



LAW OFFICES OF SPECTOR, MIDDLETON, YOUNG & MINNEY, LLP

LEGAL UPDATE

HOW EMPLOYERS CAN LIMIT THEIR LIABILITY AGAINST SEXUAL HARASSMENT CLAIMS

A recent California Supreme Court case decided that employers with strong policies against sexual harassment could limit monetary damages when an employee unreasonably fails to promptly follow the procedures implemented by the employer. (See State Department of Health Services v. Superior Court (2003) WL 22764580). Although employers continue to be “strictly” or automatically liable for some damages when a supervisor is found to have harassed an employee, victims of any claimed sexual harassment (by a supervisor or co-worker) will not be awarded damages which could have been avoided by the employee’s following the employers complaint process. For example, if an employee waits to report sexual harassment when it reasonably should have been reported, arguably, further damages from subsequent conduct would be barred as the employer could have protected the employee had the misconduct been timely reported.

As a result of this case, employers have yet another important reason to be proactive in maintaining strong policies and in training employees, especially supervisors. This case also reinforces the need, when placed on notice, for prompt employer intervention to minimize injury to victims and to “send a message” that the employer will take such matters seriously by doing the following:

- Implement policies and procedures to facilitate the filing and resolution of sexual harassment complaints.
- Establish and maintain a prompt, thorough, and objective investigation process for all complaints.
- Ensure that the school’s sexual harassment policy and procedures are adequately communicated to employees.
- Follow the school’s established policies and procedures fairly and consistently.

This is a very clear change in the law in California as our state has one of the toughest sexual harassment laws in the country. This case provides employers with a new defense in order to mitigate damages in sexual harassment claims that has never before existed in California. By implementing and enforcing clear policies and procedures, you will be able to mitigate the monetary damages you may owe as employer if an employee does not avail him or herself to such policies and procedures.

If you should have any questions regarding this update, please contact Jim Young at (jyoung@smymlaw.com) or Jessica Hawthorne at (jhawthorne@smymlaw.com) at the Law Offices of Spector, Middleton, Young & Minney, LLP at (916) 646-1400.

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