



# Good Faith Belief Leads To Employer Victory In Bias Claim

Insights

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Despite not being able to prove the alleged wrongdoings that led an Arkansas employer to terminate an employee, a federal appeals court just handed an employer a victory in a gender discrimination lawsuit because of its “good faith” belief that the worker actually committed misconduct. The [December 9 ruling from the 8th Circuit Court of Appeals](#) could serve as a helpful resource for employers fending off discrimination claims – so long as you understand the critical steps you need to take in order to take advantage of the good faith defense.

## The Facts: Alleged Porn Viewing Leads To Termination

Albert Rinchuso worked as an in-store pharmacist at Brookshire Grocery Company in Pine Bluff, Arkansas beginning in 2014. His tenure at the store was rocky, to say the least. Brookshire soon gave him a verbal warning after receiving complaints from several female coworkers that he was acting inappropriately.

Things became much more serious in 2017 when four coworkers told the company’s HR department that Rinchuso was using his work computer to view pornography. During Brookshire’s investigation, it was unable to conclusively determine whether the allegation was true, and Rinchuso adamantly denied it. He did admit to visiting dating websites on his work computer, however, which violated company policies. Several female coworkers also claimed that he touched them inappropriately, and he again denied the allegations.

Brookshire terminated Rinchuso’s employment for violating its conduct standards. He filed a lawsuit alleging a violation of the state gender discrimination law, claiming the company treated him more harshly compared to a woman who was previously accused of inappropriate conduct in 2014 but not terminated. As evidence to support his claim, he pointed to the fact that Brookshire could not definitively prove that he viewed pornography or touched anyone at work. The trial court ruled against him, and Rinchuso appealed the decision.

## Appeals Court Applies Good Faith Defense

In a unanimous ruling released on Monday, the appeals court agreed with the trial court and ruled in Brookshire’s favor. The 8th Circuit Court of Appeals – which hears cases arising in Missouri, Arkansas, Minnesota, and several other nearby states – focused on the employer’s intent and didn’t care as much about the lack of definitive evidence. “The absence of conclusive evidence that Rinchuso violated internet and conduct policies is insufficient to prove improper termination,” the court said, “because the central question in determining if termination is proper is not whether the

employee actually engaged in prohibited conduct, but whether the employer believed so in good faith.”

Although the case was brought under the Arkansas state anti-discrimination law, the court used the federal procedural standard (also known as the *McDonnell Douglas* framework) for determining whether the case should proceed to a trial. Using the same standard used across the country in claims brought under Title VII and many state laws, the court said it could not find sufficient evidence to suggest that Rinchuso was treated differently than similarly situated employees outside his protected class, nor did it have any direct evidence to support his claim.

## **5 Steps To A Solid Good Faith Defense**

While this case only directly covers employers in the 8th Circuit’s jurisdiction, many other courts use a similar good faith defense when examining claims of workplace bias. What steps can you take to make sure you have such a defense available to you should a disgruntled worker take exception to a disciplinary action you take against them? Here are five tips to keep in mind:

- Ensure you can prove that employees are aware of your misconduct standards. The best way to do this is through signed acknowledgements of your policies. You may want to audit your personnel files to make sure you have these critical documents on file for each and every employee.
- When an allegation of improper behavior is brought to your attention, make sure you launch an investigation as soon as possible. Your investigation should be headed by someone with HR experience who doesn’t have a stake in the outcome.
- Make sure all of the evidence gathered in the investigation is well documented. Notes from each person interviewed, each witness statement obtained, each document examined, each email or text message read – all should be maintained and ready to go in case you need them to defend your actions.
- Don’t jump to conclusions or you may be accused of a rush to judgment. If you feel the need to separate the alleged wrongdoer from the accuser, or to get the wrongdoer out of the workplace, you can always place them on an administrative leave pending the conclusion of the investigation. This temporary measure gives you some breathing room and will permit you to conduct your investigation without immediate pressure.
- Consistency is key. If you can prove that you have always taken the same disciplinary action against someone credibly accused of committing that form of misconduct, you will increase your odds of being viewed as operating in good faith.

You should ensure you are subscribed to [Fisher Phillips’ alert system](#) to receive updates on similar cases. If you have questions about this case or the good faith defense, please contact your Fisher Phillips attorney or any attorney in our [Kansas City office](#).

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