



**“Helping businesses like yours”**

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Many of you may be wondering what you can do to help minimize your exposure to discrimination claims, and particularly punitive damages. To help you in that endeavor, we wanted to make you aware of some guidelines that the 4<sup>th</sup> Circuit Court of Appeals has set forth in a recent case. Bryant vs. Akin Regional Medical Centers, Inc.

By way of background, punitive damages can be awarded against an employer who engages in intentional discrimination with malice or reckless indifference towards its employees' federally protected rights. Employers can also be held liable for punitive damages where their managerial staff intentionally discriminates while acting in the scope of that supervisory role against an employee. Liability is imposed on the employer because of the actions of its employees. The law has created a good faith affirmative defense and this will only come about when an employer can show it is committed to compliance with federal laws prohibiting discrimination.

The Court in Bryant gives us some instructive guidelines. The components of the employer's policy in the Bryant case that the Court was most impressed by included:

1. The policy of non-discrimination and equal employment opportunity that was widely disseminated and effectively

communicated to the employees, including through an employee handbook.

2. A detailed grievance policy in which employees were encouraged to report complaints with assurances that management would take them seriously and would not tolerate any type of retaliation.
3. Effective training programs to educate the employees and management staff.

The elements found by the Court in Bryant are by no way exclusive nor the absolute minimum that is necessary to provide an employee with an affirmative defense of good faith compliance with the law, but certainly is an educational guideline to strive for. Good policies widely disseminated and consistently followed are your best defense.

If you wish to discuss these suggestions further, or how your policies and practices measure up to these suggestions, please contact us. This alert is for your general consideration and should not be substituted for specific legal advice regarding your unique policies and practices.