

California Sexual Harassment Laws

MODULE 4



DENIALS, DEFENSES AND REMEDIES



Once a claim of sexual harassment has been made, there are certain denials and defenses that the alleged harasser can raise and defenses the company can make to the claims.

If the sexual harassment claim is successful in a court proceeding, the remedies that can be awarded to the victim are discussed in the next slide.

Denials & Defenses

Denials

The common response to charges of sexual harassment is a denial of the charges:

- ▶ “It never happened.”
- ▶ “There are no witnesses.”
- ▶ “Look at how she dresses!”
- ▶ “I am a hugger.”
- ▶ “Ever hear of a woman scorned? If I don’t say she’s hot, she’s not going to get the job done.”

Defenses

The victims could have avoided part or most of the harm if they had taken advantage of the employer’s procedures for addressing sexual harassment (Avoidable Consequences Doctrine)

- ▶ The amount of harm to the victim could have been less if the employee had taken action (Failure to Mitigate Damages)

Remedies

Injunctive Relief

- Training
- Development or changes in policies/procedures

Economic Damages

- Lost wages
- Medical expenses
- Job search expenses

Non-Economic Damages

- Emotional Distress
- Loss of Enjoyment of Life

Punitive Damages

COMPARING FEDERAL AND STATE SEXUAL HARASSMENT LAWS

Federal TITLE VII

- ▶ Negligence theory only [Employer not automatically liable].
- ▶ Employer not liable if:
 - ▶ Employer exercised reasonable care; and
 - ▶ Employee unreasonably failed to take advantage of opportunities to avoid harm.
- ▶ Requires 15 employees or more.
- ▶ No application to independent contractors, volunteers and unpaid interns.

California FEHA

- ▶ Strict liability [Employer automatically liable for harassment by managers and supervisors].
- ▶ Employer has no defense if manager or supervisor is harasser.
- ▶ All employers, even those employing one person or sole proprietors.
- ▶ Includes independent contractors, volunteers and unpaid interns.