

Where 'omg, u look gr8' can land you in court

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The new sexual harassment is much more subtle, and harder to confront

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Forbes

updated 8/11/2009 7:14:40 AM ET

When her hotel room phone rang at 2 a.m., Megan McFeely assumed it was an emergency. Maybe a friend or family member was hurt or in trouble. Worried, she sleepily picked it up, only to hear a male coworker on the other end. Not a superior, he was someone with "definitely more power than I had," urging her to come back down to the hotel bar. It was obvious he was drunk.

"I was astounded," says McFeely, who was in New York with several colleagues for a work conference. "He asked me what I was doing in bed, why wasn't I down there partying with them." McFeely told the man she needed to get some sleep and hung up the phone. But the call continued to weigh on her. "When you're not the one in power, and someone does something like that, you just feel unsafe."



Sexual harassment isn't about being chased around the desk anymore. It's about flirtation, sut

Welcome to the new sexual harassment. It's (usually) not about the stuff you see on *Mad Men*, and it's not chasing the secretary around the desk. "It's rare now that somebody in the office says, 'Sleep with me or you're fired,'" says David Bowman, a labor and employment partner at the Philadelphia office of Morgan, Lewis & Bockius. "Now it's about managers being very flirtatious at the holiday party. It's about getting drunk together at happy hour and something inappropriate being said or done. People are now aware that certain things are not acceptable, but they still stumble over the subtle areas."

Those subtle areas can include everything from flirtation at a company party to a complimentary text message or an unwelcome invitation to discuss the latest project over dinner or drinks. "There's been a new generation of confusion in this area," says Jay Zweig, an employment lawyer with Bryan Cave in Phoenix.

"Twenty years ago, it was, 'Sleep with me if you want the promotion.' Now most sexual harassment claims have to do with a hostile work environment, someone saying, 'This person is bothering me. I can't do my work. I'm distracted and uncomfortable.'"

Much of the problem is that newer technology — e-mail, IM, texting or posting on social-networking sites — makes it much easier for comments to be misconstrued on many levels. Says Bowman: "When you talk in person, 80 percent of what you say is in your tone and body language. With technology, all of that is gone." If you admire an employee's new haircut while she is in your office, she can read your tone and body language; and you can read hers. However, a late-night text message admiring your employee's new haircut can take on a lascivious tone, even if that is not the intention.

A 27-year-old professional woman tells the story of how one of her superiors, a flirty married man with children, who, after overhearing a previous comment she'd made to a female co-worker about buying a new dress, sent her a late-night e-mail from his personal account, telling her he couldn't wait to see her in the dress.

"I'm sure you will look amazing in it," he wrote. The woman responded that she didn't appreciate him sending an e-mail like that to her work account, and he claimed it was a mistake and "half-apologized." Later, he sent her an IM that she feels was "completely inappropriate." She remembers telling her co-workers she would have to block him.

The woman says she never reported the incidents to her direct superior or human resources. "With a staff that small, I knew that any complaint would be public knowledge within seconds," she says, "and I didn't have someone I could go to and feel safe talking about a sexual harassment policy."

Says Zweig: "Sometimes employees don't understand that if you are at home, and send something from a private e-mail account to a co-worker,

that it can still be used against you."

And because electronic conversation is such an integral part of office communication, people might feel compelled to respond to it, even if the message makes them uncomfortable. "Someone might write back 'LOL' just to say something, and then the person thinks what they wrote is welcomed," says Bowman, who adds that emoticons can also be a source of misunderstanding: "People use those little winks. Those things can be completely misconstrued, on both ends."

Rick Brenner, a management consultant and workplace politics expert in Cambridge, Mass., says that while a one-time unwelcome electronic message may just be an aberration, a pattern of them, with you or with other employees, could spell problems. Rather than running to human resources, Brenner suggests tactfully trying to find out if this person has a history of this kind of thing.

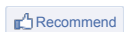
But he acknowledges that if there is a long-standing history of this issue, management may already know about it and have chosen not to act. In this case, he says, you might want to consider finding another job. "The legal path is not for the faint of heart," he says. "You need emotional and financial resources. It depends how you want to spend your life."

Social-networking sites like Facebook and MySpace can be another potential source of trouble. "Sites like this can become fertile ground for someone's fantasy life," says Brenner. "If you're trying to maintain a professional stance at work and don't want any entanglements, be careful about what you put up." Innocent vacation photos of you in your bikini may unwittingly draw unwanted attention at work. Brenner recommends having separate profiles for professional and personal contacts, or just sticking to a professional site like LinkedIn for your work colleagues.

Another gray area is office affairs. Even though they may be consensual, the aftermath of an affair gone wrong can be messy for all around. No doubt the married head of surgery at Brooklyn's Maimonides Medical Center, Dr. Patrick Borgen, learned this the hard way.

When a female doctor, Dr. Petra Rietschel, with whom he was reported to have had a two-year affair, was fired two months after their relationship ended, she filed sexual harassment charges in Brooklyn Supreme Court. Though she and Borgen worked in separate departments, and he was not her supervisor, experts say the burden of proving that she was fired for legitimate work reasons will still be with the hospital, given the suspect timing of her termination. Says Zweig: "I advise companies to consider non-fraternization policies. Workplace relationships can be volatile whether they are clandestine or open. Invariably, when they end, it's hard to go back to just being friend and co-worker."

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