

Privileged and Confidential

January _____, 2006

Re: Avoiding Punitive Damages in Discrimination/Harassment Lawsuits

Dear _____:

This letter will bring to your attention an opportunity to protect _____ against discrimination and harassment lawsuits.

As you know, virtually every employer now has mandated discrimination and harassment law training obligations. What was once considered merely a “best practice” is now required by law. In Bryant v. Aiken Regional Medical Center, Inc., the U.S. Court of Appeals for the Fourth Circuit (whose decisions are binding on Maryland and Virginia employers) recently held that punitive damages can be avoided where the employer’s “good faith efforts” to proactively prevent workplace discrimination included live, interactive training regarding discrimination.

In Bryant, a jury found that the plaintiff had been denied promotions both because of her race and in retaliation for her complaints of discrimination. The jury further held the employer responsible for the actions of its managers, and awarded plaintiff substantial punitive damages.

While the Fourth Circuit upheld the jury’s decisions regarding discrimination and retaliation, it rejected the jury’s punitive damages award. The Court reasoned that the employer should not be subject to punitive damages where its individual manager’s unlawful decisions were made “contrary to the employer’s good faith efforts” to comply with federal anti-discrimination law. The Court emphasized that the employer’s “good faith efforts” included:

- Communication of comprehensive eeo policies in an employee handbook.
- An effective grievance procedure to address discrimination and harassment claims.
- An explicit non-retaliation assurance.
- Training of employees in a “carefully developed,” classroom program, which included formal training classes, interactive group exercises, and diversity training.
- Voluntarily monitoring departmental demographics to help spot discrimination issues.

The Court contrasted these “extensive” actions with those of employers who never issued anti-discrimination policies or trained their supervisors, and reversed the punitive damages award on that basis. In so doing, the Court created a “road map” for employers to take proactive steps to reduce their exposure to discrimination, harassment, and retaliation claims, which constitute a steadily increasing percentage of court dockets around the nation.

Feel free to contact me if you have any questions about this letter or would like to implement the prophylactic measures recognized by the Court in Bryant.