptop, including a special permanent deletion software called “CCleaner.” These acts of evidence spoliation took place just three days after the court entered its order commanding the laptop’s production.

## The Outcome

Based on the nature and extent of the deletions, which Mintz believed blatantly violated the court’s preservation order, Mintz moved to dismiss the case with prejudice. The court granted the motion and invited our client to file a motion to recover its attorneys’ fees costs.

## Professionals



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