1)

======== Start of Answer #1 (716 words) ======== Sample Answer

ANALYZE THE LEGAL ISSUES: 22/30

Grunt's termination:

Grunt's termination opens liability for you to be sued under the American's with Disability Act (ADA). This act was meant to protect disabled persons from work place discrimination. In order to qualify as a disabled one must either have a Physical or Mental condition which substantially impairs major life activities, or have a history of having or being recognized as having a disability. PTSD qualifies for this as it is widely recognized to impair major life activities, as Grunt showed by having a flashback at work. He will most likely obtain a right to sue letter from either the EEOC under this act or with the DFEH under a Fair Employment and Housing Act claim. If he files federally (with the EEOC) then his compensatory and punitive damages may be capped at $300,000 because your number of employees. He would also have a year till the statute of limitations is up for the FEHA claim, while the ADA claim he has 300 days.

His claim will be based on a Disparate treatment theory of recovery, which is to say he will try and prove to the court that you intentionally took adverse employment actions against him based on his disability. As a defense you may say that he was a threat to the other workers as having flashbacks and "freak outs" could prove to be dangerous to others around him or even himself as he may try and attack one of the armed guards.

not applicable

There is also the defense of a Bona Fide Occupational qualification, However, this is quite weak as he has been performing his job well up to his episode and it is an easy accomodation to merely keep him away from guns... maybe move his desk to a floor with less security present. In either case I think his case would be strong against the company and it is worth trying to hire him back, especially since there is now undercover security that hides their firearms. If he files, settle.

missing — reasonable accomodation & interactive process

Faint's termination:

When Faint complained to Cal-OSHA she was performing a protected activity under

Court * really only covers retaliation for opposing acts protected by FEHA as noted, bel this is a cal-OSH issue.

California ~~Labor~~ Code Section 12940 (h). Firing her opened up the company her filing a retaliation claim under the said statute and I would say she has a good case. For any retaliation claim the plaintiff needs to prove up that she was performing a protected activity (which she was, see above), that she faced an adverse employment action and that there was causation between the protected activity and adverse employment action. Here the evidence is pretty strong that you fired her because of her cal-OSHA claim.

She has a year to state her claim and damages could be steep, including Compensatory, Punitive, (No caps) Backpay, Front pay and attorney's fees.

As a defense you could site another reason for firing her, performance for example, though this is unlikely to work in my view as, again, the evidence is pretty strong saying you fired her for her claim. If she files, settle.

The Cal-OSHA claim: not in Cal-OSHA

In order to prove up a General Duty claim it must be proven that there is a Hazard the workplace that is recognized as a hazardous condition or activity by the employer or the industry, the injury is likely to be caused or that injury or death has been caused and that there is no feasible abatement. Here there is a recognized hazard, namely Mr. Rambo, and he may be likely to do harm, However, the steps you have taken should be enough to be an abatement of the hazard. 12 armed guards, even if the employees don't know they are present, are still one of the only feasible ways a company like yours could deal with that threat. This is a solid defense/ attack of the prima facia case.

But issue is retaliation for filing Cal-OSHA claim

Ms. Rambo's Termination:

Ms. Rambo may also bring a cal lab code 12490 (h) or 704 (a) retaliation claim, however, here she does not fit the prima facia for retaliation. She was not taking part in any protected activity. This coupled with the fact that all employment in the United States is presumed to be at-will and no union contract or even a written contract states anything different, the termination of Miss Rambo was entirely in your rights.

======== End of Answer #1 ========

2)

6 SP

======== Start of Answer #2 (255 words) ========

F) Needed to answer F and 3 others. - only did 2

I would not advise selling insider information to a hedge-fund. If someone discovers what you are doing it could result in you going to jail. You are also liable to your employees whistle-blowing on you. California Labor Code 1102.5 protects any employee who gives information concerning the violations of law during an investigation or enquiry. 3 SP not relevant

Duty of loyalty to employer
Confidential information not available to public

E)

In cutting the Defined Contribution plan in half for those that have been in the company for 25 years I would say this is a bad idea. It would open you liability against the ADEA which is meant to protect people over 40 against discrimination due to their age. Many of the people you would be negatively effecting would be in the protected age group and they could file a disparate treatment claim against you, Which according to the Supreme court case of Griggs, is when a facially neutral policy unintentionally, adversely effects those in the protected group. The future Plaintiffs could establish this as you are almost exclusively reducing the compensation for them. 2

impact

Griggs is an impact case

D)

Your boss may hold it against you personally if you refuse to look at his tax return, However, he can not take any adverse employment actions against you as their are laws against retaliation in this state. Specifically 12940 (h) of the California Labor Code. If you take part in a protected activity, he takes adverse employment action against you and you can prove that it was because you took part in that protected activity then you can claim retaliation and sue him. 1

but what law is he breaking if he retaliates - is there?

what discriminatory basis

what protected activity?

======== End of Answer #2 ========

3)

======== Start of Answer #3 (1026 words) ======== 23 Sample Answer

BEST FORUM IN WHICH TO SUE AND WHY:

First I think she should file criminal charges for Rape against Leech, the "Frozen" response is widely recognized as a response to such situations and Rape consisted of an unwanted intercourse with a women. Leech has fulfilled the elements of rape. Her unwillingness could also be proved up by her consistent turning down of Leech's sexual advances threw out the day and her insistence on getting separate rooms. This case will also help the other claims that Sincere (SS) is going to be filing.

She could also file under the Civil rights act of 1964's Title 7 sex discrimination. Under this she could use the theory of recovery of work place harassment. (sexual harassment) Same can go for a Fair Employment and Housing Act claim. We are well within our right for both statute of limitations as she didn't make it through her 28 days of training and she only waited 2 months after, so we have a long time to obtain our right to sue letters from both the FEHA, a one year statute of limitation, and Title 7, must file within 300 days, claims. We would file with the DFHA for FEHA and EEOC for the title 7. Filing with the DFHA would most likely mean more damages as there is no cap on compensatory or punitive damages and those should be large amounts considering the substantial emotional harm done to this prospective client.

POSSIBLE DEFENDANTS:

Under california law we can sue the employees (leech and Hands) under a harassment claim. This is good because the liablilty of the employer is something that may pose a legal question. When SS had the opportunities to go through the administrational channels to achieve a remedy through them she failed to even inform her superiors of what happened. This gives the employer a chance to say they didn't know what was going on. The lead driver who was responsible for the harassment was not a supervisor himself, which would make it much easier for SS to place liability on the employer, instead he had no supervising power what so ever. (but he did recommend she continue to drive) The argument that can be made is that they had constructive knowledge of what was happening. It was said in SS's letter that "the fleet managers advised another women driver to interview co-drivers as a potential romantic interest as platonic teams don't work." This could be used as evidence that it is well known in the industry that women

good

are treated this way. The fact that they have not responded to her letter works against them as it makes it seem more like they are silently agreeing as they don't refute these serious claims. and not taking steps to investigate complaint. The employer also attempted to accommodate SS by taking her off hands truck and giving her the pick of any lead driver she felt comfortable with. Mr. Blind should have looked into her comment about not having a "boyfriend-girlfriend relationship", the fact that he did not may also be a silent nod to the practice. Finally, how pervasive it was, 2 for 2 lead drivers tried to have sex with her. How could management not know?

CAUSES OF ACTION AND THEIR VIABILITY:

FEHA and Title 7 both have the theories of liability of Harassment. Harassment is when unwanted comments or activities are directed at Plaintiff, because of her sex, which are severe and pervasive and they result in a disruption of a reasonable persons work. Here this is definitely what happened. These were unwanted comments and advances as she repeatedly said "no", "shut up" and "that will never happen". There might be evidence that she was less passive and I am sure the defense will try and find some so as to mitigate their damages, for example, the time she didn't stop him from caressing her leg, but from her statements, in the aggregate, there seems to be enough to say she didn't want it.

These comments were obviously directed at her because of her sex. They were all about the act of sex and trying to obtain it and questions like "do you have a vibrator" probably wouldn't come up if she were a man. Also they were severe and pervasive it happened time and time again even after she told Leech no and after him it continued with Hands. Finally, according to the Harris case, california recognizes the reasonable person standard for if such activity a worker would find disruptive to their job. Women often finds these activities and comments to be disruptive (especially rape) and so it is not a stretch to say a reasonable women in her position would find this disruptive.

Quid Pro Quo may also be established as Leech recommended to the fleet that she be approved as a driver and she didn't put anything bad on his evaluation sheet or go to a supervisor. There may have been a conversation left out of SS's statements

regarding that but that is just speculative. It could also be the case the judge will see this as a constructive discharge and it would then become a Tangible employment action case opening up more possible damages.

Negligent & Intentional Infliction of Emotional Distress

BURDEN OF PROOF:

It will be on the Plaintiff to provide evidence of the interactions and to establish the prima facia for these claims. However, the letter that she send to the company along with personal testimony and the statement of other female drivers and maybe even Leech and Hands, makes a very good case for her.

POTENTIAL DEFENSE:

The company may be able to wash their hands of liability (see supra) but besides from that she did fail to go through the administrational channels and that is part of the requirements for Harassment. She may give other reasons for her failure to do so though, such as stress or fear of retaliation. In a male dominated industry like trucking it is easy for a women to not feel safe enough to talk.

only to limit damages - not liability

EVIDENCE ISSUES:

See supra

POTENTIAL DAMAGES:

Under FEHA the damages will probably include Compensatory, Punitive and Attorney's fees. Same under Title 7 but there will be a cap depending on the size of the company.

Recommendation?

======== End of Answer #3 ========

END OF EXAM