

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION, *et al.*,

Plaintiffs,

v.

CASE NO.: 8:03-CV-568-T-24MAP

CHECKERS DRIVE-IN RESTAURANTS, INC.,

Defendants.

ORDER

Stephanie Credit, the remaining intervening Plaintiff, seeks entry of an order compelling Defendant Checkers Drive-In Restaurants, Inc. to respond to several requests for production and interrogatories (doc. 72). Checkers opposes the motion (doc. 74). For the reasons stated below, the motion is granted in part and denied in part.

1. Mark Springston's personnel file and related information

Credit's first and second request for production and first interrogatory seek documents and information related to supervisor Mark Springston's employment and termination. Specifically, Credit seeks Springston's personnel file, all documents reflecting the reasons Springston was terminated, and a statement of every reason Springston is no longer employed at Checkers, including whether he violated any policies and names of person(s) who decided to terminate his employment. Credit asserts that the documents and information are relevant because Springston refused to relay to upper management her complaints of sexual harassment by Checkers manager Andrew Despota, despite Checkers' internal policy requiring Springston to do so. She asserts the information is relevant because

Springston denies she reported harassment to him. Credit further asserts that Despota, Area Manager over Springston, testified he terminated Springston but refused to tell the basis for termination. Several other witnesses testified that Springston was fired for stealing from Checkers, and Springston himself apparently testified that he resigned voluntarily after borrowing money from Checkers' safe. Credit argues that Despota's decision not to report Springston's theft to law enforcement, despite Checkers' policy requiring him to do so, demonstrates favoritism toward Springston and suggests Springston may have reciprocated by testifying that Credit did not complain to him about harassment by Despota. Against this backdrop, Credit says information related to Springston's employment and termination relate to his bias and untruthfulness. Checkers objects to production on the ground that Springston's personnel file is confidential and the requested information is unrelated to the Plaintiff's claims.

Though Rule 26(b) limits discovery to any matter, not privileged, that is relevant to the claim or defense of any party, the rule's Advisory Committee Notes states that "information that could be used to impeach a likely witness, although not otherwise relevant to the claims or defenses, might be properly discoverable. *See* Advisory Committee Notes to the 2000 Amendments to Rule 26. Balancing Credit's interest in discovering impeachment information against Checkers' and Springston's privacy interests, I find that only those portions of Springston's personnel file concerning the reason(s) for and circumstances surrounding his termination or resignation or any matters concerning Credit are discoverable. The remainder of Springston's personnel file need not be produced. Consequently, Checkers is to answer request for production two and interrogatory one as

limited herein.

2. Credit's demotion or termination

Credit's second interrogatory asked for after-acquired evidence that would have supported a decision to demote or terminate her employment. Though Checkers responded that it had discovered Credit's dishonesty regarding the reasons she left her employment at Starbucks in Illinois and her criminal history involving one or more crimes for financial dishonesty, Credit seeks to compel Checkers to identify and produce all documents supporting its after-acquired defense. Upon consideration, I find that since the request was an interrogatory, document production is unnecessary. *See* Wright, Miller & Marcus, Federal Practice and Procedure: Civil 2d § 2163 ("Copies of documents and tangible things must be obtained by Rule 34 rather than requesting them in connection with interrogatories.").

3. Resume fraud

Request for production eleven seeks production of documents reflecting termination of any Checkers employees for resume fraud. Credit asserts such information is relevant since Checkers is likely to rely on the after-acquired evidence defense that it would have terminated Credit's employment after discovering her resume fraud. Checkers objects to production, arguing the request is overly burdensome since it was not limited by time or geographic scope and an invasion of privacy to non-parties. Upon consideration, I find that Checkers should produce the names and last known addresses of all former Checkers managerial employees working at restaurants within Despot's geographic area who were terminated for resume fraud after January 1, 2002.

ORDERED:

1. Intervenor Stephanie Credit's Motion to Compel (doc. 72) is GRANTED in part, and DENIED as outlined above.

DONE and ORDERED at Tampa, Florida on this 3rd day of December, 2004.



MARK A. PIZZO
UNITED STATES MAGISTRATE JUDGE