

with the EOC against the harasser and the defendant for sexual harassment and vicarious liability for the harassment respectively. The Plaintiff's claim against the harasser was settled via conciliation, while the Plaintiff's case against the Defendant was brought to the Court under the Sex Discrimination Ordinance (SDO).

✓ **The Court's decision**

The Court accepted the Plaintiff's evidence and found that the acts committed by the harasser amounted to unlawful sexual harassment. The Defendant, as the harasser's employer, was liable for his acts because it did not take reasonably practicable steps to prevent sexual harassment against the Plaintiff in the workplace. However, the Court ruled that the dismissal was because the Plaintiff slapped the harasser, not because she was sexually harassed or she is female. The Court awarded damages to the Plaintiff for injury to feelings in the sum of HK\$80,000, as well as costs to the Plaintiff.

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**L v David Roy Burton
DCEO15/2009**

◆ **Background**

The Plaintiff was offered a position with a marketing firm, of which the Defendant was the general manager. Before the Plaintiff commenced her employment and during her employment, the Defendant made numerous sexual advances towards her and twice touched her inappropriately. The Plaintiff rejected the Defendant's advances every time. The Defendant's attitude

towards the Plaintiff deteriorated and finally he dismissed her. When informing her of the dismissal, he forcefully grabbed and bruised the Plaintiff's wrist. The Plaintiff lodged a complaint to the EOC, but attempts of conciliation were not successful. With the EOC's assistance, the Plaintiff brought proceedings against the Defendant under the Sex Discrimination Ordinance (SDO).

✓ **The Court's decision**

The Court found that there was a clear case of sexual harassment under the SDO based on the Plaintiff's undisputed evidence. The Court awarded damages to the Plaintiff for injury to feelings, loss of earnings, and exemplary damages.

Injury to feelings	HK\$ 100,000
Loss of earnings	HK\$ 77,039
Exemplary damages	HK\$ 20,000
	<u>HK\$197,039</u>

The Court awarded HK\$100,000 in damages for injury to feelings flowing from both the acts of sexual harassment and the dismissal. In assessing the award, the Court considered the fact that the offensive behavior of the Defendant persisted for over a month, and that the eventual dismissal of the Plaintiff was high-handed and abusive to the Plaintiff's personal dignity. As a result of the sexual harassment, the Plaintiff suffered anxiety, stress, humiliation, physical injury, and insomnia.

For loss of earnings, the Court awarded an amount equal to five months and 14 days' income, as the Plaintiff was unemployed for

that period before finding other employment.

The Court further awarded \$20,000 in exemplary damages. The objective of exemplary damages is to punish the Defendant for his conduct and to mark the Court's disapproval of such conduct as the compensatory award was insufficient to punish the Defendant in the present case.

The Court also awarded legal costs to the Plaintiff, which it found to be warranted by the circumstances of the case. The Plaintiff had conducted the proceedings in a reasonable manner, whereas the Defendant refused to settle or to apologize for his wrongful conduct. Furthermore, the Court was of the view that the Defendant should have known from the outset that his conduct was wrong, as every adult should know that it is wrong to make unwelcome sexual advances on another person.

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A v Chan Wai Tong DCEO 7/2009

◆ Background

The Plaintiff worked with the Defendant in the Food and Environmental Hygiene Department (FEHD) as an Assistant Hawker Control Officer. In the workplace, the Defendant sexually harassed the Plaintiff by making sexual remarks, physical contacts and other unwelcome conducts of a sexual nature against her. The Plaintiff complained to the FEHD which conducted an internal investigation. However, the Plaintiff's complaint was found to be unsubstantiated.