BusinessManagement DAILY

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Stare Masters: Can Co-Worker Ogling Spark a Harassment Claim?

What's the difference between a friendly glance and a sexual stare? A recent court ruling shows that sexual harassment is in the eye of the beholder — and managers better not roll their eyes if they witness it …

Case in Point: Odessa Babbitt was hired as a room service attendant at a Westin hotel in Rhode Island. The collective-bargaining agreement said employees served a 90-day probationary period before joining the union.

Babbitt claimed that from day one she was subjected to constant staring and ogling from male co-workers. She said those men would linger around her work area for the sole purpose of staring at her. Babbitt said the behavior sometimes escalated to whistling and vulgar comments about her body. It got so bad that she feared riding in the elevator with them.

Babbitt claimed the behavior even occurred in front of her supervisor, who responded by merely "rolling her eyes" and doing nothing.

For the first 89 days, Babbitt didn't report the harassment. *The reason:* Babbitt feared she'd be fired if she complained during her probationary period. An HR manager had told her she could be fired for any reason until she was officially in the union.

Meanwhile, supervisors were building a file on Babbitt. In her first six weeks, she'd been disciplined three times—twice for tardiness and once for failing to follow a manager's instructions. As a result, managers discussed termination.

On her 90th day, Babbitt broke her silence. She allegedly complained to her supervisor about harassment. A few hours later, she was called into her boss's office and terminated. Her boss allegedly said, "We have to let you go. We can't have, like, this harassment stuff going on here."

Babbitt sued for sexual harassment and retaliation, saying the treatment was severe and pervasive enough to rise to the level of sexual harassment. Westin denied any misconduct, claiming she was fired strictly for performance reasons. Plus, it argued that Babbitt presented evidence of only isolated instances of "intersexual flirtation." (*Babbitt v. PRI XVII LP*, D. R.I., 10/26/09).

What happened next … and what lessons can be learned?

The court rejected Westin's bid for summary judgment and, instead, sent the case to a jury trial. It said the hotel never fired anyone before on day 90 and Babbitt's fear of retaliation came true.

The court said that while the conduct was not "overwhelming" it lasted long enough for a jury to decide if it was severe or pervasive. The manager should never have ignored the sexual banter in the workplace or discouraged Babbitt from reporting it.

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3 Lessons Learned … Without Going to Court

1. Don’t roll your eyes at harassment. When the manager saw the inappropriate conduct, she needed to take prompt, effective action to stop it.

2. Don’t overlook bad behavior. The company claimed the conduct was merely “intersexual flirtation” and nothing more. Never minimize sexual conduct.

3. Harassment is in the eye of the beholder. Remember, harassment is a subjective standard. If an employee feels the conduct is unwelcome or offensive, then a jury may, too.

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